

THE IMPORTANCE OF THE NOTARY AND REGISTRY SERVICE AS AN ALLY OF COMPLIANCE IN THE PREVENTION OF ENVIRONMENTAL CRIMES¹

A IMPORTÂNCIA DO SERVIÇO NOTARIAL E DE REGISTRO COMO ALIADO AO COMPLIANCE NA PREVENÇÃO DE CRIMES AMBIENTAIS

LA RELEVANCIA DE LOS NOTARIOS COMO ALIADOS AL CUMPLIMIENTO EN LA PREVENCIÓN DE LOS DELITOS AMBIENTALES

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ABSTRACT

This study aims to analyze the necessary regulation of notarial and registry activities, enabling it to act as an arm for the Organs controlling and inspecting bodies of people's and entities' activities. First, a conceptualization of Notary and Registry Law is presented. Then, the basic principles are analyzed, seeking to fulfill the proposed objectives. Then, the relationship of the notarial service with compliance practices in the prevention of environmental crimes is demonstrated. Finally, when Provision 88/2019 of the National Council of Justice (CNJ) is presented, a critical analysis of its content and effectiveness is made. This work concludes that CNJ did well in including notary offices, records and protests as an ally in the fight against organized crime and terrorism financing. Nevertheless, development of regulatory practices by the services with regard to environmental crimes is still necessary, given the importance of the subject. The proposed regulation may prove to be an important ally in preventing crimes, degradations and tragedies.

Keywords: Civil Responsibility; Compliance; Environmental Crimes; Environmental Law; Notary Law.

RESUMO

Este estudo visa analisar a necessária regulação da atividade notarial e do registro, habilitando-a a funcionar como braço dos Órgãos de controle e fiscalização das atividades das pessoas e entidades. Em primeiro lugar, é apresentada uma conceituação do Direito Notarial e de Registro. Em seguida, são analisados os princípios básicos, buscando

¹ Work financed by the Public Notice 03/2020 of the Escola Superior Dom Helder Câmara, resulting from the Research Groups (CNPQ): Civil Liability and Environmental Process (RECIPRO), NEGESP, Legal Metamorphosis and CEDIS (FCT-PT).

cumprir os objetivos propostos. Em seguida, demonstra-se a relação do serviço notarial com as práticas de compliance na prevenção de crimes ambientais. Por fim, quando da apresentação do Dispositivo 88/2019 do Conselho Nacional de Justiça (CNJ), é feita uma análise crítica de seu conteúdo e eficácia. Este trabalho conclui que o CNJ se saiu bem ao incluir cartórios, registros e protestos como aliados no combate ao crime organizado e ao financiamento do terrorismo. No entanto, ainda é necessário o desenvolvimento de práticas regulatórias por parte dos serviços no que se refere aos crimes ambientais, dada a importância do tema. O regulamento proposto pode revelar-se um importante aliado na prevenção de crimes, degradações e tragédias.

Palavras-Chave: Crimes Ambientais; Conformidade; Direito Ambiental; Direito Notarial; Responsabilidade Civil.

RESUMEN

Este estudio tiene como objetivo analizar la necesaria regulación de la actividad notarial y registral, que le permita funcionar como un brazo de los órganos de control e inspección de la actividad de las personas y entidades. En primer lugar, se presenta el concepto del derecho notarial y registral. Luego, se analizan los principios básicos, buscando cumplir con los objetivos propuestos. Después, se demuestra la relación del servicio del notario con las prácticas de cumplimiento en la prevención de delitos ambientales. Finalmente, cuando se presenta la Disposición 88/2019 del Consejo Nacional de Justicia brasileño (CNJ), se realiza un análisis crítico de su contenido y efectividad. Este documento concluye que el CNJ ha hecho muy bien en incluir registros y protestas como aliados en la lucha en contra el crimen organizado y el financiamiento del terrorismo. Sin embargo, aún es necesario el desarrollo de prácticas regulatorias por parte de los servicios en materia de delitos ambientales, dada la importancia del tema. El reglamento propuesto podría resultar un aliado importante en la prevención de delitos, degradaciones y tragedias.

Palabras clave: Delitos ambientales; Conformidad; Derecho ambiental; Derecho notarial; Responsabilidad civil.

SUMMARY

INTRODUCTION. 1 NOTARIAL LAW AS A MULTIDISCIPLINARY BRANCH OF PUBLIC LAW. 2 THE PRINCIPLES OF NOTARY LAW AS A PREVENTIVE INSTRUMENT IN ENVIRONMENTAL LAW. 2.1 From the principle of advertising. 2.2 The principle of legal certainty. 2.3 The principle of effectiveness of legal acts. 2.4 On the principle of authenticity. 3 NOTARIAL SERVICE AS AN ALLY OF COMPLIANCE IN THE PREVENTION OF ENVIRONMENTAL CRIMES AND THE LEGAL AND POLITICAL DIMENSION OF SUSTAINABILITY. 4 CRITICISM OF THE ASPECTS OF CNJ PROVISION 88/2019. FINAL CONSIDERATIONS. REFERENCES.

INTRODUCTION

The 1988 Constitution of the Federative Republic of Brazil (CRFB/88)² was a major innovation in the division of powers in the country. Especially regarding the Judiciary Power, citizens obtained a new model of access to justice, with a theoretically autonomous body.

Among the attributions conferred by the constituent to the Judiciary Power, the notarial and registration services gained prominence, occupying a respectable space in the legal system as a body that provides publicity and security to citizens in relation to their properties, possessions and the most diverse transactions. CRFB/88 was also responsible for highlighting

² BRASIL. **Constituição da República Federativa do Brasil**. Brasília, DF: Presidência da República, 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access in: Sep. 2, 2020.

Environmental Law as the most important discipline to ensure intact and protected natural environment as a common good for human beings.

From analyzing the latest occurrences with worldwide repercussions involving the environment, it becomes evident that the transgressors still manage to circumvent the inspection, registration, control and other systems that have not been efficient for the purposes for which they were intended. On the other hand, the registry and notarial system proves to be a relevant body when putting into practice its functional activities, as it is constituted by rules of the Judiciary that enable it to authenticate and guarantee the legal security of citizens' acts. Given these attributions, and the complexity of their activities, since they work by analyzing the most diverse transactions between people, they could not be far from the State's duty-power to supervise citizens, preventing and combating crimes typified in the legal system.

In addition, the globalized world has spread the ideas of compliance, regulating good governance and management practices, seeking a just and peaceful society, preventing risks and combating illegalities. The theme was responsible for the enactment of Law 9.613, of March 6, 1998 (Prevention of Money Laundering), with the purpose of preventing and sanctioning acts of corruption and money laundering. The law included among the people who must collaborate with its objectives those who lend themselves to public records.

In turn, the National Council of Justice (CNJ) edited Provision no. 88, of 2019, effective from February 2020, creating rules and methods to be followed by notaries of notes and records to comply with the Law on Prevention of Money Laundering. Despite its importance, it appears that crimes that lead to environmental damage were not dealt with, even though many of them were closely linked to corruption, fraud and money laundering.

In view of this, this article has the following question as theme-problem: can Notary Law be an ally of compliance in the prevention of environmental crimes? We aimed to demonstrate the importance of a specific regulation so that notarial activities can adapt and perform a service allied to the control and inspection bodies, aiming to prevent the occurrence of environmental crimes and, when appropriate, repair damages caused by unlawful practices.

To solve the proposed problem, extensive bibliographical, doctrinal and jurisprudential research was necessary, although there are still few studies on the subject. As a hypothesis, the article verifies compliance as an adequate and effective method in combating environmental crimes allied to registration and notes services. Theoretical-analytical and speculative methodology was used. As a theoretical framework, we used the Master's thesis by Marcial Luís

Zimmermann (2018), entitled “Money laundering: the importance of notarial activity in combating State corruption”, by the University of Vale do Rio dos Sinos (UNISINOS).

Divided into four chapters, in addition to this introduction and the final considerations, the study first dealt with the discipline of Notarial Law as a multidisciplinary branch of Public Law. In a second moment, the most important principles of Notary Law were brought to the fore as guidelines for the discipline and objectives of registry and notarial activity. In the third chapter, compliance within Notary Law was debated, with brief conceptual analyses. Finally, the fourth chapter introduces criticisms to Provision no. 88/2019 to, at the end, highlight its effectiveness in the targeted themes and, therefore, give rise to the creation of specific rules concerning matters of Environmental Law.

1 NOTARIAL LAW AS A MULTIDISCIPLINARY BRANCH OF PUBLIC LAW

Notarial Law in Brazil finds its primary source in CRFB/88, notably in its art. 236, which provides for notarial and registry services. In doctrine, the conceptualization of Notarial Law almost always reveals its multidisciplinary nature. An example of this can be taken from Loureiro³, when he states that the expression under discussion is divided into two different meanings: a first meaning would lead to the conclusion that the discipline is part of private law, encompassing areas of interest to the notary (family and successions, for example); a second meaning would lead to the conclusion that Notarial Law is the set of rules and disciplines that state notaries' rights, which would restrict its content.

The fact is that discipline affects so many others that it would be impossible to reach a restrictive concept. Within the scope of the duties of notaries and registrars, their acts generate effects in various types of legal transactions, including, in an exemplary list, Tax Law (Protest of Active Debt Certificates), Real Estate Law (property records), Contract Law (records of purchase and sale contracts) and even Environmental Law (endorsements of environmental protection areas).

These ramifications within Notarial Law made it a specific discipline, with its own characteristics, and can be said to have become an autonomous branch of law. Thus, Loureiro concludes:

³ LOUREIRO, Luiz Guilherme. *Manual de Direito Notarial*. 2. ed. Salvador: JusPodvim, 2017.

The development of this notarial science resulted in the emergence of a law with its own substance - and which, within the classic distinction between public and private law, belongs to the sphere of the latter -, even though its precepts are of a necessary character and the presuppositions and requirements of the notarial function, outlined by the public faith that is inherent to it, are of public order⁴.

However, unlike what Loureiro concludes, it is possible to verify that the Notarial Law mixes between the public and the private. Its regulations have a mixture of disciplines, as public law rules are observed for entering the career of notaries, for example.

As stated, with provision in art. 236 of CRFB/88, notarial and registry services are exercised in a private capacity by delegation of the Public Power, and the Judiciary Power must exercise its supervision. It is inferred, therefore, that the activities developed are subject to a public law regime.

In fact, the Federal Supreme Court (STF), in judgment of the Direct Action of Unconstitutionality (ADI) no. 1,800, through a report by Minister Ricardo Lewandowski, stated that “the activity carried out by the holders of the notes and register offices, although analogous to business activity, is subject to a public law regime”⁵. Through Law no. 8,935, of November 18, 1994 (Lei dos Notaries), the activity was regulated by the Union, noting that the services are “destined to guarantee the publicity, authenticity, safety and effectiveness of legal acts”⁶. Other laws also deal with the subject, such as the Public Records Law (Law No. 6015, of December 31, 1973)⁷, Civil Code (Law No. 10,406, of January 10, 2002) and Law No. 10169, of December 29, 2000.

Art. 3 of the Notary Law provides that notaries and registrars are endowed with public faith⁸. In other words, this means that the acts of these public agents have a presumption of

⁴ LOUREIRO, Luiz Guilherme. **Manual de Direito Notarial**. 2. ed. Salvador: JusPodvim, 2017. p. 28.

⁵ BRASIL. Supremo Tribunal Federal. **Ação Direita de Inconstitucionalidade nº. 1.800**. EMENTA: CONSTITUCIONAL. ATIVIDADE NOTARIAL. NATUREZA. LEI 9.534/97. REGISTROS PÚBLICOS. ATOS RELACIONADOS AO EXERCÍCIO DA CIDADANIA. GRATUIDADE. PRINCÍPIO DA PROPORCIONALIDADE. VIOLAÇÃO NÃO OBSERVADA. PRECEDENTES. IMPROCEDÊNCIA DA AÇÃO. Relatoria: Ministro Ricardo Lewandowski. 28 ago. 2007. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=1699175>. Access in: Sep. 15, 2020.

⁶ BRASIL. Lei nº. 8.935, de 18 de novembro de 1994. Regulamenta o art. 236 da Constituição Federal, dispendo sobre serviços notariais e de registro. **Diário Oficial da União**, Brasília, 21 nov. 1994. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8935.htm. Access in: Sep. 15, 2020.

⁷ BRASIL. Lei nº. 6.015, de 31 de dezembro de 1973. Dispõe sobre os registros públicos, e dá outras providências. **Diário Oficial da União**, Brasília, 31 dez. 1973. Available at: http://www.planalto.gov.br/ccivil_03/leis/l6015compilada.htm. Access in: Sep. 15, 2020.

⁸ BRASIL. Lei nº. 8.935, de 18 de novembro de 1994. Regulamenta o art. 236 da Constituição Federal, dispendo sobre serviços notariais e de registro. **Diário Oficial da União**, Brasília, 21 nov. 1994. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8935.htm. Access in: Sep. 15, 2020.

veracity, and can only be challenged until proven otherwise. This premise is a reaffirmation of what the Public Records Law already provided in its Art. 1st. In the words of Goulart and Batista, public faith, in short, refers to the “veracity legally granted by the State, to documents and instruments issued by authorities that perform services of a public nature or by individuals who work in collaboration with the Public Administration, in the exercise of their functions”⁹.

Still regarding the duties of notaries, the duty to formalize and document the will of the parties is extracted, giving this will legitimacy, validity and publicity, within the legal dictates. The activity carried out confers transparency, security and control to business acts, which are fundamental for social pacification. As it is an activity notably inserted in the powers of the Judiciary, even if carried out in a private nature, notarial and registry services bind the State when the matter is civil liability for damages caused to third parties, as provided for in Art. 22 of the Notary Law¹⁰.

This matter was also judged by Extraordinary Appeal (RE) no. 842,846 before the STF, coming from the Court of Justice of Santa Catarina (TJSC) and reporting by Minister Luiz Fux, who established the thesis on theme 777 in general repercussion:

The State is objectively liable for the acts of notaries and official registrars who, in the exercise of their functions, cause damage to third parties, based on the duty of return against the responsible, in cases of intent or guilt, under penalty of administrative improbity¹¹.

Therefore, the responsibility of notaries and registrars in the exercise of their functions is verified. Added to this is the fact that they are endowed with public faith, which requires that these public agents perform the service with the utmost caution in order to meet their social function and meet the interests of society.

⁹ GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. *Recifaqui*, v. 2, n. 10, p. 47-67, 2020, p. 54.

¹⁰ “Notaries and registration officers are civilly responsible for all damages they cause to third parties, through fault or intent, personally, by the substitutes they designate or clerks they authorize, ensuring the right of recourse” (BRASIL, 1994).

¹¹ BRASIL. Supremo Tribunal Federal. Recurso Extraordinário nº. 842.846. EMENTA: DIREITO ADMINISTRATIVO. RECURSO EXTRAORDINÁRIO. REPERCUSSÃO GERAL. DANO MATERIAL. ATOS E OMISSÕES DANOSAS DE NOTÁRIOS E REGISTRADORES. TEMA 777. ATIVIDADE DELEGADA. RESPONSABILIDADE CIVIL DO DELEGATÁRIO E DO ESTADO EM DECORRÊNCIA DE DANOS CAUSADOS A TERCEIROS POR TABELIÃES E OFICIAIS DE REGISTRO NO EXERCÍCIO DE SUAS FUNÇÕES. SERVENTIAS EXTRAJUDICIAIS. ART. 236, §1º, DA CONSTITUIÇÃO DA REPÚBLICA. RESPONSABILIDADE OBJETIVA DO ESTADO PELOS ATOS DE TABELIÃES E REGISTRADORES OFICIAIS QUE, NO EXERCÍCIO DE SUAS FUNÇÕES, CAUSEM DANOS A TERCEIROS, ASSEGURADO O DIREITO DE REGRESSO CONTRA O RESPONSÁVEL NOS CASOS DE DOLO OU CULPA. POSSIBILIDADE. Relatoria: Ministro Luiz Fux. *DJe*, Brasília, 18 ago. 2019. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=4650160>. Access in: Sep.15, 2020.

Nowadays, notaries have also taken on other important practices for society. Through the publication of regulations, provisions and other norms by the bodies responsible for their management and inspection, the State uses the notary and registry offices to curb the practice of crimes. It is not about the delegation of police power, but a broadening of the inspection system from its organs and peculiar characteristics.

In the case of notary offices, they have been helping state inspection in the search for the prevention of various crimes committed, observing their attributions. The method used, which will be discussed in a specific item, gains notoriety in the legal community for the positive results that systemic interconnection brings. Despite this, Oliveira, Costa and Pinto e Silva highlight:

The conjugation of the assertion and exercise of the legal entity's autonomy (private autonomy and public autonomy) with the potential of plurisystemic interconnections (Law, Ethics, Science and Technology) makes the compliance institute, in its various modalities, an important vector to equate, in a democratic way, the tensions between private autonomies (with each other) and between these and public autonomy. In addition, the possible interconnections that can be stimulated by the compliance institute can act, in an expressive way, in the normative and institutional development, also of the multiple social systems, in the medium and long term; that is, if various public or private sectors improve their internal *accountability* and *responsiveness activities*, society will be positively impacted¹².

Before getting into the heart of the matter, however, it is important to understand the objectives of Notary Law. As a legal discipline, the discipline has principles that are also important sources and that, for the present proposal, which deals with the preventive character of Notary Law within Environmental Law, it is essential to briefly discuss its nuances.

2 THE PRINCIPLES OF NOTARIAL LAW AS A PREVENTIVE INSTRUMENT IN ENVIRONMENTAL LAW

As extracted from the legal texts that regulate the notarial and registration activity in the country, the resulting acts aim to ensure the conservation, authenticity, security and effectiveness of legal acts. These qualities are reverted in the principles of the discipline,

¹² OLIVEIRA, Marcio Luis. COSTA, Beatriz Souza. PINTO E SILVA, Cristiana Fortini. O instituto do *compliance* ambiental no contexto da sociedade plurissistêmica. Belo Horizonte: *Veredas do Direito*, v. 15, n. 33, p. 51-71, set./dez. 2018, p. 56. Available at: <http://dx.doi.org/10.18623/rvd.v15i33.1396>. Access in: Nov. 13, 2020.

adding strength to others that are so important to the existence of the system, provided for in CRFB/88 in its art. 37¹³, such as publicity, legality and efficiency.

These principles are not far from those of Administrative Law. Together with the norms of Notarial and Registry Law, they are embodied in important preventive instruments within the Brazilian legal system, as will be seen later.

By observing the principles of Notarial and Administrative Law, and the social functions that notary offices have, we seek to achieve concrete legal businesses that are properly established, avoiding the commission of crimes, as already said, and even pursuing pacification Social. It is how Loureiro interprets:

We can thus affirm that this branch of law aims at the normal and healthy development of legal relations, through rules, principles and institutions that tend to avoid their abnormal, pathological or doubtful situation, which could lead the parties to conflicts and differences in defense of claims resulting from such relationships¹⁴.

Therefore, following the premises of these rules, Notary Law is a necessary instrument for society, as a diffuser of a complete and safe extrajudicial activity and, in addition, as an aid to inspection bodies, hindering and curbing criminal practices so deeply rooted in the country.

In this regard, it is important to mention that the extrajudicial services do not usurp functions that are not their own. However, playing an important role in the “business” society, avoiding conflicts and crimes is one of the most valid ways to promote social peace. And, on the topic, Loureiro lectures:

Unlike procedural law, a classic example of adjective law, notarial law does not seek to resolve differences or rule out disputes, but rather to avoid the emergence of conflicts. There is a clear distinction in the purposes of these two branches of adjective law, which is obviously reflected in the rules, principles and institutions that are specific to it and give it peculiar aspects¹⁵.

In fact, all these collaborative and preventive practices are the result of these important principles. The necessary observance of such guidelines gained expression with the edition of Provision no. 260, of the General Court of Justice of the State of Minas Gerais, in 2013

¹³ “Art. 37. The direct and indirect public administration of any of the Powers of the Union, States, Federal District and Municipalities shall obey the principles of legality, impersonality, morality, publicity and efficiency, and also the following: [...]”

¹⁴ LOUREIRO, Luiz Guilherme. *Manual de Direito Notarial*. 2. ed. Salvador: JusPodvim, 2017. p. 31.

¹⁵ LOUREIRO, Luiz Guilherme. *Manual de Direito Notarial*. 2. ed. Salvador: JusPodvim, 2017. p. 31.

(260/CGJ/2013)¹⁶, which codifies the normative acts related to notarial and registration acts. Said document also reaffirms the general principles of Administrative Law, as it is extracted from its Art. 5th. We then briefly analyze some of the most important principles within the notary and registry preventive activity.

2.1 From the principle of advertising

The principle of publicity is provided for in art. 37 of CRFB/88 and highlighted in art. 1 in the Notary Law, as well as in art. 5, II, of Provision 230/CGJ/2013. Through the publicity of notes and records, any citizen will be able to have access to their content, which adds greater security and transparency to legal transactions in their implementation. The Public Records Law also provides for the need for public acts in articles 16 to 21.

The notes and records services can and should publicize their acts, when requested, and issue certificates attesting to the content of the documents registered and filed in their collections, unless legally limited. The publicity and validity of notarial and registry acts are also supported by the Civil Code, as extracted from the content of art. 217: “transfers and certificates, extracted by a notary or registration officer, of instruments or documents entered in their notes will have the same probative force”¹⁷.

As Marinela ¹⁸teaches, advertising also means effectiveness, as it is the knowledge of the existence of a certain act that obliges the interested party to comply with it. It is also the milestone for counting deadlines, that is, through the day of the science of the act, it is possible to start counting prescriptive and decaying deadlines. It also enables citizens to exercise control and inspection.

2.2 From the principle of legal certainty

¹⁶ MINAS GERAIS. Tribunal de Justiça de Minas Gerais. Corregedoria Geral do Estado de Minas Gerais. Provimento n.º. 260, de 18 de outubro de 2013. **Diário Oficial de Minas Gerais**, Belo Horizonte, 30 out. 2013. Available at: <http://www8.tjmg.jus.br/institucional/at/pdf/cpr02602013.pdf>. Access in: Nov. 11, 2020.

¹⁷ BRASIL. Lei n.º. 10.406, de 10 de janeiro de 2002. Código Civil. **Diário Oficial da União**, Brasília, 11 jan. 2002. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm. Access in: Sep. 16, 2020.

¹⁸ MARINELA, Fernanda. **Direito administrativo**. 11. ed. São Paulo: Saraiva, 2017.

When writing deeds, registering properties or protesting titles in notary offices, the citizen is automatically seeking security in the acts performed. The formalization of rights through annotation in the competent notary offices guarantees security, publicity, regularity (formal) and has a preventive character, since, at first, an analysis of regularity will be carried out by the notary public about the pre-constituted evidence and to him presented for the registration of the act.

For Marinela¹⁹, the principle of legal certainty is the mainstay of the legal order, preventing further changes, causing instability in society. Legal security also guides the preventive nature contained in notarial and registry services. Goulart and Batista explain:

The notary is also charged with cooperating with the state's legal security, participating in the repression of criminal offenses, such as money laundering, in order to identify all customers, preserve the necessary documents and provide the information they hold in their services, essential to investigations, under the terms of the law²⁰.

Therefore, the objective of providing legal certainty in the acts of the notary public directly influences the prevention of crimes.

2.3 Of the principle of effectiveness of legal acts

The effectiveness of legal acts concerns the production of intended effects, based on the principles of security and authenticity. Some acts of legal business, even, can only be effective from the moment of registration in notarial or registry minutes. To Zimmermann:

Efficacy, in turn, is the production of legal effects from a secure perspective of the authenticity of the transactions and declaration transposed to it. The registration aims to provide publicity in relation to third parties, in addition to, in the broadest sense, affirming the good faith of those who practice legal acts with the presumption of certainty of the settlements²¹.

¹⁹ MARINELA, Fernanda. *Direito administrativo*. 11. ed. São Paulo: Saraiva, 2017.

²⁰ GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. *Recifaqui*, v. 2, n. 10, p. 47-67, 2020. Available at: <http://recifaqui.faqi.edu.br/index.php/recifaqui/issue/view/5>. Access in: Sep. 18, 2020. p. 57.

²¹ ZIMERRMANN, Marcial Luís. *Lavagem de capitais: a importância da atividade notarial no combate à corrupção do Estado*. 120 f., 2018. Dissertação (Mestrado em Direito) - Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2018, p. 20. Available at: <http://www.repositorio.jesuita.org.br/handle/UNISINOS/9036>. Access in: Sep. 15, 2020.

It can be said that the principle of effectiveness of legal acts is strictly linked to the principle of legality, within which it is necessary to observe by the notary whether the acts to be registered are in accordance with the law. It is up to the agent, at the time it is requested, to verify the adequacy of the declaration with the current regulations, if the documents presented have a backing of veracity, in addition to other requirements. Only after this verification will the utility be able to carry out the requested service.

2.4 Of the principle of authenticity

Authenticate, when it comes to notarial and registry acts, means giving a document or declaration of intent the quality of truth in legal terms. This authenticity will be done through an act of the notary.

As explained above, the acts that occurred before a notarial or registry authority are presumed to be true, as such agents enjoy public faith. Thus, the principle of authenticity materializes.

It is important to emphasize that the principle of authenticity concerns only the way in which the notarial or registration act is confirmed. This is because the content of the act is only authenticated if it is certified by the notary public, as expressed by Ceneviva:

Registration creates a relative presumption of truth. It is rectifiable, modifiable and, as the official is a recipient of the declaration of third parties, who examines according to predominantly formal criteria, the purpose determined by the legal definition does not reach the registration: it does not give authenticity to the causal transaction to the fact or legal act of that originates. Only the registration itself has authenticity²².

In other words, it is inferred that the registration or notarial act is a declaration of will of the parties. Interested parties present the claim and, if the documents necessary for registration are sufficient, as indicated by the law, with evidence of authenticity, the notary will do so, and its form remains valid. The content, on the other hand, has only a presumption of veracity, and can be challenged by whoever is interested. About this difference, Zimmermann asserts:

Authenticity and security are the main attributions of the notarial activity, as it aims to confer a quality on what is confirmed by an act of authority, that is, a document or declaration that will have the public faith declared as authentic by the Notary. From this perspective, the registration ends up creating the relative

²² CENEVIVA, Walter. *Lei dos Registros Públicos Comentada*. São Paulo: Editora Saraiva, 2010, p. 55.

presumption of truth, that is, it may still be ratified or modified, not conferring authenticity on the transaction or act, but on the registration itself. Security, more specifically, is a condition assigned to the registry whose purpose is to trust the bookkeeping, representing that a Notary had access to the document, declaration or legality and, thus, it is assumed that he inspected its legality, making it public²³.

Through this brief analysis of some of the most important principles of Notary Law, it is possible to see the close connection it has with the preventive activities of some crimes. For this study, it is important to understand how notarial and registry activities can be an ally in combating the most diverse crimes, focusing on environmental crimes.

The current scenario denounces the practice of crimes involving Brazilian fauna and flora, with disastrous consequences, such as the rupture of ore dams, fires, land grabbing and deforestation. In general, all the crimes mentioned, in some way, have a flaw in the documents that supported the legal transaction, whether it is an omission, a forgery or even the involvement of public agents in favoring the crime.

In view of the importance of notarial and registry services for social pacification, as explained above, their use as a way to fight crime is essential, especially in Environmental Law. We then analyze it from this point of view.

3 NOTARIAL SERVICE AS AN ALLY OF COMPLIANCE IN THE PREVENTION OF ENVIRONMENTAL CRIMES AND THE LEGAL DIMENSION OF SUSTAINABILITY POLICY

By analyzing all the concepts exposed so far, it was possible to verify the importance of Notary Law in its length. The use of notes and records play a unique role in society, giving authenticity to business relationships and declarations of will.

As they carry out a risky activity, notaries must carry out a thorough analysis to fulfill the legal requirements in order to carry out the act requested by the interested party. Such is the responsibility assumed by public agents that they may be subject to investigations, sanctions and even dismissal due to errors committed. Due to all the complexity and importance of these

²³ ZIMERMANN, Marcial Luís. *Lavagem de capitais: a importância da atividade notarial no combate à corrupção do Estado*. 120 f. 2018. Dissertação (Mestrado em Direito) - Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2018. Available at: <http://www.repositorio.jesuita.org.br/handle/UNISINOS/9036>. Access in: Sep. 15, 2020. p. 110-111.

services, the notary and registry offices also act as an auxiliary body in the fight against crimes, especially environmental crimes.

In view of this condition, the CNJ issued Provision no. 88, of October 1, 2019, which "provides for the policy, procedures and controls to be adopted by notaries and registrars aiming at the prevention of money laundering crimes and terrorist financing"²⁴. The measure adopted by the CNJ aims to monitor the world scenario, with public agents being responsible for communicating, in case of suspicion of committing crimes, to the Financial Activities Control Council (COAF). These are regulatory practices, understood as compliance²⁵.

On the need to follow global practices, Candeloro, Rizzo and Pinho indoctrinate:

The existence of such a set of rules, guidelines and procedures is necessary in institutions and in developed markets, since we are talking about standards imposed worldwide or even global corporate standards that must obviously be adapted according to the legislation of the country where the compliance policy is being implemented. Thus, the commitment to globalization must coexist harmoniously with respect for the characteristics of the local environment²⁶.

It is important to bring a brief conceptualization of this important institute, which aims to change the relationship between society and its various segments, providing security and transparency in its negotiations. Compliance is based on the meaning of the verb *to comply*, which brings the imperative to be subordinate, to obey. For the doctrine, compliance means "to be in compliance".

The system emerged in the United States of America (USA) at the beginning of the 20th century. Initially, it aimed to regulate private activity, with its formalization and standardization in search of ethical, political and economic guidelines, confirming its exercise with integrity and sustainability.

However, as pointed out by Oliveira, Costa and Pinto e Silva, society is plurisystemic, and society's expectations regarding lawful and integral activities exceed those of private segments.

²⁴ BRASIL. Conselho Nacional de Justiça. Provimento 88, de 1º de outubro de 2019. Dispõe sobre a política, os procedimentos e os controles a serem adotados pelos notários e registradores visando à prevenção dos crimes de lavagem de dinheiro, previstos na Lei n. 9.613, de 3 de março de 1998, e do financiamento do terrorismo, previsto na Lei n. 13.260, de 16 de março de 2016, e dá outras providências. *Diário Oficial da União*, Brasília, 02 out. 2019. Available at: <https://www.cnj.jus.br/wp-content/uploads/2019/10/Provimento-n.-88.pdf>. Access in: Sep. 2, 2020.

²⁵ For a review on compliance, see: AGUIAR, Julio Cesar de; MATIAS, Flávio Pereira da Costa. Teste de integridade no setor privado: estado da arte. *Revista Eletrônica do Curso de Direito da UFSM*, Santa Maria, v. 14, n. 3, e33399, set./dez. 2019, p. 1-31.

²⁶ CANDELORO, Ana Paula Pinho; RIZZO, Maria Balbina Martins de; PINHO, Vinicius. *Compliance 360°: riscos, estratégias, conflitos e vaidades no mundo corporativo*. 2. ed. São Paulo: Do Autor, 2015, p. 11.

In addition, the compliance system must also comply with public law. The authors' words go against the premise that the Notary Law can be an arm of the institute in the inspection of activities by notaries and registrars:

In this way, and in the context of the plurisystemic society, the compliance institute becomes essential for corporate governance as it serves, above all, as a factor of prevention and efficient correction of normative-institutional problems that can substantially interfere with sectoral or even global sustainability of the enterprise²⁷.

In continuation of the conceptualization, in the words of Candeloro, Rizzo and Pinho, the compliance institute is identified "as a tool that institutions use to guide their own businesses, protect the interests of their customers and shareholders, as well as safeguard their most precious asset: reputation"²⁸.

Goulart and Batista, in turn, describe compliance activities as follows:

Compliance, in the context of providing services, can be understood as a set of international rules and internal policies, adopted by a certain company, body or any other institution, with the purpose of reducing risks of conduct that violates legal and administrative rules applicable to the activity carried out²⁹.

Well then. The link between Notarial and Registry Law and compliance is precisely in the social function that notaries have, since they accumulate a lot of relevant information, with the performance of important businesses that interest society. Therefore, as Goulart and Batista agree, notaries and registrars must be important allies in the fight against criminal actions:

Although notarial attributes are notably essential to civil life and fully capable of corroborating the mitigation of the occurrence of criminal actions, which discredit investigative and repressive government forces, the recognition of notaries, as qualified subjects to contribute information and prevent imminent practices of money laundering, internationally and nationally, is up to date³⁰.

²⁷ OLIVEIRA, Marcio Luis. COSTA, Beatriz Souza. PINTO E SILVA, Cristiana Fortini. O instituto do *compliance* ambiental no contexto da sociedade plurissistêmica. Belo Horizonte: *Veredas do Direito*, v. 15, n. 33, p. 51-71, set./dez. 2018. Available at: <http://dx.doi.org/10.18623/rvd.v15i33.1396>. Access in: Nov. 13, 2020. p. 58.

²⁸ CANDELORO, Ana Paula Pinho; RIZZO, Maria Balbina Martins de; PINHO, Vinicius. *Compliance 360°: riscos, estratégias, conflitos e vaidades no mundo corporativo*. 2. ed. São Paulo: Do Autor, 2015. p. 04.

²⁹ GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. *Recifaqui*, v. 2, n. 10, p. 47-67, 2020. Available at: <http://recifaqui.faqi.edu.br/index.php/recifaqui/issue/view/5>. Access in: Sep. 18, 2020. p. 62.

³⁰ GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. *Recifaqui*, v. 2, n. 10, p. 47-67, 2020. Available at: <http://recifaqui.faqi.edu.br/index.php/recifaqui/issue/view/5>. Access in: Sep. 18, 2020. p. 58.

They complement about compliance activities within the scope of notary offices of records and notes:

In the scope of the notary office, the compliance directives have long been observed, in the performance of notaries and their agents, in view of the need to comply with the principles and rules governing the notarial function, which places these professionals in charge of adopting processes organized internships that aim to achieve effectiveness and legal security, to formalized acts³¹.

In this study, its essentiality to Environmental Law is highlighted. Significant tragedies involving the environment have risen in the media. These are news such as land grabbing, important impacts on fauna and flora, the hydraulic crisis and dam tragedies. All these acts are a consequence of criminal acts, many disguised as validity and legality, as their executioners manage to circumvent the entire system to satisfy their desires.

Gomes and Oliveira³² highlight the approximation of compliance with Environmental Law, given the growing concern with the world's future. Thus, the institute goes beyond the limits of the financial field to meet the needs of society in its systemic plurality.

Regarding preventive practice aided by notary offices, this reflects important achievements for society, as they prevent the emergence of lawsuits and, mainly, can achieve respect for the environment, the greatest common good of humanity. Zimmermann summarizes this colloquium:

Given that social life is complex, that is, a series of rules is required in order to regulate the conduct and acts of individuals, there is certainly a need to perpetuate the time of acts and businesses by which legal life manifests itself in documents. Thus, the notarial function is directed towards the performance of an intervention and, as a rule, a special, public, privileged documentation to legal acts and transactions, conferring on them the quality of publicity, security and legality, that is, before the establishment of a lawsuit, including preventing its emergence³³.

³¹ GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. *Recifaqui*, v. 2, n. 10, p. 47-67, 2020. Available at: <http://recifaqui.faqui.edu.br/index.php/recifaqui/issue/view/5>. Access in: Sep. 18, 2020. p. 62.

³² GOMES, Magno Federici; OLIVEIRA, Warley Ribeiro. A efetivação do *compliance* ambiental diante da motivação das certificações brasileiras. *RDFG - Revista de Direito da Faculdade Guanambi*, Guanambi, v. 4, n. 1, p. 187-208, jan./jun. 2017. Available at: <http://revistas.faculdadeguanambi.edu.br/index.php/Revistadedireito/article/view/143>. Access in: Nov. 13, 2020.

³³ ZIMERMANN, Marcial Luís. *Lavagem de capitais: a importância da atividade notarial no combate à corrupção do Estado*. 120 f. 2018. Dissertação (Mestrado em Direito) - Universidade do Vale do Rio dos

In view of all the information provided on the important objectives of Notary Law, translated into its principles (according to a brief study in chapter 2), as well as the role of compliance in society, in the environment and the necessary participation of notary offices in the validation of this connection, the CNJ Provision 88/2019, mentioned in this chapter, is analyzed.

4 REVIEWS TO THE ASPECTS OF CNJ PROVISION 88/2019

As stated so far, the notarial and registry services are great allies in the fight against the practice of crimes. Recently, the CNJ published Provision 22/2019, which became effective on February 3, 2020.

The importance of bringing the notarial system closer to the control and inspection bodies is indisputable. On the one hand, there is a systemic apparatus endowed with public faith and legal certainty, with formalities to be followed in the exercise of its activities. On the other hand, the control and inspection bodies, a broad system that needs to go through several fields in order to achieve the objective. The integration of these two segments could result in a multidisciplinary work with greater ease to reach their goals, with a more specialized and judicious work in preventing and combating crimes.

In this sense, Zimerrmann said:

The legal solution that aims for the effective resolution of the proposed problem is the necessary approximation of the connections of the control and repression bodies to money laundering with the notary institutions, which will enable numerous benefits for the growth of the effectiveness of the fight against illegality and, also, for the very soundness of notarial acts in the economic and social sphere³⁴.

Said document formally includes registrars and notaries within the list of persons and institutions responsible for combating terrorism and money laundering. The need for this regulation comes from the Money Laundering Prevention Law, no. 9,613 of March 3, 1998. The

Sinos (UNISINOS), São Leopoldo, 2018. Available at:
<http://www.repositorio.jesuita.org.br/handle/UNISINOS/9036>. Access in: Sep. 15, 2020. p. 21.

³⁴ ZIMERRMANN, Marcial Luís. *Lavagem de capitais: a importância da atividade notarial no combate à corrupção do Estado*. 120 f. 2018. Dissertação (Mestrado em Direito) - Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2018. Available at:
<http://www.repositorio.jesuita.org.br/handle/UNISINOS/9036>. Access in: Sep. 15, 2020. p. 113.

mentioned Law was the regulatory framework of the compliance institute in Brazil, providing "on the crimes of money laundering or concealment of assets, rights and values, on the prevention of use of the financial system for the offenses provided for in the document, in addition to creating the COAF"³⁵. Among the legal provisions, the imposition on people listed in arts. 10 and 11 to identify clients and maintain their records (*Know Your Client*), as well as to communicate financial transactions to COAF that contain serious indications of crimes and other specified transactions.

Among the persons mentioned in art. 9, it is verified in its sole paragraph, item XIII, that the duties of arts. 10 and 11 also apply to the public record. However, the practice was only regulated in 2019 with the edition of Provision 88/2019.

It is also extracted from the aforementioned rule that inspection practices are limited to activities that finance terrorism or money laundering. Nevertheless, the official must not refrain from verifying other illegal activities that are not outlined in Provision no. 88/2019.

Despite its eminently financial content, Provision no. 88/2019 leaves gaps to extend its application to the inspection of other offenses as well. Thus, crimes that harm the environment must also be inspected by notaries, within their limits, attributions and competences.

These gaps relate to the way in which the CNJ edited the aforementioned Provision. The list of measures to be taken by notaries and registrars provided for in the document is not exhaustive. The standard specifies appropriate ways for the notary to register the act of his client. It also provides some exemplary behaviors that could characterize the offense committed.

On the other hand, the agents must carry out a discretionary and thorough analysis of the data being collected and, if they fit the hypotheses or, if they raise suspicions, they must be justifiably reported to the competent body to consider.

All hypotheses contained in Provision no. 88 allude to terrorism or money laundering, which is generally linked to the financial system. Thus, it is imperative to bring to light that most environmental crimes, especially those of greater scope, are closely linked to money laundering. Therefore, it can be said that in few cases one will be dissociated from the other.

³⁵ BRASIL. Lei nº. 9.613, de 03 de março de 1998. Dispõe sobre os crimes de "lavagem" ou ocultação de bens, direitos e valores; a prevenção da utilização do sistema financeiro para os ilícitos previstos nesta Lei; cria o Conselho de Controle de Atividades Financeiras - COAF, e dá outras providências. *Diário Oficial da União*, Brasília, 04 mar. 1998. Available at: http://www.planalto.gov.br/ccivil_03/leis/L9613compilado.htm. Access in: Nov. 13, 2020.

Despite the latent possibility of inspection of environmental crimes that affect the public registry service, the Public Power is still helpless of a regulation that will bring greater effectiveness to the power-duty to inspect the environment by the notary and registry offices.

Specifically regarding the provisions of Provision no. 88/2019, Goulart and Batista draw attention to the preference that the duty to prevent crimes has over the duty to inform the competent authorities. It is transcribed:

However, better than being able to communicate the identification of a criminal practice, it is to be able to prevent it. From this perspective, Article 7 of Provision No. 88 aims to regulate measures to prevent the actions of individuals and organized groups that seek, when seeking banknote services, to conceal the illicit origin of goods, values and rights. This proposal configures a compliance policy³⁶.

At this point, Environmental Law must be taken even further into account. This is because activities that put the environment at risk must be fought before they even materialize. This premise reflects the principle of prevention, so important for the discipline.

Often, the damage caused to the environment is difficult or impossible to repair. This damage is borne by all of humanity and can affect multiple generations. The trans-individual and trans-generational nature of the environment puts harm prevention first.

The *status* of the environment as a right that goes beyond the limits of man in himself and extends to all generations gained ground with the international recognition of its importance. The universalization of collective rights, which created strength in the post-war period, is in line with what they call the third dimension of human rights or, as some prefer, the rights of brotherhood.

Gomes and Ferreira assert the need for joint work between all civil and governmental spheres. It is important to highlight the fundamental right to good public administration, as an instrument of the legal-political dimension of sustainability. Fragments of their research are transcribed:

For sustainability to be effectively achieved, the participation of the State in daily relations and in the regulation and distribution of income and incentives is imperative, however good public administration depends on good management of the public treasury.
[...]

³⁶ GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. *Recifaqui*, v. 2, n. 10, p. 47-67, 2020. Available at: <http://recifaqui.faqi.edu.br/index.php/recifaqui/issue/view/5>. Access in: Sep. 18, 2020. p. 64.

A good administration echoes in the sense of mobilizing all activities to filter the principles of prevention and precaution, in a continuous exercise of predictability of accidents that could be catastrophic from an environmental point of view³⁷.

In view of this, it is certain that the notarial and registry activity, when touching environmental interests, must be performed with greater criteria than those already provided for by the financial order through the publication of Provision no. 88/2019. Thus, we proceed to the final considerations.

FINAL CONSIDERATIONS

This study was dedicated to analyzing Notarial Law as an independent discipline, whose nature (still under discussion) reaches Public and Private Law, given its peculiarities. Given the seriousness that the matter assumes when touching the public and private sphere, it was proposed the analysis of whether Notary Law is an ally to regulatory, preventive and inspection practices when the subject is environmental crime.

Among the objectives of Notarial Law agents, notably the notaries of notes and records, are the reach of authenticity, legal certainty, publicity and public faith. Such objectives are embodied in the principles of the discipline that, together with the principles of Administrative Law, guide extrajudicial activities to achieve the importance attributed to them by the constituent. Due to the value of the services provided by notaries, as well as the contact with transactions that affect the social interest and with the most diverse documents and people, such agents are responsible for providing their services efficiently and with good management, and must follow the trend world of regulating compliance standards. In addition to their own rules that must govern notarial activities, notaries must now also be part of the people and entities that control, prevent and supervise legal transactions, with the opportunity to combat criminal practices.

In light of this, and following the provisions of the Money Laundering Prevention Law, the CNJ, a body to inspect notarial and registry activities, issued a provision that attributes and regulates preventive practices to crimes of money laundering and terrorist financing. Provision

³⁷ GOMES, Magno Federici; FERREIRA, Leandro José. A dimensão jurídico-política da sustentabilidade e o direito fundamental à razoável duração do procedimento. *Revista do Direito*, Santa Cruz do Sul, n. 52, v. 2, p. 93-111, maio/set. 2017, p. 104. Available at: <http://dx.doi.org/10.17058/rdunisc.v2i52.8864>. Access in: Nov. 13, 2020.

no. 88/2019 of the CNJ, obviously of a financial nature, provides a series of measures to be taken by agents when registering acts, as well as exemplifying hypotheses of suspicions of the illicit act. Once the occurrence of any of them is verified, the notary must inform the competent authorities of its suspicions, justifiably.

Notwithstanding the importance of the subject, one must face the lack of regulation of compliance practices to be followed by notaries when the subject is Environmental Law. It is understood, in a broad reading of Provision no. 88/2019, that its practices may be extended when there is evidence of crimes other than those provided for in its text. However, there are peculiar characteristics of Environmental Law that must be dealt with in specific regulations, especially given the trans-individual and trans-generational nature of the environment, which is a common good.

Despite the serious environmental crimes that have occurred in recent times, with greater repercussion, being directly linked to the financial system, combined with money laundering, land grabbing and contractual fraud, it is noted that the legislative system needs greater provisions for a preventive activity to be developed by registrars and notaries. The practice of inspection and prevention of environmental crime is in line with the international objectives of guaranteeing a dignified survival for man, in a subjective view, for the community and for future generations. The key to this statement is that, since the balanced environment is a fundamental right, its preservation must be the responsibility of all, especially those public bodies that can help as allies in the realization of human rights. In a country where criminal practices are diversified with the most creative acts and means, the connection between compliance and Notary Law becomes yet another important tool to prevent criminal practices and, much more, prevent environmental damage, by overseeing business that pass under its analysis and act in the most appropriate way to each situation.

Faced with the proposed problem, it appears that the presented hypothesis is the most adequate in the fight for the conservation of the environment. Given that there are regulations for the performance of the notarial and registry services as allies of compliance to combat the practice of organized crime or terrorism, nothing prevents the environment, a fundamental right, from also having a regulation in the activities of notary offices to make the inspection more efficient.

REFERENCES

- AGUIAR, Julio Cesar de; MATIAS, Flávio Pereira da Costa. Teste de integridade no setor privado: estado da arte. *Revista Eletrônica do Curso de Direito da UFSM*, Santa Maria, v. 14, n. 3, e33399, set./dez. 2019. Available at: <https://doi.org/10.5902/1981369433399>. Access in: Oct. 1, 2021.
- BRASIL. **Constituição da República Federativa do Brasil**. Brasília, DF: Presidência da República, 1988. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Access in: Sep. 2, 2020.
- BRASIL. Conselho Nacional de Justiça. Provimento 88, de 1º de outubro de 2019. Dispõe sobre a política, os procedimentos e os controles a serem adotados pelos notários e registradores visando à prevenção dos crimes de lavagem de dinheiro, previstos na Lei n. 9.613, de 3 de março de 1998, e do financiamento do terrorismo, previsto na Lei n. 13.260, de 16 de março de 2016, e dá outras providências. *Diário Oficial da União*, Brasília, 02 out. 2019. Available at: <https://www.cnj.jus.br/wp-content/uploads/2019/10/Provimento-n.-88.pdf>. Access in: Sep. 2, 2020.
- BRASIL. Lei nº. 6.015, de 31 de dezembro de 1973. Dispõe sobre os registros públicos, e dá outras providências. *Diário Oficial da União*, Brasília, 31 dez. 1973. Available at: http://www.planalto.gov.br/ccivil_03/leis/l6015compilada.htm. Access in: Sep. 15, 2020.
- BRASIL. Lei nº. 8.935, de 18 de novembro de 1994. Regulamenta o art. 236 da Constituição Federal, dispendo sobre serviços notariais e de registro. *Diário Oficial da União*, Brasília, 21 nov. 1994. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8935.htm. Access in: Sep. 15, 2020.
- BRASIL. Lei nº. 9.613, de 03 de março de 1998. Dispõe sobre os crimes de "lavagem" ou ocultação de bens, direitos e valores; a prevenção da utilização do sistema financeiro para os ilícitos previstos nesta Lei; cria o Conselho de Controle de Atividades Financeiras - COAF, e dá outras providências. *Diário Oficial da União*, Brasília, 04 mar. 1998. Available at: http://www.planalto.gov.br/ccivil_03/leis/L9613compilado.htm. Access in: Nov. 13, 2020.
- BRASIL. Lei nº. 10.406, de 10 de janeiro de 2002. Código Civil. *Diário Oficial da União*, Brasília, 11 jan. 2002. Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/L10406compilada.htm. Access in: Sep. 16, 2020.
- BRASIL. Supremo Tribunal Federal. **Ação Direita de Inconstitucionalidade nº. 1.800**. EMENTA: CONSTITUCIONAL. ATIVIDADE NOTARIAL. NATUREZA. LEI 9.534/97. REGISTROS PÚBLICOS. ATOS RELACIONADOS AO EXERCÍCIO DA CIDADANIA. GRATUIDADE. PRINCÍPIO DA PROPORCIONALIDADE. VIOLAÇÃO NÃO OBSERVADA. PRECEDENTES. IMPROCEDÊNCIA DA AÇÃO. Relatoria: Ministro Ricardo Lewandowski. 28 ago. 2007. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=1699175>. Access in: Sep. 15, 2020.

BRASIL. Supremo Tribunal Federal. **Recurso Extraordinário nº. 842.846**. EMENTA: DIREITO ADMINISTRATIVO. RECURSO EXTRAORDINÁRIO. REPERCUSSÃO GERAL. DANO MATERIAL. ATOS E OMISSÕES DANOSAS DE NOTÁRIOS E REGISTRADORES. TEMA 777. ATIVIDADE DELEGADA. RESPONSABILIDADE CIVIL DO DELEGATÁRIO E DO ESTADO EM DECORRÊNCIA DE DANOS CAUSADOS A TERCEIROS POR TABELIÃES E OFICIAIS DE REGISTRO NO EXERCÍCIO DE SUAS FUNÇÕES. SERVENTIAS EXTRAJUDICIAIS. ART. 236, §1º, DA CONSTITUIÇÃO DA REPÚBLICA. RESPONSABILIDADE OBJETIVA DO ESTADO PELOS ATOS DE TABELIÃES E REGISTRADORES OFICIAIS QUE, NO EXERCÍCIO DE SUAS FUNÇÕES, CAUSEM DANOS A TERCEIROS, ASSEGURADO O DIREITO DE REGRESSO CONTRA O RESPONSÁVEL NOS CASOS DE DOLO OU CULPA. POSSIBILIDADE. Relatoria: Ministro Luiz Fux. 18 ago. 2019. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=4650160>. Access in: Sep.15, 2020.

CANDELORO, Ana Paula Pinho; RIZZO, Maria Balbina Martins de; PINHO, Vinicius. **Compliance 360°: riscos, estratégias, conflitos e vaidades no mundo corporativo**. 2. ed. São Paulo: Do Autor, 2015.

CENEVIVA, Walter. **Lei dos Registros Públicos Comentada**. São Paulo: Saraiva, 2010.

GOMES, Magno Federici; OLIVEIRA, Warley Ribeiro. A efetivação do *compliance* ambiental diante da motivação das certificações brasileiras. **RDFG - Revista de Direito da Faculdade Guanambi**, Guanambi, v. 4, n. 1, p. 187-208, jan./jun. 2017. Available at: <http://revistas.faculdadeguanambi.edu.br/index.php/Revistadedireito/article/view/143>. Access in: Nov. 13, 2020.

GOMES, Magno Federici; FERREIRA, Leandro José. A dimensão jurídico-política da sustentabilidade e o direito fundamental à razoável duração do procedimento. **Revista do Direito**, Santa Cruz do Sul, n. 52, v. 2, p. 93-111, maio/set. 2017. Available at: <http://dx.doi.org/10.17058/rdunisc.v2i52.8864>. Access in: Nov. 13, 2020.

GOULART, Maryelle Silva; BATISTA, Ygor Almeida. A atuação dos tabelionatos brasileiros de notas na prevenção aos crimes de lavagem de dinheiro. **Recifaqui**, v. 2, n. 10, p. 47-67, 2020. Available at: <http://recifaqui.faqi.edu.br/index.php/recifaqui/issue/view/5>. Access in: Sep. 18, 2020.

LOUREIRO, Luiz Guilherme. **Manual de Direito Notarial**. 2. ed. Salvador: JusPodvim, 2017.

MARINELA, Fernanda. **Direito administrativo**. 11. ed. São Paulo: Saraiva, 2017.

MINAS GERAIS. Tribunal de Justiça de Minas Gerais. Corregedoria Geral do Estado de Minas Gerais. Provimento nº. 260, de 18 de outubro de 2013. **Diário Oficial de Minas Gerais**, Belo Horizonte, 30 out. 2013. Available at: <http://www8.tjmg.jus.br/institucional/at/pdf/cpr02602013.pdf>. Access in: Nov. 11, 2020.

OLIVEIRA, Marcio Luis. COSTA, Beatriz Souza. PINTO E SILVA, Cristiana Fortini. O instituto do *compliance* ambiental no contexto da sociedade plurissistêmica. Belo Horizonte: **Veredas do Direito**, v. 15, n. 33, p. 51-71, set./dez. 2018. Available at: <http://dx.doi.org/10.18623/rvd.v15i33.1396>. Access in: Nov. 13, 2020.

ZIMERMMANN, Marcial Luís. **Lavagem de capitais: a importância da atividade notarial no combate à corrupção do Estado.** 120 f. 2018. Dissertação (Mestrado em Direito) - Universidade do Vale do Rio dos Sinos (UNISINOS), São Leopoldo, 2018. Available at: <http://www.repositorio.jesuita.org.br/handle/UNISINOS/9036>. Access in: Sep. 15, 2020.

Artigo convidado com autor estrangeiro

COMO FAZER REFERÊNCIA AO ARTIGO (ABNT):

GOMES, Magno Federici; PEREIRA, Eduardo Calais; LAZCANO, Alfonso Jaime Martínez. The importance of the notary and registry service as an ally of compliance in the prevention of environmental crimes. **Revista Eletrônica do Curso de Direito da UFSM**, Santa Maria, RS, v. 16, n. 1, e67927, jan./abr. 2021. ISSN 1981-3694. DOI: <http://dx.doi.org/10.5902/1981369467927>. Disponível em: <https://periodicos.ufsm.br/revistadireito/article/view/67927> Acesso em: dia mês. ano.

Direitos autorais 2021 Revista Eletrônica do Curso de Direito da UFSM

Editores responsáveis: Rafael Santos de Oliveira e Angela Araujo da Silveira Espindola



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