

National Solid Waste Policy: Analyzing the Collective and Diffuse Rights of Recyclable Materials Collectors

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Abstract: This article scrutinizes the National Policy on Solid Waste (PNRS) - Law 12.305/2010 regarding the collective and diffuse rights of collectors of recyclable materials. More than a decade since the enactment of the PNRS, the rights bestowed by this legislation have yet to be actualized. In its analysis, the article highlights public-interest civil actions pertaining to the cities of São Paulo (SP), Rio de Janeiro (RJ), and Brasília (DF). The hypothetical-deductive method was employed within a qualitative framework, utilizing both bibliographic and documentary research tools. It is concluded that, due to governmental neglect, there is an imperative for the ongoing involvement of the Public Prosecutor's Office and the Public Defender's Office to advocate for and safeguard the rights of this worker category, which are pivotal in the advancement of a sustainable environment.

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Introduction

This article aims to analyze the perspective of justice over the 10 years since the enactment of the National Policy on Solid Waste (PNRS) - Law 12.305/2010 and its impact on the collective and diffuse rights of recyclable material collectors. There is a clear interconnection between this environmental norm, which also safeguards a collective right to the environment, and the aforementioned rights of recyclable material collectors.

The temporal scope of this research—spanning from 2010 to 2020—was chosen due to the number of recyclable material collectors still working and living under miserable and sub-human conditions, even more than 10 years after the PNRS's inception and the rights conferred by this legislation. Furthermore, the year 2020 was marked by the Covid-19 pandemic, which caused a disruption in policies in this area, though these are not the object of this article. The year 2020 also marks the tenth anniversary of the national solid waste policy, highly significant in terms of environmental relevance, with which it is intimately intertwined (PICANÇO, HAONAT, 2022).

To underscore the importance of this study, based on bibliographic and documentary research, this work will consider public-interest civil actions initiated by State Public Prosecutors' Offices (MPEs) and the Public Defender's Office (DP) aiming to enforce the PNRS, in defense of the diffuse and collective rights of collectors (from now on public-interest civil actions). In this regard, it will be examined how these institutions legally operate in the cities of São Paulo (SP), Rio de Janeiro (RJ), and Brasília (DF). The choice of SP and RJ is due to their having the largest populations of collectors, making it more urgent to think about public policies to serve this population (DAGNINO; JOHANSEN, 2017, p. 119).

The selection of the Federal District (DF) was due to the closure of the so-called Structural Dump on January 20, 2018, also known as the Jóquei landfill or the second largest dump in Latin America, after the closure of the Gramacho Dump in Rio de Janeiro (on June 3, 2012), which resulted in further disregard for the diffuse and collective rights of recyclable materials collectors in DF.

Therefore, the discussion of this study is based on the following question: Since the promulgation of the PNRS in 2010 until 2020, what actions have been proposed within the judiciary, in the aforementioned cities, with the intention of jurisdictioning the collective and diffusing rights of recyclable material collectors?

This question arises from the hypothesis that governmental omission in fulfilling the collective and diffuse rights, guaranteed by Law 12.305/2010, to recyclable material collectors, compels the MPEs and DP of SP, RJ, and DF to file actions with the intent to protect and ensure the respective rights of this category of workers.

Three paradigmatic actions were selected based on the criteria of thematic relevance, contained within the context of the actions, and the importance due to the location, the involved population (São Paulo being the most populous state in Brazil, and Rio de Janeiro the third), and by the issue of centrality, as in the case of the Federal District, where the country's capital is located, thus being geographically close to the po-

litical center of the Nation). Thus, considering these criteria, the three cases are analyzed from the perspective of protecting the collective and diffuse rights of recyclable material collectors. It is noted that there is only one similar case that reached the STJ, but it was not about protecting rights, but rather an individual action, whose special appeal was not even acknowledged by the STJ (BRASIL, 2017b), with no cases of this nature having reached the STF. Note that individual actions by collectors, as previously mentioned, against issues with sanitary landfills, even in cases of their closure, exist but are not within the scope of this article, which addresses the topic of collective and diffuse rights.

The hypothetical-deductive method was chosen, such that the investigation follows the following steps:

1) Observation – identification of the investigation’s area of interest; 2) Preliminary review of the literature and information; 3) Definition of the investigation’s problem; 4) Theoretical structure identification and designation of variables; 5) Formulation of hypotheses; 6) Design of the investigation; 7) Analysis and interpretation of the data collected; 8) Deduction-confirmation or rejection of hypotheses. Answer to the investigated problem (VAZ, 1998, p. 130).

The qualitative approach chosen for this research allowed for a more contextualized composition of reality, as well as the emergence of an interdependent dynamic between the object being researched and the researcher, creating an inseparable link between the objective world and the subjective world of the research subject (LUDKE; ANDRÉ, 1986, p.18).

To analyze the gathered data, the research aimed to achieve three objectives, namely: “overcoming uncertainty, enriching interpretation, and integrating discoveries” (MINAYO, 2004, p. 197), so that the researcher could gain their own insight into the collected and examined data, could also perceive the intrinsic messages of the material, and, finally, could achieve an understanding beyond appearances.

The work was structured into five sections so that the reader can learn in Section 1 who the collectors of recyclable materials are; in Sect. 2 understand the importance of PNRS; in Section 3 distinguish collective and diffuse rights and their interrelationship with the PNRS; in Section 4, learn about cases from SP, RJ and DF on this topic and, finally, in Section 5, access the conclusions and recommendations of this study.

1 Who are the recyclable material collectors?

1.1 Historical aspects

The past can be positively utilized as a tool for constructing the identity of the present time, especially the recent past, which has not yet passed and whose effects remain active, according to Marcelo Jasmin (2013, cited in CARVALHO, 2019).

To address the work carried out by recyclable material collectors today, it is imperatively necessary to look back to the past and discuss slavery, as the majority of recyclable material collectors, who are of African descent, continue to live marginalized, that is, on

the fringes of society.

Helena Carvalho (2019, p. 3) conducts a study on the work performed in the past and present by collectors and highlights that “during slavery in Brazil, due to the absence of basic sanitation, waste was a significant part of household trash,” which was transported by slaves in barrels. The slaves, in turn, were called “tigres,” a nomenclature that originated from the liquid and feces that fell on the black skin of the slaves and that, “in a combination of black skin and waste, resembled the striped fur of tigers.” According to the author, who touches on the core of the harsh life history lived by collectors and elucidates significant facts about their work, “the history of the concept ‘tigre,’ associated with the social history of slave labor with trash, materializes the animalization and humiliation of the slave, as well as the progressive destruction of their humanity” (CARVALHO, 2019, p. 4-5).

Over the course of history, the so-called “tigres” came to be called “cabungueiro,” which meant “one who transports or cleans the cabungo,” “that is despicable,” “a person who should not be considered important.” Subsequently, the dominant classes named these workers as garbage collectors or trashmen, a term that emerged around 1913, and from this class originated the so-called waste pickers (CARVALHO, 2019, p. 7).

According to Marcel Bursztyn (2003, p.21), this intertwining between physical refuse (trash) and human outcasts (excluded) from society reveals a perverse dimension of modernity, that is, increasingly disposable goods are produced, parallel to the increase in the production of unemployed people, who find in trash dumps, a possibility, albeit degrading, of work and income. In the author’s words, “social discard and consumption discard coming together, living off each other.”

Aldo Paviani (2003, p. 67) emphasizes that “workers excluded from employment sources end up forming a ‘reserve army’ or, in other terms, a grouping of the proletarian masses, the excluded from production and consumption.” In this sense, it is worth reinforcing that the equipment for the disposal of solid waste (trash bins/containers placed on the streets as well as in dumps that have not yet been deactivated) for the collection of recyclable materials, become a survival alternative, places that make these socially excluded and economically poorly included workers, true environmental service providers by collecting all kinds of materials that can return to the recycling production chain.

The history of achievements and challenges faced by recyclable material collectors began in the mid-1980s in Porto Alegre-RS, São Paulo-SP, and Belo Horizonte-MG, with the I National Congress of Paper Collectors, held in Belo Horizonte in 1999, and the creation in June 2001, of the National Movement of Recyclable Material Collectors (MNCR) (SOUZA, et al., 2014, p. 4001), from which the struggles for the improvement of working conditions for collectors intensify.

1.2 Organization

In 2002, the then-existing Ministry of Labor and Employment, through the Brazilian Classification of Occupations - CBO, registered the codes that differentiated and

recognized the domestic waste collector as “trashman” under Code 5142-05 and the recyclable material collector as Code 5192-05 (MTE, 2002).

Following the formation of the MNCR, the fight for the recognition of this category of professionals strengthened and directly influenced the promotion of public policies that could ensure improvements for the work of collectors.

Another victory stemming from the collectors’ struggle came in 2006 with the enactment of Decree No. 5,940/2006 (BRAZIL, 2006), which required direct and indirect federal public administration bodies and entities to separate recyclable waste and allocate it to associations and cooperatives of recyclable material collectors.

Amidst the greater fervor regarding the issue and the promotion of public policies on solid waste management in Brazil, the political role played by the MNCR and the possibilities for dialogue with the federal government, which is not possible today, allowed for the textual construction of various articles of the PNRS that safeguarded the obligation of the Union, the States, the Federal District, and the Municipalities to establish targets for the social inclusion and economic emancipation of collectors of reusable and recyclable materials.

It is worth noting that the Bill - PL No. 203/1991, which “regulated the packaging, collection, treatment, transportation, and final destination of health service waste,” after 19 years of legislative process in Congress, was approved as Law 12.305, of August 2, 2010, better known as the National Policy on Solid Waste - PNRS. The recognition of recyclable material collectors by the Brazilian Classification of Occupations - CBO (2002); Decree No. 5,940/2006 (which established the separation of recyclable waste discarded by direct and indirect federal public administration bodies and entities at the source and its allocation to associations and cooperatives of recyclable material collectors) and the Pro-Collector Program (2010) (SOUZA, et al., 2014, p. 4007) can also be considered significant achievements. These advances should be credited to the strong organization of the collectors themselves across the country.

2 National Solid Waste Policy – PNRS

The PNRS was regulated by Decree No. 7,404/2010. This policy imposes obligations on the Union, States, Federal District, Municipalities, Business Sector, and Society regarding the management of solid waste. It is a policy, grounded in the Constitution, establishing general norms to provide the country with guidelines related to the management and monitoring of solid wastes (YOSHIDA, 2012, p. 36). According to the author, it is a policy that:

It was concerned with structuring a system of integrated waste management and governance, anchored in the institutionalization and appreciation of social self-organization and self-control, through stimuli for cooperation, participation, and organized mobilization of the productive sector and other segments of society, notably collectors of reusable and recyclable materials, with the establishment of

guidelines for defining the shared responsibility of these economic and social actors in the reverse logistics system (YOSHIDA, 2012, p. 33).

In this sense, the importance of this Law lies mainly in the protection and recognition it grants to the work of recyclable material collectors.

In the text of Law 12.305/2010, the term “collectors of reusable and recyclable materials” is mentioned twelve times, as read in Articles 7, item XII; 8, item IV; 15, item V; 17, item V; 18, item II; 19, item XI; 21, § 3, item I; 33, § 3, item III; 36, § 1; 42, item III; 44, item II, and 50. As can be discerned from these provisions of the PNRS, recyclable material collectors have the right to social and productive inclusion, which must be effectively ensured by the public power, considering that non-compliance constitutes a violation of the collective and diffuse rights of the collectors.

3 Collective and diffuse rights

The discussions that took place in the 1970s in Italy and Brazil, where the Italian legal doctrine introduced to the *civil law* world a broad debate on the topic that addressed the concept and defense of collective and diffuse rights and procedural guardianship with scholars such as Mauro Cappelletti, Andrea Proto Pisani, Vittorio Denti, Vincenzo Vigoriti, Nicolò Trocker, had a significant impact in Brazil, where the subject was addressed by jurists such as Waldemar Mariz de Oliveira Junior, Ada Pellegrini Grinover, and José Carlos Barbosa Moreira. (GRINOVER, 2008).

The studies published at that time brought inquiries, mainly, about judicial tutelage and supra-individual interests. Another important aspect was understanding the indivisibility of the objects of diffuse interest, which would allow access to justice for members of social groups (GRINOVER, 2008). In the 1980s, many scholars and associations delved into the topic, and various legislative proposals were presented, leading to the Public Civil Action Law No. 7,347/85. Thus, the microsystem of collective proceedings was inaugurated by this Law and later continued by the Consumer Defense Code (CDC), with the nomenclature arising from the works of the National Constituent Assembly in 1988 (GRINOVER, 2008, p. 5).

According to Rodrigo Carvalho (2019, p. 8), people, in general, have a universe of rights secured in laws such as the Federal Constitution and scattered legislation aimed at ensuring rights, such as: education, health, freedom, security, a balanced environment, among others. When such rights are violated or not met, it is up to each person, through the Judiciary, to demand that their right be restored/secured.

When a right is violated or suppressed, not just of an individual but of a collectivity or specific social groups, it becomes impracticable to specifically identify each person involved. This factor prevents full protection, both judicially and extra-judicially, considering that a person cannot, on their own, defend the rights of others, as prohibited by Article 18 of the Civil Procedure Code (BRAZIL, 2015). In other cases, it is attested that there is no possibility of individual claims, as depending on the situation, it becomes

impossible to assess the affected right. Thus, it was found necessary to allow the person with the violated right to have access to justice, advancing to the sphere of guaranteeing the right of the entire collectivity that, in some way and at a certain moment, had its right violated. In this context, the protection of diffuse rights was extended, and transindividual rights were collectivized (CARVALHO, 2019, p.8).

It should be highlighted that due to there always being an underlying legal relationship in this type of situation, even though there is no divisible object, these diffuse and collective rights discussed here can also align with the concept of homogeneous individual rights (MAZZILLI, 2013, p. 56-62). However, further elaboration on the topic is not pertinent to this work.

3.1 Collective rights

For Fredie Didier Jr. and Hermez Zaneti Jr. (2008, p.76), the concept of collective rights *stricto sensu* is akin to that of diffuse rights, given that some characteristics are common to both institutions, such as: the transindividual rights; possessing distinct characteristics; having an indivisible nature, but with the holders being from a group, category, or class of people, indeterminate, yet determinable, linked together against an opposing party, in a specific legal action of basis. It's crucial to clarify that the base relationship must precede the injury, which determines the character of anteriority.

According to Adriano Andrade, the *stricto sensu* diffuse collective right is characterized by the indivisibility of the object. In this sense, if the right of one of the holders is violated or denied, it determines the violation or denial of the right of the entire collectivity. Thus, the indivisibility of the object dictates that the judgment, in relation to the collective right, always be *ultra partes*, meaning, the judgment rendered will benefit not only the parties involved in the action but the entire collectivity of the category or class that is in the same basic legal relationship, an example of this is when members of an institution such as unions or associations have filed an action related to the rights of that specific collectivity, the sentence will benefit all those who are in the common legal relationship (ANDRADE, *et al.*, 2015, p.49).

3.2 Diffuse rights

According to Adriano Andrade (*et al.*, 2015, p.46), diffuse rights, also known as diffuse interests, are described in Article 81 of the CDC as transindividual rights of an indivisible nature, whose holders are indeterminate people connected by some specific circumstance. For Fredie Didier Jr. and Hermez Zaneti Jr. (2008, p. 75), initially, there were difficulties in conceptualizing what diffuse rights effectively were. Interestingly, it's worth mentioning that some scholars referred to it as a "mysterious character".

Under Article 81, section II, sole paragraph of the CDC, the diffuse right belonging to a community has transindividual, metaindividual, supraindividual characteristics, of an indivisible nature where the holders are indeterminate to avoid individualization,

being important that they are connected by a fact, and that there is no common link of a legal nature (BRAZIL, 1990).

Since recyclable material collectors are subjects linked by transindividual rights, by the specific circumstance of being recyclable material collectors, it is deduced that they are holders of collective and diffuse rights as determined by the National Policy on Solid Waste.

3.4 Collective and diffuse rights of recyclable material collectors and their interrelation with Law No. 12.305/2010

With the promulgation of the Federal Constitution of 1988, various legislations introduced transindividual rights that enabled the protection of a class, such as the National Policy on Solid Waste (PNRS) - Law 12.305/2010, which aims, among its specific objectives, at the social and productive inclusion of recyclable material collectors. In other words, the PNRS is legislation that outlines a series of collective and diffuse rights for recyclable material collectors in its articles.

Carvalho (2019, p.11) emphasizes that in the collective diffuse right, it is fundamental to consider the collective procedural microsystem and the need for the use of specific legislation in the defense of collective or diffuse rights. He also maintains that the legislation protecting transindividual rights has become quite scattered across different legal texts without a single document outlining the protection of transindividual rights, like a Procedural Code. To avoid this procedural dispersion, a “connection between various legislations was created allowing the application of a legal provision from one legislation in another, provided it is not contrary to it. This is derived from the wording of Article 90 of the Civil Procedure Code and Article 21 of the Public Civil Action Law” (CARVALHO, 2019, p. 9).

Scrutinizing the PNRS law, it is evident that this legislation recognizes diffuse rights in Articles 7, item XII; Article 8, item IV; Article 15, item V, by addressing recyclable material collectors in a diffuse manner. Meanwhile, Articles 18, §1, Items II and XI; Article 21, Item I; Article 33, Item III; Article 36, §1; Article 42, Item III; Article 44, Item II address collective rights, as they describe the inclusion of these workers through cooperatives or other forms of recyclable and reusable material collector associations. Furthermore, it is worth noting that the PNRS introduced new instruments, such as the sharing of responsibilities “to ensure proper collection and disposal of post-consumption waste, the requirement of a Sectorial Agreement (AS) and the inclusion of collector cooperatives as service providers in the reverse chain.” (PICANÇO, HAONAT, 2022, p. 2015).

4 Thematic study: the perspective of justice

4.1 Public civil action and the legitimacy of Initiating the action

According to Adriano Andrade (*et al.*, 2015, p.65), since the 1970s, countries with a “common law” legal system have been seeking to develop legal tools to resolve conflicts involving transindividual interests.

Furthermore, the author notes that with the advent of the Public Civil Action Law (PCAL) - Law 7.347/1985, legislation that goes hand in hand with the collective writ of mandamus and the popular action, are fundamental legal instruments in the defense of transindividual interests.

Law 4.717/65 (BRAZIL, 1965) stipulates that popular action allows citizens to challenge acts of direct and indirect public administration before the judiciary regarding damage to the public patrimony. However, it is important to highlight that even before the enactment of the PCAL, the Public Prosecutor's Office already had the legitimacy to file civil actions to defend the environment with the aim of repairing damages, based on the National Environmental Policy (NEP) - Law 6.938/1981 (ANDRADE, *et al.*, 2015).

Hermes Zaneti Jr. & Leonardo de Medeiros Garcia (2016, p.38) discuss that a class action, in theory, is a genre that encompasses various actions including collective writs of mandamus, collective writs of injunction, popular actions, administrative improbity actions, and public civil actions. However, not every public civil action will be a class action. It is also worth highlighting the entities authorized to initiate an action according to Law No. 7.347, of July 24, 1985 (in its current wording):

Art. 5 The following have legitimacy to propose the main action and the action for a provisional remedy:

I - the Public Prosecutor's Office;

II - the Public Defender's Office;

III - the Union, the States, the Federal District, and the Municipalities;

IV - the autarchy, public owned company, foundation, or mixed economy society;

V - the association that, concurrently:

a) has been constituted for at least 1 (one) year according to civil law; (Included by Law No. 11.448, of 2007).

b) includes, among its institutional purposes, the protection of public and social patrimony, the environment, the consumer, the economic order, free competition, the rights of racial, ethnic, or religious groups, or the artistic, aesthetic, historical, touristic, and landscape patrimony. (BRAZIL, 1985).

In this sense, considering the description of those authorized to initiate a public civil action, this paper will address three public civil actions proposed in the defense of

the collective and diffuse rights of recyclable material collectors.

4.2 Public civil actions proposed in defense of the collective and diffuse rights of recyclable material collectors

As previously mentioned, despite the existence of legislation guaranteeing the collective and diffuse rights of recyclable material collectors in the country, it is noted that in 10 years since the PNRS's inception, the filing of legal actions is still necessary to ensure these collective and diffuse rights.

Thus, it has been observed that public civil actions have been proposed in the States of São Paulo, Rio de Janeiro, and the Federal District, with the purpose of mandating compliance with what is described in Law 12.305/2010, regarding the guarantee of the diffuse and collective rights of recyclable material collectors. As already mentioned, the choice of these three States was made due to the volume of collectors and the closure of the so-called landfills.

4.2.1 State of São Paulo (SP)

Leme is a Brazilian municipality in the state of São Paulo, in the Southeast region of the country, with an estimated population of 104,346 inhabitants (IBGE, 2020).

According to Case No. 1002306-48.2017.8.26.0318, the São Paulo State Public Prosecutor's Office (MPSP) filed a Public Civil Action against the Municipality of Leme. The MP alleged, as the plaintiff, the existence of irregularities in compliance with the Municipal Integrated Solid Waste Management Plan (PMGIRS), notably regarding the collection, sorting, and processing of recyclable materials. The MP believed that the municipality was not providing adequate conditions for the proper functioning of recyclable materials management, which could lead to the cessation of services. It is stated that:

The Prosecution also maintained that the municipality “has not been providing adequate conditions for the proper functioning of recyclable materials management, with the ReciclaLeme Cooperative even reporting a lack of equipment and materials for collection services.” Moreover, vehicles provided by the municipal administration are in very poor condition for use. Furthermore, the inappropriate disposal of solid waste keeps several people in social exclusion who could be employed in the recycling process. Instead, these citizens continue to risk their lives in landfills. According to the MPSP, there is no indication that the municipal government intends to grant new physical space or improve the conditions for collectors. There is also no news that the municipality plans to remedy violations of the Municipal Integrated Solid Waste Management Plan (MPSP, 2017).

In the judgment, Judge Ana Carolina Aleixo Cascaldi Marcelino Gomes Cunha ordered the Municipality to:

A) Promote the socio-productive inclusion of collectors, providing any associations and cooperatives, within 30 (thirty) days and for defined use, all the necessary means for the collection, treatment, and processing of waste, maintaining them in perfect working condition and carrying out any preventive/corrective maintenance; such as: I Area (physical space) and own storage and processing warehouses for collected material (recyclable and organic waste, sorting center, and composting), B) Establish, within 120 (one hundred and twenty) days, a central treatment facility for organic waste, either for composting or biogas generation, sharing management with recyclable material collectors, who may sell the compost, gas, and electricity, ensuring the economic viability of their enterprises; C) [...]; D) Allocate within 180 (one hundred and eighty) days, all construction waste to the organization of collectors (MPSP, 2017).

In other words, the MPSP requested an emergency measure consisting of the anticipation of judicial provision to establish within 03 (three) months, a partnership or contract with potential cooperatives or associations of collectors for the remunerated provision of selective collection and sorting of recyclable materials, including criteria for the quantity and quality of services, as well as their supervision.

This action demonstrates that the Public Prosecutor's Office sought to safeguard the rights of cooperatives and associations, clearly showing the institution's role in defending the collective rights of recyclable material collector entities.

4.2.2 State of Rio de Janeiro (RJ)

Campos dos Goytacazes is a Brazilian municipality located in the interior of the state of Rio de Janeiro, Southeast Region of the country, with an estimated population of 463,731 inhabitants (IBGE, 2020).

According to Case No. 0037144-44.2012.8.19.0014, originating from the Public Defender's Office of the State of Rio de Janeiro (DPERJ), Public Defender Natália Milione, from the Collective Guardianship Unit of Campos dos Goytacazes at the time, proposed the following Civil Appeal and necessary reexamination: Public Civil Action. Waste Pickers. Closure of "landfill". Productive inclusion of waste pickers in the selective collection system. Subjective right established by Law 12.305/2010. Non-existent moral damage. Municipality not obliged to pay a minimum wage to non-relocated waste pickers. The Rapporteur was Justice Antônio Iloízio Barros Bastos who delivered his vote on October 22, 2014 (DPERJ, 2014).

To facilitate understanding of the case, the National Association of Public Defenders published the following content of the judgment:

The action was filed by the First Service Core of Public Farm and Collective Guardianship against the municipality and Vital Engenharia Ambiental, aiming to promote the productive inclusion of all capable

waste pickers in carrying out selective collection in the municipality, “supporting the formation of work cooperatives or other forms of waste picker associations, organizing the selective collection service and linking it with the hiring of recycling agent associations, defining their scope of action throughout the municipality’s territory, supporting them also materially, with the transfer of use of real estate, for the installation of sorting centers, and movable assets, consisting of equipment such as conveyor belts, scales, presses, and any other movable property necessary for the separation of recyclable and reusable materials.” Despite the contrary opinion of the Public Prosecutor’s Office, which had recommended dismissing the claim based on Article 295, III, of the Civil Procedure Code, labeling the plaintiff’s claim as “nonsense,” the judgment partially granted the request, approving the mentioned productive inclusion in its exact terms and ordering the pensioning of the waste pickers until their effective inclusion, excluding only compensation for collective material and moral damages. The judgment issued in October 2014 removed the pensioning but maintained productive inclusion, which was the main object of the action. [...]” (ANADEP, 2015, p. 55).

In other words, the DPERJ sought to ensure the diffuse rights of the waste pickers by mandating their social and productive inclusion through support for the formation of work cooperatives or other forms of waste picker associations, as well as demanding their hiring for remunerated service provision in the municipality.

4.2.3 Federal District (DF)

The Federal District is an entity of the Federation with characteristics of both a municipality and a state, located in the Central-West Region of the country, with an estimated population of 3,055,149 inhabitants (IBGE, 2020).

According to Public Civil Action No. 0001315-60.2017.5.10.0003, the Public Defender’s Office of the Union (DPU) initiated a public civil action against the government of the Federal District regarding the rights of recyclable material collectors who worked at the “Estrutural Dump.”

The Public Defender’s Office of the Union filed a public civil action against the Union and Federal District, aiming to protect the rights of recyclable material collectors. It argued, in summary, that the collectors who carried out waste collection at the Jóquei Landfill (Estrutural dump) were affected by a “fact of the prince,” due to the closure of dumps, mandated by Law 12.305/2010, which prevented them from continuing their previously developed activity. Seeking to protect the rights of recyclable material collectors, who worked at the Jóquei Landfill, popularly known as “ESTRUTURAL DUMP,” under the responsibility of the Federal District [...] It concerns a group of

UNDERPRIVILEGED WORKERS, including CHILDREN and ADOLESCENTS, as there are none more impoverished and vulnerable, since they perform economic activities of reusing WASTE, that is, SURVIVING FROM THE COLLECTION OF MATERIALS FROM THE URBAN CLEANING SERVICE [...] At first glance, it is worth noting that the Federal Law No. 12.305, of 2010, while it mandated the closure of dumps, also prescribed a series of commands so that the collectors could continue their activities, however, only in an associative form, that is, as long as gathered in cooperatives or associations. The public defender's office seeks to protect the rights of the collectors as individuals, understanding that this public civil action aims to protect the diffuse right of the collectors (BRAZIL, 2017a).

In other words, as described in the action itself, the DPU sought to ensure the diffuse right of the collectors. This is because it is evident that the action guaranteed the right of the figure of the recyclable material collector and not of their organizations, whether associations and/or cooperatives.

Considering the complex case of the closure of the Estrutural Dump in the DF, it is important to note that at the time, the Human Rights Defense Core of the Public Defender's Office, through a Public Civil Action filed by the Public Prosecutor's Office of the Federal District and Territories (MPDFT), acted in a class action in favor of recyclable material collectors (ANADEP, 2018).

In this action, filed by the MPDFT in 1996 and that became final in 2007, there was non-compliance with the judgment by the Government of the Federal District. However, with the promulgation of the PNRS in 2010, the closure of the Estrutural Dump became imperative to comply with current legislation.

In 2018, one of the public defenders involved in the action explained that the judgment issued before the existence of the National Policy on Solid Waste (that is, the closure of the Dump did not bring the obligation of including the collectors) should comply with current legislation, specifically, it should close the Dump, but also should socio-productively include all the collectors who worked there as stated by Law 12.305/2010.

The Public Prosecutor argued that the Public Defender's request for the inclusion of collectors would delay the execution of the judgment. It was then explained by the public defender that, with the existence and promulgation of the PNRS, the DPDP would have total "legitimacy to act in the enforcement of a judgment of a Public Civil Action filed by the Public Prosecutor in favor of the collectors" (ANADEP, 2018).

The dispute between the DPU and the Public Prosecutor was the subject of case No. 3.6947/1996, where the report of Judge Álvaro Ciarlini reaffirmed the importance of complying with the diffuse and collective rights of recyclable material collectors.

It turns out that, as well as defending the environment affected by the operation of the landfill, it is necessary to protect the interests of individuals who, for decades, extracted from the aforementioned landfill, as their only source of income, the products resulting from the

hard work of separating recyclable material. . In effect, the measures to be implemented must seek to guarantee that environmental interests and the interests of these workers are protected, to the maximum extent. Therefore, even though the actions of the DPDF may lead to greater deliberations regarding the measures to be implemented and, eventually, postpone the implementation of certain legal measures, its actions in the process will certainly promote the search for greater effectiveness in the interests of the “garbage collectors”. of Structural”, which justifies the maintenance of the learned decision aggravated by its own foundations (TJDF, 2018, p.9).

Given the above, these legal actions reaffirm the existence and importance of protecting the collective and diffuse rights of recyclable material collectors not only in the Federal District, but throughout the country.

Conclusions and recommendations

As observed, despite the existence of Law 12.305/2010, 10 years after its enactment, it is still possible to note public civil actions being filed in favor of enforcing a public policy that clearly outlines all actions the public power must undertake for the benefit of recyclable material collectors.

Indeed, governmental omission in fulfilling the collective and diffuse rights guaranteed by Law 12.305/2010 to recyclable material collectors, as depicted in the cases of the states of SP, RJ, and DF, demonstrated the necessity of Institutions – State Public Prosecutors’ Offices and Public Defender’s Offices – to adjudicate the collective and diffuse rights of recyclable material collectors and ensure their respective rights to this category of workers.

If in these three cases, which concern large cities with greater financial and technical resources available to truly comply with the directives of the PNRS, public negligence is still observed, it is reasonable to conclude that this situation of non-compliance with the diffuse and collective rights of recyclable material collectors reverberates to the other 5,567 municipalities in the country.

Considering the estimate by the MNCR about the existence of 800,000 recyclable material collectors in the country, the stagnation and low investment by the federal government in the last 10 years to comply with the PNRS, the current and future scenario of these workers, to improve, will depend even more on the action of Public Prosecutors’ Offices and Public Defender’s Offices to ensure what is stated in Law 12.305/2010 is effectively fulfilled.

Therefore, it is recommended that both Public Prosecutors’ Offices and Public Defender’s Offices conduct diagnostics to assess compliance with the PNRS in Brazilian municipalities. In cases where there is an omission by the public power as determined by Law 12.305/2020, regarding the collective and diffuse rights of collectors, it becomes increasingly necessary to file public civil actions to guarantee rights to the collectors.

Moreover, there is no doubt that joint actions between Public Prosecutors' Offices and Public Defender's Offices are increasingly necessary across the national territory on this subject.

It is observed that Law 12.305/2010, although a reality, still requires the action of Public Prosecutors' Offices and Public Defender's Offices; otherwise, the public power is likely to continue its omission regarding full compliance with the PNRS, hindering the progress of environmental preservation.

Lastly, the importance of continuing studies that can delve deeper into the topic for a better understanding of the use of legislation as instruments to guarantee collective and diffuse rights in their interconnection with environmental consciousness and the effective preservation of national ecosystems is considered.

For the development of knowledge on the studied topic, it is suggested to conduct research that examines the primary causes leading to the judicialization of public policies affecting recyclable materials collectors, in terms of social and productive inclusion.

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Política Nacional de Resíduos Sólidos: Analisando os Direitos Coletivos e Difusos dos Catadores de Materiais

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Resumo: Este artigo analisa a Política Nacional de Resíduos Sólidos (PNRS) - Lei 12.305/2010 em respeito aos direitos coletivos e difusos dos catadores e catadoras de materiais recicláveis. Passados 10 anos da existência da PNRS os direitos que são conferidos por essa legislação não são efetivados. Na análise, o artigo identifica ações civis públicas relativas às cidades de São Paulo (SP), do Rio de Janeiro (RJ) e de Brasília (DF). Foi adotado o método hipotético-dedutivo, dentro de uma abordagem qualitativa e foram utilizados instrumentos de pesquisa bibliográfica e documental. Conclui-se que devido à omissão governamental há a necessidade da atuação contínua do Ministério Público e da Defensoria Pública para promover e garantir os direitos dessa categoria de trabalhadores que são relevantes da promoção do meio ambiente sustentável.

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Artigo Original

Palavras-chave: Direitos coletivos e difusos; Catadores de Materiais Recicláveis; Política Nacional de Resíduos Sólidos.

Política Nacional de Resíduos Sólidos: Análisis de los Derechos Colectivos y Difusos de los Colectores de Materiales Reciclables

Marcos Aurélio Pereira Valadão
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Resumen: Este artículo analiza la Política Nacional de Resíduos Sólidos (PNRS) - Ley 12.305 / 2010 sobre los derechos colectivos y difusos de los recicladores y recicladores de materiales reciclables. Después de 10 años de existencia del PNRS, los derechos que le confiere esta legislación no se hacen cumplir. En el análisis, el artículo identifica acciones civiles públicas relacionadas con las ciudades de São Paulo (SP), Río de Janeiro (RJ) y Brasilia (DF). Se adoptó el método hipotético-deductivo, dentro de un enfoque cualitativo y se utilizaron instrumentos de investigación bibliográfica y documental. Concluimos que por omisión gubernamental, existe la necesidad de una acción continua del Ministerio Público y la Defensoría Pública para promover y garantizar los derechos de esta categoría de trabajadores que son relevantes para la promoción del medio ambiente sostenible.

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Artículo Original

Palabras-clave: Derechos Colectivos y Difusos; Política Nacional de Resíduos Sólidos; Recogedores de material reciclable.