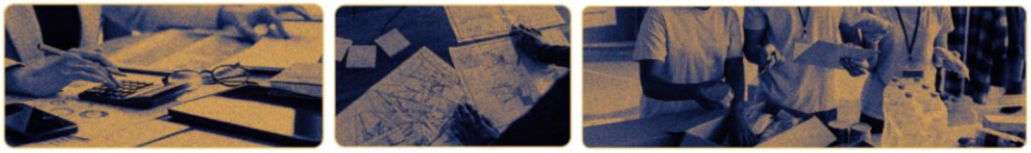

IMPACTO CIENTÍFICO EDITORA

JUDICIAL PRECEDENTS AND THE EFFECTIVENESS OF ENVIRONMENTAL LAW: THE IMPLEMENTATION OF ARTICLE 225 OF THE FEDERAL CONSTITUTION

PRECEDENTES JUDICIAIS E A EFETIVAÇÃO DO DIREITO AMBIENTAL: A CONCRETIZAÇÃO DO ARTIGO 225 DA CONSTITUIÇÃO FEDERAL

ANTECEDENTES JUDICIALES Y APLICACIÓN DEL DERECHO AMBIENTAL: LA CONCRECIÓN DEL ARTÍCULO 225 DE LA CONSTITUCIÓN FEDERAL

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ABSTRACT

The objective of this study is to investigate how judicial precedents can help to enforce environmental law, with the aim of undermining the implementation of Article 225 of the Federal Constitution. The theoretical framework of this article was based on the use of renowned authors who discuss the subject, including doctrines, articles, dissertations and theses that deal with the topic in question. The methodology adopted for this research comprises a qualitative and descriptive approach. Data collection was carried out through bibliographical consultation. The results obtained revealed that judicial precedents are an important instrument for the implementation of Article 225 of the Federal Constitution in practice, giving due effectiveness to environmental precepts at the national level. The practical and theoretical implications of this research are discussed, providing insights on how the results can be applied or influence practices in the field of environmental law. This study contributes to the literature by fostering the theme and the issue and debate surrounding environmental law today, in general.

Keywords: Precedents. Environmental Law. Federal Constitution. Jurisprudence.

RESUMO

O objetivo deste estudo é investigar de qual forma os precedentes judiciais podem auxiliar na efetivação do direito ambiental, com o intuito de infirmar a concretização do artigo 225 da Constituição Federal. O referencial teórico do presente artigo foi realizado com base na utilização de conceituados autores que dissertam no tema, incluindo doutrinas, artigos, dissertações e teses que tratam da temática aventada. A metodologia adotada para esta pesquisa compreende uma abordagem qualitativa e descritiva. A coleta de dados foi realizada por meio de consulta bibliográfica. Os resultados obtidos revelaram que os precedentes judiciais são um importante instrumento para a concretização do artigo 225 da Constituição Federal na prática, dando a devida efetividade aos preceitos ambientais em âmbito nacional. As implicações práticas e teóricas desta pesquisa são discutidas, fornecendo insights sobre como os resultados podem ser aplicados ou influenciar práticas

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no campo do direito ambiental. Este estudo contribui para a literatura ao fomentar a temática e a questão e o debate que cerca o direito ambiental na atualidade, em geral.

Palavras-chave: Precedentes. Direito Ambiental. Constituição Federal. Jurisprudência.

RESUMEN

El objetivo de este estudio es investigar cómo los precedentes judiciales pueden ayudar en la implementación del derecho ambiental, con el objetivo de refutar la implementación del artículo 225 de la Constitución Federal. El marco teórico de este artículo fue creado a partir del uso de reconocidos autores que hablan sobre el tema, incluyendo doctrinas, artículos, disertaciones y tesis que abordan el tema tratado. La metodología adoptada para esta investigación comprende un enfoque cualitativo y descriptivo. La recolección de datos se realizó mediante consulta bibliográfica. Los resultados obtenidos revelaron que los precedentes judiciales son un instrumento importante para implementar en la práctica el artículo 225 de la Constitución Federal, dando el debido efecto a los preceptos ambientales a nivel nacional. Se discuten las implicaciones prácticas y teóricas de esta investigación, proporcionando información sobre cómo los resultados pueden aplicarse o influir en las prácticas en el campo del derecho ambiental. Este estudio contribuye a la literatura promoviendo el tema, la cuestión y el debate que rodea al derecho ambiental hoy, en general.

Palabras clave: Precedentes. Derecho Ambiental. Constitución Federal. Jurisprudencia.

1 INTRODUCTION

To contextualize the theme addressed, this article aims to present the importance of the right to a balanced environment, as provided for in article 225 of the Federal Constitution, and the relevance of this right for future generations. In addition, the concept of judicial precedents and how they influence the application of environmental law will be briefly explained.

The research problem to be answered is to understand what is the relationship between judicial precedents and the realization of the right to a balanced environment, according to article 225 of the Federal Constitution?

The general objective of the article is to analyze the influence of judicial precedents on the implementation of environmental law, considering the role of the judiciary in the protection and enforcement of article 225 of the Federal Constitution.

The specific objectives are:

1. To analyze the importance of judicial precedents in the construction of environmental jurisprudence in Brazil.

- Explore how previous decisions of higher courts (such as the STF) influence subsequent decisions and the effectiveness of environmental law provided for in article 225 of the Federal Constitution.

2. To examine the role of the Supreme Court in the protection and implementation of environmental law.

- Investigate the main decisions of the Supreme Court related to environmental protection and its contribution to the consolidation of the right to a balanced environment.

3. To investigate the challenges faced by the judiciary in the implementation of environmental law and in the application of article 225 of the Federal Constitution.

- Identify the main difficulties that the judiciary faces, such as the lack of specific regulation and the resistance of certain economic sectors, to enforce the right to a healthy environment.

4. Evaluate how judicial precedents contribute to the creation of environmental public policies.

- Study the relationship between judicial decisions and the formulation of environmental public policies, with a focus on strengthening environmental protection.

5. Propose solutions to improve the effectiveness of environmental law through the strengthening of jurisprudence and the use of judicial precedents.

- Present suggestions to optimize the use of precedents in the judicial process and increase the effectiveness of environmental protection in Brazil.

The hypothesis of this article is that judicial precedents play a fundamental role in the realization of the right to a balanced environment, according to article 225 of the Federal Constitution.

The research assumes that the decisions of the Federal Supreme Court, based on consolidated precedents, contribute significantly to the construction of an environmental jurisprudence that drives the formulation of effective public policies and ensures greater protection of the environment, but also faces challenges due to resistance and the lack of specific regulation.

The justification for this study lies in the urgent need to deepen the understanding of the role of judicial precedents in the implementation of environmental law in Brazil. Article 225 of the Federal Constitution enshrines the right of everyone to an ecologically balanced environment, but its full implementation faces challenges that often depend on judicial interpretation.

Through the analysis of judicial precedents, especially those of the STF, it is possible to understand how jurisprudence has contributed to the protection of the environment, in addition to identifying the obstacles faced by justice to ensure the effectiveness of this right.

In addition, the research seeks to highlight how the judiciary, through the application of precedents, can strengthen environmental control and inspection, ensuring that the public power acts more efficiently in the preservation of natural resources.

In a context of increasing pressure on ecosystems and society, understanding the role of judicial precedents in the implementation of Article 225 becomes essential for the evolution of environmental public policies in Brazil.

Finally, the present study is relevant for academics, jurists, legislators and environmental activists, as it will provide a critical view of the interaction between constitutional law and judicial action in the defense of the environment, in addition to suggesting ways to improve the effectiveness of the legal system in environmental protection.

2 THEORETICAL FRAMEWORK

2.1 ENVIRONMENTAL LAW AND ARTICLE 225 OF THE FEDERAL CONSTITUTION

Under the terms of Article 225 of the Federal Constitution, which corresponds to Principle No. 1 of the Rio/92 Declaration, an ecologically balanced environment is a fundamental right of all. This right serves as an interpretative basis for environmental standards, guiding their application. (Silva, 2024)

The concept of an ecologically balanced environment refers to a healthy environment, free of pollution and conducive to quality of life, being a reflection of the constitutional principle

of the dignity of the human person, which requires healthy living conditions. Article 225 of the Constitution establishes:

"Art. 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."

In turn, Principle No. 1 of the Rio/92 Declaration reinforces that human beings must be at the center of concerns related to the sustainability of development, guaranteeing them the right to a healthy and productive existence, in harmony with nature. (Silva, 2024)

In this sense, the Superior Court of Justice, when judging the Regimental Appeal in RESP 1.418.795/SC, which dealt with the discharge of waste from pig farming directly into the soil, followed the vote of Justice Regina Helena Costa, rapporteur for the ruling, categorically recognizing the right to an ecologically balanced environment is recognized as a fundamental right, As highlighted in the following summary:

> I. The principles of sustainable development and prevention, enshrined in article 225 of the Federal Constitution, should guide the interpretation of the rules both in the scope of environmental law, especially with regard to administrative matters, and in criminal law. The environment, being a common heritage of present and future generations, is configured as a fundamental right, requiring the adoption of preventive and cautious measures to minimize, as much as possible, any risk of damage, even if potential.

Thus, the observance of the precepts set forth in article 225 of the Federal Constitution is essential for the development and improvement of environmental public policies and the defense of the principles applicable to the subject.

2.2 THE CONCEPT OF JUDICIAL PRECEDENT

The use of precedents is a form of argumentation and justification widely used in various spheres of human life. The appeal to a precedent is nothing more than the use of past experience to influence decisions or convince third parties. In this sense, a precedent can be understood as a past event that serves as a reference for a present action. (Chaves, 2021)

Precedents, therefore, are not restricted to the legal system. In different contexts, decisions are guided by previous experiences. A politician, for example, may base his campaign strategies on those that have led to the success of other candidates in the past. Similarly, a father may decide to gift his youngest daughter a mobile phone taking into account the age at which his eldest daughter received his first mobile phone. (Chaves, 2021)

In the legal field, the term "precedent" can be understood in two senses. In its proper sense, it refers to a previous court decision that can serve as a model for future judgments. In this sense, the precedent comprises the entire decision-making act, including the report, the grounds (including dissenting votes, if any) and the operative part. In other words, a precedent is essentially a case that has already been decided. (Marinoni, 2016)

It is important to note that a judgment is usually only treated as a precedent when a new case arises that bears a similar relationship with it. This is because judicial precedent has a relational character: its relevance lies in the analogy with subsequent cases, in which argumentation based on precedents becomes pertinent. (Marinoni, 2016)

In an improper sense, the term "precedent" is used to designate the universalization of the reasons for the decision of a judicial body in a past case. In this context, the precedent is equivalent to the ratio decidendi or holding, that is, to the legal norm extracted from the decision. Thus, when it is stated that a precedent must be applied, it is actually referring to the application of the norm derived from it, and not to the concrete case itself.

The two senses of "precedent" can be understood in a relation of continent and content:

(i) In the proper sense, precedent is the decision-making act, considered as a possible instrument of normative creation and source of law. (ii) In the improper sense, the precedent represents the result of this creative act, that is, the reasons for deciding that can be replicated and, in certain cases, the legal norm extracted from it (ratio decidendi). (Marinoni, 2016)

The normative aspect of judicial precedent – whether as a source of law or as the legal norm itself – is, without a doubt, its most relevant characteristic. For this reason, some authors maintain that only decisions with institutional relevance and innovation in the legal system can be considered precedents. Others argue that precedents are always binding, while decisions whose reasons for deciding do not have binding force are mere jurisprudence. (Chaves, 2021)

This work, however, adopts a broader conception of precedent, including decisions that do not have a significant normative impact. Furthermore, restricting the concept of precedent only to binding decisions would break with the traditional dichotomy between "mandatory precedent" and "persuasive precedent", which is widely consolidated. Thus, it seems more appropriate to understand binding as an attribute incidental to the precedent, and not as a defining element of its essence. (Chaves, 2021)

Each legal system is responsible for defining which texts will have normative authority. With regard to judicial precedents, the main normative reference currently is article 927 of the

Code of Civil Procedure.

Items II and IV of this provision reaffirm the traditional recognition of the authority of precedents in Brazilian law, even though they are not properly considered precedents. It should be noted that the coexistence of precedents in a system based on precedents is the target of criticism, as both institutes have different assumptions. However, a more in-depth analysis of the precedents goes beyond the scope of this study. (Chaves, 2021)

Item I, in turn, classifies decisions rendered in concentrated control of constitutionality as mandatory precedents. In addition to the erga *omnes binding*, resulting from the effectiveness of these decisions by the Federal Supreme Court, their reasons for deciding also constitute a legal rule.

Thus, such judgments perform a double function in the legal system: on the one hand, they determine the constitutionality or unconstitutionality of a rule; on the other hand, they provide the grounds for this decision, which influence the analysis of similar norms in future cases. (Novelino; Minami, 2019, p. 343-363)

Item III, on the other hand, addresses the types of precedents that are part of the microsystem of concentrated formation of mandatory precedents. This microsystem is composed of specific procedures aimed at creating binding precedents, which follow rules that expand cognition and participation in the process, improve the debate, require reinforced reasoning and ensure wide publicity. Among these precedents, the Incident of Assumption of Jurisdiction (IAC), the Incident of Resolution of Repetitive Demands (IRDR) and the judgments of extraordinary and special repetitive appeals stand out. (Didier Jr.; Cunha, 2018, p. 689-692)

Finally, item V establishes the binding nature of decisions rendered by the plenary or by the special body of a court to all the courts that are subordinate to it. This means that the precedents from the higher bodies of the court have normative force, being applicable both to the judges attached to that court and to the internal bodies of the court themselves.

2.3 THE ROLE OF THE JUDICIARY IN THE ENFORCEMENT OF ENVIRONMENTAL LAW

With the enactment of the Federal Constitution of 1988, which dedicated a specific chapter to environmental issues, environmental law began to receive greater attention from legislators.

However, the enforcement of the rules of this branch of law still faces significant challenges. In view of the growing urgency of environmental protection, there is an increase in the judicialization of these issues, with the transfer of responsibility for implementing environmental policies from the Executive Branch to the Judiciary. (Araújo; Matos; Pereira,

2017)

Among the various norms created in this context, Law No. 9,985, of July 18, 2000, which established the National System of Nature Conservation Units, stands out. This legislation was drafted to regulate article 225, § 1, items I, II, III and VII of the Federal Constitution and has been widely cited in the jurisprudence of Brazilian courts. Its fulfillment has often been guaranteed through judicial intervention, making up for any omissions by the Executive in the implementation of environmental policies. (Araújo; Matos; Pereira, 2017)

Although the intervention of the Judiciary in environmental protection is necessary given the urgency of the issue, this action also generates institutional impacts. The direct interference of one Branch over the other can compromise the balance between state functions, in addition to contributing to the overload of the Judiciary. (Freitas, 2012)

This phenomenon, in turn, can jeopardize the effectiveness of judicial decisions, compromising the effectiveness of environmental protection in the long term. (Araújo; Matos; Pereira, 2017)

In view of the social relevance attributed to the Judiciary today, it is essential to recognize its role not only as a guardian of justice, but also as an agent of social transformation and the realization of fundamental rights. In this context, its work aims to ensure the application of the norms that protect the dignity of the human person, always seeking the effectiveness of constitutional precepts. (Freitas, 2012)

Is the socio-environmental issue, therefore, also part of this judicialization scenario? The answer is affirmative. Thus, it is necessary to analyze the performance of the Judiciary in socio-environmental protection, especially in the light of the theory of guaranteeism and the understanding of socio-environmental law as an interconnected system, as already exposed.

The role of the Judiciary in the implementation of socio-environmental law is undeniable. Until the 1980s, lawsuits and judicial decisions in this field were scarce, a scenario that changed significantly after the enactment of the Public Civil Action Law. (Freitas, 2012)

Although there have been notable advances in the speed and quality of decisions, there are still challenges to be overcome, mainly due to the resistance of some magistrates to adapt to processes of a collective nature, in contrast to the traditional individualistic perspective of the Law. (Freitas, 2012)

This mentality, still rooted in part of the legal doctrine, makes it difficult to assimilate the collective spirit inherent to socio-environmental law. However, it is unquestionable that magistrates cannot omit themselves in the face of demands of this nature. In view of the facts

presented, it is up to the judge to decide. (Freitas, 2012)

As Ingo Wolfgang Sarlet and Tiago Fensterseifer (2011) point out, "the state's omission in the adoption of legislative and executive measures aimed at protecting the fundamental right in question constitutes an unconstitutional practice, subject to judicial control, both in the abstract and diffuse".

2.4 THE FEDERAL SUPREME COURT AND THE IMPLEMENTATION OF ENVIRONMENTAL LAW

In this context, the Federal Supreme Court (STF), as guardian of the Constitution of the Republic, as provided for in article 102, caput, has the responsibility to ensure that article 225 is interpreted in such a way as to enable the realization of its ideals.

Although the Supreme Court has the final word, it is the role of the Judiciary to interpret the Constitution and the entire normative framework involved in the complex task of ensuring a balanced environment, a fundamental right of all Brazilians. However, this mission is not simple, given the magnitude of the consequences of the decisions and the frequent collision between constitutional norms, which requires careful and in-depth analysis to ensure the adequate protection of the legal assets in conflict. (Almeida, 2020)

An emblematic example of this clash was mentioned by Justice Luís Roberto Barroso, in a lecture given at the "Judicial Colloquium on the Constitution, Environment and Human Rights: Practice and Implementation", on May 22, 2017. On the occasion, he cited the case of the construction of a hydroelectric plant in the Amazon, highlighting that, on the one hand, the project would represent a significant advance for national development, by increasing the production of clean energy, with low impact of pollution and environmental risks, in addition to fostering economic progress in the region. (Almeida, 2020)

On the other hand, the same construction would have negative impacts on fauna, flora and riverside communities. This situation illustrates a typical normative conflict, in which the Constitution, while advocating national development, also guarantees environmental protection as a fundamental right.

The Minister pointed out that environmental causes are not always victorious, but that the defense of the environment must be supported with solid arguments, research and empirical data, demonstrating, in the concrete case, the prevalence of environmental protection over other opposing interests. (Almeida, 2020)

Thus, the Judiciary plays a fundamental role in environmental protection, as it is responsible for applying legal norms to the factual reality, often facing the challenge of resolving conflicts between norms and principles. In addition, the interpretation and

applicability of environmental norms must evolve in accordance with new scientific discoveries and phenomena that alter the context of their protection. (Almeida, 2020)

A notorious example of this need for adaptation is the regulation of asbestos exploitation in Brazil: initially allowed, later partially prohibited, then completely prohibited and, currently, at risk of being reauthorized, demonstrating how legislation can demand reassessment in the face of new evidence and social needs. (Almeida, 2020)

The Federal Supreme Court (STF) has played a fundamental role in the protection of the environment in Brazil, consolidating understandings and establishing important guidelines for the effectiveness of article 225 of the Federal Constitution.

The Court has reiterated the supremacy of environmental law, often balancing it with other constitutional interests, such as economic development and legal certainty.

The Federal Supreme Court has handed down important rulings in environmental and animal protection matters. Among them, the judgment of the direct action of unconstitutionality against Law 12.684/2007, of the State of São Paulo, which prohibits the use of products containing asbestos in the state territory, stands out. (Brazil, STF, 2017)

In this case, Federal Law 9,055/1995 allowed the extraction and commercialization of chrysotile asbestos, generating a regulatory conflict. The STF incidentally declared the unconstitutionality of this federal rule, reinforcing the understanding that the protection of health and the environment can justify stricter state restrictions.

Asbestos, widely used in the manufacture of roofing tiles and water tanks, has been shown to be extremely harmful to human health. According to the World Health Organization (WHO), more than 107 thousand workers die annually due to exposure to the material. Thus, the STF recognized the competence of the States to legislate in a supplementary manner in environmental matters, even in the face of the existence of a permissive federal rule.

Another emblematic judgment was ADI 1.856/RJ, in which the STF declared the practice of the so-called cockfights unconstitutional. The Court considered that Law 2.895/1998, of the State of Rio de Janeiro, which allowed competitions between birds of combatant breeds, contravened article 225 of the Constitution, which prohibits acts of cruelty against animals. Justice Celso de Mello, rapporteur of the action, stressed that environmental protection cannot be relativized in the name of cultural manifestations. (Almeida, 2020)

In response to decisions like this, the National Congress approved Constitutional Amendment No. 96/2017, which inserted paragraph 7 to article 225 of the Constitution, establishing that sports practices with animals, when registered as cultural manifestations and regulated by law, would not be considered cruel. The measure aimed to legitimize events such as vaquejada, but does not allow abuse or mistreatment, requiring safeguards for animal

welfare. (Brazil, STF, 2017)

These decisions highlight the central role of the Supreme Court in environmental protection and in defending the balance between culture, economy, and fundamental rights.

3 METHODOLOGY

The methodology used in the elaboration of this article consists of: in the research phase the deductive-bibliographic method was used, in the data treatment phase the Cartesian method, and the results expressed in the present academic work are composed on the inductive logical basis.

In the research phases, the techniques of the referent, the category, the operational concept and the bibliographic research were used.

The procedures adopted for the realization of this article were the survey of bibliographic data, including extensive doctrinal and jurisprudential research, as well as the analysis and interpretation of the legislation related to the species.

4 RESULTS AND DISCUSSIONS

It can be stated, based on what is exposed in this article, that the creation and application of judicial precedents have become essential tools to ensure the implementation of environmental law. The system of binding precedents, consolidated by the 2015 Code of Civil Procedure, strengthened the standardization of decisions and provided greater predictability and legal certainty. However, there are still significant challenges regarding the effectiveness of these precedents in the environmental field.

One of the main obstacles refers to the resistance in the application of precedents by lower courts, which often interpret environmental rules in a fragmented or conflictive way.

In addition, the complexity of environmental cases, which often involve social, economic, and political impacts, makes it difficult to form solid precedents with broad applicability. The need for technical studies and the constant evolution of scientific knowledge make the uniform application of jurisprudence a constant challenge.

Another critical point is the interaction between the Judiciary and the Executive Branch. The growth in the judicialization of environmental issues reveals, on the one hand, the inertia or insufficiency of environmental public policies and, on the other hand, the need for the Judiciary to intervene to ensure the implementation of Article 225 of the Constitution. However, this interference raises questions about the separation of powers and the risk of replacing the administrative function with a judicial decision.

In addition, the pressure of economic interests on the environment generates frequent conflicts of norms, requiring the Judiciary to have the difficult task of weighing constitutional principles. Decisions such as the one that declared the exploitation of asbestos in São Paulo unconstitutional, despite its permission in federal law, and the judgment of the lawsuits that discussed the legality of vaquejadas show the complexity of environmental issues and the crucial role of jurisprudence in their regulation.

With regard to future prospects, one of the challenges will be the consolidation of environmental precedents that guarantee effective protection of the environment without compromising sustainable development. To this end, the harmonization between the Superior Courts and the adoption of uniform interpretative guidelines can provide greater legal certainty and efficiency in environmental protection.

In addition, the advancement of technologies and the strengthening of alternative methods of conflict resolution, such as environmental mediation, can contribute to the reduction of judicialization and the implementation of faster and more effective solutions.

In short, judicial precedents have proven to be fundamental instruments for the implementation of environmental law in Brazil, but their full operation still depends on greater interpretative uniformity, reinforcement of legal certainty and improvement of interactions between the powers. The challenge is to ensure environmental protection in a balanced way, respecting the Constitution and promoting sustainable development for future generations.

5 CONCLUSION

The implementation of environmental law in Brazil, especially with regard to the implementation of article 225 of the Federal Constitution, faces significant structural and pragmatic challenges. The growing judicialization of environmental issues, although essential to ensure the implementation of constitutional norms, has exposed the complexity of the relations between the different powers and the need for a uniform and coherent interpretation of the legislation.

The use of judicial precedents emerges as one of the main instruments to ensure the uniformity of decisions and the legal certainty necessary for environmental protection, especially in a context of global challenges such as climate change and the preservation of biodiversity.

However, there are still substantial barriers to the effectiveness of these precedents, such as resistance to their application in lower courts and the difficulty of harmonizing constitutional norms with economic interests.

The interaction between the Judiciary and the Executive remains a critical point, since the Judiciary often assumes a role of "supplying" public policies when the Executive Branch fails in its function of environmental protection.

The prospects for the future point to the need for greater consolidation of environmental precedents, with an emphasis on the integration between the different bodies of the Judiciary and the creation of a more robust regulatory framework, capable of meeting both the needs of environmental preservation and sustainable development.

In addition, the continuous evolution of technologies and the improvement of alternative methods of conflict resolution can contribute to the reduction of judicialization and promote faster and more effective solutions.

The role of the Judiciary, therefore, will be crucial to ensure that environmental law is implemented in an effective and lasting manner, always in accordance with the constitutional principles of environmental protection and human dignity.

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