THE FUNDAMENTAL RIGHT TO AN ECOLOGICALLY BALANCED ENVIRONMENT AT RISK: A CRITICAL ANALYSIS OF BILL N. 2159/2021 (GENERAL LAW ON ENVIRONMENTAL LICENSING)

O DIREITO FUNDAMENTAL AO MEIO AMBIENTE ECOLOGICAMENTE EQUILIBRADO EM RISCO: UMA ANÁLISE CRÍTICA AO PROJETO DE LEI Nº 2.159/2021 (LEI GERAL DO LICENCIAMENTO AMBIENTAL)

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RESUMO

O artigo realiza uma análise crítica do Projeto de Lei (PL) nº 2.159, de 2021, que propõe alterações significativas no processo de licenciamento ambiental no Brasil. A partir da discussão dos principais e mais relevantes dispositivos do texto legal, evidencia-se que, embora haja avanços pontuais voltados à modernização e à transparência, o projeto tende a fragilizar os mecanismos de controle e de fiscalização ambiental. A ampliação das hipóteses de dispensa de licenciamento, a ausência de um rol mínimo de atividades sujeitas ao processo e a transferência de responsabilidades aos empreendedores demonstram um cenário de retrocesso normativo. Conclui-se que, ao priorizar a desburocratização em detrimento da proteção ambiental, o PL compromete o direito constitucional ao meio ambiente ecologicamente equilibrado, configurando um risco à sustentabilidade e à efetividade das políticas ambientais no país.

Palavras-Chave: Licenciamento Ambiental. Flexibilização. Retrocesso.

ABSTRACT

This article presents a critical analysis of Bill No. 2,159/2021, which proposes significant changes to the environmental licensing process in Brazil. Based on the discussion of the bill's key provisions, it becomes evident that, although there are specific advances aimed at modernization and transparency—such as the reactivation of SINIMA and the requirement for institutional reports—the project tends to weaken essential environmental control and oversight mechanisms. The expansion of scenarios exempt from licensing, the absence of a minimum list of activities subject to the process, and the delegation of responsibilities to developers illustrate a normative setback. It is concluded that, by prioritizing deregulation over environmental protection, the bill threatens the constitutional right to an ecologically

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balanced environment, posing risks to sustainability and the effectiveness of environmental policies in the country.

Keywords: Environmental Licensing. Flexibility. Regression.

INTRODUCTION

With the accelerated growth of the world population in recent years, the exploitation of natural resources has intensified in an unprecedented way, significantly aggravating environmental problems. Clear examples of this setback include deforestation, pollution of rivers and the atmosphere, which contribute to global warming and other serious environmental crises. The term "pollute" comes from Latin and means to desecrate, soil or stain, referring to the act of degrading nature by contaminating it (Ronqui, Souza, 2022).

According to the National Environmental Policy Law (PNMA), pollution is the degradation of environmental quality as a result of human activities that directly or indirectly harm the health, safety and well-being of the population (Brazil, 1981).

According to Who (2018), the exposure of individuals to an unbalanced environment due to environmental pollution can bring serious health risks, such as: neurological disorders, fetal malformations, cancer, heart disease, asthma and other lung diseases. It is estimated that approximately 12.6 million of the annual deaths, about a quarter of the global total, are related to environmental pollution.

Brazil, being the fifth largest country in the world in territory and sixth largest in population (IBGE, 2020), has faced several socio-environmental problems, which directly harm the health of the population, mostly unevenly, and who suffers the most is the most vulnerable population, mainly affecting those living in large urban centers where pollution is constantly evident (Curado et al., 2022).

For Persch et al. (2023), environmental issues have gained special attention since the twentieth century, to the detriment of the increase in diseases related to human health, the extensive exploitation of natural resources and events related to anthropogenic events that impact the environment. Because of these aspects, local concerns have become emerging problems.

Here the distinction between contamination and pollution is important. Vasconcelos and Gonçalves (2011) mention that this difference is found in the damage listed at concentration levels of a compound, element or energy, which are above those permissible to the environment, in both cases exceed the normal, but in contamination, that may be of natural or human origin, there is still no harmful effect, toxic or harmful to human health,

animals or the environment, already in pollution these effects are harmful. The premise of measuring pollution and determining environmental standards is to stipulate acceptable values that do not harm the environment.

In Brazil, when pollution endangers human health or causes the death of animals or significant destruction of flora, this is no longer just an environmental management problem but also a crime.

While bringing comfort and well-being to the vast majority of the world population, technological advances and unrestrained consumption brutally hurt nature, making the means of production increasingly unsustainable. Rich and more developed countries tend to exhaust their natural resources faster than poor countries; the heterogeneity of socio-environmental conflicts shows the lack of interest of governments in a healthy environment (Medeiros, Navoni, 2023).

As a result of this, Carvalho (2025) cites that the PNMA guidelines at the national level were not enough to guarantee environmental quality for present and future generations. Thus, it was necessary that the environment was elevated to the status of constitutional norm, reflecting the character of fundamental right in our country, with the advent of the Federal Constitution of 1988, causing direct impact on the life of the entire population, with regard to the reading of the Article 225, caput, which reads:

> Art. 225. Todos têm direito ao meio ambiente ecologicamente equilibrado, bem de uso comum do povo e essencial à sadia qualidade de vida, impondo-se ao Poder Público e à coletividade o dever de defendê-lo e preservá-lo para as presentes e futuras gerações. (Brasil, 1988).

As highlighted by Rodrigues (2018, p. 78), the Federal Constitution of 1988 represented a revolutionary milestone in the Brazilian environmental protection. If the Law no 6.938, of 1981, inaugurated the autonomous protection of the environment in our legal system, the Constitutional Charter raised this protection to a qualitatively superior level, by expressly consecrating it as a fundamental right and common good of the people (art. 225).

According to Cristina et al. (2022, p. 853), the right to an ecologically balanced environment is constituted as a subjective right *erga omnes*, opposable both to the State and to individuals. This guarantee covers not only the natural aspects, but also the cultural, artificial and labor factors, essential for a healthy quality of life. Legally, the environment is classified as a diffuse property belonging to the community and protected as a common property of the people (CF/88, art. 225). Its definition is structured in two categories: macrobem, which constitutes an immaterial good, unavailable and of broad nature (e.g., the ecological balance), formed by microbens, which are concrete elements such as rivers, fauna, forests and seas.

This duality reinforces the need for integral protection of environmental heritage, covering both its intangible dimension and specific natural resources.

The works and human activities with their projects potentially polluting or capable of causing environmental degradation require a prior legal analysis for compliance with the possible environmental impacts resulting from such purposes. For Farias (2022), environmental licensing is the procedure by which the Government examines the compatibility of a certain activity with the environment, and the environmental license is the conclusive act that authorizes or not the project. This distinction transcends the merely conceptual aspect, directly impacting on the practical sphere by influencing three fundamental dimensions of the Environmental Law: (i) liability for ecological damage, (ii) judicial control of potentially polluting activities, and (iii) the legal security of projects submitted to the state screen, showing how terminological accuracy is crucial for the effectiveness of environmental protection.

Brazilian environmental licensing was consolidated by the Law no 6.938, of 1981, which established the environmental license as a central instrument of the National Environment Policy. Its regulatory framework was progressively detailed by the CONAMA Resolutions no 001 of 1986 (environmental impact studies) and no 237 of 1997 (administrative procedures), culminating with its elevation to the category of constitutional guarantee implied in the art. 225, § 1o, IV, of the Federal Constitution of 1988. This device not only made it mandatory to carry out prior studies for potentially degrading activities, but also enshrined environmental protection as a fundamental right of the third generation, endowed with horizontal effectiveness and binding on all entities of the federation.

Cerqueira (2025) shows that in recent years, since the beginning of 2020 specifically, we are witnessing what for many environmental activists can be called a legal setback in the Environmental Law.

The Bill no 2.159, of 2021, called "PL of Devastation", proposes the flexibilization of environmental licensing through the reduction of requirements for economic activities, the permission to decrease protected areas and the weakening of enforcement mechanisms, representing a serious threat to the ecological balance, as environmental experts and lawyers warn. Such an initiative not only potentiates the increase of deforestation rates, in addition to proposing a lower supervision in enterprises and the vulnerability of traditional communities, but also constitutes a flagrant violation of the principle of which, despite not having absolute character, has been applied by the Supreme Federal Court (STF) to control normative acts that recently relaxed procedures for environmental licensing (cf. Brazil, 2022a,b).

This article aims to carry out a critical analysis of the significant changes proposed in the Bill (PL) no 2.159, of 2021, for the environmental licensing process in Brazil and its risks to sustainability and effectiveness of environmental policies in the country.

1 THE PROCESS OF DEREGULATION IN THE ENVIRONMENTAL LAW

Environmental law is a set of rules and legal principles that regulate the relations between society and the environment, with the aim of protecting and conserving natural resources. It seeks to ensure sustainability, biodiversity conservation, natural resource management, pollution control, land use planning and environmental civil liability.

For Tavares et al. (2020), Brazil consolidates itself as an indisputable protagonist in global environmental governance, not only by hosting the largest extension of tropical forests in the world, with unique ecosystems such as the Amazon, the Cerrado (Brazilian biome), the but also for exercising essential regulatory function in global climate cycles. This privileged position is reinforced by multilateral commitments, such as the implementation of the Paris Agreement and leadership in biodiversity protection initiatives, which give it moral and technical authority in the international arena.

Environmental law in Brazil recorded significant achievements, such as the creation of the National System of Nature Conservation Units (SNUC), the improvement of environmental licensing and the implementation of innovative mechanisms, such as environmental compensation, among other instruments that reflect an internationally recognized regulatory framework. However, these normative advances, although effective, coexist with a paradox that undermines their effectiveness, due to the continuous degradation of protected ecosystems, evidenced by invasions of indigenous lands, illegal deforestation and predatory exploitation of natural resources. This contradiction exposes critical flaws in the practical application of laws, either by insufficient supervision, by judicial slowness or by pressure from economic interests. As warned by Barroca and Oliveira (2022), the system urgently needs modernization to face both old problems, such as environmental impunity, and new challenges, including digital crimes (e.g., the illegal sale of fauna specimens on the internet) and the impacts of legislative changes to address climate change.

Part of the national economic matrix historically depends on activities with significant environmental impact, characterized by the use of a large amount of environmental resources, as agribusiness, which depends heavily on water availability and it was a driving element for land use conversion, logging, mining and mega-energy projects.

These are sectors whose economic performance is regulated by environmental legislation, which is why they often seek to pressure the weakening of ecological protections, i.e., the flexibilization of the current environmental regulatory framework.

As demonstrated by Ribeiro and Lima (2022), this tension has resulted in a reduction of 8.4% in protected areas between 2019 and 2023, the approval of the Law 14,299 of 2022, which flexibilized licensing for thirteen strategic sectors. With this, an old Bill (PL) also returned to be agenda in the national legislative branch, the PL (no 2.159, of 2021, which in June of 2025, after consideration and amendments by the Federal Senate, returned for analysis in the Chamber of Deputies.

Due to the significant impact and regression to the instruments of the National Environment Policy (PNMA), this legislative proposal has been called "PL of Devastation".

This scenario reveals the Brazilian paradox, of global environmental power that has not yet solved the equation for full conciliation between economic growth and environmental conservation.

Some principles of the Environmental Law such as precaution and prevention are fundamental pillars for the understanding of jurisprudence, decisively influencing the action of the Judiciary. The precautionary principle authorizes the adoption of protective measures even in the face of scientific uncertainties, allowing the Judiciary to act preventively to avoid irreversible environmental damage. In addition, the prevention principle requires prior studies such as the Environmental Impact Study and the Environmental Impact Report (EIA/RIMA) to mitigate foreseeable impacts, ensuring that potentially harmful projects are carefully assessed. These principles not only guide the application of environmental legislation, but also justify the relaxation of procedural formalities when the protection of ecosystems is at stake. This approach reflects the understanding that the defense of the environment, well diffused essential to present and future generations, demands agile and effective mechanisms by the judicial system (Oliveira, 2025).

In this sense, the legal-environmental hermeneutics in the recent jurisprudence of the Superior Court of Justice (STJ), has been guided by the principle in dubio pro natura (cf. BENJAMIN, 2014; STJ, REsp 1.145.083/MG, 1.198.727/MG, 1.328.753/MG, 1.367.923/RJ, 1.356.207/SP, 1.255.127/MG, 1.669.185/RS and 1.646.193/SP), whose application occurs in an integrated way with the other structuring principles of the Environmental Law, seeking to interpret environmental legislation in a more favorable way for the protection of the environment and vulnerable subjects.

Although the constitutional principles are not absolute, the norms that aim to reverse the current environmental regulatory status, when they imply damages to the environmental quality, to vulnerable communities, to the management of specially protected territorial spaces, are unconstitutional for removing historical achievements for the implementation of the Environmental Law to the ecologically balanced environment.

Already one of the main instruments of the Environmental Procedural Law is the Public Civil Action (ACP) that is consolidated when triggered by the Public Prosecution, associations and entities legitimized for the defense of diffuse interests. Its theoretical and practical relevance lies in the ability to civilly hold responsible polluting agents, ensure the integral repair of environmental damage and prevent future aggressions to ecosystems. In addition to this instrument, the popular action provided for in the art. 5o, LXXIII, of the Federal Constitution, democratizes environmental protection by allowing any citizen to challenge acts harmful to the environment and public property. This tool strengthens social control, as demonstrated in the case of the Belo Monte plant, where local communities blocked irregularities through judicial mobilization (Fiorillo, 2020).

Eventual promulgation of the current General Law on Environmental Licensing may bring a greater number of socio-environmental conflicts to be reflected in the growth of judicialization of public and popular civil actions, as will be discussed in the following sections.

2 GENERAL LAW PROJECT OF ENVIRONMENTAL LICENSING

Since 2004, it has been processing in the Chamber of Deputies the PL (Law Project) no 3.729, which proposes the regulation of environmental licensing, with emphasis on the art. 225, §1, IV, of the Federal Constitution of 1988, which establishes the mandatory (EIA-RIMA) in specific cases. The project seeks to modernize and standardize licensing procedures in order to reconcile economic development and environmental protection. The authors of the PL no 3.729, of 2004, argued that the lack of specific regulation of environmental licensing, even after sixteen years from the promulgation of the Federal Constitution of 1988, generated legal uncertainty and excessive judicialization of licensing processes. To solve these problems, they proposed the creation of a General Law on Environmental Licensing, which would establish clear and uniform rules for the entire national territory (Souza et al., 2021).

The PL no 3.729, of 2004, faced a troubled process for seventeen years due to deep divergences between its defenders and critics. While its supporters claimed that the current rules were decentralized and created legal uncertainty, opponents argued that the new text excessively relaxed environmental requirements and ignored regional particularities (Silva, 2021).

The project has undergone numerous changes since 2019, being subject to criticism from experts, who pointed out the emptying of its original environmental safeguards (Souza et al., 2021).

Approved by the House of Representatives in 2021, it was submitted to the Federal Senate, where it gained new numbering (2.159, from 2021), being presented as part of a "de-bureaucratization" agenda.

The issue has generated great repercussion among environmentalists and jurists, but it is still being little commented in media for the general population. Given the legislative process, it becomes imperative a technical analysis that details the proposed changes to environmental licensing and evaluates their environmental, social and economic effects.

3 FLEXIBILITY OF ENVIRONMENTAL LICENSING

Brazilian Environmental Licensing was originally established by the Law no 6.938 of 1981, which instituted it as an instrument of the National Environment Policy, and then by the Constitution of 1988, that by raising the EIA-RIMA (Environmental Impact Study and Environmental Impact Report) to the condition of constitutional requirement for installation of work or activity potentially causing significant degradation of the environment (art. 225, paragraph 1, IV), implicitly recognized the importance of that instrument for adequate prior planning and control of environmental impacts.

Although there is no general federal law in the strict sense (ordinary law) governing environmental licensing, sections I and VII of the art. 8th of the Law no 6.938, of 1981, assigned to CONAMA (National Council of the Environment) the regulatory power to define norms, criteria and standards for licensing effective or potentially polluting activities and for control and maintenance of the quality of the environment, in order to provide the rational use of environmental resources, especially water. The Resolutions of CONAMA are effective in the face of all bodies and entities that integrate the National System of the Environment (Sisnama), so they have nature of the general federal law in the form of the art. 24, §1, of the Constitution (Machado, 2014).

The STF, in the ADPF 623/ DF, declared that Conama is a collective administrative body that fulfills consultative and deliberative functions, being an authentic public forum for creating broad and sectoral environmental policies, binding to the environmental sector and society, in such a way that its dismantling constitutes an institutional-democratic and socio-environmental setback (Brazil, 2023).

The reason for the legislator to entrust CONAMA with the environmental regulatory competence was the need to ensure a technical and dynamic character to the environmental regulatory standards, which is not possible through the stricto sensu legislative process, as in the PL 3.729 of 2004 (current 2.159, 2021), which has been processed for more than two decades.

The mentioned Bill, recently approved in the Federal Senate and sent to the Chamber of Deputies for amendments, is at a crucial moment for the Brazilian Environmental Law, whose effects combine current legislation, national coverage and intergenerational repercussion. The technical analysis of the proposals and the necessary punctual adjustments will be decisive to reconcile economic development and ecological preservation throughout the national territory (Trennepohl, 2022).

Art. 1st of the PL no 2.159, of 2021, establishes that its general rules are applicable to all federated entities for the environmental licensing of activity or enterprise user of environmental resources, effective or potentially polluting or capable, in any form, to cause degradation of the environment.

Originally, the Project foresaw, in the § 3rd of the art. 1st, that the mining projects would subsequently be subject to a specific law, extending the effectiveness of the current rules of Conama until the said law was promulgated.

For Milanez (2021), this type of activity has a huge polluting power and consumes high amounts of environmental resources, which need licensing for its operation. However, the Federal Senate, by means of the Amendment 1 (corresponds to the Amendment 10 of the Plenary), deleted from the Bill the § 3rd of the art. 1, so that at least the proposed project will maintain its universality.

Art. 5th of the Project establishes the following modalities for environmental negotiation administrative acts: Prior License (LP), Installation License (LI), Operating License (LO), Single Environmental License (LAU), Adhesion and Commitment License (LAC), Corrective Operation License (LOC) and Special Environmental License (LAE).

LAU is a new modality of single-step negotiation and aims to attest the feasibility of installation, expansion or operation of enterprises, approving all control and monitoring of the

enterprise. Art. 20 defines that in a single act the LAU declares environmental viability and authorizes the installation and operation of the activity, without establishing its scope, which will depend on regulation by the licensing body (Santos, 2022); however, it still depends on the prior preparation of the Environmental Control Plan and Report.

Otherwise, the LAC allows the installation and operation of small and medium-sized activities and low and medium potential polluter, through compliance with environmental conditions standardized by the licensing body, provided that the suppression of native vegetation is not necessary. Although there are activities of lower complexity that allow simplified processes, the project at this point contradicts the understanding set by the STF in the ADI 6.808/ DF, according to which the automatic and simplified procedures for issuing environmental permits cannot be applied to medium-risk activities (Brazil, 2022a).

Art. 11 of the project also addresses the employment of the LAC, allowing its application, its services and works aimed at capacity expansion and paving in pre-existing facilities or in domain and servitude bands, as well as directed to sanitation activities and enterprises, provided that accompanied by specific technical report.

This flexibility can weaken the environmental control if the criteria are not well established. Among some aspects we highlight the risk of inappropriate use of the LAC by enterprises that underestimate its impacts, the possible lack of technical structure of local environmental agencies to supervise and monitor licensed activities and the difficulty of reviewing or revoking licenses granted on a self-declaration basis, which may compromise the effectiveness of environmental protection.

The most controversial negotiation modality of the Project is the Special Environmental Permit (SAA), which represents real interference in the two fundamental constitutional principles that guide environmental licensing: precaution and prevention. According to the art. 21-2 of the Bill no 3 of the Federal Senate, projects with a high degree of socio-environmental complexity can be declared as strategic by means of a biannual proposal from the Government Council, and processed with priority and in a single phase, without provision of any instrument for social participation through public hearing, putting at risk the right to free, prior and informed consultation provided for in Convention 169 of the International Labor Organization (ILO).

This discretion, without objective criteria defined in the Law, raises concerns about possible abuses and inconsistencies in application. Although the proposal seeks to expedite projects considered priority for national development, this can bring risks of undermining environmental control. The absence of mandatory compliance checks and the combination of

steps may result in less rigorous impact analysis, especially in complex and large-scale projects.

Another example of conjugation of steps is found in the art. 7th, § 4th, which allows automatic renewal of environmental permits via electronic declaration, for small and medium-sized activities and low and medium potential polluter, provided that the original conditions, its legal status and compliance with the conditionalities are maintained.

Although agile, the model reduces oversight and requires safeguards to avoid underreporting of impacts. This presents impacts that require careful analysis. On the one hand, the streamlining of the renovation process for projects that maintain their original characteristics and comply with conditions can bring gains in administrative efficiency, reducing operating costs both for the public authorities and for entrepreneurs.

However, the model would only work in case the periodic audits of the licensing body - to verify compliance with the conditions of the undertaking - are up to date. Otherwise, there is no way to attest that the entrepreneur at the time of renovation is effectively complying with environmental conditions.

The risks inherent in this model cannot be underestimated. The waiver of systematic technical reanalysis by the licensing body creates a vacuum in preventive supervision, and may mask problems such as progressive environmental degradation or undeclared changes in production processes.

Art. 8th, item VII, brings a controversial point, by exempting from environmental licensing services and works directed to the maintenance and improvement of infrastructure in pre-existing facilities or in areas of domain and servitude, including previously paved highways and maintenance dredges. In these hypotheses, road works with significant environmental impact can be included, such as the paving of the BR-319 (city of Porto Velho – state of Manaus), as well as dredging activities for harbors, which involve the movement of sediments with high levels of polluting substances. These are activities that need to be evaluated by the licensing body individually; whose general and unrestricted exemption can cause significant environmental damage.

Art. 9th of the project in question provides for exemption from environmental licensing for ventures related to the cultivation of species of agricultural interest, as well as for agricultural research that does not involve biological risk. Likewise, the practice of extensive, semi-intensive or intensive livestock farming is exempted from the licensing requirement, provided that it is small. This measure can be understood as an effort to reduce bureaucratic procedures and foster economic development in rural areas, especially for small

producers and researchers operating on a reduced scale and with less potential environmental impact (Santos, 2022).

However, by conditioning the waiver to the simple registration of properties in the CAR and the transition instruments defined in the Law no 12.651, of 2012, the device allows the operation of significantly polluting activities (e.g., large agricultural projects) without prior assessment of environmental impacts, in conflict with historical positions adopted by the STF in the ADI 1.086/SC, which declared unconstitutional art. 182, § 3rd, of the Constitution of the state of Santa Catarina, which dispensed from the Preliminary Environmental Impact Study (EIA) forestation and reforestation activities for business purposes (Brazil, 2001), as well as in the face of the understanding recently signed in the ADI 6.618/RS regarding the impossibility of exemption from licensing for forestry activities that have a high polluting potential (Brazil, 2025).

The hypotheses of exemption from environmental licensing provided for in the Bill, even partial and conditional, can generate adverse effects. The absence of a prior evaluation process can open scope for the performance of activities without following good environmental practices, as well as reducing the control of the Government over activities that, although small on an individual scale, can generate significant cumulative and synergistic environmental impacts, especially in environmentally sensitive areas.

4 IMPACTS FOR THE ENVIRONMENTAL MANAGEMENT IN BRAZIL

Athayde et al. (2022) found, in general, that a new more permissive legislation could favor the aggravation of impacts already observed in Brazil, especially in the Amazon region, as the deforestation of legally protected areas due to illegal mining and forest fires, directly compromising biological diversity. In addition, there would be a direct influence on the climate commitments made in international treaties, such as the increase in emissions of greenhouse gases (GHG), which would damage the position of Brazil in the context of the Agreement of Paris.

According to Athayde et al. (2022), the Organization for Economic Cooperation and Development (OECD) assessed that there would be a setback in terms of good practices recommended by the entity, mainly due to the weakening of the use of the Environmental Impact Study (EIA) as a tool to inform decisions and assessments, in addition to negligence in monitoring the environmental effects.

A large part of the civil population and scholars from academia have expressed their opposition to the widespread waiver of environmental licensing for agricultural and livestock activities, as well as the risk of facilitating practice of grappling, deforestation and inappropriate soil management.

It is possible to identify some points of divergence between the current legislation regarding environmental licensing and the proposal contained in the Bill no 2.159, from 2021, which shows structural changes suggested by the new standard. In general, it is proposed to reduce the bureaucracy of environmental licensing procedures, with the aim of boosting economic growth and expansion of infrastructure, sectors that would tend to benefit directly from faster and less complex procedures. However, by promoting the flexibilization of guidelines aimed at environmental protection, the project ends up creating gaps that may favor practices of greater socio-environmental risk, thus being able to as another mechanism of weakening public policies aimed at preserving the environment.

Consequently, a disruption of the main instrument of prior environmental control will lead to an increase in conflicts involving diffuse interests, which will represent a significant increase in the number of public civil actions.

Currently, the federal entities are responsible for defining the typology of projects subject to environmental licensing in their respective jurisdictions. This prerogative implies that the classification as to size of a same type of enterprise, as well as the criteria and requirements applicable to the licensing process may differ among the entities of the federation. This normative disparity leads to a scenario of legal uncertainty and potential overlapping of competences, highlighting the lack of standardized national guidelines that promote uniformity and regulatory cohesion. In this context, there is room for the aggravation of the phenomenon known as "environmental war", in which the relaxation of legal requirements by certain entities can be used as a strategy of territorial competition, turning environmental standards into bargaining tools to attract economic ventures (Antunes, 2023).

The exemption from the environmental licensing requirement is not the ideal solution to such a problem, which can be solved by increasing regulatory output by CONAMA, whose current gaps in its general rules have allowed the edition of additional local standards without national uniformity.

Another relevant divergence in the project under analysis is the absence of a minimum list of activities subject to environmental licensing, as provided for in the Annex I of the Resolution 237 of CONAMA, 1997. In contrast, arts. 8 and 9 of the said PL present an extensive list of developments exempted from this requirement. This exemption extends even

to cases of expansion or modification of projects already in operation, provided that such changes do not increase the environmental impacts previously evaluated. The provision provided for in the § 5th of the art. 5th of the PL provides that the simple declaration by the entrepreneur stating that the changes do not change the framework of the activity or project is sufficient to exempt it from a new impact assessment by the competent environmental body. Such a measure is contrary to the precautionary principle and weakens the supervision of potentially polluting activities (Antunes, 2023).

Despite the criticism, there are some positive advances, such as the consolidation of the National System of Information on the Environment (Sinima), provided for in the articles 31 to 34 of the PL. The proposal reinforces the role of Sinima as an integrated platform for public and geo-referenced data on environmental licensing, centralizing information currently dispersed in several other sectoral systems. Although already foreseen in the PNMA, the system was never fully implemented. Its implementation can represent a significant advance in terms of transparency, institutional efficiency and guarantee the right to an ecologically balanced environment.

The § 2nd of the art. 6th establishes a ban on the granting of licenses with an indefinite term, which represents an important mechanism to strengthen the control and supervision of licensed activities. By requiring the periodic renewal of permits, the standard ensures that projects remain subject to regular technical assessments, preventing the perpetuation of environmental impacts without institutional monitoring. It is, therefore, a measure that contributes to the improvement of environmental governance by ensuring the constant updating of licensing conditions in view of the environmental and operational dynamics of the projects. However, the device has its effectiveness impaired by other hypotheses of automatic renewal of licenses without prior control by the licensing body.

CONCLUSION

Bill no 2.159, of 2021, in the version with the amendments approved in 2025 in the Federal Senate, if promulgated, will represent a turning point in Brazilian environmental policies, by proposing a general relaxation of environmental licensing under the argument of simplification and incentive to development.

Although it presents positive points in the devices that seek to modernize and give more efficiency to the process, such as the reactivation of Sinima and the requirement for institutional reports, the PL, in its essence, weakens fundamental control and supervision

instruments, putting at risk the constitutional principle of the right to an ecologically balanced environment, as well as substantially impairs the effectiveness of the principles of precaution and prevention.

The expansion of cases of exemption and ineligibility for environmental licensing activities and the transfer of management to the entrepreneurs themselves, without concrete follow-up by public authorities, constitute setbacks that compromise the effectiveness of environmental policy.

In this sense, the legislative proposal, instead of promoting the balance between environmental protection and economic development, favors the logic of deregulation, paving the way for an institutionalized degradation, which will result in a significant increase in the judicialization of socio-environmental conflicts.

It is necessary that the debate around the restructuring of environmental licensing be guided by technical criteria, constitutional principles and the centrality of sustainability as a structuring axis of political decisions in the country.

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