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Critical Analysis of Legal Discourse: A study of the Effectiveness of Brazilian Environmental Legislation

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Abstract: The little effectiveness of environmental law does not correspond to the importance that this branch of law has for today's society and for the future of mankind on Earth. The aim of the present study was to analyze the role of the Judiciary in dealing with environmental issues through the identification of the categories of reasoning of legal discourses arising from environmental demands trials. The methodology used was critical discourse analysis based on the categories formulated by Fairclough (2001). The sample consisted of a Direct Action of Unconstitutionality (ADI) judged by the Federal Supreme Court and an environmental Public Civil Action (ACP) judged by the Federal Judicial Section of Piauí (SJPI). The study showed that the discourses captured in the interviews of the practitioners are against the written legal discourses, however their discursive practices have not yet been sufficient to transform the ideological positions demarcated in the Judiciary. It is believed that legal discourses are in many cases the consequence of a doctrinal formation based on individual rights and cultural values that do not have the environment as a priority, and also due to the divergence of position regarding the eminent issues of society when compared to environmental issues.

Keywords: Effectiveness; Environmental legislation; Legal Discourse; Ideology

1. Introduction

In view of the various attacks on natural resources, pollution, which can affect human life, environmental law has the potential to change this reality within the Brazilian legal order. For this, it is necessary competent judges who understand the complexity of the environmental issue and have effectiveness in their decisions, a society that also demands collective goods, not only individual ones, and public administration with the implementation of public policies committed not with the formalism of environmental legislation, but seeking an efficient management.

The right to a balanced environment is guaranteed by the Constitution as a fundamental right, which is directly related to the right to life for present and future generations. However, even though Brazil has a vast infra-constitutional environmental legislation, this has not been sufficient for the effective protection of the environment, as there is a gap between what is established in the laws and the practical reality (Bezerra *et al.,* 2016). Legal rules exist, so they need to be implemented, but for that, it is essential to make society aware that human beings are not the owners of nature, but part of it, combined with the awareness of legal interpreters when in the application of the law to specific cases. Seeking the implementation of the right to the environment as a fundamental right, the need for effective environmental legislation is imperative. There must be punishment whenever there is an irresponsible and inconsequential use of technological development that causes consequences for the environment. Brazil has a large arsenal of normative acts that regulate the environmental issue, however, there are evident difficulties in its application in the way that the legal provisions are presented.

Prado (2012) attributes the imperfections to environmental laws and the difficulty in applying them to the fact that they are drafted by non-experts of the law, being above all, based on specialists from the

affected areas, and that these factors may be among the causes for the ineffectiveness of Brazilian environmental legislation. The current state of environmental law in Brazil, and at a global level, results in the impossibility of talking about effectiveness and much less in its efficiency, hence the importance of determining the main causes and their effects from the study with the legal practitioners, with the purpose of knowing the magnitude of the problem and proposing possible solutions. According to Chacón (2016), it is also argued that environmental legislation has experienced significant growth both in the domestic law of States and in international law through binding bilateral, regional and global declarations or treaties. Despite this, environmental problems have increased in number and severity, which shows that environmental law and the multiplication of its rules have failed to solve environmental problems.

In this sense, the present study aims to analyze the role of the Judiciary in tackling environmental issues from the identification of the categories of reasoning of legal discourses arising from judgments of environmental demands. It is assumed that the study of the legal discourses produced in the analysis of environmental issues will be important to determine the conditions of possibility for the construction of new paradigms for the interpretation of environmental legislation, and this is because the study of the way legal practitioners decide, their reasons and their reactions can be seen as cultural elements.

2. Method

The study of legal discourse, the central theme discussed in this study, is not conceptually a science, but it has an epistemological nature, because it presents scientific concepts from different areas of knowledge used in its foundation, specifically legal science and socioeconomic studies on sustainable development.

The research consisted of a Supreme Court judgment and a sentence handed down in an environmental Public Civil Action (Ação Civil Pública - ACP) judged by the Federal Judicial Section of Piauí (Seção Judiciária Federal do Piauí - SJPI). The intention in analyzing a decision of the STF and another of a local judge was to try to make a parallel between the categories of reasoning of the discourses used by both judging bodies, trying to understand if they are going in the same direction or in opposite ways, and even more so if in some of the discourses there is more or less intensity in the protection of the environment and the enforcement of environmental legislation.

The analyzed STF case was selected based on the following criteria: Cases that made up the Justiça TV channel program “Grandes Julgamentos do STF” from 2011 to 2017 and with environmental issues as themes, reaching a total of 10 actions that represent the universe of the study; after getting the number of cases, they were numbered and selected using a random number selection app, in order to maintain impartiality in the choice of text; and ADI 4066 was obtained, which deals with the unconstitutionality of a device that allowed the extraction of chrysotile asbestos. The STF decision was analyzed based on the discourse written in the judgment made available on the STF website and the discourse spoken through the video of the trial session that took place on November 17, 2017, available on YouTube. The intention of watching the video of the ADI 4066 judgment session was to try to capture whether there were any differences between written and spoken speeches, and whether in either of them the environmental issue transcended more prominently.

The environmental ACP from SJPI was obtained as follows: a) first, obtaining through the TRF1 website the Public Civil Actions in process and sentenced. The research carried out on the TRF1 website presented the public civil actions in process in the Judicial Section of Piauí was made using the following search algorithms: Type of Action: Public Civil Action, Nature of the action: Environmental demands, Author: Public, federal or state prosecutors; Procedural stage: not filed; Time lapse: this limiter was not made (Table 1), reaching a total of 7 actions; b) after the number of cases were obtained, they were numbered and selected from by using a random number selection app, in order to maintain impartiality in the choice of text; c) then the verdict was given in case No. 12298-38.2010.4.01.4000 pending at the 2nd Federal Court (see annexes).

Having delimited the corpus of the study and the samples of the documentary research, the CDA was used to analyze the texts from the analysis categories of Fairclough (2001): (1) analysis of discursive practices; (2) analysis of texts and (3) analysis of social practice.

Having made the CDA of the selected texts, and having understood the discursive process, the results were analyzed according to the different theoretical instruments that serve as the background of this study, so that, then, one can know the judicial ideology and identify the proper categories used in the foundation of their decisions, and finally, apply the substrate of these results to overcome hegemonic ideologies and formulation of new paradigms for the interpretation of environmental legislation that guarantee its effectiveness of research articles.

3. Critical Discourse Analysis (CDA)

Critical discourse analysis (CDA) is more than a tool for text analysis: its starting point is social problems of a discursive nature. Through explanatory criticism, CDA seeks to denaturalize hegemonic discourses; prioritizing power struggles, social differences and issues related to discrimination, exploitation, etc. – in order to stimulate the agency of individuals. Thus, CDA aims to collaborate to take informed actions, which can lead to effective changes in our society (Fernandes, 2014).

This section presents the movement of CDA's transdisciplinary research, starting with its definition, then the characteristics of critical discourse analysis, and finally the theoretical approaches to the use of CDA as an analysis tool, such as the dialectical relational (Fairclough), sociocognitive (Van Dijk), discourse-historical (Wodak), social actors (Van Leeuwen), and Foucauldian dispositive analysis (Jäger & Maier, 2009) are described.

Critical discourse analysis is a "problem-oriented interdisciplinary research movement, subsuming a variety of approaches, each with different theoretical models, research methods and agenda" (Fairclough *et al.,* 2011). The movement can be best described as a vigorous network of scholars, which began in the 1980s in Britain and Western Europe, and has since flourished in an international set of approaches that explore the relationships between the use of language, and its producers and consumers, and the social and political contexts, structures and practices in which it occurs (Waugh *et al.,* 2016).

When studying discourse, the emphasis is given to how language is implicated in issues such as power and ideology, which determine how language is used, the effect it has, and how it reflects, serves, and advances interests, positions, perspectives, and values of those in power. A point of view of the CDA is that the speech perpetuates social patterns such as domination, discrimination, exploitation, dehumanization, naturalization (ideological direction) of “common sense” unless it’s generally hidden effects are exposed, so that awareness, resistance, emancipation, and social action can bring social change and social justice (Waugh et al., 2016).

In the book *Methods for Critical Discourse Analysis*, Wodak and Meyer (2009a) list some principles that characterize research in CDA. They are:

Investigation of socio-discursive problems, that is, social questions partially constructed through language.

Interdisciplinarity, since the CDA borrows concepts from other areas of knowledge – such as ideology, social practice and even the concept of discourse itself – with the aim of having inputs to investigate the relationship between language and society in the processes of continuation/transformation of the *status quo*. The essence of CDA is interdisciplinary because it needs to transcend linguistics to account for investigating the dialectical relationship between language and society.

Interest in denaturalizing ideologies and power relations through the investigation of semiotic data that includes not only verbal texts – written and oral – but also visual and multimodal texts.

Clarity in the position and interests of critical discourse analysts in their research. CDA researchers understand that taking a certain position in relation to their research object and remaining reflective about the research process itself does not diminish the scientificity of theoretical and methodological apparatus used (Wodak & Meyer, 2009a).

However, although research on CDA shares these listed principles, Wodak and Meyer (2009b) emphasize that "CDA has never been and has never attempted to be or to provide one single or specific theory". There is also no specific methodology that characterizes CDA researches. On the contrary, the studies in this line of study are varied, derived from different theoretical references, oriented towards different data and methodologies. The constitutive heterogeneity of CDA should not, however, be seen as something negative – because it is a school open to debate and constant changes and innovations (Fernandes, 2014).

To illustrate the possibility of conducting research on CDA based on different theoretical and methodological devices, five common approaches to CDA are presented, which have a number of characteristics in common. For example, they are problem-oriented, interdisciplinary and eclectic, and they all share an interest in demystifying ideologies and power through the semiotic investigation of systematic data (Wodak & Meyer, 2009b).

Most types of CDA seek to "demystify discourses by deciphering ideologies" (Wodak, 2009), which is the purpose of this study when analyzing the discourse obtained from the decisions made by the Federal Supreme Court ministers (Supremo Tribunal Federal - STF)[1], and to ask questions about the specific form that specific discursive properties are implanted and reproduced in social dominance. CDA approaches also try to define which interests are being represented, for example, which social actors, groups or institutions have the power to convince, dominate, or control others and for what purposes. Their social power is seen as a source of control, a power base for privileged access to scarce social resources, such as strength, money, *status*, fame, knowledge, information, language and specific forms of discourse, including especially public speaking; integration in laws, rules, norms, habits and consensus; and access to ways of instilling beliefs about the world through discourse and communication (Waugh *et al.,* 2016).

The first of these approaches is Norman Fairclough's Dialectical Relational (DRA), which is one of the key figures in the domain of CDA. Famous book titled Language and Power (Fairclough, 1989) is commonly considered the pioneer publication for the genesis of CDA. For Fairclough (2009), "discourse" has two interconnected meanings: (1) "the language associated with a specific social field or practice (for example, 'political discourse')," and (2) "a way of interpreting aspects of the world associated with a particular social perspective (for example, a "neoliberal globalization discourse").

According to Wodak and Meyer (2009b), in the dialectical relational approach, Fairclough: focuses on social conflict in the Marxist tradition and tries to detect its linguistic manifestations in discourse, in specific elements of domination, difference and resistance... He understands CDA as the analysis of the dialectical relations between semiotics (including language) and other elements of social practice. Its CDA approach oscillates between a focus on structure and a focus on action (Wodak & Meyer, 2009b).

According to Fairclough (2009), the value of the dialectical relational approach lies in its ability to make sense of data from different perspectives, in order to get a more powerful research approach. In addition, dialectical relational analysis allows people to see through the "complex dialectical relationships between semiotics and non-semiotic elements that constitute the social, political and economic conditions of their lives" that most people are unable to do (Fairclough, 2009: 183).

CDA's second approach is Teun van Dijk's Sociocognitive. Teun van Dijk is recognized as one of the youngest, most prolific, and professional leaders of the CDA. In his socio-cognitive approach (Van Dijk,

[1] SUPREMO TRIBUNAL FEDERAL. 2018. Disponível em: http://www.stf.jus.br/portal/principal/principal.asp> Acesso em 26 set. 2020.

2014b), he emphasizes the "fundamental importance of the study of cognition (and not just of society) in the critical analysis of discourse, communication and interaction and "the fascinating sociocognitive interface of discourse, with mental processes, discursive interaction and society "(Van Dijk, 2014b).

In this approach, discourse is a multidimensional social phenomenon that can be a linguistic object, an action, a form of social interaction, a social practice, a mental representation, an interactive or communicative event or activity, a cultural product, or even a commodity that can be bought and sold (Van Dijk, 2014a).

Ruth Wodak's Discourse-Historical Approach, recognized as one of the main founding figures of CDA still active in business in general, focuses on politics, developing a framework for political discourse, and analysts make sure not to get lost in "theoretical mazes", but instead try to develop conceptual tools that are suitable for specific social problems (Wodak & Meyer, 2009b).

Wodak (2009) characterizes the ten most important principles of DHA as follows: (1) it is interdisciplinary, (2) it is problem-oriented, (3) various theories and methods are combined, (4) the research incorporates fieldwork and ethnography, (5) the research moves recursively between the theory and empirical data, (6) numerous genres and public spaces, as well as intertextual and interdiscursive relationships are studied, (7) the historical context is taken into account in interpreting texts and discourses, (8) categories and tools are not fixed once and for all (9), "great theories" often serve as a foundation, but "middle-range theories" can also provide a theoretical basis, and (10) the application of results and communicating them to the public is important (Wodak 2009). DHA also adopts van Dijk's notions presenting the "positive self" and the "negative other" but does not emphasize the top-down manipulation of "elites" by the masses of ordinary people, nor the stress of socio-cognitivism.

A final but relevant element of Wodak's approach, which sets it apart from many CDA supporters, is the inclusion of the "inside perspective" (an ethnographic approach) to examine the ways in which minorities or immigrants are actually victims of racial discrimination in today's societies (Krzyzyanowski & Wodak, 2009). One way of doing this is through focus groups in which relevant themes are discussed on the subject in question.

Theo van Leeuwen, presents the Social Actors Approach (SAA) for CDA, "based on the idea that discourses are recontextualizations of social practices" (Van Leeuwen ,2009). According to Van Leeuwen (2008): In SAA, the analysis focuses on sociological categories (such as "appointment" or "agency") rather than linguistic categories, such as "nouns" or "passive sentence" and when examining a range of linguistic and rhetorical phenomena, the elements examined are linked through the concept of "social actors", rather than linguistic concepts such as "nominal groups" (Van Leeuwen, 2008).

Van Leeuwen (2008) provides an expansive inventory of the ways that we can classify people and the ideological effects that these classifications can have.

The Device Analysis approach by Siegfried Jäger and Florentino Maier is, in essence, Critical Discourse Analysis based on Michel Foucault's theory of discourse (Jäger & Maier ,2009). For Foucault, the notion of discourse is used with "a set of anonymous, historical rules, always determined in time and space, which defined, at a given time and for a given social, economic, geographical or linguistic area, the conditions for exercising enunciative function" (Foucault 1980). Many CDA practitioners recognize implicitly or explicitly the influence of Foucault's theory of CDA discourse. From the beginning, Fairclough (1992b) invariably quoted Foucault, but few actually apply Foucault's work in discourse analysis instead "putting Foucault's perspective to work" (Fairclough, 1992b), as in the dispositive analysis approach.

The Dispositive Analysis approach (Jäger & Maier, 2009) is oriented towards the cultural sciences and all the approaches presented here, it is the least focused on the structures/grammatical/linguistic characteristics of a text (micro level) and most focused on the macro level, "large categories, identified with equally large chunks of often un-deconstructed text" (Threadgold, 2003). For Jäger and Maier

(2009), discourse analysis and its extension, dispositive analysis, "aim to identify the knowledge contained in the discourses and devices and how that knowledge is firmly linked to the power relations in power/complex knowledge".

As Foucault (1980) explains, “the device is a thoroughly heterogeneous set consisting of discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral, and philanthropic propositions-in short, the said as much as (or even less than) the unsaid”.

According to Bragato and Colares (2017), the legal and judicial texts, in the perspective of the Critical Analysis of Legal Discourse (CALD), “result from historically constituted sociocognitive processes, in which, inevitably, policies and ideologies are invested in the subjects' daily practice, producing results and effects on social structures”.

The judicial proceedings, precisely because it is configured as a response to a particular conflict, individual or collective (as in the case of the environmental ones), in terms of resisted pretension, whether concrete or abstract, in terms of interpretive constitutionality (interpretation of the Constitution and interpretation according to the Constitution), projects two undeniable discourses at their point of arrival, both reciprocally influenced: the immediate discourse linked to the protection of the law and the mediated discourse of universal justification of the normative criterion adopted for the purpose of parameterizing the intended choice. From the perspective of the judicial structure, the first discourse is immanent to the case under trial, because it stems from it; the second inevitably transcends it, now taking the case as a pretext to boost a given justification extension of the normative criterion employed, whose baton will guide the stability of coherence involved in future situations of fact and law (Reis, 2017).

The jurisdictional decision in this heterogeneous structure with a hermeneutic nature, from which we can see the presence of a corresponding normative criterion interpreted for the specific case and beyond, deserves close attention among the other spaces of deliberative experience of the Law, because it inexorably – as a legal interpretation it is – will transition between the previous abstract of the legislation and the concrete decision formula destined to the origin process, resulting from this hybrid taxonomy the need to prescribe – this is how we draft our working hypothesis - for each and every judicial decision the ethical ambition of being potentially overlaid on a precedent of jurisprudence and a way of applying legislation (Reis, 2017).

The analysis of the judicial decisions shows the way in which the jurists conduct the text, manifesting in the linguistic materiality the framework of relevance and modes of operation of the ideology triggered in the enunciative situation. The critical analysis of legal discourse has as its focus the approach of the relationship among language, law and society (Colares 2014), anchored in the Social Theory of Discourse, proposed by Norman Fairclough (2001), who was also the creator of the Critical Analysis of Discourse.

The texts socially produced in authentic Judiciary events are the result of the social structuring of the language that consumes them and makes them circulate. The CALD approaches the interaction in justice from a dialectical point of view, as a process open to change, in which social relationships and identities can emerge and generate new representations. For Correas (1995), who centered his work on the study of legal ideology related to the consequences of the performance of power in a given society, "the legal ideology also exists in the discourse of officials and judges when they base the rules they produce". Thus, the delivery of judicial decisions can be considered a mediating discursive practice that occurs between a text and a social practice and, as such, can both promote justice and equality and justify and naturalize oppression.

As a research program or agenda, Critical Discourse Analysis is known for its openly political position and is concerned with analyzing various forms of social inequality and injustice. The analysis of the discourse that shows the functioning of the power that supports oppressive social structures and

relationships contributes to ongoing struggles of protest and change through what can be called "analytical activism". Therefore, the interest in this type of analysis is not merely academic in the sense of deconstructing texts and speeches, but comes from the assumption that these themes deal with material and phenomenological consequences for certain groups of people (Lazar, 2007).

The key concepts presented throughout the theoretical sections discussed in this study, reflect discourses about the confrontation of the environmental issue by the legal practitioners and which materialize on the surface of the texts. In the case of the object of study of this thesis – Actions of an environmental nature judged by the STF and by the local Judiciary – these are judicial decisions (social event – the concrete action of social agents materialized in text form) arising from the social practice of the Judiciary, which reflects the social structure to which it belongs, the justice, in the perspective of the Critical Discourse Analysis agenda that seeks to explain the naturalized and (or) neutralized power relations (Bragato & Colares, 2017).

The relationship between the ethnographic approach and the Critical Discourse Analysis becomes fruitful because power relations are disputes over interests that are exercised, reflected, maintained and resisted in very different ways and in different degrees of explicitness, which can be subtle and implicit. They manifest themselves through speeches whose formation is studied by Critical Discourse Analysis in order to uncover the ideology and hegemonic power relations frequently assumed.

Thus, the adoption of the concept of ideology, in this thesis, does not imply its use as a construction of reality that hides the truth or serves to produce and reproduce relations of domination, necessarily, but that also serves to transform them, in the sense of Fairclough (1992b). Every discourse is ideological, to a greater or lesser degree, either to reaffirm or to break with the perception of the lack of effectiveness of environmental legislation. Fairclough (2001) proposes, in the Critical Discourse Analysis agenda, in the analysis of discursive practices, the distinction between intertextuality (shown heterogeneity) and interdiscursivity (constitutive heterogeneity).

4. Analysis and Discussion

The Brazilian Judiciary has considered, in the scope of Environmental Law, issues related to environmental licensing, sports activities with animals, conflicts of an economic nature in areas of environmental preservation, industrial facilities, among others. But what is observed in a preliminary analysis, is that these are issues of little relevance or social scope, they are demands that are not posed to society, simply because they are grounded or justified by actions that are based on economic growth, in name of which, it is even possible to apply multiple meanings for the same legislation (Bezerra, 2013).

Table 1. Discourses analyzed.

Case	Author	Object
ADI 4066 (Case 1)	National Association of Labor Attorneys (ANPT) and National Association of Labor Court Magistrates (ANAMATRA)	The declaration of legal and constitutional invalidity of art. 2º of Law No. 9,055, of 6/1/1995 - which allows the exploration, as well as the industrial use and commercialization of chrysotile asbestos (white asbestos)
12298-38.2010.4.01.4000 SJPI (Case 2)	Federal Public Ministry	Public Civil Action aiming to declare the competence of IBAMA to grant environmental licensing regarding the implantation of the Castelo Dam in the municipality of Juazeiro/PI.

Source: Direct research, 2018.

For Critical Discourse Analysis, intertextuality establishes the dialogue between a text and other text(s), the intertexts present on the textual surface. While interdiscursivity refers to other voices and social

conventions, which are not always effectively located on the surface of the text, intertexts refer to the functioning of relationships in cultural and historical contexts, social matrices of discourse.

The analysis below shows these two modes of text production (or modes of enunciative heterogeneity) in the two previously selected cases, as shown in Table 1.

A) CDA of the Direct Action of Unconstitutionality nº. 4066

This case was judged by the STF plenary on 08/24/2017. The Court, by majority, heard of the action, recognizing the active legitimacy of the plaintiffs, the Ministers Alexandre de Moraes and Marco Aurélio lost. On the merits, the Court counted five votes (from Ministers Rosa Weber (Rapporteur), Edson Fachin, Ricardo Lewandowski, Celso de Mello and Cármen Lúcia) for the merits of the action, and four votes (from Ministers Alexandre de Moraes, Luiz Fux, Gilmar Mendes and Marco Aurélio) for the dismissal of the action, and, as the quorum required by article 97 of the Constitution has not been reached, the unconstitutionality of art. 2º of Law 9,055/1995 was not accepted, in a judgment devoid of binding effectiveness. Ministers Roberto Barroso and Dias Toffoli were prevented. Minister Gilmar Mendes was justifiably absent. Minister Carmen Lúcia presided over the trial. Plenary (STF, 2017).

The oral trial session demonstrated the highlights that each minister had already given in their vote. The session began with the vote of the rapporteur of the case, Minister Rosa Weber, who defended the constitutionality of the state law that prohibited the use of asbestos and argued that there was no violation of legislative competence. In her vote, the minister made ample emphasis on the theme of asbestos, its consequences for human health, the environment and the work environment. Her vote was substantiated in technical advice and arguments about the risks caused by asbestos, ending her vote by the declaration of legal-constitutional invalidity of art. 2º of Law No. 9,055, of 6/1/1995 – which allows the exploration, as well as the industrial use and commercialization of chrysotile asbestos (white asbestos) –, due to the asbestos fibers, regardless of their type or geological origin, be carcinogenic and cause other serious pathologies, some of which are characterized by their lethality.

Finally, the spoken and written discourse proved to be coherent and in speaking, the minister was able to show in fact his extensive interpretation of the legislation and his concern with the environmental issue.

B) CDA of Case No. 12298-38.2010.4.01.4000 SJPI

The text that composes the speech analyzed here was produced individually by the judge in charge of the 2nd Court, which we will call J1. This is a sentence issued at the 1st degree level in Public Civil Action (ACP) proposed by the Federal Public Ministry in face of the State of Piauí and IBAMA, aiming to declare the competence of IBAMA to grant environmental licensing regarding the implementation of the Castelo Dam, in the municipality of Juazeiro do Piauí/PI, on the Poti River, under the argument that such an undertaking will directly affect goods of interest to the Union – Conservation Unit and archaeological sites – in addition to causing regional damage.

The case initially had an injunction granted to remove the competence of the state licensing agency (SEMAR) and declare the competence of IBAMA for the licensing process of the Castelo Dam. The decision, however, was revoked by the sentence, which declared the state agency's competence for the aforementioned licensing process, and after the judgment of the appeal was confirmed by the TRF1 judges. When reading the magistrates' votes, the presence of intriguing aspects in the text is noticeable much more than what was actually said. This characteristic is accentuated by the discrepancy and the use of interpretative techniques of laws. Obviously, each magistrate brings with them their own ideological range that governs their relationships, which commands their way of seeing the world and reflects in their decisions.

Table 2. Text analysis.

Analysis Elements	Topics	Case 1	Case 2
Interactional control	General	The interactions of the text are exclusive to the rapporteur	The interactions of the text are exclusive to the rapporteur
Textual structure	Politeness	Written in technical language, cohesive and polite sentences. There is a concern to present the conviction of the speakers x the concern with what is socially accepted	Written in technical language, cohesive and polite sentences. There is a concern to present the conviction of the speakers x the concern with what is foreseen in the legislation
	Ethos	Demonstrates concern for worker's health and preservation of the environment	It is conservative with respect to environmental issues, limiting itself to a restrictive interpretation of legislation
Cohesion	General	The sentences are connected in a way that allows a clear and understandable reading	The sentences are connected in a way that allows a clear and understandable reading
Grammar	General	Organization of the text according to the standards of legal texts, sentences are combinations of ideational and legal meanings.	Organization of the text according to the standards of legal texts, sentences are combinations of ideational and legal meanings.
	Transitivity	The constructions are in an active voice and allow a clear perception of the speaker on the topic.	The constructions are in an active voice and allow a clear perception of the speaker on the topic.
	Theme	There is a discernible pattern in the structure of the text's themes. The chosen themes are related and create a support for the main thesis	There is a discernible pattern in the structure of the text's themes. The chosen themes are related and create a support for the main thesis
	Modality	Intonation patterns are carried out in an attempt to force the conviction of the ideological position	Intonation patterns are carried out in an attempt to force the conviction of the ideological position
Vocabulary	Meaning of words	Environment extensive significance	Environment overlapped by procedural and technical issues
	Creating words	There is a lexicalization of terms specific to forensic language, which cause difficulties for other readers	There are no ambivalences that hinder the interpretation of the text
	Metaphor	Use of metaphors associated with irony	It was not noticed the use of metaphors that transcended the grammatical aspect in their interpretation

Source: Adapted from Fairclough (2001)

For the purpose of comparing the analyzed discourses, tables 2 to 4 were prepared. We do not want to demonstrate here that the ideologies must be the same. But the consequences this brings must be carefully observed. In this formulation of the *ethos*, applied to this model, the aim is to understand

which factors contribute to the magistrate's understanding in dealing with some issues, especially environmental ones. In another round, the ideological and political effects of the discourse are added. Therefore, systems of knowledge and rules, social relationships and social identities are included.

Table 3. Analysis of discursive practice.

Discursive Practices	Topics	Case 2	Case 1
Text production	Interdiscursivity	It is a monocratic decision, it has a rhetorical style, the sample is sometimes conventional at times innovative, heterogeneous discourse	It is a monocratic decision, it has a rhetorical style, the sample is sometimes conventional at times innovative, heterogeneous discourse
	Manifest intertextuality	Direct representation discourse, clearly demarcated in the object of the action, but expands when reflecting on themes related to the case, presence of metadiscourse and irony	Direct representation discourse, clearly demarcated in the voice of those represented, formal statements and assumptions supported by legislation.
Text distribution	Intertextual strings	The discursive sample does not undergo transformations and the intertextual chains are stable	The discursive sample does not undergo transformations and the intertextual chains are stable
Text consumption	Coherence	As an argumentative, explanatory way, structured in the form of theses (themes) that involve the problem faced	As a simple, objective way of arguing and using only legal provisions and technical opinions in the case file
Conditions of discursive practice	General	The discourse speaks of a position taken by the Court, but the rapporteur's emphasis on his own position is evident	The discourse is directed to the pronouncer's own position in relation to the theme

Source: Adapted from Fairclough (2001).

It is possible to focus on all the practical effects of the Judges' discourse. These controversial issues and the way they are resolved demonstrate a logical disagreement. Another technique used by discourse analysis also allows to enlighten what is behind the text. The social context, at the moment of the discourse, which also influences it. When applying the CDA in the selected legal discourses, it was noticed at first that there is a certain corporatism when referring to decisions other than that of the author of the discourse, especially if this position is different from the one being mentioned.

Certain characteristics of discursive practice are repeated throughout the discourses analyzed, such as rhetorical style, heterogeneity, which is a characteristic of legal decisions, which always rely on the help of legislation, doctrine, jurisprudence and arguments of the parties involved in its reasoning. Another interesting aspect is the behavior of ministers during the plenary session. Some use the space to discuss facts, debate with the other participants, provoke some controversial issues in the text, while others maintain their expression exclusively by written vote. There is no oralization of discourses by them.

Table 4 . Analysis of social practice.

Analysis Elements	Case 1	Case 2
Social discourse matrix	It deals with the unconstitutionality of a legal rule that allows the exploitation of asbestos. Involving worker's health and environmental degradation	It deals with the change of competence for granting an environmental license from the state agency to IBAMA
Discourse Orders	The pronouncer's convinced position presents theses on the themes related to the case to support his conviction. Defense of the environment in its entirety	Mention of legal provisions, jurisprudence and excerpts from technical opinions
Ideological and political effects of discourse	Concern about the effects of judgments on society; defense of the integrity of the environment and the effectiveness of the Constitution. The discourse has no hegemonic character, but contains innovative ideologies from a broad interpretation of the environment, makes use of innovative principles to empower its discourse	The hermeneutics used by the speaker to the legal provisions invoked was merely restrictive. It did not show a greater concern with the environmental issue involved, especially since the case was the implementation of a dam. There was no intense discussion about the environmental impacts themselves, but only their territorial extent, and overshadowed the technical arguments presented by the defendants.

Source: Adapted from Fairclough (2001).

The use of irony and assumptions is also frequent in the votes studied, some even with the clear intention of manipulating those involved in order to modify positions already defended. The *ethos* of each minister is noticeable, since it is possible to perceive the implicit subjectivity of each one, their scale of values and hierarchy, their view of the world and their legal view.

In the category of text dimensions, there was also similarity in the analyzed discourses. All discourses are structured as an argumentative mode, using elements of heterogeneity to defend individual positioning. They are written in technical, formal, polite and understandable language to those who belong to the legal environment. Also, there is the use of orthographic visual resources (italics, underlining and bold) to highlight what interests the represented. Some use more of these resources, others endlessly throughout the text. The analyzed texts also have non-discursive effects, among them the concern with the effects of judgments before society and the possible moral judgment by the nation of ministers (Table 2).

The social practical category reveals some hegemonic and other innovative ideologies when it comes to tackling environmental issues. There is a clear intention to give the reader a pro-environment posture (thinking about the judgment they suffer for society), because that is what is expected of legal practitioners, in this sense, the arguments are often simulations of what the operator actually believes.

This pro-environment discourse is marked by expressions that highlight the importance of the environment for society, without, however, showing itself as a real conviction by the author of that text.

Another aspect that became evident was the special emphasis on the procedural issue and analysis of the documents in the case files, even overlapping these with the other evidence. The Civil Procedure Code (CPC) does not allow hierarchy of evidence, all of which must have the same importance for the case. However, in relation to both the STF ministers and the local judge, there was an extreme

appreciation of the documentary evidence and the use of procedural legal tricks, which prevailed over the criminal practice over the environment, which is the legal asset of tutored fact.

Ideology is constituted by the meanings/constructions of reality that are constructed in various dimensions of forms/meanings of discursive practices and that contribute to the production, reproduction, or transformation of power struggles. Thus, it became evident the participants' ideology of reproducing the prevalence of individual tutelage over environmental issues, including the environment. Such conduct also reflects one of the aspects of ineffective environmental legislation. Ministers compare criminal and environmental legislation, and make use of criminal law, even if it means violating environmental law.

The ideologies embedded in discursive practices are very effective when they become naturalized and reach “common sense” status. This is evident and even formalized, when it comes to the decisions of the STF, bearing in mind that the Court's discourses become a kind of paradigm for other judges, that is, their decisions will be repeated, and will become “common sense”. For this reason, the extreme care in reading these decisions, in the mot of each vote, each basis used, as there we will have an often individual perspective that will become the “positioning of the Court” and that “should” be respected by the other judges. The idea that an individual positioning is often confused with the positioning of the Court, which is clear even in the discourses analyzed. The binding effect attributed to some STF judgments (such as the case analyzed) also has this highlighted ideological charge. It is as if to say that the "law" can only be interpreted in that way, and that it is not possible to disagree or produce discourse in the opposite direction, making it more difficult to transform the relationships in the field of the judiciary.

The transformation points to the ideological struggle as a dimension of the discursive practice, a struggle to reshape the discursive practices and the ideologies built on them in the context of reorganization or transformation of the relations of domination. It is also important to think that the discourses captured in the interviews of the practitioners are against the Court's position in some cases, however their discursive practices have not yet been sufficient to transform the ideological positions demarcated in the STF.

The subjects are ideologically positioned in their field of action, but they are also able to act creatively in order to make their own connections. In this sense, ideological creativity is restricted to the performance of individual judges, whose decision is subject to a kind of review by the lower courts. In these courts there is no predisposition to creativity, but simply a culture of reproduction of understandings, often surpassed by the very evolution of society, but which are still being reproduced there, it is unclear whether out of pure comfort, or because they do not see themselves as agents of transformation of ideological positions, especially hegemonic ones. With the STF, it has not been different, even though the environmental issue has increased in the Court's appreciation, there has not yet been an inclusion of environmental law as an autonomous procedural branch, maintaining itself as a branch of administrative law. However, progress has already been made, since before the nomenclature "environment" did not even appear within the procedural classification of the Court.

Most ministers still rely on their votes for strictly procedural analysis, without advancing the meritorious aspect, there is a certain "fear" of facing the environmental issue in all its complexity and in what it represents for society. Thus, it is even observed that when the demand is on environmental matters, even the technical discussions are minimal during the judgment session, limiting the reading of votes and procedural issues.

In case 1, Minister Celso de Melo perceives a discourse rooted in innovative ideologies, for which he used reasoned and consistent arguments, envisioning a change of position in the Court, demonstrating even awareness that the decisions made there have a direct impact on society and in their yearnings. There is even the perception of the minister that his vote represents a minority position, favoring the environment in favor of economic issues. He tried to deconstruct the discourse of the author based on a cohesive and well-structured analysis, with great convincing power. The minister clearly perceives the

clear intention of infecting the other ministers with his innovative ideological position for the environment, even those with pro-economic convictions.

In case 2, the positioning is again hegemonic and reproduces the culture of extreme valuation of the normative devices. This positioning is considered inadequate for environmental issues, which, as already reflected, have a complex and technical character, which will require technical analysis, expertise of professionals specialized in the field, but not necessarily a legal practitioner. In this case, the judge even used technical opinions, but issued by the parties themselves, which in this case does not guarantee the impartiality that this type of expertise must have, nor should it constitute a unique means of justifying a judicial decision, as happened in the case analyzed.

All judges must realize that their discursive practices are ideologically invested as they incorporate meanings that contribute to maintaining or restructuring power relations. Ideologies arise in societies characterized by relations of domination based on class and gender, as ministers are able to transcend such societies, they will be able to transcend hegemonic positions and spread new ideologies compatible with the evolution of society.

5. Conclusions

In view of the above, it is possible to affirm that, for the purpose of enforcing environmental legislation, it is necessary to articulate between the legal practitioners and the other social actors involved in environmental issues, immediately needing to pay attention to an adequate understanding of the meaning and extent of such a right and its effective points of contact with environmental legislation, preserving its autonomy and materializing in a substantiated manner and using instruments linked to each specific theme its scope of protection. The publicity of judicial decisions places a considerable collection of discourses exposed in verdicts and judgments, which can more clearly show the dilemmas and limits of the Brazilian judiciary regarding environmental issues. In addition, it also makes possible the positions of the Public Ministry, the executive and its agencies, public and private companies and the intertwining of environmental, social, technical and cultural issues inherent to the complexity of Brazilian society. The relevance of the environmental theme in the judiciary was presented through the speeches of the judges, who were sometimes hegemonic, sometimes innovative in taking care of environmental issues. Also, discourses were described from the categories of discursive practice, text dimensions and social practice by Fairclouhg (2001). In any case, far from meeting all the possibilities here and expressing our sympathy for the CDA methodology applied to legal discourses, what was sought here was to maintain a critical dialogue on the effectiveness of environmental legislation and to propose more questions for reflection and discussion on such a delicate and complex theme. For all these reasons, we are convinced that, in order for us to make progress in promoting legal cooperation and guaranteeing the effectiveness of environmental legislation, it is necessary to recognize the importance of the Judiciary's performance in this area, so that the jurisprudence is formed in a responsible way, conscientious and committed to the adopted ideal, and, thus, with the appropriate use of the structuring measures suggested here, this long journey of progress and evolution that we still have to go can be paved. This does not mean endorsing an argument that the Judiciary has the role of guardian of all society's hopes. It just means that, among other various elements, one must consider, in criticizing the collective proceedings (of an environmental nature), the ability of other channels of participation to promote the changes intended by the social group. In any case, it is not desirable, a judiciary that is distant from society and the environment, focused on issues that favor only part of the population, and that deviate from the determinant form of its objective, which is the solution of these social conflicts that have life as a legal asset.

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