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WATER MANAGEMENT CONFLICTS IN SANTA CATARINA AND THE JUDICIARY'S ACTION IN THE DENIAL OF RIGHTS

CONFLITOS NA GESTÃO DA ÁGUA EM SANTA CATARINA E A ATUAÇÃO DO JUDICIÁRIO NA NEGAÇÃO DE DIREITOS

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Abstract

In this article we analyze the environmental conflicts around water that arise as a result of the regional development patterns in Santa Catarina State (SC), Brazil. To this end, we study the judicial decisions involving the companies responsible for the construction of hydroelectric dams, moved to claim the rights of riverside communities and artisanal fishermen affected by the dams. To develop our argument, we also look at the structural genesis of these conflicts, identifying their relationship with the economic activities associated with the regional development patterns and the institutional obstacles that face the management of water resources. In the analysis of the decisions we found, a) it is a small part of the conflicts that reaches an effective judicialization and, b) in the lawsuits the affected ones are systematically defeated in their demands. We note that these are conflicts that have become insoluble within the water management system, and that the judiciary resolves by treating them as irrelevant from the point of view of a naturalized idea of national interest that simply ignores the interests of the citizens affected.

Keywords: Water conflicts. Water management. Court decisions. Regional development. Affected people.

Resumo

Neste artigo analisamos os conflitos ambientais em torno da água que surgem como seqüela dos padrões de desenvolvimento regionais do Estado de Santa Catarina (SC). Para isto, estudamos as decisões judiciais envolvendo as empresas responsáveis pela construção de hidrelétricas, movidas para reivindicar os direitos de comunidades ribeirinhas e pescadores artesanais atingidos pelas obras. Para desenvolver esta problemática também nos debruçamos sobre a gênese estrutural desses conflitos, identificando sua relação com as atividades econômicas associadas aos padrões de desenvolvimento regional e os entraves institucionais que enfrenta a gestão dos recursos hídricos. Na análise das decisões constatamos que, a) é uma parcela pequena dos conflitos que alcança uma efetiva judicialização e, b) nos processos judiciais os atingidos são sistematicamente derrotados nas suas ações reivindicatórias de direitos. Observamos que se trata de conflitos que se tornaram

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insolúveis dentro do sistema de gestão dos recursos hídricos, e que o judiciário resolve tratando-os como irrelevantes a partir de uma ideia naturalizada de interesse nacional que simplesmente ignora interesses de cidadãos atingidos.

Palavras chave: Conflitos hídricos. Gestão da água. Decisões judiciais. Desenvolvimento regional. Atingidos.

Introduction

In this article we analyze the environmental conflicts over water, emerging as a sequel to the regional development patterns in Santa Catarina-SC (federative state in South of Brazil). In this context, we study the judicial decisions involving the companies responsible for the construction of hydroelectric plants, moved to claim the rights of riverside communities and artisanal fishermen affected by the building works. In order to develop this discussion, we also look at the structural genesis of these conflicts, identifying their relation among the economic activities associated with regional development patterns and the institutional barriers faced by the management of water resources. In the analysis of the decisions, we found that, a) it is a small part of the conflicts that reaches an effective judicialization and, b) in the judicial processes the affected ones are systematically defeated in their actions claiming rights.

The article's analytical path begins with a very brief exposure of the economic development process in SC, focusing on water use patterns. In the sequence, we deal with the water resource management obstacles, showing how water suffers the threat of scarcity caused by the established forms of use and management. These forms of use and management tend to be reproduced by the State, with co-responsible participation by the judiciary and the most influential economic sectors. In view of this observation, we reflect on the meaning and purpose of Law as a state instrument for conflict resolution, and it's (in) capacity to perceive the economic and social determinants that permeate such conflicts.

The final analysis showed that, in addition to being a very small portion of conflicts that effectively reach judicialization, those who do reach it receive treatment based on a type of legal argument that associates the general interest of the community with the interests of energy generating companies. As a result, the rights of affected riverside dwellers and artisanal fishermen are underestimated or treated as irrelevant. In this context, the performance of the judiciary from a merely instrumental view of the river and the water resource exposes the demands of a population that is often not even benefited by the development brought by the installation of hydroelectric plants. Although some first-degree decisions have granted indemnity rights to riverine residents, this right is entirely denied in the second degree of decision-making, under speeches that fishermen who will have their activities unfeasible "can freely position themselves in the labor market in a new activity", ignoring the social link that connects fishermen with their way of life and the river. Thus, we identified that in all decisions the benefits of dominant "progress" or "development" are highlighted, without significant considerations about their undesirable effects, making clear the process of invisibility of the affected communities. The article ends with the argument that the systematic naturalization of this perspective by the judiciary constitutes a process of epistemic violence, ignoring the rights, territorial identities, and suffering to which these communities are exposed.

The work is inserted in the field of regional development showing how the judiciary in its decisions sustains and reproduces a peculiar vision of development that generates inequalities and inequities. These are spatially distributed across regions where territorial conflicts over the use of rivers occur. The cases on screen also reveal how the process of hiding these undesirable consequences occurs. Thus, the generation of energy, a structural economic activity of regional development in Santa Catarina, also leads to a situation of social injustice, causing damage and suffering to those who lose their space, but do not enjoy such development.

The article is organized in five sections, in addition to this introduction and the final considerations. In the first section we describe the methodology used in carrying out the study, in the second section we present the ways of using water in Santa Catarina and its interdependence with the regional development patterns of the state. Subsequently, in the third section, we make an explanation about the obstacles and dilemmas in water management, listing some of the problems of

its management in Brazil, verifying inconsistencies in the management mechanisms. The fourth section of the article discusses the judicialization of conflicts that exists around water, showing partial judicialization, that is, the impossibility for some affected to reach the judiciary, questioning whether there is a denial of rights, since the few cases that reached the judiciary were systematically labeled as unfounded in favor of companies. The fifth section of the article describes the process of epistemic violence to which all those affected by conflicts over water in the case of hydroelectric plants are exposed.

Methodology

The article is based on the analysis of judicial decisions issued by the Court of Justice of Santa Catarina, TJSC (Tribunal de Justiça de Santa Catarina). The method of collecting and analyzing decisions followed the steps proposed by Freitas Filho and Lima (2010) in their Decision Analysis Methodology (MAD/DAM). Following this prescription, having defined the specific problem that would be the focus of our attention, we carried out the institutional section of the Court of Justice of Santa Catarina.

The choice of this court was because it is the second degree of decision on the state, in which all appeals are settled. In addition to being the legitimate instance of conflict resolution in the second instance in the state, due to the dynamics of the judiciary, it is clear that almost all cases of this type result in appeals resolved in this court, making it the most appropriate institutional framework.

We repeatedly searched the Court's website, using the jurisprudence search tool (SANTA CATARINA, S / D) from categories that combine expressions identified in bibliographic references, and carrying out successive approximation tests to verify those that most adequately captured our universe of analyze. Thus, we located the decisions that involved activities with intensive use of water, and that in turn expressed territorial conflicts³.

All the processes processed in that court that were included in the system in May 2018 were considered, without limiting the initial time frame. As a result, all the processes that passed the second instance between 1998 and 2018 (year of beginning of the digital record and year of research, respectively) were part of the universe of analysis, as these were decisions that had already become final and were not more appealing.

At first, about 700 decisions were cataloged in some way linked to the keywords of the research. Subsequently, in a detailed analysis, decisions whose conflict was not directly linked to water were excluded, thus resulting in the 130 analyzed affectively.

Through this procedure, we generate a "raw database", resulting from the first moment of MAD/DAM (FREITAS FILHO; LIMA, 2010). In it there is an organization of the data and a previous treatment, still without reflection, although the organization of the data itself already presupposes justifying hypotheses.

Following, we started to analyze "how the decision makers use the concepts, values, institutes and principles present in the decision narrative" (FREITAS FILHO; LIMA, 2010, p. 13). For this, it was necessary to verify the use of narrative elements in the discourse related to socio-environmental issues and, later, to analyze the meaning of decision-making practice. In this way, the data were organized in such a way that the results of the decisions were possible to be appreciated and compared.

This showed that in different decisions and on the same theme, even from different decision-makers, there is a repetition of a decision-making protocol, susceptible itself to a reflection on its premises, legal and non-legal bases and justifications.

In addition, we work with data produced by the Pastoral Land Commission, CPT, (Comissão Pastoral da Terra). This institution annually organizes information on conflicts over water in the state collected from complaints, news, and research carried out by agents in the field, and subsequently systematizes and shares them.

The work with CPT data (CPT, 2015) allowed us to realize that most of these conflicts did not reach the judiciary. This, although with the necessary care because it is data constructed very differently from those obtained in the TJSC, it provided us with relevant complementary information regarding the reality of conflicts that do not reach effective judicialization.

³ The searches were carried out with the following keywords: mining, water / mining, water / coal, water pollution, agriculture, pig farming, rice growing, ceramic / water industry, hydroelectric (hidroelétrica in portuguese) and "hydroelectric" (hidroeletrica in Portuguese, spelling without accent).

Thus, having identified the decision-making pattern of judicialized conflicts and some of the characteristics of the reality of non-judicialized conflicts, we have developed the analysis that follows.

Water and development

The state of Santa Catarina, in southern Brazil, is generally referred to as having one of the best indicators of human development and regional equity in Brazil. This virtue is repeatedly associated with the peculiar way of occupying the territory due to the colonization processes developed by European immigrants since the 19th century. However, these processes produced other effects that are not usually recognized by official speeches, such as territorial segregation and the invisibility of subalternized or excluded groups. These effects still persist today, and are also the cause of environmental inequities and disproportionate exposure to the unwanted consequences of economic activities and major infrastructure works.

The official narrative obliterates the violence that historically permeates the production of the territory and also the definition of the development patterns that today appear as dynamic regional hubs. According to Dagnoni (2018), the colonization of Santa Catarina lands gave rise to multiple territorial conflicts. The processes of reterritorialization that immigrants started here (reterritorialization, since they had already been deterritorialized from their region of origin), did not include the original populations. The indigenous peoples were exiled and then, occurred the settlement of the immigrants who had arrived here, for their own "security", according to their thinking at that time.

In this context, rivers were a crucial access route for European immigrants and the flow of their production, having been of vital importance for the development of the state since colonization. This process was based on the imposition of a colonial vision, in which the government implemented measures to meet British requirements regarding the abolition of slave labor, which also sought to structure and occupy the South Brazilian territory with a white labor force (FLORIT et al., 2016).

According to Raud (1999, p. 85) Santa Catarina started to be definitively occupied in the 17th and 18th centuries by Azoreans and Madeirans, "this population consisted basically of small farmers and fishermen, who were dedicated to subsistence agriculture, but also to activities such as whale fishing, the production of oil and the manufacture of manioc flour "(RAUD, 1999, p. 85). The industrialization of the state began with the textile industry in the Vale do Itajaí, in 1875. The sectors related to extractivism also began to stand out with the extraction of wood, mate herb and furniture, as well as the extraction of coal, although handmade form appeared. Between 1880 and 1889 many industries emerged, the villages also changed and the integration among the colonies began to happen. The improvement of roads and the construction of railroads were measured to production flow (GOULARTI FILHO, 2002; STRELOW, 2016), and the multiple activities that persisted structuring the development of the state, demanded and demand, in addition to specific natural resources, the intensive use of water. Today the state of Santa Catarina is divided into six mesoregions distributed in South, Greater Florianópolis, Vale do Itajaí, North Catarinense, Serrana and Oeste Catarinense, each of which has its own economic characteristics (MATTEI, 2011), all of which they have economic activities that structure the development pattern that are intensive in relation to water use (BERNARDY et al, 2016).

As an infrastructure for the economic activities that gave identity to the Santa Catarina mesoregions, it is important to mention the production of energy from water courses. As it is bathed by important hydrographic basins, Santa Catarina is the stage for an expressive park of hydroelectric plants. Although energy production is, of course, linked to economic development, the impacts of installing hydroelectric plants on the environment and their inequities in water use can be devastating. Santa Catarina sets not only to large hydroelectric plants but also Small Hydroelectric Power Plants (PCHs), which are smaller projects with less environmental impact. However, when proliferated without integrated basin studies, they may also reveal serious water and hydrological problems.

From dams to contain floods to economic activities that support the state's economy, water uses in SC have implications for the emergence of various types of conflicts. One of the most emblematic cases is that arising from the North Dam (Barragem Norte), an infrastructure built for flood containment located in the municipality of José de Boiteux. This dam was built just downstream of the confluence of the River Dollmann with the River Itajaí do Norte and close to the limits of the

Duque de Caxias Indigenous Land. The work on the North Dam had a great social impact, displacing all the populations that lived on the banks of the river. If, on the one hand, the said dam was a measure of protection for communities historically affected by the downstream floods, on the other hand it placed the communities affected by its construction in a situation of vulnerability, which had its life dynamics changed dramatically (ATHAYDE; MARTINS, 2017). The Xokleng-Laklano people, who after a century of persecution, had been settled in a place compatible with the construction of an acceptable way of life, even if different from the traditional one, had the dam installed right there during the military dictatorship (FLORIT et al 2016).

However, in terms of number of occurrences, dams for the construction of hydroelectric plants are the biggest source of conflicts in the state. As already mentioned, Santa Catarina has great hydroelectric potential, having large hydrographic basins and housing large hydroelectric works already installed and in operation.

It is estimated that 19% of the world's energy is being produced through hydroelectricity. More than forty-five thousand dams have already been built around the world in about 60% of the world's rivers. Data show that around 40 to 80 million people have been displaced as a result of these enterprises in recent years. Considering indirect impacts, the numbers go up to four to eight hundred million people impacted. Brazil is among the twenty-four countries that produce 90% of the world's energy and is the country with the greatest hydroelectric potential in the world (GIONGO; MENDES; WERLANG, 2017).

The processes involving the installation of hydroelectric plants are complex, relating multidimensional effects, which comprise economic, technical, political, socio-cultural and ecological aspects and cause strong changes in the territory, which cross borders. The installation of these dams involves articulations between national and international public and private sector agents (VIGNATTI; SCHEIBE; BUSATO, 2016), whose delimitation of functions and interests is not always clear enough.

The state of Santa Catarina is crossed by the Uruguay River, in whose basin, in Santa Catarina, there is the installation of large hydroelectric projects involving several municipalities. The Foz do Chapecó Plant, for example, reaches twelve municipalities in both Santa Catarina and Rio Grande do Sul states. The state also includes, just in the Rio Uruguay basin, works such as the Campos Novos Plant, Itá Plant, Machadinho Plant and Barra Grande Power Plant.

In addition to the installation of large hydroelectric plants, there is also the installation of small hydroelectric plants (SHPs), projects that, it is supposed, would cause less impact on nature. However, contrary to the discourse of common sense, this type of enterprise can also cause serious social and environmental problems, and the facilities in the licensing process should be avoided without giving up any of the phases of the process (VAINER, 2007).

Water management barriers and dilemmas

Although water is a common good, the law establishes the ownership of rivers and lakes as belonging to the Union. On the other hand, although the law establishes that the defense of the common good is a state competence, there is currently a social outcry for this defense, which is based on the perception that this protection has not been successfully carried out. A situation was reached in which it is no longer possible to stop questioning the way water uses are managed (PIZAIA; MACHADO; JUNGLES, 2002; MARTINS, 2012; CAMPOS; FRACALANZA, 2010; MARTINS; LIMA, 2017).

But this wave of concerns contrasts with the economic logic that instrumentalizes the political field and makes this clamor for the defense of public goods to be a form of resistance to the way of using water that is currently noted (HOUTART, 2011). This happens while there is an offensive of recent neoliberal policies, mainly in Latin American countries, which stimulates the participation of the private sector in water supply and sanitation services, and a weakening of controls on extractive activities (CASTRO, SILVA, CUNHA, 2017).

Since the 1980s, governments have been informed by neoliberal principles in water and sanitation policies. This continues today, although there is growing recognition of the lack of empirical evidence to justify the assumptions underlying such perspectives (admitted, even, by institutions like the World Bank). In fact, there is widespread recognition by international experts that the historic success of water and sanitation policies that helped achieve universal coverage in developed countries was possible because they were based on the principle that access to them should be considered a universal social right, a common good, which should take priority over

market interests. These policies were accepted and supported by a wide range of social and political forces, even by sectors that, in other aspects, defended free market liberalism, but accepted that the universalization of these essential services required different arrangements (CASTRO, 2008).

For this reason, even though the right to water has been rhetorically recognized as a Human Right, in Latin America there are the greatest violations of access to this essential asset for life. About forty million people do not have safe water for human consumption, about one hundred and seventeen million people lack sanitary facilities that meet the minimum necessary conditions, and 36 million people still defecate outdoors (CASTRO; SILVA; CUNHA, 2017).

In this context, water scarcity creates a new market, arousing the interest of large corporations that are associated, structured by contractors, state water and sanitation companies and political allotment companies, meaning that privatization, although it does not necessarily characterize commercialization, it is the path that is being followed (DOWBOR, 2005).

With the Federal Constitution of 1988, the water management system took on a new institutional design in Brazil. A decentralized and participatory management model was inaugurated, but which, despite calling for social participation, presents evident weaknesses. In this model, water management in Brazil is carried out jointly between the Union, states and municipalities and should promote multiple uses of water in a decentralized and participatory manner, integrating public power, users and communities into management, constituting a Policy National Water Resources Plan formulated, executed and evaluated with wide social participation (AITH; ROTHBARTH, 2015). The state constitutions also follow the institutional design inaugurated by the Magna Carta, expanding the concern with the management of water resources.

The Hydrographic Basin Committees (CBHs), created by the new form of management are advisory and deliberative management bodies, however, they are optional and are only paid for the use of water where there is a committee (JACOBI; BARBI, 2007; ANA, 2011).

The payment, instituted by the committee, is actually an apportionment to cover expenses with water quality analysis, hydrological models, verification of the appropriate technologies to be used in that basin, investments in treatment and sanitation stations, issues that will be decided by the committee (MOTTA, 2000).

In addition to the aforementioned attributions, the committee must promote debates to avoid conflicts on competing uses of water, but if conflicts cannot be avoided, the committee must arbitrate the conflicts through rules established in the committee's internal regulations. As for the managing body, it is up to the regulation, the police power and the implementation of what is decided through a management system (ANA, 2011).

Within the management structure, the roles of the National Water Agency and Basin Agencies stand out. The first is responsible for the implementation of the National Water Resources Policy and performs management functions in bodies of water belonging to the Union. The second is only created if there is financial viability to provide technical support to the committee, exercising, among others, the role of executive secretary, since the committee does not have its own personality and has functions of a deliberative, propositional and consultative nature, and not executive (JACOBI, 2009; ANA, 2011). The Committee's functions are not impeded if the basin agency is not created, requiring an even greater level of integration in management, especially between the committee and the managing body.

Abers and Keck (2004) understand that the payment that has been recommended by the Federal Law and, to a large extent, by the state laws is the operationalization of the polluter-pays principle, that is, who uses the water either for consumption or for the dumping of effluents, have to pay for it, except those users of an irrelevant amount.

The implementation of the imperatives of participation and decentralized management do not always take place satisfactorily to deal with the inherent conflicts. Although the National Water Resources Plan provides for social participation, the socio-environmental theme it brings remains under the interpretive hegemony of a technical environment impervious to concepts that transcend its own logic. Although the discourse is about respecting differences and combating inequalities, there is a unilateral and reductionist logic in which market agents end up standing out and the debate does not reflect consistent participation (VALÊNCIO, 2009, p. 63).

Studies show that mediation in this type of conflict, in order to arrive at referrals that are felt to be legitimate from the point of view of those affected, is crucial to devise procedures capable of substantially including all the values and interests involved in the conflict. This is often quite challenging, because it is not uncommon for immeasurable dimensions of valuation to emerge

(industry development vs. nature's intrinsic values, for example). Even so, for a successful solution of conflicts it is very important that most values and interests are genuinely recognized, and they are given some form of protection in the final result. For these studies, it is largely a question of procedure, and not a normative commitment to some of the positions, that is, to ensure that the various sectors, values and interests are in fact recognized and substantively weighted (KARJALAINEN, TP, JÄRVIKOSKI, T., 2010).

But this type of procedure is difficult to conceive and realistic feasibility in social structures as unequal as those found in Brazil. For this reason, for several authors, only a political pact is able to guarantee the demand for water from users as disparate as the large water supply companies, energy generators and others with intensive uses as well as from small users (RIBEIRO, 2009) .

Abers and Jorge (2005) warn that the decentralization of management can bring with its political interests, being able to characterize bargains among local / regional and central political forces. This makes it necessary to understand why the central government would cede power and responsibilities and why the local government would accept that power and these responsibilities. When decentralization occurs, incentives must also be given to local authorities that accept these new powers and responsibilities. Regarding the National Water Resources Policy, there are problems with these incentives, which theoretically would come from charging by the use of water, however, this charge has not been institutionalized at the state level, at least, not in a way that gives strength to the committees.

Partial legalization and denial of rights

The described socioeconomic process determined the development patterns of the different regions of the state. They are leveraged through planning, financing, regionalization, and the action of the judiciary, which, together, consolidate lasting economic and political orders, enshrined and reproduced from the State or by private agents whose vision is incorporated by it. These economic and political orders contain tensions and conflicts, and the judiciary functions as the last arm of the system to give them, from the point of view of the State, a legitimate conclusion.

Regarding to water resources, despite the imperatives of decentralization and participation, the management model is unable to impose restraints and conditions on the structuring forces of the dominant development patterns, nor to protect the rights of the most vulnerable users. Thus, conflicts of serious implications are generated, and the economic activity of greatest incidence in this aspect is the generation of energy. These conflicts result from situations of dispute between different agents or social groups involving the use of this resource and the means of appropriating the territory associated with it (CPT, 2015; ZHOURI; LASCHEFSKI, 2010; ACSELRAD et al. 2009).

As already explained, in the survey we carried out with the Santa Catarina Court of Justice following the systematic use of keywords, 130 decisions related to conflicts over water resources were identified, with the distribution by activity which is presented below.

Table 1: Economic sectors involved in conflicts over water in the TSJ-SC

Atividade econômica dos réus	
Hidroeletricity	106
Swine	14
Urban Industry	6
Mining	3
Other	1
Total decisions identified	130

Source: The authors, based on Bittencourt, 2018.

On the other hand, it should be noted that, looking at the issue more broadly, it is possible to see that in addition to the quarrels that are effectively judicialized, there are also numerous conflicts over water that for some reason do not reach the judiciary.

The survey carried out by the Pastoral Land Commission (CPT), which studies and systematizes data about conflicts over water in Santa Catarina, shows the existence of a significant number of other conflicts. These, in general, are linked to themes such as dams and dams for the installation of hydroelectric plants, particular appropriation of water, its use and preservation and, as a rule, involve traditional peoples and communities (such as indigenous, riverside and artisanal

fishermen) and other social groups vulnerable (such as small family farmers and residents of peripheral urban areas)⁴.

Although the two groups of data do not allow a systematic comparison, comparing them allows an intuitive assessment, which indicates that many cases of conflicts over water do not reach judicialization in Santa Catarina. The causes of the difficulty in accessing justice will not be discussed in this opportunity. Here, just finding this discrepancy. But it is also possible to make another assessment. While in lawsuits the majority of cases are brought by individual victims, in the CPT survey there are conflicts involving large numbers of affected families that, if there were easier access to justice, would most likely be potential cases. The tables below present a comparison of the CPT data and those collected in the TJ-SC.

Table 2: Cases identified from the CPT

	Number of cases	Affected families (potential processes)
Conflicts identified by the CPT (between 2005 and 2016)	23	11.892

Source: The authors, based on Bittencourt, 2018, based on CPT data.

Table 3: Judicial Cases

	Number of cases	Raised by affected	Raised by Public Ministry (collective processes)
Effective court decisions (until 5/2018)	130	107	20

Source: The authors, based on Bittencourt, 2018.

Although the data show that most of those affected in conflicts with hydroelectric plants do not have their cases judicialized, the decisions given by the Court of Justice of Santa Catarina are very important in the social context of those who sought the “legal remedy” for their pain. In fact, decisions granting or denying a measure have a profound impact on the lives of every citizen who has sought judicial jurisdiction, and of all those who are in an equivalent situation, because such decisions supposedly explain a perspective of uncontroversial validity⁵.

In the processes involving the hydroelectric plants, the cause for asking was similar in all of them - the fishermen from the western region of Santa Catarina, claimed to have had their fishing activity altered due to the installation of the Itá and Chapecó plants. In addition to the decrease in income that this modification caused, some claimed to have suffered moral damage.

Basically, in the analyzed judicial decisions, what is perceived is that the generation of energy is always privileged under the claim that development is of *national interest* or foundation of public *well-being*. In this sense, the decisions move almost inexorably towards accepting the suppression of rights of certain social groups in favor of this development, even if the work does not have any benefits for those affected.

For example, in the Civil Appeal decision no. 0001084-59.2013.8.24.0059, from São Carlos, we have the following:

Hydroelectric power plants are an example of the combination of efforts to achieve the national objective of achieving well-being for the population, with the supply of quality and continuous electricity, with the production of the least possible damage to the environment, as its installation and operation bring, in themselves, damage to the fauna and flora of the region in which they are located.

⁴ The methodology applied by the CPT collects its data through media, complaints received, and reports from agents in the field.

⁵ In Bourdieu's words: “The verdict that resolves conflicts or negotiations over things or people by publicly proclaiming what they are actually, ultimately, belongs to the class of acts of appointment or institution [...]; it represents the form par excellence of the authorized word, public, official word, enunciated in the name of all and before all: these performative utterances, as attribution judgments publicly formulated by agents who act as authorized representatives of a collective and thus constituted in models of all acts of categorization (katègorein as it is known, means to accuse publicly), are magical acts because they are up to being universally recognized, therefore, to ensure that no one can refuse or ignore the point of view, the vision, that they impose” (BOURDIEU, 1989, p. 236-237).

It was a decision that denied any compensation for understanding that the right to a balanced environment contained in art. 225 of the Federal Constitution, could not stand out from any other. In it, which does not differ much from the others, the request of those affected is dismissed, maintaining the rejection of the initial request, emphasizing the need to harness the energy potential of the Uruguay River, and stressing that the constitutional right to a balanced environment cannot castrate the economic activity developed by the State in the name of the community "with conflicts arising between private individuals and activities impacting the environment" (op. cit.). It should be noted that the "individuals" properly referred to are those affected, and that, in this context, the hydroelectric companies would be representing the common interest of leading to collective well-being and not a particular interest.

Epistemic violence

The installation of hydroelectric plants is a complex issue that, often, is the subject of Public Civil Action due to the licensing processes that, as Vainer (2007) explained and we verify here, are always justified in the light of the public interest. In the case of Usina Foz Chapecó, it was no different, the federal public prosecutor filed a public civil action questioning numerous points in the licensing process and aiming at a preliminary injunction that would prevent IBAMA from granting an operating license until measures taken by Foz do Chapecó Energia S.A. were complied with and analyzed. The Public Civil action had no practical result, as it was understood that the Judiciary could only meddle in the problem if there were illegalities, which would not be the case.

In general, the second degree decisions, which concern both defendants that were parties to the decisions evaluated in the present study, varied between unanimous decisions to deny the authors any rights and decisions that contained defeated/divergent votes, but that, for majority of votes denied the authors any rights.

The requests that were made by the fishermen referred to the recognition of damage due to the decrease or elimination of fishing activity while economic activity. Although the rights to be recognized could involve aspects much broader than the economic, such as the very loss of a territorial identity that these people had, these losses were not focused on actions.

There is an episode in the lawsuits in which the floodgates of the Chapecó plant were closed and there was a decrease in fish, which triggered the actions claiming damages to which fishermen were exposed. It is also said that the floodgates of the Itá plant were closed, which occurred during the piracema (spawning season), and the fishermen claimed that there was a large number of fish deaths in the face of this event.

According to the judges, the fact that the floodgates were closed at the time of the piracema was thought by the developers of the environmental impact study and the technical variables were taken into account to reduce the impact on the river ichthyofauna (SANTA CATARINA, TJSC, 2005a, s.p.). "Damage, of course, there will always be. It is important that they are immersed within reason, according to the standards of the bodies responsible for managing, in a sustainable manner, the exploitation of water resources" (SANTA CATARINA, TJSC, 2006, s. p.).

In fact, the installation of the aforementioned hydroelectric power plants reduced the number of fish in the rivers and in many cases curtailed the fishing activity, with which countless families who lived from fishing, found themselves overnight without their economic activity, without the possibility of providing for his family, with what was his main activity for his entire life.

The decisions point out that the fish mortality was lower than mentioned, and that the defendant company is authorized to carry out such a project. The many mitigating measures engendered by the defendant companies are praised for the purpose of declaring that there was damage, but such damage cannot be attributed to the installation of the hydroelectric plant. It is also clear from the decisions that "naturally the installation of a hydroelectric plant causes environmental damage, but that there was an impact project prepared by professionals in the area and approved by the competent environmental agency, with no evidence of non-conforming execution of the project (SANTA CATARINA, TJSC, 2006, s.p.).

The concessionaire company for the use of public goods, whose projects and works for the implantation of dams for the purpose of exploiting hydraulic potentials, once analyzed by the competent

environmental agencies for the management of the sustainable granting of the use of water resources, remain approved and licensed, does not answer to private individuals for the normal damages invariably provided for in such studies and approved by the administration in the exercise of the proportionality judgment between environmental protection and the public interest in the establishment of the hydroelectric plant (SANTA CATARINA, TJSC, 2005a, s. p.).

Civil Appeal no. 2002.024814-8 (SANTA CATARINA, TJSC, 2006) stresses that the public interest outweighs the private interest, that there is no question of damage liable for liability resulting from the exercise of judging the proportionality between the protection of the environment and the public interest and that the damages occurred are not abnormal.

As stated, the legal logic of all decisions, all of which are negative to the requests of those affected, was based on the supremacy of the national interest and collective well-being, a reason that would justify and treat as less important the losses to those affected who, In this case, they would have other opportunities to enter society through another activity or another way of life.

This type of court decision ends up contributing to a notion of the environment that “results in the erasure of the plundering processes that are still ongoing in places” (ZHOURI; OLIVEIRA, 2010, p. 53). Bermann (2007, p. 142) has already pointed out that in hydroelectric installation works, riverside populations are absolutely disregarded "in view of the prospect of irreversible loss of their conditions of production and social reproduction, determined by the formation of the reservoir". The construction of hydroelectric plants often represents the destruction of their life projects for these populations. Even if there is some compensation, this compensation does not guarantee the conditions for reproducing life as it was before the installation of the hydroelectric plant.

Although the subjects can build territorial or multi-territorial identities, the physical territory they appropriate has become, in planning, an abstraction outside the experience of everyday life. Thus, the transformation of this territory ends up obeying a market demand that is not always related to the interests of those affected by the works. Faced with this abstract space, territorial planning is carried out without restrictions or limitations, treating it as if it were an empty space of lives, sociability, etc. given only rationality based on technical knowledge, falsely purified of subjectivities and interests. Thus, the State gives in to business pressures in the face of the strength of private initiative in the public budget, without even realizing that it is giving in to something, by allying itself with capital to the detriment of the territoriality of groups within the nation (ZHOURI; LASCHEFSKI, 2010).

As a result, the vision that permeates the decisions illustrates what Lander remembers as the imposition of a single possible reality, namely, to grow and develop, and any other current reality would not be adequate, taking society to a unique civilizing model, without highlighting the aspects of each social group, their desires and their own characteristics (LANDER, 2008, p. 8). This imposition of a development that leaves no possibility for another form of social existence, constitutes an epistemic violence that is embedded in the colonial process. According to Tirado (2009) epistemic violence is configured in the desire for knowledge and the imposition of that knowledge on the other, which is effective with the fabrication of an epistemological system that gives legitimacy to atrocities that occurred in the name of the need for development (MIGNOLO, 2017).

This knowledge becomes, therefore, the standards from which the deficiencies, delays, and brakes that are supposed to occur as a product of the “primitive” or “traditional” can be analyzed and detected, never seeing in them wealth, potential, rationalities, satisfaction, meaning, etc. According to Lander, it is a Eurocentric vision that thinks and organizes the world from its perspective, having any other as inferior, backward, harmful, archaic, primitive or traditional (LANDER, 2005). It is, according to this narrative, that the dominant development patterns were imposing themselves as legitimate, even at the cost of environmental damage and segregation of the inferior populations.

Castro-Gomez (2005) referred to this type of phenomenon as “the project of modernity”, which would be inextricably linked to the attempt to subject the world to the absolute control of the human being, under the safe direction of capable knowledge to master the forces of nature. Here, the role of technical-scientific reason would have been to access the secrets of the

natural world by making them obey the wishes of humans. And for this submission and control of the world, an institution is needed: the State. It is this State that coordinated the modernization projects and is still a key player in developmental actions today, and continues to validate the modernization project at any cost, as can be seen through the analysis of decisions that respond to conflicts over water in SC.

The discourse used in decisions often blames those affected and minimizes their suffering with expressions such as “fishermen can look for other activities”, which are part of the analyzed decisions (BITTENCOURT, 2018).

Blaming fishermen for the lack of fish in the Uruguay River and consolidating this understanding through jurisprudence is an insensitive act of making those affected by the hydroelectric dams invisible, perpetuating colonial thinking (BITTENCOURT, 2018, p 157).

The situation referred to is similar to that reported by Zhouri (2019) regarding a public hearing for the construction of a dam in Minas Gerais. The author reports the case of a counselor who, after hearing complaints from the affected people about the serious difficulties caused by the beginning of the dam's works, reacted like this: “Do not come to me with whining, the discussion here must be technical” (ZHOURI, 2019 p. 525). These social situations, says the author, make evident the denial of the experience of the “other” typical of the condition of coloniality in which the so-called development projects fit.

When analyzing the details of the decisions, what is perceived is that, in addition to the traditional subsumption of the case to the norm, characteristic of Law (which often culminates in the suppression of the analysis of the social aspects of the issues involved), there is often an interpretation of testimonials in order to validate the behavior of defendant companies (BITTENCOURT, 2018). Thus, what is found is that

Juridification can bring an empty democratic discourse within it, consolidating democracy through procedures that do not really represent democracy (ZHOURI; KLEMENS; PEREIRA, 2005. P. 97).

This means that the legal action of the State, more than imposing a hegemonic view of the world, makes it possible to intervene in the world, making the judiciary an agent that promotes planning decided in the spheres of power, freeing it from obstacles of a not only legal order, but also epistemological and moral.

Final considerations

In the analysis presented, we sought to show the relationship between development patterns in the state of Santa Catarina and the conflicts over water, especially the conflicts caused by the installation of hydroelectric plants. The realization of these projects has a direct impact on the lives of people who live close to these enterprises, with fishing as their economic activity for their entire lives.

We note that, of the countless conflicts generated, few are those that reach the judiciary. Although the scarce access to this decision-making body is a problem in itself, the issue becomes even more serious when we realize that, even when conflicts reach the judiciary, the decisions handed down are limited to validating a development project based on an idea restricted of modernity, as if no other logic were possible.

All the analyzed decisions deny any right to those who suffered the effects of the installation of hydroelectric plants. The claim that energy production is a national interest guides decision and leaves no room for observing any social and economic reality that may permeate the lives of those who built their history in a given territory.

These are conflicts that have become insoluble within the water resources management system, and which the judiciary resolves by treating them as irrelevant based on an unquestionable idea of national interest that simply ignores the interests of affected citizens. Thus, the decisions made by the Judiciary of Santa Catarina on this type of issue are part of the imposition of a vision of modernity that denies the right to existence to ways of life that do not adjust to the dominant development patterns.

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