


URBAN LAND REGULARIZATION AS A WAY OF REALIZING THE FUNDAMENTAL RIGHT TO AN ECOLOGICALLY BALANCED AND RESILIENT ENVIRONMENT

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ABSTRACT

This scientific article analyzes urban land regularization as a necessary political-administrative instrument to ensure an ecologically balanced and resilient environment, in the face of the challenges arising from the global environmental crisis. Resilience becomes one of the dimensions of urban environmental sustainability in cities, which is why it is essential to verify how land regularization can influence and implement this municipal public policy. For this, informal urban centers must be incorporated into the municipal territorial planning, making special use of land regularization. The work is based on a qualitative approach, as well as bibliographic and documentary research, and the data are analyzed by the deductive and inductive methods.

Keywords: Urban Land Regularization. Ecologically balanced environment. Property. Resilience of Cities. Public Records.

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INTRODUCTION

Fundamental rights derive from legislative evolution worldwide, and a constant concern in several countries is the guarantee of minimum rights to any individual on a universal basis. Brazil followed this need and global concern to safeguard fundamental rights and inserted them in our Federal Constitution of 1988.

Among the most diverse fundamental rights foreseen, the right to an ecologically balanced environment will be addressed in this work. It is important to highlight the dichotomy between the right to property and the right to an ecologically balanced environment, which are different rights, but intimately linked. The State must guarantee the protection of these rights, including against public facts or acts, as well as to provide the realization of these rights, enabling individuals who are members of society the adequate and efficient means for individuals to enforce such rights.

In this context and given the peripheral housing informality in large urban centers, the Urban Land Regularization thus emerges, a proposal for the incorporation of informal urban centers into urban territorial planning and its facilitation in obtaining urban property, consequently with the scope of solving the recurrent problems of informal centers in large urban centers, such as environmental problems.

Urban Land Regularization is not limited to a simple concession of property, its social scope is more comprehensive, since the right to formal property is a way and tool for the individual to reach the state apparatus, stably and permanently, especially for the most vulnerable individuals.

Thus, a procedure was sought that would be fast and that would enable individuals, who live in an irregular and vulnerable situation, to obtain the property title in a regulatory way, and the acquisition of other social rights arising from it, through minimum conditions and also with the presence of the State through the incorporation of informal urban centers into urban territorial planning, with observance of environmental standards, as will be studied in the present work.

URBAN ENVIRONMENT AND RESILIENCE OF CITIES

Brazil, following the need and global concern with the environment and its protection for future generations, began to expressly provide, in a constitutional manner, among other rights, the fundamental and collective right to an ecologically balanced environment. We see this provision expressed in article 225 of our Federal Constitution.

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

Thus, we see, in the words of Patrícia Perrone Campos Mello, that "the 1988 Constitution operated Brazil's transition to democracy and, like other Latin American constitutions produced in the same period, provided for a broad list of fundamental rights".³

In the constant need for constitutional evolution, so that it always meets the desires of society, we see Jackson's words, exposing us that:

At least one other Western democracy, Canada, sees its constitutional law as a "living tree" — a metaphor that in some ways better captures the idea that even a "living" document is limited by its origins. After all, trees are rooted in ways that other living organisms don't.⁴

About the evolution of the State, Lucas de Souza Lehfeld tells us that "The junction of civil, political, social and environmental rights demands a new profile of the State".⁵ In this new profile, we see that the State must guarantee the protection of the environment, and also to provide its concretion through public policies and means of inspection to private individuals for their strict obedience, ensuring compliance by the whole society.

Given the importance of such collective right, procedural alternatives were sought that aim to give greater effectiveness to their concretion, urging the need to improve the existing tools that enable the effectiveness of environmental law.

Fiorillo also tells us that:

In addition to authorizing the protection of individual rights, which was traditionally already done, it began to admit the protection of collective rights, because it understood the existence of a *third type of good*: the environmental good. This fact can be verified due to the provisions of article 225 of the Federal Constitution, which enshrined the existence of a good that is neither public nor private, but for the *common use* of the people (italics in the original).⁶

³ MELO, Marcelo Augusto Santana de. **New Forest Code and the Real Estate Registry**. Available at: <http://irib.org.br/obras/3974>. Accessed on: 12 jan. 2025.

⁴ JACKSON, Vicki C. **Constitutions as "Living Trees"? comparative constitutional law and interpretive metaphors**. Fordham Law Review, n. 75, p. 921-960, 2006.

⁵ LEHFELD, Lucas de Souza. **Socio-environmental Rule of Law and its Principles of Contextualization**. Journal of constitutional and international law, v. 22, n. 89, p. 303-318, Oct./Dec. 2014.

⁶ FIORILLO, Celso Antônio Pacheco. **Brazilian Environmental Law Course**. 14. ed., rev., ampl. and current. in the face of Rio+20 and the New Forest "Code". São Paulo: Saraiva, 2013. p. 39.

Despite being a collective right of paramount importance that guarantees the perpetuity of healthy subsistence conditions for future generations, this collective right, since its inception and in general, has been confronting the property right.

Given a clash between fundamental rights, in which on the one hand we have the right to an ecologically balanced environment, and on the other hand we have the right to property and the resulting private autonomy, the Brazilian legislator had to evaluate these⁷, opting for the valorization of environmental rights to the detriment of property in a broad way.

By express legal provision, we see that the property right is no longer seen as a full and unconditional right, and the individual owner must ensure that his movable or immovable property, especially the latter, meets its social and collective purpose, preserving the environment.

Milaré argues that:

The enjoyment of one's right was no longer considered limitless, recognizing that it must be exercised for the benefit of the person, but always respecting the ethical-social purposes of the community to which its holder belongs⁸.

When it comes to the relationship between the social function of property and the right to a balanced environment, we see this relationship as more latent in the properties in large urban centers and in the way they are used by their owners.

With the evolution of national law, which began to contemplate the importance of the environmental in the present case, to the detriment of other rights, such as the right to property and possible misuse of the property, we see that there was a limitation in the latter, which can and should be exercised as long as it meets its social and environmental function.

The property right was no longer considered from an individualistic perspective, as the individual right of the owner to fully use his property, and the right to property inserted in a collectivity was considered, fulfilling its role, even when the property is inserted in large urban centers.

⁷ We see such valuation expressly contained in article 1,128 of our Brazilian Civil Code, which provides as follows: "Art. 1,228. The owner has the faculty to use, enjoy, and dispose of the thing, and the right to recover it from the power of whoever unjustly possesses or detains it. § 1 The right to property must be exercised in accordance with its economic and social purposes and in such a way that flora, fauna, natural beauty, ecological balance and historical and artistic heritage are preserved, in accordance with the provisions of a special law, as well as avoiding pollution of the air and water."

⁸ MILARÉ, Edis. **Environmental Law**. 10. Ed. São Paulo: Revista dos Tribunais, 2015. p. 274.

Despite the affirmation of the right to an ecologically balanced environment, we see that, with the disorderly growth of cities and informal urban centers, places where the State is not present, environmental guidelines and standards are commonly not complied with, generating serious environmental problems that have consequences.

It is important to remember the Sustainable Development Goals, established by the United Nations (UN), among which, SDG 11, which states "making cities and human settlements inclusive, safe, resilient and sustainable", this being a role of the State of collective scope, which must have action mechanisms including in informal centers to make the city resilient and sustainable.

Regarding resilience, the concept brought by Cristiane Mansur de Moraes Souza is important, who tells us that "the concept of socio-ecological resilience concerns the ability of a socio-ecological system to recover easily or adapt to adversity or unexpected changes".⁹

Bringing the concept of resilience to society and cities, the aforementioned author also complements by arguing that:

Socio-ecological resilience aims to make both society and the environment able to withstand socio-environmental impacts, especially in more vulnerable areas, and to make cities/communities developed in the lens of sustainability¹⁰.

Thus, by resilient cities, we have to be cities developed with sustainability, with respect for environmental rules so that the impacts on vulnerable areas must be mitigated, especially informal urban centers, with the ability that the socio-ecological system can resist adversity without harming nature or society.

From the point of view of the construction of geographic space and the concern with structuring a more harmonious society about its social relations and with nature, it is important to analyze the intentionality of the transformations that cause such impacts.

José Herbert Luna Lisboa discusses the need for the coexistence of property rights and an ecologically balanced environment:

In general terms, it tries to highlight the evolution and construction in the international and domestic legal system of the right to housing and balanced environmental law as intertwined rights that are essential to the quality of life of

⁹ SOUZA, Cristiane Mansur de Moraes; MELLO, Bruno Jandir; GOMES, Anderson de Miranda. **Sustainable development and socio-ecological resilience: an agenda for a sustainable transition of territories**. Redes (St. Cruz Sul, Online), v.26, 2021. ISSN 1982-6745.

¹⁰ SOUZA, Cristiane Mansur de Moraes; MELLO, Bruno Jandir; GOMES, Anderson de Miranda. *Op. Cit.*

human beings, incorporated as they are in the Federal Constitution as fundamental rights¹¹.

The State needed to implement legal tools capable of controlling and inspecting the use of properties, especially in large urban centers, even if in informally constituted nuclei, to certify that the social and environmental function is being fulfilled by the owners.

To achieve this objective, the concern with compliance with environmental legislation in the context of Urban Land Regularization arose, which will be studied in more depth below.

URBAN LAND REGULARIZATION AS A FORM OF REALIZATION OF FUNDAMENTAL ENVIRONMENTAL RIGHTS

As previously discussed, the State's duty does not extend to the simple protection of private property, but also extends to the protection of environmental law, even in cases of incorporation of informal urban centers into urban territorial planning.

The State must facilitate the obtaining of the right to property through adequate and efficient means so that individuals can own a real estate and, consequently, be able to have decent housing, with the minimum infrastructure requirements, and environmentally adequate.

Even though these are possibly conflicting rights, as previously commented, these rights are intimately linked, if the State is present, providing individuals with the possibility of obtaining the right to property, it must also, certainly, observe the guarantee, stably, of the right to an ecologically balanced environment and the other rights arising from individuals, more especially environmental rights, urban security, and perpetuity for future generations.

Thus, Urban Land Regularization emerged as an institute that aims to serve as a tool for the incorporation of informal urban centers into urban territorial planning, a facilitating instrument in obtaining urban property, and should also indirectly imply the acquisition by the population of the right to health and an ecologically balanced environment, especially by the vulnerable low-income population in informal urban centers.

¹¹ LISBON, José Herbert Luna. **Right to housing and a balanced environment: weighing international human rights rights**. Available at: <https://jus.com.br/artigos/59593/direito-a-moradia-e-ao-meio-ambiente-equilibrado-ponderacao-entre-direitos-internacionais-dos-direitos-humanos/1>. Accessed on: 12 jan. 2025.

In a way, with Urban Land Regularization there is a new "popular urban order",¹² since there is an adaptation of urban legislation to real social situations, providing vulnerable individuals, who live in irregular areas, to achieve the rights to decent housing, in a stable way, as well as the right to regulatory property.

Urban Land Regularization is currently regulated by Decree 9,310/2018, "which establishes the general rules and procedures applicable to Urban Land Regularization and establishes the procedures for the evaluation and disposal of Federal Government properties", and Law 13,465/2017 is now regulated.

This decree established the legal, urban, environmental and social measures aimed at the incorporation of informal urban centers into urban territorial planning and the titling of their occupants, as provided for in its first article.

In this context, we have that:

Land regularization becomes necessary, useful and appropriate in cases where the illegality of property or possession presents itself as a social problem with the potential to generate major urban or rural conflicts, or put people's physical and patrimonial integrity at risk, in addition to generating or aggravating social inequity and environmental impacts. Both for reasons of improving agricultural productivity (in the rural sphere) and for environmental reasons or social equity (in both cases, urban and rural), land regularization is an important element for sustainable development, which must reconcile the productive use of the property (generation of wealth), promote social equity and ensure the protection of the environment¹³.

Urban Land Regularization is not a simple instrument for granting property, but rather a form of regularization of large irregular and precarious urban centers, bringing them the basic infrastructure, with the protection of the environment, this, with the presence of the State, where it was previously absent.

According to the Booklet of the Union of Notaries and Registrars of the State of Espírito Santo, about Urban Land Regularization, this "is the process that includes legal, urban, environmental and social measures to incorporate informal urban centers into urban territorial planning and the titling of their occupants".¹⁴

¹² SUNDFELD, Carlos Ari. **The Statute of the City and its general guidelines**. In: DALLARI, Adilson Abreu and FERRAZ, Sérgio (Orgs) Estatuto da Cidade (Comments on Federal Law n. 10.257/2001. São Paulo: Malheiros, 2002.

¹³ REIS, Émilien Vilas Boas Reis; OLIVEIRA, Márcio Luís de. **Urban and rural land regularization: the need for different theoretical frameworks and public policies**. Available at: <https://www.publicacoesacademicas.uniceub.br/RBPP/article/download/4748/4748>. Accessed on: 22 jan. 2025.

¹⁴ SINOREG-ES. BOOKLET - **Urban land regularization**: practical aspects of law 13.465/2017. Available at: https://www.sinoreg-es.org.br/_Documentos/Upload_Conteudo/arquivos/CARTILHA_REGULARIZACAO_FUNDIARIA_URBANA_2017.pdf. Accessed on: 17 jan. 2025.

We can see even greater explanations in the lessons of Arícia Fernandes Correia:

In this sense, it has already been observed that the full land regularization of precarious settlements in Brazil is presented under different facets: the dominial-registral, which guarantees the security of possession or the title of property, through the most diverse legal instruments; the urbanistic, due to which a specific legislation for the use and occupation of the land is guaranteed, urban infrastructure, collective equipment, fundamental right to address, connection with the city (mobility); and the socio-environmental, to guarantee the maintenance of the titled people preferably in their places of belonging, in an integrated way with the environment in which they (survive), and should finally be characterized as sustainable, not only from an environmental point of view, but also from a social point of view¹⁵.

Thus, the regularization of irregular urban centers is carried out with the guarantee of the right of property to their real owners, with the use and occupation of the land in a correct way, with an adequate urban infrastructure, from an environmental point of view and in a sustainable way, integrating, in fact, this urban irregular zone with the rest of the city, freeing its occupants from social informality.

In addition to the idea of the main functions of Urban Land Regularization, it is worth highlighting:

The main purpose of urban land regularization is, in addition to the legalization of property and possession of places of residence, to adapt and integrate the regularized area into the socially, economically and environmentally sustainable urban space, demanding, for this, the implementation of an infrastructure that allows residents access to public and private goods and services proper to the cities. Therefore, the process does not merely aim to legalize illicit property and possession, but to make the fundamental right to housing viable, ensuring a good quality of housing life¹⁶.

It should be noted that, with the incorporation of informal urban centers into urban territorial planning, the implementation of a basic infrastructure is carried out in the place, allowing residents to access public services proper to cities, such as access to security, public lighting, basic sanitation, hospitals, among others. Thus, individuals who were previously in a situation of vulnerability of social marginalization, now have the presence of the State and, as a result, the enjoyment of its services in their daily lives, regaining access to their fundamental rights.

¹⁵ CORREIA, Arícia Fernandes. **Right to urban land regularization and municipal autonomy:** the conversion of Provisional Measure No. 759/2016 into Federal Law No. 13,465/2017 and the titles of the City Hall of the City of Rio de Janeiro in the first four months of 2017. Available at: <https://www.epublicacoes.uerj.br/index.php/geouerj/article/viewFile/32061/22979>. Accessed on: 10 jan. 2025.

¹⁶ REIS, Émilien Vilas Boas Reis; OLIVEIRA, Márcio Luís de. *Op. Cit.*

In the case of the Urban Land Regularization procedure, there is a first phase in which an administrative process is carried out by the City Hall, to recognize the legitimacy of possession or land legitimation, with the consequent issuance of the Land Regularization Certificate (CRF). The legitimate persons able to make this request are listed in article 14, Law 13,465/17, including the Union, State, Federal District or the Municipality itself, the beneficiaries, the owners of the properties, the Public Defender's Office and also the Public Prosecutor's Office.

In the processing of this request, the Municipality must classify the informal urban nucleus, framing them in one of the modalities of Urban Land Regularization provided for in the legislation, with a subsequent period of 30 (thirty) days for the manifestation of the interested parties and confronting parties, after its notification.

Also important is the legal provision brought regarding the approval of the project by the Municipality, which according to article 12 of Law No. 13,465/2017, "The municipal approval of Reurb corresponds to the urban approval of the land regularization project and, if the Municipality has a qualified environmental agency, to environmental approval".

Also by express legal provision, the referred project must bring a proposal for solutions to environmental issues and a schedule for the implementation of essential infrastructure works, including urban and environmental compensations, and must consider the characteristics of the occupation and the occupied area to define specific urban and environmental parameters.

It also complements that the aforementioned Law provides for cases in which the Municipality does not have the technical capacity or a qualified municipal environmental agency for such approval, cases in which the analysis and approval can be done by the States.

In this phase of analysis of the project, if there is a challenge, the municipality itself will carry out an extrajudicial procedure for the settlement of conflict. If there is no challenge or after it is overcome, the preparation of the land regularization project begins, with the end of this first phase being the issuance of the Land Regularization Certificate (CRF) by the Municipality.

For the issuance of the Land Regularization Certificate (CRF) by the Municipality, it is necessary to adopt some measures in the project, such as:

Legal measures correspond especially to the solution of domain problems, referring to situations in which the occupant of a public or private area does not have a title that gives him legal certainty about his occupation. It is the aspect of the lack of a "document" that gives full ownership to the direct beneficiary of Reurb.

Urban measures refer to solutions to adapt the subdivisions to the regularized city, such as the implementation of essential infrastructure (pavement, sewage, energy, water supply), resulting from the allotments implemented without complying with legal standards. The relocation of housing given being in places subject to landslides, floods, in contaminated, unhealthy places, among others, also enters into this aspect.

The environmental measures seek to overcome the problem of settlements implemented without environmental licensing and in disagreement with urban legislation and environmental protection.

Social measures, in turn, refer to the solutions given to the population benefiting from Reurb, especially in occupations by low-income families, (but not excluding other populations), to provide the dignified exercise of the right to housing and citizenship, providing quality of life¹⁷.

Thus, it is linked that, for the issuance of the Land Regularization Certificate (CRF), it is necessary to foresee the urban measures that will be adopted in the place, such as the implementation of essential infrastructure, paving, sewage, energy, water supply and the minimum necessary to provide good health conditions to citizens.

In addition to urban measures, it is imperative the need for environmental measures to be taken for the regularization of the urban core, which should seek to overcome problems of environmental protection, common to settlements implemented without environmental licensing and in disagreement with the legislation.

After the title is issued, it has to be noted, which is equivalent to a protocol with the Real Estate Registry of the place where the property is located, thus initiating a second phase of the Urban Land Regularization procedure.

This title will go through the registration qualification of the Real Estate Registry Officer. Afrânio de Carvalho shows that:

... It is necessary to interpose between the title and the registration a mechanism that ensures, as far as possible, the correspondence between the presumptive ownership and the true ownership, between the registration situation and the legal situation, for the sake of the stability of the real estate business. This mechanism must function as a filter that, at the entrance of the registry, prevents the passage of titles that break the mesh of the law, either because the disponent lacks the power to dispose of it, or because the disposition is loaded with ostensible defects¹⁸.

¹⁷ SINOREG-ES. *Op. Cit.*

¹⁸ CARVALHO, Afrânio de. **Real Estate Registry**: comments on the registration system in the face of Law 6.015, of 1973, with the amendments of Law No. 6.216, of 1975. 2nd ed. Rio de Janeiro: Forense, 1977. p. 78.

Therefore, it is up to the Real Estate Registry officer to review the administrative procedure carried out by the Municipality, and it is up to him to issue subpoenas and receive the challenges to them, if they have not been carried out, and may reject them out of plan or forward them to the Judge of Appeal, if he considers the challenges to be justified.

After the resolution of all the challenges, or if there has not been one, the Real Estate Registry Officer must approve the Urban Land Regularization project, opening a new registration for the property, if applicable, together with the opening of individualized registrations for the lots and public areas resulting from the approved regularization project, finally carrying out the registration of the Land Regularization Certificate (CRF) in the registrations, conferring the real right of ownership to its holders.

In this sense:

The Real Estate Registry is the guardian of the property right, of the holders of said right, its extension and effects. In Brazil, it is constitutive of rights that arise within the Real Estate Registry, which exercises the function of controlling real estate traffic¹⁹.

An important detail to note is that the procedure with the Real Estate Registry Office, which constitutively confers the right of ownership to the occupants, should have a maximum duration of sixty days, extendable only once for an equal period, if there is a substantiated justification, being a quick procedure and completely free of charge for interested parties.

CONCLUSION

Urban Land Regularization is an extrajudicial, fast and free procedure, provided for in Law 13.465/2017, with two phases; the first, there is an administrative process carried out by the municipality and, after overcoming all the stages of the aforementioned process, it ends with the proper registration in the Real Estate Registry Office.

Such a legislative provision is shown to be a legal advance about the protection and protection of fundamental social rights. In this way, individuals who live in informal housing centers quickly have the possibility of using this tool to incorporate informal urban centers

¹⁹ MELO, Marcelo Augusto Santana de. **New Forest Code and the Real Estate Registry**. Available at: <http://irib.org.br/obras/3974>. Accessed on: 12 jan. 2025.

into urban territorial planning, resulting in the realization of their rights, such as property and an ecologically balanced environment.

By providing for an entirely extrajudicial procedure, which does not require approval or homologation by the Judiciary, the legislator contemplated the Urban Land Regularization as fast and free of charge, combined with the legal certainty and authenticity inherent to the Notarial and Registration Services. Thus, such procedure in its final result will be provided with publicity, effectiveness, authenticity and legal certainty to obtain the immovable property from the competent Real Estate Registry Office.

In this way, Urban Land Regularization as provided for in our legal system is an important tool for the solution of the social problem of informal housing centers in large urban centers, providing citizens with the possibility of obtaining and realizing fundamental rights and the return of the State to their daily lives, with the provision of public services and the realization of the rights arising from them, such as environmental rights.

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