



**The solidary function of contracts and the protection of the ecologically
balanced environment**

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ABSTRACT

The aim of this article is to analyze current contractual principles and how they can serve to protect the environment. Initially, it seeks to analyze the figure of the contemporary contract and the consequences of its social function. Next, the concept of the right to an ecologically balanced environment and the necessary search for sustainability are studied. Finally, aspects concerning the solidary function of contracts, which is different from the social function, and solidary liability for damage caused to the environment are analyzed. It emerges that tackling the environmental crisis and the quest for sustainability also involves adopting contracts in line with the solidary function of contracts. The method of approach used in the research is Miguel Reale's three-dimensional legal dialectic, accompanied by the bibliographic research procedure.

Keywords: Contracts. Solidary function. Environment.

1 INTRODUCTION

The contract, in addition to being an individual instrument, is a social instrument for harmonizing individual relationships, promoting the principles and values enshrined in the legal system.

Thus, contracting is not merely a personal choice, but a social imposition in the sense that individuals are beings endowed with vital needs, and the contract is the main peaceful and institutionalized means of production, distribution and access to goods. In a civilized society, contracting goes hand in hand with the entire economic process, and is not detached from it, but must be directed towards a fair, useful and healthy circulation of wealth.

With the impact of the industrial revolution and the consolidation of capitalism, the process of environmental degradation accelerated, giving rise to an environmental crisis. As a result, with the advancement of the ideal of sustainable development, the aim is to establish procedures and strategies aimed at protecting the environment, but without neglecting economic and social development.

The global scenario calls for sustainability, balance in the management and use of natural resources. In addition, contracts can be considered one of the most influential mechanisms in the development of economic operations.

Since the importance of contracts in all spheres of human life is evident, the requirement to fulfill not only a social function but also a solidary function has been introduced into this instrument, with the aim of enabling sustainable development to be achieved, including environmental issues.

In this context, this study aims to analyze the solidary function of contracts and how it can serve as a tool for protecting the environment, with a view to achieving the goals set by sustainable development. The study of the subject is justified by the current reality of the search to overcome the environmental crisis, in addition to the important charge of sociability and solidarity that the new conception of contracts brings.

To this end, the research initially sought to analyze the contemporary contractual relationship and the new social context it brings. Subsequently, the study focused on the constitutional right to an ecologically balanced environment, covering the environmental crisis scenario currently faced. Finally, the aspects involving the joint and several function of contracts and the consequent joint and several liability for damage caused to the environment were

discussed.

To this end, Miguel Reale's three-dimensional dialectical method was used in the approach, since the starting point will be the principiological analysis of contracts in their three dimensions, in a complementary way, in order to define their contribution to sustainable development. A bibliographical review was also used as a research tool.

2 CONSIDERATIONS ON CURRENT CONTRACTS AND THE PRINCIPLE OF SOCIAL FUNCTION

Contracts are a type of legal business of notable social and economic relevance and, as such, the instrument par excellence for the circulation of wealth.

At a time of economic liberalism, the content and essential values of the contract were guided by the freedom to contract, based on the sovereignty of the individual will of the contracting parties. However, with economic, social and political changes, the contractual institute was transformed (Roppo, 2009, p. 295).

In this context, the classic conception of the contract as an instrument of absolute and intangible manifestation of the will of the parties, covered by a certain immutability and the absence of state intervention, has undergone major transformations.

The ideological nuance of the contract can be developed according to the time and social conjuncture in which it is concluded. The contract adapts to economic and, above all, social needs. In light of this, contracts are highly sensitive to this reality, reproducing the objective values chosen at the forefront by the society in which they are inserted.

In order to analyze the transformations undergone by contract law, it is essential to examine the current constitutional text itself. The 1988 Federal Constitution devotes Title VII to the Economic Order, and Article 170 gives contracts a special role, taking into account their importance for the exercise of economic activity (Ferreira; Oliveira, 2019, p. 248).

In this way, the freedom to contract, from the perspective of a rigid system typical of classic contract law, is gradually being analyzed within a system of constitutional values to be protected.

Therefore, when we look at the contract in the 1916 Code, we realize that it was liberal and individualistic, being the maximum expression of the autonomy of will. According to Campello and Santiago (2012, p. 1839) these features characterized "the first dimension of the contract and strengthened its individual function".

In this scenario, the contract fulfilled a function that was far removed from the social function enshrined in the current Code. The contract designed by the Civil Code of 2002, in turn, carries a great deal of sociability and, in the words of Campello and Santiago (2012, p. 1839) "The contract assumes, in this perspective, a second and new dimension, in which the aim is to guarantee a balance between private interests and social interests".

Thus, the contract, described by Roppo (2009, p. 32) as the "driving force of capitalism", takes on new functions, alongside the traditional economic function. From the autonomy of will, a hallmark of the Liberal State, to private autonomy, the freedom to contract is subject to limitations, such as social function, objective good faith, constitutional principles and values.

The old contractual design no longer prevails in the face of a Constitution that places the human person at the center of the legal system, enshrining it as a pre-eminent value. Thus, for Nalin (2008, p. 46) "It is on the basis of this relocation of legal figures that we seek to reconstitute the idea of contract, always centered on the figure of the human person (contracting subject) and their constitutional protection".

The contractual institute cannot be considered in isolation, since it interferes, negatively and positively, in assets held not only by certain individuals, but by society. In this way, in order to abandon the single pactual scope of satisfying the interests of the contracting parties, the social objective of protecting the interests of the community is established in the contractual institute, thus adopting a social function to it.

According to Godoy (2012, p. 111), there is no autonomous concept of social function, including that of the contract. However, it can be reiterated that the social function of the contract is, first and foremost, a legal principle, which is understood to the extent that it is recognized as having the primary effect of imposing limits on contractual freedom, for the sake of the common good.

In other words, the social function of the contract, enshrined in Article 421 of the Civil Code, is its foundation and limits, revealing that collective interests override private interests.¹

In a similar way to what happens with property, the contract, once functionalized, also becomes an "instrument for carrying out the constitutional project" (Negreiros, 2006, p. 208). In this way, the contract begins to channel constitutional values, transmitting them to private individuals in their business relations, so that the functionalization of legal situations can be seen as a realization of the constitutional order.

In the words of Araújo Júnior and Teixeira:

The social function of the contract causes important oxygenation in the institute of the contract by presenting elements that seek to concretize the constitutional guidelines of respect for people's existential interests and the promotion of a model of pact that is adequate to the constitutional dictates (Araujo Junio; Teixeira, 2014, p. 49, Free translation).

Therefore, in the current context, it is essential to observe the principle of objective good faith² and the social function of the contract in the context of contractual legal relations, in order to reconcile the individual interests of the contracting parties with the collective interest and the protection of the common good.

Therefore, the Federal Constitution gives Contract Law new contours. Through constitutional values and precepts, human dignity, human rights and all the legislation protecting the vulnerable must be preserved, with the aim of avoiding harm, both to the contracting parties and to third parties.

¹ Article. 421. Freedom of contract will be exercised within the limits of the social function of the contract (Free translation).

² For Miguel Reale, "the constant value given to good faith is one of the most important differences between the Civil Code of 1916 and that of 2002, which replaced it" (Reale, 2003, free translation). According to Judith Martins Costa, objective good faith is a "model of social conduct" to which each subject must adjust their conduct, [...] acting as an upright man would act: with honesty, loyalty, probity [...], including consideration for the expectations legitimately generated by their own conduct in other members of the community, especially at the other end of the obligatory relationship (Martins-Costa, 2018, p. 411-412, free translation).

By establishing that contracts must fulfill a social function, the Civil Code definitively breaks with the outdated idea that contracts are inflexible. To the extent that the contract must be viewed from a social perspective, the personal, individual and private interests of the contracting parties cannot override the interests of society.

It is important to note that the social function of the contract does not override classic contractual principles, but rather complements and limits them. It can be said that the social function of contracts aims to enhance private autonomy, with contractual freedom being exercised within the limits of this function (Silva, M.; Silva, C., 2019, p. 38).

The freedom to contract takes on a new meaning, becoming an instrument for enshrining the most cherished social values. In this way, "the freedom to contract no longer belongs only to the individual; it is now a social value, which cannot be overlooked in the contractual technique, under penalty of contradicting the major postulate of the social function of the pact" (Xavier, 2006, p. 199).

In this sense, human and social interests must be considered when entering into a legal transaction, guaranteeing the precepts of the Democratic Rule of Law. According to Nalin (2014, p. 115), with the social function of contracts, "the role of the business will is mitigated in order to increase the value of the human person, in the figure of the contracting party and their patrimonial and existential interests".

It is important to stress that the free expression of will remains, even in this new contractual concept, an essential element in contract formation.

For Branco, the social function is "an instrument for controlling the content and value adequacy of declarations of will". Thus, the principle of social function overrides the structure of the contract, spreading throughout all the stages, from drafting to fulfillment (Branco, 2006, p. 382).

On the other hand, it is important to mention that provision 421 of the Civil Code was amended by Law No. 13.874 of 2019, known as the Economic Freedom Law, in an attempt to re-establish a minimum level of stability in contractual relations, determining that the State, through the Judiciary, should interfere in these relations only in exceptional situations.³ The amendment, however, is unnecessary, since it represents the only possible understanding of the contract in a capitalist system, which is already provided for in the constitution.

However, state regulation of private contractual relations is essential, both to ensure the binding force of contracts and to guarantee the incidence of legal rules, including rules protecting the vulnerable, such as workers and consumers. The state should not be seen as the enemy of the freedom to contract, when, in fact, the presence of the state - and, consequently, the law itself - is fundamental to ensuring the exercise of this freedom, avoiding the pathologies that this freedom could cause in a state with extreme social inequalities.

Furthermore, it is indisputable that contracts are one of the main instruments for the circulation of wealth. However, by regulating the interests of the party, it cannot be considered an element of another dimension, detached from the social context in which it is constituted.

³ The amendment basically consisted of changing the term freedom to contract to contractual freedom, since it is the content of the contract that must be limited by the social function. In addition, a single paragraph was added to article 421, in verbis "In private contractual relations, the principle of minimum intervention and the exceptional nature of contractual revision shall prevail". (Included by Law No. 13.874 of 2019).

Nalin (2008, p. 242) argues that "a contract detached from its social function will always carry with it an illicit object, since it goes against the legal order and the constitutional purpose, so as to render it null, even if no sanction is provided for".

In line with the constitutional precepts outlined in the 1988 Federal Constitution, the private autonomy of the contracting parties must be conformed to the principle of the social function of the contract, demonstrating that the parties "can do a lot, but they can't do everything", and must respect each other (endogenous character) and third parties and society itself (exogenous character) (Silva, M.; Silva, C., 2019, p. 42).

As mentioned above, contractual theory in the post-modern environment is directly influenced by the principles chosen by the Constitution to serve as a reference and orientation for the legal order. The exclusive realization of the interests of the contracting parties also makes room for the consecration of constitutional values to protect the interests of the community.

It is at this point that we see the need for a re-reading of third-dimension contract law in order to achieve other objectives, as will be analyzed in the following topics.

3 THE ENVIRONMENTAL CRISIS AND THE RIGHT TO AN ECOLOGICALLY BALANCED ENVIRONMENT

Due to the processes and transformations brought about since the first industrial revolution, coupled with population growth, the rise of consumerist industrialization and intensive agriculture, the plot of a serious environmental crisis has been under discussion for some decades now. There are currently signs that the planet's limits of sustainability are being exceeded, causing economic, political and social damage, as well as damage to the existence of life.

Capitalist society, which is totally focused on excessive consumption, has the environmental crisis as the price to pay for its way of life. Natural disasters, lack of drinking water, desertification, atmospheric, river and marine pollution, loss of biodiversity, among others, are striking consequences of man's inconsequential action on nature. In this unpleasant context, humanity - perhaps belatedly - has been searching since the end of the last century for a solution that will provide a glimpse of more favorable horizons.

These concerns have received a great deal of focus in recent decades, through the necessary national and international discussions on the subject, which have aimed to spread environmental awareness in the face of the consequences resulting from the technological advances made in the 20th century.

Faced with the current situation, in which concern for the environment has increased as its transformations have become more visible and constant, an attempt has been made to rethink the human way of life, considering that it is necessary to make the instruments used to satisfy the needs felt today compatible with the intention of maintaining a sustainable living status in the future.

In this way, concern for the environment occupies an extremely important place among the priorities of the contemporary state, so that the various political, legal and economic guidelines converge towards its protection, since protecting the environment has become an unavoidable task (Xavier, 2006, p. 201).

In his teachings, Canotilho (1999, p. 23) states that among the current values of the Rule of Law, alongside legality, democracy and sociality, is environmental sustainability.

The concept of sustainability has emerged as a way of guaranteeing human social and economic development, but also with a proper eye on environmental issues. In this sense, Ayala (2013, p. 253) argues that "human existence depends on ensuring simultaneous protection of levels of economic development, but also levels of natural resource quality".

Concern for the environment was reflected precisely in Brazilian law through the enactment of Law No. 6.938/1981, the National Environmental Policy Law, where the obsolete mechanistic and anthropocentric view of man was abandoned, observing that the preservation, improvement and recovery of the environment are essential for the healthy existence of human beings on planet Earth.

Subsequently, the Constitution of the Republic of 1988⁴, with its strong democratic inspiration, did not refrain from recognizing the importance of the environment, seeking to protect it adequately. Analyzing Article 225 of the Constitution, it can be seen that every society is entitled to a balanced environment capable of providing a healthy life. In other words, the right to an ecologically balanced environment, as determined by the 1988 Constitution, can be considered to be transindividual, one whose ownership cannot be specified, as it constitutes an interest in the whole community.

Law 6.938/1981 provided the necessary impetus for protecting these rights, which are neither public nor private, but belong to everyone. Similarly, in addition to authorizing the protection of individual rights, which had traditionally been done, the 1988 constituent legislator now allowed the protection of collective rights, in this case, the environmental good (Silva; Teixeira, 2017, p. 1163).

Another point to note from the constitutional provision mentioned above is the intergenerational nature of the right to an ecologically balanced environment, since it mentions "present and future generations".

Furthermore, by giving citizens the right to an ecologically balanced environment, the Constitution makes it clear that preserving the environment is a guarantee of human dignity, and any act that causes environmental damage must be immediately repaired and punished.

In this way, environmental protection takes on the tone of a strong duty. In agreement, Braga Neto, Farias and Rosenvald (2017, p. 864) state that it is the Constitution itself that explicitly conveys the duty of the Public Power to defend and preserve the environment.

The understanding that the ecologically balanced environment is a right of Brazilians and, moreover, of present and future generations, is well established, and the protection of the

⁴ Article 225: "Everyone has the right to an ecologically balanced environment, an asset of common use to the people and essential to a healthy quality of life, imposing on the public authorities and the community the duty to defend and preserve it for present and future generations".

(...)

Paragraph 2: "Anyone who exploits mineral resources shall be obliged to restore the degraded environment, in accordance with the technical solution required by the competent public body, in accordance with the law."

Paragraph 3: "Conduct and activities considered harmful to the environment shall subject offenders, whether individuals or legal entities, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused".

environment, in all its aspects concerning human life, is also aimed at defending the quality of life.

It is worth noting, however, that while everyone has the right to an ecologically balanced environment, everyone, whether public or private, has the duty to preserve it, because this obligation is not the responsibility of the state alone. Therefore, maintaining a healthy environment is not a task that can be abstained from, but on the contrary, it is everyone's duty and commitment (Silva, M.; Silva, C., 2019, p. 33).

According to Silva, M. and Silva, C. (2019, p. 32), joint action by the state and society is necessary to guarantee current and future generations a balanced environment that allows human life to flourish.

The Federal Constitution, in article 170, item VI, already with a sustainable vision, states that the Economic Order must observe the principle of environmental protection, thus establishing the need to align development and the environment, understanding that the former does not exist without the latter.

It is at this point that we realize that the aforementioned constitutional provision addresses the true principle of sustainable development. However, in order to enable effective environmental conduct, combined with development, a balance must be struck between consumption, production and natural resources (Silva, M.; Silva, c., 2019, p.1165).

The idea of what the environment represents and its importance for living beings is clear, as is the incidence of vast aggression and damage experienced by society today. Sustainable development therefore appears to be a necessary and irrefutable measure in this context.

It is worth pointing out that environmental protection should not be seen as a way of inhibiting development, but as a mechanism capable of providing rational and responsible management of environmental resources.

Concern about sustainability results in a new market rationale, new methods and parameters for economic development and, of course, these movements must be accompanied by changes in the application and understanding of the legal system itself.

The legal system influences and is influenced by the surrounding value and economic context, and must follow parallel patterns and accompany common rhythms of change. In this way, sustainable development, by reforming economic theories and creating growth paradigms, generates substantial changes in the legal context as a whole.

In short, having the right to an ecologically balanced environment means that economic development must take the environment into account. However, this would not be enough without instruments to make it a reality (Araujo Junio; Teixeira, 2014, p. 47).

This is a time when man is challenged to find solutions to problems that he has tried to ignore for centuries. It is imperative to look for ways to preserve and protect nature in order to maintain life on Earth.

4 THE SOLIDARY FUNCTION OF CONTRACTS AS PROTECTION OF THE ENVIRONMENT AND LIABILITY FOR ENVIRONMENTAL DAMAGE

Faced with the current environmental panorama, as mentioned above, in which it has become clear that human beings need to readjust their behavior in order to achieve an ecologically balanced environment, the social function of the contract has unfolded into a solidary function, demanding compatibility between the interests of the contracting parties and the environment.

This topic is therefore divided into two parts: firstly, the main aspects of the solidary function of contracts and, secondly, solidary liability for environmental damage caused.

4.1 The solidary function of contracts

The social function, according to the concept adopted here, advocates, above all, that the obligations arising from contracts are valid not only because the parties voluntarily assumed them, but also because it is in society's interest to protect the legal situations generated by the contract.

According to Hazan and Poli (2013, p. 45) "Contracting [...] accompanies the entire economic process and is not detached from it, exerting a direct influence on the environment, whether natural or artificial".

That said, introducing the environmental issue into economic development proposals implies exploring new strategies and innovating existing models, as well as re-reading contractual obligations in the light of social interests, especially with regard to the right to an ecologically balanced environment.

In this way, given that contracts are closely related to the dynamics of the economy, since they are the instrument through which the circulation of goods and services takes place within the market, it is not difficult to understand how important it would be to align this institute with policies to protect natural resources, so as to include clauses that address ecological concerns.

As mentioned throughout the text, the contract must be an object for the promotion and realization of social values, acting to provide benefits for living together in society, which is only possible if there is a clear commitment to issues that are projected into the social environment, among which we find the search for a better quality of life in society, that is, in order to provide sustainable development (Xavier, 2006, p. 202).

In this way, the third-dimension function of solidarity goes beyond the second-dimension social function, showing itself to be a demand for sustainable development, with an impact on the issue of protecting future generations.

In this context, the commitment of modern contractual theory to solidarity values is evident and, as Ulrich Beck (2011, p. 98) states "[...] nature cannot be conceived without society, society no longer without nature".

With the application of the solidarity function to contracts, the pact, in addition to promoting the satisfaction of the parties that enter into it and meeting social interests, must at the very least refrain from having a negative impact on the environment.

In addition, the provisions that imprint an environmental character on the constitution become conditioning factors for both state and private action, thus binding private autonomy,

which is reflected in contracts and their solidary function, which must be attentive to the impositions of the environmental legal order (Xavier, 2006, p. 202).

In a practical sense, Santos (2013, p. 115-116) exemplifies the possibility of applying the joint and several function in the case of a construction contract, where the contractor undertakes to build a house with a wooden structure, but the wood used in the construction is not duly certified. In this case, the author explains that "although the contract is being fulfilled, its ultra partes effectiveness compromises it, since illegal deforestation causes negative impacts on the whole community".

What can be seen in this example is that, as a result of a contract, there is environmental damage that affects society as a whole, evidence that shows non-compliance with the principle of the joint function of contracts. The interests of the contracting parties cannot be satisfied by fully externalizing the environmental cost. Any impact on the environment must be controlled so as to harm nature and, consequently, society as little as possible.

Santos says that if the pact does not fulfill the essential functions of the common environmental good, violating trans-individual rights or harming them, directly or indirectly, the joint and several function of the contract is not fulfilled and, consequently, the instrument can/should have its effectiveness challenged (Santos, 2013, p. 115).

Furthermore, as Borges points out, proposing a solidary function is not about formulating an environmental concept of the contract, nor is it about proposing an obsolescence of the current understanding of this institute, but only about paying attention to the environmental variable that exists in legal business (Borges, 2007, p. 97).

For this reason, Silva Filho adds that this need to highlight the related factor of the environment is due to the undeniable environmental crisis currently being witnessed, as well as being driven by the transindividual and intergenerational understanding of the right to an ecologically balanced environment (Silva Filho, 2018, p. 326-327).

By seeking to open up communication between the business dimension that guides the economic activities of individuals and their relationship with the environment, the aim is to favor an environmental ethic that presupposes that values of special fundamentality are observed in private relations.

The inclusion of socio-environmental clauses in business agreements has a double purpose: a) to foresee possible economic and legal risks that could affect the environment through the object of the contract; b) to contribute to sustainable development and the consolidation of the solidary function of contracts.

In this sense, if the solidary function of the contract is complied with, in addition to the parties directly involved in the business relationship, society also gains as the holder of the trans-individual right to an ecologically balanced environment.

In addition to verifying the existence of the solidary function of the contract and its mandatory observance at all stages of the agreements, it is necessary to achieve full application of the principle, especially with regard to the possible damage caused by contractual relations. Damage to the ecologically balanced environment as a legal asset gives rise to liability on the part of the contracting parties.

4.2 Joint liability for environmental damage

The 1988 Federal Constitution guarantees the right to a balanced environment, and the need to protect it is directly linked to one of the fundamental principles of Brazilian law: solidarity.

Environmental protection is everyone's right and duty, which requires legal solidarity and ethical solidarity, including intergenerational solidarity, since the subjects are simultaneously on both sides of the legal relationship. At the same time that they are active subjects, they are also passive subjects of the same right and duty: they have a right and a duty over the same asset.

According to article 225, paragraph 3 of the Federal Constitution, conduct and activities considered harmful to the environment will result in criminal and administrative sanctions for offenders, whether individuals or legal entities, regardless of the obligation to repair the damage caused. Thus, there is triple criminal, administrative and civil liability, all independent, although with reciprocal influences (Brazil, 1988).

In addition, article 14, paragraph 1 of Law No. 6.938/81⁵ enshrined the system of objective liability for the reparation and compensation of damage caused to the environment and to third parties affected. Article 3, IV of the same law also states that a polluter is a natural or legal person, whether public or private, who is directly or indirectly responsible for an activity that causes environmental degradation (Brazil, 1981).

In view of the provisions mentioned above, it is possible to extract the joint obligation of offenders and polluters (debtors) to repair environmental damage in favor of society (the creditor).

Transposing the ethical-legal duty of solidarity and the obligatory rule of joint liability to the reality of contracts and their environmental repercussions, it can be seen that contracts cannot be observed outside the social, economic and environmental contexts. The parties cannot contract an environmentally damaging activity, satisfy their economic interests and pass on the negative consequences of the contract to the rest of society, externalizing the environmental cost. Even if the contract satisfies their interests, the parties have to take care of the environmental impact caused by the contract on the rest of the community (Borges, 2008, p. 239).

As Santos (2013, p. 124) teaches, it is customary to hold only the contracting party responsible for the environmental damage caused or the direct agent causing the pollution or environmental degradation. However, the contracting party who benefited from the environmental damage should also be held responsible, as they are also responsible for the negative externalities of a contract to which they are an integral part.

In order to overcome the environmental crisis, it is necessary to overcome the individualist ethic that marked the civil discourse in the 1916 code, as Hazan and Poli point out:

Discursive thinking needs to be incorporated to enable everyone to take responsibility for global ecological events. The response to the ecological crisis demands

⁵ Article 14, § 1 - Without prejudice to the application of the penalties provided for in this article, the polluter is obliged, regardless of fault, to indemnify or repair the damage caused to the environment and to third parties affected by its activity. The Public Prosecutor's Office of the Union and the States shall be entitled to bring civil and criminal liability actions for damage caused to the environment.

responsibility in solidarity, centered on principles that go beyond the individualistic sphere, which is still so dear to contemporary mankind (Hazan, 2013, p. 56-57).

The society that generated the ecological crisis did not have alterity or solidarity as fundamental values. This collective responsibility is demanded on an ethical level, which must stem from the combination of the ethics of solidarity and alterity - without which it is not possible to consider nature and even human beings themselves as other subjects, but only as objects - in order to be able to understand and seek a way out of the ecological crisis (Lima, 2006, p. 81).

Furthermore, in the context of contracts, it is essential to understand that the contracting parties have duties that go beyond those assumed solely between the parties, since their agreement must not only not cause harm to society, but must also collaborate with sustainable development. Therefore, one must go beyond the "essentially pathological concern of the contract to turn to its promotional role; only in this way will a true interface between the contractual universe and the environment be possible" (Santos, 2013, p. 57).

Contractors become key players in achieving the objectives of sustainable development, since they have in their hands an important instrument that suffers and exerts, at the same time, great influence on the economy. The limit established by the solidary function serves as an instrument for achieving greater objectives that override private and public interests, as they involve diffuse and timeless rights.

Therefore, it is argued that in order to achieve the goals of sustainable development, it is imperative to apply the social and solidary function of the contract.

5 CONCLUSION

It was noted that the contract, previously marked by liberalism and individualism, being the maximum expression of the autonomy of will, must be contextualized in a new constitutional panorama, which adds to its market and economic function a social function and a solidary function.

In this new context, contractual relations are now carried out through a new horizon, where the pact must not cause damage to the community, since contractual freedom must be exercised within the limits of the social function, nor to future generations, whose context encompasses the solidarity function.

From this point of view, the environment and business relations should not be separated. Protecting the right to an ecologically balanced environment must be the task of society as a whole, involving society, the market and the state.

It was also found that in order to achieve the objectives of sustainable development, it is essential to apply the social and solidary function of the contract. In this sense, the contracting parties become key players in achieving sustainable objectives, since they have in their hands an important instrument that simultaneously suffers and exerts great influence on the economy. The response to the serious environmental crisis will involve recognizing joint liability, where the parties and, in general, society must be committed to protecting the right to an ecologically balanced environment.

Finally, it was found that sustainable development and the contractual phenomenon are closely related: the contract can and should work as a useful instrument for achieving sustainability, and, in addition, increase fruitful relationships between individuals and the environment, relationships that should promote the implementation of constitutional values such as human dignity and solidarity, especially if we consider responsibility towards future generations.

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