

CIVIL INVESTIGATIONS ON ENVIRONMENTAL MATTERS IN LEGAL EDUCATION: THE LAW BEYOND THE TRIALS

INQUÉRITOS CIVIS DE MATÉRIA AMBIENTAL NO ENSINO JURÍDICO: O DIREITO PARA ALÉM DOS JULGADOS

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Abstract

In the teaching of law, the study of practical cases gives prestige to the analysis of the content of sentences and judgments. However, there are complex legal problems in reality that are not submitted to the judiciary. In addition, there are paradigm shifts between the end of the twentieth century and the beginning of the twenty-first, such as the recognition of diffuse and collective rights holders and the increase in extrajudicial techniques and methods of conflict resolution, which demand a new look at legal education in times of complexity. To this extent, it is proposed

Resumo

No ensino do Direito, o estudo de casos práticos prestigia a análise do teor de sentenças e acórdãos. Todavia, há problemas jurídicos complexos, na realidade, que não chegam a ser submetidos ao Judiciário. Além disso, há mudanças de paradigma, entre o fim do século XX e o início do XXI, como o reconhecimento de titulares difusos e coletivos de direitos e o aumento de técnicas e métodos extrajudiciais de resolução de conflitos, que demandam um novo olhar para o ensino jurídico, em tempos de complexidade. Nessa medida, propõe-se analisar em que medida os inquéritos civis podem servir de objeto de



to analyze the extent to which civil inquiries can serve as an object of active and participatory methodologies capable of filling gaps and limitations that may exist in the study of judicial decisions in the teaching of Environmental Law. It is assumed that the interaction between civil investigations and active methodologies provides students with an opportunity for a broad and detailed analysis of the complex environmental problem. This is a bibliographic and documentary research, with a qualitative approach. It is concluded that the use of the civil inquiry in the teaching of Environmental Law, through active methodologies, benefits a protagonist formation of the student, in line with what the current legal system provides. Among them, "problem-based learning" stands out as one of the most fruitful for the study of the extrajudicial procedures in question.

Keywords: civil procedures; legal education; environmental law; active methodologies; practical cases.

metodologias ativas e participativas capaz de suprir lacunas e limitações eventualmente existentes no estudo de decisões judiciais, no ensino do Direito Ambiental. Parte-se da hipótese de que a interação entre os inquéritos civis e as metodologias ativas proporciona aos estudantes uma oportunidade de análise ampla e detalhada da complexa problemática ambiental. Trata-se de pesquisa bibliográfica e documental, com abordagem qualitativa. Conclui-se que o uso do inquérito civil no ensino do Direito Ambiental, por meio das metodologias ativas, beneficia uma formação protagonista do aluno, em consonância com o que dispõe o ordenamento jurídico vigente. Entre elas, destaca-se o "problem based learning" como uma das mais proveitosas para o estudo dos procedimentos extrajudiciais em destaque.

Palavras-chave: inquérito civil; ensino jurídico; Direito Ambiental; metodologias ativas; casos práticos.

Introduction

Curricula at law universities tend to follow the dynamics of legal facts and problems faced in real underlying experience. In this context, the late 20th century and the early 21st century are marked by significant changes in the Brazilian legal system. At least two main fields of paradigm shift are observed: (a) the recognition of diffuse and collective rights holders; and (b) the increase in extrajudicial conflict resolution techniques and methods.

Indeed, until the early-mid 1980s, civil legal problems were concentrated on the analysis of obligations between parties. Thus, the recognition of a third dimension of fundamental rights and the reach of environmental repercussions of public policies and public and private undertakings requires universities to rethink the teaching methods in Law, in an era of complexity.

Logically, if legal education is to train good professionals to face current issues, it must prepare them for professional work and for research in situations

that go beyond mere conflicting individual interests, discussed in a uniquely judicialized environment. In this sense, one can observe that the improvement of methods for studying and analyzing environmental issues in Brazil – within the academia and within the technical, scientific, or jurisdictional practice – contributes to the confrontation of ecological issues in the relationship between sustainable quality of life, human rights, and environmental planning.

In the 21st century, complex legal problems arise in the environmental field on a daily basis; some of them with great national repercussions. In November 2015, for instance, a dam with a capacity for 60 million tons of iron ore tailings, owned by the mining company Samarco, broke in the city of Mariana, in Minas Gerais (MG). Less than four years later, in January 2019, a Vale mine tailings dam ruptured in the city of Brumadinho/MG. The repercussions of these disasters are of an environmental, social, cultural, health, and economic nature; that is why they demand the action of on-site control and inspection agencies, in a joint effort by municipalities, the State, the Federal Government, social movements, and non-governmental organizations.

Indeed, the complexity of the legal relationships involved in disasters of this magnitude explains the relevance of the dialogue on the legal protection of flora, fauna, and human beings, in all aspects. Another perceptible factor is that a good part of these legal problems are only ascertained, delimited, and resolved in the context of civil investigations instituted by the bodies of the State and Federal Prosecution Office, rather than in court, in a judicialized process.

However, in the practice of legal teaching and research, the analysis and discussion of matters already decided in judgments and decisions (jurisprudence) predominates, with emphasis on those arising from the superior courts. However, the legal problems that reach this level of discussion represent the minority of issues faced in reality. Furthermore, there is a limitation in the use of a court decision in active and participatory teaching methods: the judgment/decision does not encompass – at least as far as the material aspect of the problem is concerned – the methods of data collection and diagnosis of the legal resolutions of the problem in its inception. After all, it is not up to the judges, as a rule, to delimit the request and produce evidence that they deem appropriate.

In a judgment, therefore, the judge can only decide on duly stated and organized facts, based on probative data presented by the parties. On the other hand, investigative procedures, such as the case of the civil investigation, face the problem from its inception: the registration of the harmful fact (which sometimes is not as clear as is usually observed) in an initial petition). The demand is incipient

in all senses, which requires different and more complex skills from the Law professional than those necessary to act in the judicial process.

Thus, this article deals with the following question: to what extent can civil investigations serve as an object of active and participatory methodologies capable of filling gaps and limitations that may exist in the study of judicial decisions, in the teachings of Environmental Law? Faced with this issue, we outlined the following specific objectives: (a) to understand the legal aspects of civil investigation and its scope as a source of data, design and resolution of legal-environmental problems; (b) to evaluate the relationship between environmental legal problems in civil investigation and the opportunities for transforming legal education in the 21st century; and (c) to analyze the potential of the interaction between civil investigation and active methodologies in the teaching of Environmental Law for a leading role in student training, through the expansion of their contact with reality.

It is estimated that there is a concentration of research and legal teaching in practical studies and analysis of concrete cases focused on jurisprudence. This generates a gap to be filled regarding the understanding of conflicts that do not originate a lawsuit, specifically, and demands new perspectives on the possibility of using other types of legal production and action in participatory case studies in Law.

Thus, we start from the hypothesis that the use of civil investigations within teaching methodologies provides students with an opportunity for a closer and a more detailed analysis of the environmental problem in a legal situation that is still in the germinal phase. In this context, there are no conclusions put forward (as seen in court decisions), and students are encouraged to carefully analyze the complexity revealed by the concrete case. They are thereby required to develop hypotheses for resolving the problem, stipulate methods for gathering evidence and applying conclusive concrete legal acts – be it judicial or extrajudicial.

This is a bibliographical research carried out within the theoretical field, in the Redalyc and Google Scholar databases, in books and scientific articles specialized in extrajudicial procedures and legal teaching, and within documentary research, using legal sources for the creation and regulation of the civil investigation. As for the approach, the research is characterized as qualitative, as it deals with the intense (rather than extensive) nature of the investigated phenomena. A literature review is used as a method for defining concepts and identifying gaps and possibilities in the addressed topic.

In section one, we propose to define the meaning, characteristics, and

functions of the civil investigation as an investigation procedure exclusively attributed to the Public Prosecutor's Office and its use in the extrajudicial protection of the environment. In section two, we discuss how the professors of Environmental Law can make good use of concrete cases documented in civil investigations in active and participatory learning methodologies.

1 The civil investigation to collect information on environmental legal issue

Between the second half of the 1970s and the early 1980s, members of the Public Prosecutor's Office of the State of São Paulo and USP professors, represented by Ada Pellegrini Grinover, were the protagonists of a series of studies focused on environmental problems and other collective demands. For them, the national legal system was not able to face the problems inherent to a complex society, existing in a globalized context, and which started to recognize the environment as a legal good to be protected.

For Garcia (2021), this is a new legal paradigm in which Environmental Law gains scientific autonomy and its own object: the study of human relations with the environment in a balanced way. New relationships arise between individuals and between them and the environmental "macrogood".

This legal relationship differs from previous ones, which leads to the construction of a new kind of legal relationship, the legal-environmental relationship. The legal nature of this new relationship is that of a diffuse legal bond, which goes beyond merely individual or group interests and connections, to reach an indeterminate and indeterminable number of subjects bonded together by a factual circumstance. It is about the recognition of the survival of everyone depending on the biotic and abiotic elements that make up the environment, in a state of dynamic equilibrium (GARCIA, 2021, p. 138).

So far, precariousness has been observed in the protection of environmental goods and other diffuse interests provided for in the 1988 Constitution and in sparse laws, which portray interests that are neither public, nor collective, and in which no one is individually the holder, at the same time that everyone is (FLEURY FILHO, 2010). Before that, the approval of the Public Civil Action Law, Law no. 7,347 of July 24, 1985, was the result of efforts by members of the São Paulo Public Prosecutor's Office, and it has ever since been outlined as a determining law for ministerial actions that deal with the subject (BRASIL, 1985). In addition to the prosecution's traditional role in public criminal action and police investigations, this law and the Constitution eventually came to establish the body's

extension of attributions so that it would be possible to act in public civil actions and civil investigations, with the legal protection of diffuse and collective interests.

As Mazzilli (2010, p. 306) compares, “just as the lawyer prepares to sue, the prosecution must also prepare to appear in court” (our translation). According to him, civil investigations are civil inquiry procedures that were initially created in local legislation in São Paulo, and later established in the national legal system, with the Constitution and Law no. 7,347/1985 (BRASIL, 1988; 1985). Analogously to the police investigation, the civil investigation is the extrajudicial administrative procedure instituted for the purposes of surveying evidentiary data and diverse information with a view to rightfully conduct the work of the member of the prosecution, in the protection of diffuse and collective interests.

This avoids the filing of frivolous lawsuits or those that do not have the essential elements for the initiation of a civil process before the Judiciary Power. It is, therefore, an administrative investigation with the aim of gathering information for filing a public civil action in the future. Moreover, it is with the civil investigation that it becomes possible to prepare conduct adjustment commitments, hold public hearings, issue recommendations, among other duties.

Civil investigation that one can more easily design the materiality and authorship in damages with collective civil repercussions. To this end, members of the Prosecution Office can promote inquiries and request documents, information, examination, and expert evidence, issue notifications, take depositions, and conduct surveys and inspections (MAZZILLI, 2008). The matter is regulated in Law no. 7,347/1985, but also in the organic law of the Prosecution Office (Law no. 8,625, of February 12, 1993) and in infralegal resolutions of the Superior Council of the Prosecution Office (Resolution no. 23/2007). Therefore, the civil investigation is rather a method of gathering information that requires good technique and strategy to avoid that serious matters under investigation get lost in documental confusion, hindering a clear or elucidative conclusion about the legal issue in question.

In the environmental area, the civil investigation constitutes an essential tool for the investigation of damage, disasters, and other wrongdoings. The complexity of the matter requires the organization of information and evidence that authorize the identification and analysis of authorship, materiality, and the qualitative and quantitative extent of the damage experienced. Thus, it enables professionals and law students to reflect on complex issues involving soil, water resources, mining, infrastructure, pollution, transgenics, agrochemicals, urban planning, flora, fauna, among others. Additionally, we cannot forget the socio-environmental problems,

which deal with the relationship between people and the physical environment that receives them, in particular traditional communities, Indigenous populations, and *quilombolas*. All these elements are just part of the problematization raised in the highlighted procedure.

Indeed, once the investigation area of action has been identified, it is necessary to detail all aspects of civil liability (damage, authorship, causal link), approximately quantify the damages for indemnity or compensation purposes, and determine strategies to restore the environment to its *status quo ante*. To produce these results, the method of civil investigation must consist of gathering all necessary evidence. In the environmental area, the need to produce technical and expert documents stands out, which represents costs that need to be considered. For the protection of the environment, however, and in view of environmental constitutional principles, means have been admitted toward inverting the burden of proof to the enterprise that causes the damage or wrongdoing, which may even pay for any inspections or degradation recovery plans.

Faced with this very relevant legal tool, it is worth pointing out that, in the Mariana/MG disaster, for example, the State Prosecution Office established procedures to work on various aspects of extrajudicial or judicial socio-environmental action. There were at least 11 civil investigations, not counting criminal proceedings and various administrative procedures, which resulted in: (a) financial aid distributed to 529 affected families; (b) temporary housing to 330 affected families; (c) compensation to at least 19 families, in the amount of R\$100,000.00, for the death of relatives; (d) compensation between R\$10,000.00 and R\$20,000.00, in advance of compensation for the physical displacement of 382 victimized families; (e) reimbursement of electricity costs to 255 families; (f) donations of R\$3,500.00 to 360 families; and (g) resettlement of hundreds of families (MINAS GERAIS, 2019).

In the case of the civil investigation in Brumadinho/MG, in the first six months after the dams broke, emergency measures registered in terms of preliminary adjustment were adopted, as well as reparation for environmental and socio-economic damage. Regarding the protection of fauna, the state Prosecution Office recommended the preparation of a plan for locating, rescuing, and caring for animals affected by the spilling of mud and other substances and the monitoring of the Paraopeba River waters; they also banned fishing and determined the provision of clean water for animals in the region affected by the mud.

Also, in the field of cultural heritage defense, a recommendation was issued for the enterprise that causes the damage to carry out actions to contain, collect,

and neutralize the tailings generated in the disaster, to avoid the perishing of the local historical and cultural heritage. A conduct adjustment term was also signed to bring water security to the site and remedy and compensate for the impacts caused to the water supply service in the municipality of Pará de Minas (MINAS GERAIS, 2021).

As we can see, the network of facts and measures that substantiate an investigation of this nature leads to multiple reflections, which gives the procedure an essential character within the study of Environmental Law, in this scenario of complexity.

2 The analysis of environmental legal problems in civil investigation applied to legal education

The plurality of student profiles and legal situations requires Law schools and their professors to employ new teaching and learning methods, different from traditional lectures and the more well-known assessment systems. According to Faganello and Nolasco (2016), Environmental Law should gain similar importance to other traditional disciplines, and part of its workload should be devoted to the practical analysis of environmental issues in concrete cases.

Indeed, Klafke and Feferbaum (2020) state that teaching should be participatory, with space for students to play a leading role in Law schools. This change of focus towards the student represents the most appropriate measure to deal with the heterogeneity of higher education, after the arrival of other profiles of law students. Also, for these authors, active teaching methods must relate to experience, in a conception of law as an assumption of solutions, which makes the university environment vivid and pulsating.

For Gordillo (1988), the general objectives of an undergraduate course should be based on learning activities that: (a) enable students to carry out a critical analysis of theoretical principles and different points of view; (b) enable the students to acquire the ability to apply theoretical knowledge to the resolution of concrete cases in professional practice; (c) help them to understand with maximum accuracy the details of the concrete fact and its legal approach; (d) allow the articulation of the principles of proportionality and reasonableness in concrete cases; and (e) stimulate the critical and creative spirit in the formulation of hypotheses or imaginative conjunctures.

Among the main challenges of teaching Environmental Law are the complexity and interdisciplinarity of the subject, the lack of prior knowledge on the

subject, the need to constantly update the content, the lack of adequate teaching resources, and students' possible lack of interest. In addition, teaching Environmental Law can be challenging also due to the lack of clarity and consistency of numerous environmental laws and regulations (ROBERTSON, 2021).

Furthermore, Araújo, Tassigny and Freitas (2022, p. 24) point out that

[...] the wide access to information of all kinds, through the dissemination of the mass media, recklessly attributes the same degree of importance to serious and relevant news (such as issues related to human existence) and irresponsible critical content.

Meanwhile, studies carried out by Seker (2023) on the use of texts as the only sources of analysis of social and environmental issues conclude that textbooks often present abstract rather than concrete information.

Within this contradiction, there is, on the one hand, an excess of disconnected information on the internet and, on the other, the absence or insufficiency of information in texts that deal with important environmental issues. For Seker (2023), it is necessary to include in the texts relevant and appropriate images that are related to real problems, to help students better understand the topics studied. In addition, it is essential to train the faculty to deal with specific topics, outside of books. Therefore, books and texts are excellent sources for theoretical study; however, they are a limited space for recording and working on concrete cases.

Therefore, appropriate teaching resources for Environmental Law should include curriculum materials and databases available from government or civil organizations, websites created by professors, specific books, and any documents with diagrams, photos, graphs, and other visual tools to illustrate content (ROBERTSON, 2021). In this regard, the civil investigation stands out for being a dossier of information that can facilitate data analysis in the classroom.

Complementarily, Wei, Burnside and Che-Castaldo (2015) emphasize that the case study method (and, here, the usefulness of using the civil investigation as an object of analysis) can be a valuable tool to teach and prepare students to meet the environmental challenges of the future. Indeed, the collaborative, interdisciplinary approach is needed to solve complex environmental problems and teach students critical thinking and data analysis skills. Environmental education should focus on how to solve environmental problems and enable students to become productive citizens, environmental problem solvers, and scientists.

The technical complexity of environmental issues, as well as its dynamic evolution and transversality between academic disciplines, branches of law, and jurisdictional levels, make the creation of a curriculum of Climate Law a challenge

for academic instructors. This is due to the need to prepare students to deal with a complex and constantly evolving subject, which requires an interdisciplinary approach and an understanding of internal and external legal norms. Furthermore, education in Climate Law must be able to prepare students to deal with the uncertainty and ambiguity, which characterize the subject (MEHLING *et al.*, 2020).

Environmental education has evolved over time from a fragmented and specialized approach to a more integrated and consolidated approach, and is now seen as an important part of the overall legal curriculum, and not just as a specialization of law (MEHLING *et al.*, 2020). For Robertson (2021, p. 69), the best way to do case studies in environmental matters is through long factual scenarios that present specific environmental legal issues. These case studies can be used to illustrate how environmental laws apply to real and complex situations, and can include such issues as air and water pollution, waste management, biodiversity, climate change, among others.

Rightly so, case studies should be used to teach students how to apply environmental laws to real situations, and students should be encouraged to work in teams to solve the problems presented in the case studies, which should be updated regularly to reflect changes in environmental laws and regulations (MEHLING *et al.*, 2020). Therefore, education in Environmental Law must be interdisciplinary and address topics from other sciences; and instructors should be able to teach students the importance of distinguishing between an internal and external perspective on legal norms, as well as the importance of a critical and reflective approach.

Here, civil investigation stands out for portraying an indispensable practical approach to environmental education, as recommended by Mehling *et al.* (2020), which favors the performance of simulation exercises, case studies, and research projects. Thus, and as previously illustrated, in the cases of Mariana and Bru-madinho, there is an important contribution in the field of approaching civil investigations in the scope of Environmental Law.

Taken to the students, the facts and legal acts documented in the highlighted administrative procedure make it possible to learn not only the tension between two conflicting legal points of view (A's request resisted by B, which results in a conclusive decision, with which it was presented to the judge); but also to arouse the students to the complexity that involves the problem's multiple formal and material factors, which demands from the professor the organization and application of participative and creative methods that enable students' contact with these documents.

Environmental problems recorded in such rich detail help professors and students to apply Gordillo's (1988) suggestions. It is expected that the general principles of Environmental Law and conflicting points of view will be worked out from the civil investigation, in order to discuss the practice of prudence, consideration, and reasonableness. Thus, students have a unique opportunity to analyze complex problems based on the existing conflicts in disputes involving diffuse and collective rights.

Moreover, following Gordillo's (1988) considerations, by analyzing procedures of this nature, the student body faces the challenge of delimiting a problem, which is to be conducted by the students themselves. This would not occur in the analysis of a judicial decision, since all participants in the process would have already handed the problem to the judge, from their point of view. Furthermore, the magistrate determines, definitively, the limits of the problem and all its circumstances, leaving the student only to express their agreement or disagreement, and the reasons that led them to understand one way or another. With that, the civil investigation allows students to go through the three acts of the path of prudence in environmental education in higher education, namely:

[...] (a) deliberating on a certain subject, with a view to building knowledge, developing skills, attitudes and social values, caring for the community of life, justice and socio-environmental equity, and protecting the natural and built environment; (b) carrying out the judgement of the facts and thoughts that motivate them, through the integration of the multiple and complex relationships involved, as a continuous process of learning about issues related to the space of multidimensional interactions, whether biological, physical, social, economic, political or cultural; and (c) carrying out the command achieved, as a result of a practical action that considers the interface between nature, socio-culture, production, work, consumption, through a complex and multidisciplinary approach (ARAÚJO; TASSIGNY; FREITAS, 2022, p. 29).

In the civil investigation, therefore, students can deliberate and exercise their legal reasoning, from the focus they give to them a situation that possibly still awaits judgment, in an exercise of analysis of the procedural aspects of evidence collection; and decision-making, in order to confirm or not the legal hypothesis formulated by them, through the appreciation and understanding of the facts and thoughts that cross them. The use of civil investigation, in this context, constitutes a manifestation of the exercise of prudence in the environmental education of legal teaching in times of complexity, as it allows students and professors the necessary contact with the method of gathering evidentiary data, with the corresponding evidence and reality and with the decision-making exercise, in the concrete case, through sufficient discussion in the classroom.

The use of civil investigations in the classroom thereby contributes to an advance from the decision-making stage to the taking of measures, in the student's professional life. This advance may be manifested, in the future, through an attitude of filing a lawsuit, shelving a case, or adopting extrajudicial measures for conflict resolution in their performance in the labor market. This is because the civil investigation allows the analysis of vast material at different times of the conflict, something that is not sufficiently provided in analyses of judgments and decisions.

Thus, it should be understood as a kind of learning material in Law, according to Gordillo (1988), as it observes the logic of document analysis, normative texts, facts (legal delimitation and assessment of the corresponding evidence), and the law applicable to the case. Based on the pieces produced in the civil investigation, students can prepare their own procedural acts, practice legal writing and exercise creativity in the decision-making process.

3 Active methodologies and possibilities for understanding reality through the use of civil investigation in legal education

Klafke and Feferbaum (2020) warn that the use of manuals and dogmatic works is just a way of reducing the complexity of legal issues, presenting a solution as if it were true. They are not, therefore, a source of knowledge, but of information, like any other. Moreover, for these authors, who reinforce the difference between theory and practice, students must be in constant contact with reality since that is, ultimately, what they will work with and interpret.

It is necessary to use real work documents in case studies, debates, simulations, games, field trips and other practical activities to engage students and make learning more dynamic and interesting (ROBERTSON, 2021). This time around, the use of active methodologies in the classroom can prove to be very useful in contacting with the possibilities of understanding a real environmental problem ascertained in a civil investigation. To this end, the Law professor can work on teaching methods based on the discussion of ideas and the students' leading role.

Among the teaching methods aimed toward the student's protagonism, the following stand out: (a) experience-based learning; (b) design thinking; (c) mapping; (d) problem-based learning (PBL); (e) project-based learning; (f) simulation; and (g) case study. In turn, in methods based on discussion of ideas, the best known are: (a) debates; (b) Socratic dialogue; (c) brainstorm; and (d) fishbowl (KLAFFE; FEFERBAUM, 2020). All these active methodologies are available for legal education and can interact, in some way, with civil investigation, to explore

practical and theoretical aspects of the various problems that permeate Brazilian Environmental Law. In this study, however, we chose to develop an interaction between civil investigation and problem based learning, case study, mapping, debates, and Socratic dialogue.

Faced with these possibilities, the professor can, for example, propose to the students the exercise of solving a previously delimited problem, which involves environmental and socio-environmental damage resulting from the extraction of ore by a company in a given location. The real situation can be drawn from a civil investigation partially or completely supported by evidence, aiming to provoke the preparation of a legal solution to the conflict. One can start the exercise by presenting a written document to the students, in which only the relevant facts for the exercise are narrated, as a kind of news of fact, representation, or report of an event.

By way of example, the theme “ore exploitation”, of a more generic and multidisciplinary nature, can be worked on in the classroom in order to instigate students to appreciate extra-legal issues that are current and closer to the reality to be faced. On the subject, the professor can lead the students to think about how the extraction of ore occurs, or how this activity can generate pollution to the soil, air, and water resources.

During the exercise, economic aspects should also be considered, such as the possible increase in the employability index, local income, and the increase in revenue from taxes, and their relationship with the possible economic growth of the city; as well as the sanitary aspects involved in the possible impacts of economic activity on collective health, due to irregular mining of ore.

In this first phase, it is pertinent to carry out activities related to methods based on discussions of ideas, with the exercise of prudence, proportionality, and reasonableness. The classroom can make space to group work, to promote debates, Socratic dialogue, brainstorming, and the fishbowl, through the exposition of ideas capable of illustrating the limits and possibilities in the proper management of mineral exploration in a given location.

In the subsequent phase, one can advance in the study of the problem by communicating that, on a certain date, the enterprise caused pollution in the river that runs through the city, due to mining exploration, which made the water unusable, caused the death of fish and birds, and brought diseases to the local population.

At this point, the professor can promote teaching methods aimed at the student's leading role, by simulating the creation of a civil investigation with the

students. Therefore, here we highlight the *problem-based method (PBL)* or *case study method*, capable of bridging theory and practice, through the discussion of topics such as: civil responsibility for repairing the damage and related legal aspects (whether the responsibility is objective or subjective, for example); diffuse, collective, and individual interests and rights affected; prescription of the respective indemnities, etc. Both methods allow student to understand aspects of environmental licensing, such as: competence, regularity of licenses, and environmental compensation; thereby covering issues of responsibility for the action of the state entity that holds police power, under the terms of the law.

It should be added that there is the Harvard Case Study Method (CSM), specifically known for its application in legal teaching and business teaching (REBEIZ, 2011). Indeed, Khasanova (2022) confirms that this methodology, developed by the Harvard Business School (HBS) in the early 20th century, is widely used in Law, business, and administration schools around the world.

It is a modality based on the analysis and solution of practical situations (KHASANOVA, 2022), which encourages students' active participation in the classroom through the analysis of real facts to be discussed in groups, under the guidance of the professor, in a simulated environment (REBEIZ, 2011). It is considered one of the most effective teaching methodologies for teaching business, since it allows for students to develop critical thinking, analysis, and decision-making skills, as well as communication and group collaboration skills (REBEIZ, 2011).

Khasanova (2022) does not mention the critical thinking ability referred to by Rebeiz (2011), but reiterates the development of students' analysis skills and, instead of decision-making, refers to problem solving (or action) skills. Thus, since it is a form of active learning, the CSM presents students with a real or hypothetical situation and invites them to analyze the facts, identify the problems, and propose solutions.

Therefore, and with a joint analysis of the contributions of Rebeiz (2011) and Khasanova (2022), we can observe the benefits of this method: (a) the development of several skills including thinking, analysis, decision making, problem solving, and taking action; (b) experience of an active and contextualized learning; (c) development of teamwork skill; and (d) improvement in the communication skills of the subjects involved.

While preparing a case study may seem to be a time-consuming process, it is a valuable tool to help students actively build their learning, develop important skills, and apply their knowledge in real business situations. The first step,

therefore, is to choose a topic that is relevant and interesting for the case study, based on a real situation and challenging enough to encourage students to develop their knowledge and skills (REBEIZ, 2011).

Next, it is important to research and collect relevant information about the issue. This may include interviews with people involved in the situation and data analysis. Based on the information collected, the case should be detailed enough to allow students to analyze the situation and make informed decisions. The case should include information about everyone involved, the challenges faced and the options available (REBEIZ, 2011). In addition, students should be asked which measures should be adopted.

In any case, the practical procedural aspects can be worked on by the professor by providing copies, printed or electronic, of the civil investigation to the students so that they can write dispatches and decisions to be added to the file. In this line, models of recommendations, terms of adjustment of conduct, and public civil actions can be explored in the classroom. It is also useful to present students with real copies of environmental forensic documents, which can help them understand the need and the correct moment to produce this evidence and the importance and adequacy of expert evidence to the present case.

To the detriment of the benefits of using the civil investigation in the aforementioned terms, it is worth considering the inadequacy of the concept presented by Ghirardi (2009, p. 49) which restricts the case method to an instrument for the teaching of skills aimed at developing and practicing legal reasoning through the analysis of court decisions only. For the author, this tool focuses on the analysis of the rationale and arguments that support the solution, rather than on the resolution of the case itself. This concept confirms the hypothesis initially presented in this article, which concerns the unjustified neglect of the use of civil investigations (and other investigative procedures) as an object of active methodologies in the teaching of Law.

However, it is important to point out, in this scenario, that PBL, or problem-based learning, represents the method that is closest to a real problem, when encountering a civil investigation. After all, in the real professional field, civil investigations serve to enable the solution of a complex legal problem. Rightly so, Ghirard (2009, p. 63) clarifies that in PBL students receive a complete description of the problem to be discussed, and “must develop by themselves all the necessary research and have all the freedom to make decisions about the handling of the problem, just like a lawyer would do in a real situation” (our translation).

Data collection in civil investigations is very similar to scientific research, as

it outlines a question-problem, a hypothesis, and a verification methodology in search of still unknown results. Thus, use of civil investigation in a dialogue with the PBL clearly constitutes a manifestation of the exercise of prudence in the environmental education of legal teaching in times of complexity; it enables students and professors to experience the method of collecting data, gathering evidence, and the corresponding reality, in a movement that precedes decision-making and taking action in an specific case.

In addition to the hypotheses of dialogue between the civil investigation and the above-mentioned active methodologies, the assessment of damage resulting from ore exploitation can also be implemented, by the professor, through *simulation* or *role playing*. In this case, the classroom can be transformed into a public hearing or a negotiation table, to deal with compensation and resettlement of families who lost their homes or started to face health problems, for example. Based on this, work is done on developing skills to carry out complex collective negotiations and extrajudicial means of conflict resolution.

Furthermore, the use of the *mapping* methodology, which develops the student's leading role, can be interesting for the purpose of systematizing in a clear, organized, and concise way the complex relationships and interactions between environmental damage, those responsible for reparation, beneficiary holders, inspection agencies, the respective legal solutions, etc. Similarly, within classroom discussions, the debate facilitates critical reflection on the taking of measures, in the subsequent moment, embodied in the filing of a lawsuit, in the closing of the case, or in the adoption of extrajudicial dispute resolution measures. To that extent, the use of both *debates* and *Socratic dialogue* can be relevant to work on the legal adequacy of collective moral damage, which enables the exchange of different points of view and enriches learning.

As we can see, the use of an active methodology does not exclude the possibility of using another, especially in the scope of Environmental Law, which is related to complex legal problems. Therefore, the use of the teaching strategies presented above, with a focus on practice and on facing real problems, based on the civil investigation (an existing procedure in the Brazilian legal system) is essential for a legal education centered on the realization of third generation fundamental rights.

As a result, Law schools contribute to the formation of a generation capable of complying with the principles of the National Environmental Education Plan (*Política Nacional de Educação Ambiental – PNEA*), instituted by Law 9,795, of 27 April 1999, in particular that of the articulated approach to environmental

issues (art. 4, VII), through the “development of an integrated understanding of the environment in its multiple and complex relationships, involving ecological, psychological, legal, political, social, economic, scientific, and cultural aspects” (BRASIL, 1999; our translation).

It is also important to note that the National Curriculum Guidelines (*Diretrizes Curriculares Nacionais* – DCN) for the undergraduate course in Law, instituted by Resolution no. 05/2018 of the National Council of Education/MEC, implicitly encourage the use of civil investigations for the practical analysis of environmental problems. This time, the course that proceeds in this way complies with the provisions of art. 3 of the DCN, which requires that, in the student profile, a solid capacity for analysis, interpretation and appreciation of legal and social phenomena, among other skills, is assured.

Likewise, the possibilities of using the survey in the scenario of active methodologies in the teaching of Law, by Higher Education Institutions, are in accordance with the content of the items V and VIII of art. 4 of Resolution no. 05/2018, because they enable the student to acquire the necessary capacity for the development of reasoning and legal argumentation techniques with the aim of proposing solutions and deciding issues in the scope of the Law, in addition to allowing the students to act in different extrajudicial, administrative or judicial bodies, with the experience of having accessed and used relevant legal processes, acts and procedures.

From this it can be concluded that the use of real and simulated procedures – as is the case of civil investigations – gains relevant utility in promoting the understanding of Law to students, in the 21st century, in addition to promoting the analysis of court decisions. Indeed, this strategy facilitates the analysis of environmental cases involving complexity, as it includes theory (concepts, ideas, terminologies, principles, classifications, categorizations) and practice (know-how: techniques, methods, and processes). It is, therefore, a successful application of the transition between conceptual knowledge and procedural knowledge made by Krathwohl and Anderson (2001).

In this sense, it is observed that, since civil investigations allows students to expand their contact with complex real facts, documented or not, in a kind of simulated procedure, it motivates the student to learn as an author, as recommended by Demo (2015). This gives the student greater autonomy to experience future processes of decision-making and acting, in their professional and even personal life trajectory.

This time, civil investigations involve the development of essential skills and

competences for the legal professional in the 21st century, which is not always achieved through the study of a judgment or decision, for example. Indeed, a fact with environmental repercussions can arouse the student's creativity for different themes and activities, considering the connection of the subject with the human experience lived by the student, in their individual and collective sphere, beyond the classroom.

Final considerations

We conclude that the existing teaching methods prioritize the analysis of concrete or practical cases based on judgements or decisions, which restricts the learning of law students to a jurisprudential discussion. However, we observed that only a portion of the judicialized conflicts gets to be judged. Thus, it appears that it is necessary to consider other sources or procedures of a practical and legal approach as investigative instruments, such as civil investigations into environmental matters, which constitute rich and complex objects of study within Law, beyond judicial rulings.

Furthermore, we observed that the importance of using civil investigations in legal education stands out especially considering the theoretical gap in the teachings of Environmental Law, which includes complex environmental legal problems. This requires Law schools to make investments in order to rethink and transform the teaching-learning relationship beyond manuals, dogmas, and lectures, in search of participatory teaching, able to give students the leading role necessary for the construction of viable legal solutions in a near professional future.

We also conclude that the use of real and simulated procedures, such as the civil investigation, actively contributes to students' understanding of Law in the 21st century, because it facilitates the analysis of environmental cases involving the complexity, in the space between theory (concepts, ideas, terminologies, principles, classifications, categorizations) and practice (know-how, techniques, methods, and processes).

Given this, we observed that civil investigations can and should serve as the object of active and participatory methodologies, considering their ability to fill gaps and existing limitations in the study of judicial rulings, in the teaching of Environmental Law. Indeed, it appears that the introduction of practical pieces of investigation, such as the civil investigation, allows for the practice of facing real problems and meets the objectives, guidelines, and principles foreseen in the National Environmental Education Plan and in the National Curriculum Guidelines

for the undergraduate courses in Law (Resolution no. 05/2018 of the National Council of Education/MEC).

This is because, when in contact with the civil investigation, students can deliberate and exercise their legal reasoning, from the approach they give to the situation faced, thus practicing the analysis of procedural aspects for gathering evidence and making decisions, in order to confirm or not the legal hypothesis they initially formulated, through the appreciation and understanding of the facts and their own thoughts. Therefore, we conclude that the use of this procedure, in this context, allows for the exercise of prudence in the environmental education of legal teaching in times of complexity, since it allows students to have a meaningful experience with the method of surveying evidentiary data, the evidence itself, and the corresponding reality, in order to provide the theoretical and practical exercise of decision-making, in the specific case, after discussion in the classroom.

We can, thus, verify that the use of civil inquiries in the classroom favors an advance in the decision-making stage for taking action, within the student's professional practice, which can be embodied in the attitude of filing a lawsuit, filing the case, or even adopting extrajudicial measures to resolve disputes. This is because civil investigations allow the student to exercise the analysis of vast material, at different stages of the conflict, which is not sufficiently provided in the analysis of judgements and decisions.

The interaction with the civil investigation in environmental matters provides professors and students with direct contact with the wide universe of registered documentation, procedures, and documented evidence elements, with space for discussing how to do it and decide on the next steps. With this, they can go beyond a critical analysis of a decided ruling, previously discussed by the courts, while multiplying the possibilities of building pertinent and situated legal knowledge.

Thus, the applicability and relevance of civil inquiries as sources of study in the discipline of Environmental Law is acknowledged, as it enables students to exercise critical reflections about their own criteria and experience the decision-making process and decide on the measures to be taken in matters not yet definitively decided by the Judiciary, via an original practical exercise of prudence in the environmental education of legal teaching.

To this extent, we highlight the relevance of the dialogue between the use of this procedure and active methodologies in legal education, in favor of expanding the possibilities of understanding reality. We observe the pertinence of using participatory methodologies in the classroom when in the contact with

civil investigations, since this leads students to real or fictitious facts, already documented or not, in a kind of simulated procedure that motivates the student to learn as an author.

Among the methodologies that stand out in this relationship between legal education, Environmental Law, civil investigation, and active methodologies, it is observed that the method or case study provides, as benefits: (a) development of thinking, analysis, decision-making, and problem-solving or action-taking skills; (b) experience with an active and contextualized learning; (c) development of teamwork skills; and (d) improvement in the communication skills of the subjects involved. Note, however, that the very concept of the case method is sometimes restricted to the analysis of judicial decisions only, which reinforces the need to bring civil investigations to the center of the debate.

Without disregarding the benefits offered by the case method, we conclude that PBL, or problem-based learning, represents the method that most resembles facing a real problem, in contact with civil investigations, whose scope is precisely to enable the solution of a complex legal problem. In addition, PBL allows students to receive a complete description of the problem to be discussed and to develop the necessary research, with freedom to make decisions about the management of the problem, as a lawyer would do, in a real situation. In addition, data collection in civil investigations is very similar to scientific research, since it is necessary to delimit a question-problem, a hypothesis, and a verification methodology, in favor of results yet unknown.

In the example proposed, regarding assessment of damage resulting from mining, the active methodology called *simulation* or *role playing* is also highlighted. With this, it appears that the classroom can be transformed into a public hearing or a negotiation table around the theme of compensation and resettlement of the affected families. This involves the development of skills to carry out complex collective negotiations and extrajudicial means of conflict resolution.

Furthermore, the *mapping* methodology allows for a clear, organized, and concise systematization of the complex relationships and interactions observed between environmental damage, those responsible for repairing, the beneficiary holders, the inspection agencies, the respective legal solutions, etc. Along the same lines, the Socratic dialogue and debate facilitate critical reflection on the facts presented, the damage caused, decision-making, and measures to be taken (filing a lawsuit, closing the case, or adopting extrajudicial dispute resolution measures).

We conclude, therefore, that the use of an active methodology does not affect the use of another in the scope of Environmental Law, which is related to complex

legal problems. On the contrary, it appears that the complementary use of these strategies, with a focus on practice and on facing real problems, is essential for a legal education centered on the realization of third-generation fundamental rights. Law schools thereby contribute to the training of professionals capable of acting according to the principles of the National Environmental Education Plan, in particular the articulated approach to environmental issues (art. 4, VII), through the development of an integrated understanding of the environment in its multiple and complex relationships.

Moreover, it is observed that a study of the National Curriculum Guidelines (DCN) of the undergraduate course in Law, instituted by Resolution no. 05/2018 of the National Council of Education/MEC points to the implicit presence of incentives for the use of civil surveys for the practical analysis of environmental issues. With this, the Higher Education Institution also mobilizes the student's ability to develop reasoning techniques and legal argumentation, with a view to constructing solutions and making decisions in the scope of Law, in different extrajudicial, administrative, or judicial instances.

In terms of limitations, it should be noted that this research did not carry out an analysis of the application of a specific active methodology with civil investigation, real or fictitious, in the empirical field. Therefore, from this work, there is space for future research in this direction, focused on the practical aspects of the application of civil investigations in the context of active methodologies in the teaching of Law.

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