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# THE PROHIBITION OF PLASTIC AND BIODEGRADABLE BAGS IN MANAUS A MATTER OF ENVIRONMENTAL CITIZENSHIP

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*Ricardo Hübner*

Mastering in: ``Universidade do Estado do Amazonas, Manaus``, Brazil

*Patrícia Fortes Attademo Ferreira*

Professor in ``Universidade do Estado do Amazonas``, Manaus, Brazil

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**Abstract:** This work has as its theme the analysis of adequacy and constitutionality in the prohibition of plastic and biodegradable bags through municipal law in the city of Manaus, considering the high environmental impact of the unrestrained use of plastic bags and disposable products in general, thus, considering the possibility of replication of this normative instrument to other places, an attempt was made to point out possible risks of the norm produced in Manaus, mainly taking into consideration, the apparent conflict of constitutional principles such as protection of the environment, health, life, freedom and free enterprise. For the execution of the theme, the following objective was established: first, to analyze the concept of planetary citizenship, second, to contrast this principle with free initiative, third, to present considerations on the environmental problem of plastic bags and the use of disposable products in general and, fourth, to analyze the adequacy and constitutionality of the Municipal Law of Manaus, which prohibits the free sale and distribution of plastic bags in Manaus. To carry out the work, the deductive method was adopted, with bibliographical research and through the qualitative method. It was concluded that there is no hierarchy between principles, but that, analyzing the concrete case, it is possible to restrict the right to freedom and free initiative in favor of the protection of the environment, health and life and, consequently, consider adequate and constitutional the municipal law that prohibits the free sale and distribution of plastic bags and biodegradable bags in Manaus.

**Keywords:** Environmental law. Environmental Citizenship. Free Initiative. Plastic bags. Biodegradable bags.

## INTRODUCTION

The Earth Charter brings important considerations about the unique nature of the

environment, while environmental damage is not limited to the borders of a country, thus, the effects caused by environmental degradation can affect locations very far from the focus of degradation. This interdependent nature of the world makes it necessary to create a sustainable global society, which together seeks solutions to the world's environmental problems.

In this line, despite the importance of the State, all people are also participants in the process of implementing citizenship, whether through personal action, unions, professional associations, public companies, private companies and organized civil society.

The central problem is that the world timer for change is ending and if behavior and practices are not changed, there is a great chance that the planet will no longer support life, as there is a risk of a domino effect in which environmental events derived from degradation environment of the planet trigger new events harmful to life.

This globalized nature of the environment means that: all countries and people in the world become participants in the process of degradation and recovery. Unfortunately, as not everyone will do their part, it is up to others to compensate and do more than is acceptable, after all, at this point, there is no point in assigning blame without resolving the problem.

Of course, urgency does not support the expression "one swallow does not make a summer", considering that social participation has a multiplier effect. In this wake, it is up to the State, communities, companies, people, researchers – through scientific production – and all other participants in this process to do their part and multiply knowledge about the importance of everyone's participation. Evidently, there are countless environmental problems in the modern world, but without a doubt, a product that is essential for

development is also a major polluting agent, namely: plastic.

Plastic appeared in approximately 1909, that is, it has a short history of just over 110 years of existence, but today it is present in almost all aspects of people's lives. To make matters worse, plastic is a durable product with an estimated time for decomposition of approximately five hundred years, that is, the first plastic produced by society, it still has almost four centuries of "life" to be decomposed naturally.

As if that were not enough, despite the longevity of the material, much of this plastic is produced for the manufacture of disposable products that will only be used once. In this wake, it appears that the production circle does not close, after all how to treat and give new use to a cheap material, which encourages the production of disposables, discourages recycling and has no estimate of decomposition by natural means.

In an attempt to reduce the use of plastic bags and to protect the environment, the Municipality of Manaus enacted Municipal Law of Manaus Number: 485/2021, of May 7, 2021, which prohibited the sale and free distribution of plastic bags. plastic surgery in commercial establishments in the city of Manaus. It turns out that shortly after the mentioned law had to be amended by the Municipal Law of Manaus n° 2.799/2021, of October 13, 2021, due to problems in its application.

The legislative amendment after approximately 5 (five) months of validity of the norm causes significant legal uncertainty, as well as demonstrating a hypothetical fragility of the proposed normative text. Thus, despite the apparent adequate motivation for having the protection of the environment and reducing the consumption of disposable plastic materials as a central objective, it is necessary to assess the real adequacy of the

standard – that is, if it fulfills its objective – and its constitutionality, compared to other constitutional principles such as free enterprise. Furthermore, by analyzing the successes and errors of the aforementioned norm, it will be possible to replicate the normative instrument for other products and cities.

Thus, considering the established problem, the objective of the present work will be, first, to analyze the concept of planetary citizenship, second, to oppose the idea of planetary citizenship with respect for the principle of free initiative, third, to present considerations on the environmental problem of bags plastic bags and the use of disposable products in general and, fourth, to analyze the adequacy and constitutionality of the Municipal Law of Manaus, which prohibits the free sale and distribution of plastic bags in Manaus.

The research methodology to be adopted will be the deductive method, through bibliographic research of the legislation and doctrinal positions, in the qualitative research modality.

## **PLANETARY CITIZENSHIP**

The importance of a healthy environment for the quality of life, as well as for the maintenance of life on the planet, is undeniable. However, despite this indisputable premise, which is common knowledge for most minimally educated people, the effects of environmental degradation are not always really known, since not everyone is aware of the cascading effects pollution (especially when it comes to small unsustainable acts) and some others prefer not to care about it, after all, part of the environmental damage practiced today will only be felt by the next generations. Likewise, environmental protection is not a priority for some, after all, public policies and sustainable practices are, for the most part, more expensive or difficult

to apply (needing to change practices already rooted in the culture of a people).

The only way to present such problems is to make individuals aware of the importance of the environment and the “butterfly effect” caused by the pursuit of unbridled (non-sustainable) growth, as well as the importance of small acts that can be practiced by each individual in favor of the environment, such as, for example, the reduction in the consumption of plastics, non-biodegradable materials and disposables, as well as the preference for the adoption of renewable energy sources or the act of turning off the lights when leaving a room in your house.

The big problem is that, on the environmental issue, time will not wait for a change in everyone’s mentality and practices, the effects of devastation can already be seen with the rise in ocean levels, the expansion of desertification, the greenhouse effect, between others. Thus, it is necessary to start from the premise that: it is up to each one to do their part, even if the other does not, because if nothing is done, everyone will lose.

Along these lines, in order to achieve planetary citizenship, one must first seek local and national citizenship, despite planetary citizenship being, in its ideal concept, the participation of the entire planet in favor of a common objective, in terms of the concept brought by the Earth Charter (1992):

We are facing a critical moment in Earth’s history, at a time when humanity must choose its future. As the world becomes increasingly interdependent and fragile, the future holds both great dangers and great promise. To move forward, we must recognize that, in the midst of a magnificent diversity of cultures and ways of life, we are one human family and one earth community with a common destiny. We must join forces to generate a sustainable global society based on respect for nature, universal human rights, economic justice and a culture of peace. To achieve this purpose, it

is imperative that we, the peoples of Earth, declare our responsibility to one another, to the greater community of life, and to future generations.

On another track, the Federal Constitution attaches great importance to the participation of society in the process of implementing citizenship. One of the first examples being social participation through trade unions and professional associations, pursuant to Articles 8 and 10:

Art. 8 Professional or trade union association is free, subject to the following:

[...]

VI - the participation of trade unions in collective bargaining is mandatory;

Art. 10. The participation of workers and employers in collegiate bodies of public bodies in which their professional or social security interests are the subject of discussion and deliberation is ensured.

In turn, article 144 establishes that: “Public security, the duty of the State, the right and responsibility of all, is exercised for the preservation of public order and the safety of persons and property, through the following bodies:”

The participation of society in the planning and execution of the country’s agricultural policy is guaranteed, as established in art. 187 of the same diploma:

Art. 187. The agricultural policy will be planned and executed in accordance with the law, with the effective participation of the production sector, involving rural producers and workers, as well as the commercialization, storage and transport sectors, taking into account, in particular:

All planning, formulation, monitoring, evaluation and control of social public policies must be accompanied by civil society, as provided in article 193:

Art. 193. The social order is based on the primacy of work, and its objective is social welfare and justice.

Single paragraph. The State will carry out the function of planning social policies, ensuring, under the terms of the law, the participation of society in the processes of formulation, monitoring, control and evaluation of these policies.

Articles 194, 198 and 204 establish society's participation in security, which encompasses health, social security and social assistance:

Art. 194. Social security comprises an integrated set of initiatives taken by public authorities and society, aimed at ensuring rights related to health, social security and social assistance.

[...]

VII - democratic and decentralized nature of the administration, through quadripartite management, with the participation of workers, employers, retirees and the Government in collegiate bodies.

Art. 198. Public health actions and services are part of a regionalized and hierarchical network and constitute a single system, organized according to the following guidelines: (See ADPF 672)

[...]

III - community participation.

Art. 204. Government actions in the area of social assistance will be carried out with resources from the social security budget, provided for in art. 195, in addition to other sources, and organized based on the following guidelines:

[...]

II - participation of the population, through representative organizations, in the formulation of policies and in the control of actions at all levels.

In turn, Article 205 of the Constitution establishes that the right to education must be promoted with the collaboration of society:

Art. 205. Education, a right of all and a duty of the State and the family, will be promoted and encouraged with the collaboration of society, aiming at the full development of the person, his preparation for the exercise of citizenship and his qualification for work.

The National Culture System must also rely

on popular collaboration, under the terms of art. 216-A:

Art. 216-A. The National Culture System, organized in a collaborative manner, in a decentralized and participatory manner, institutes a process of management and joint promotion of public cultural policies, democratic and permanent, agreed between the entities of the Federation and society, with the objective of promoting human, social and economic development with full exercise of cultural rights.

§ 1 The National Culture System is based on the national culture policy and its guidelines, established in the National Culture Plan, and is governed by the following principles: (Included by Constitutional Amendment Number: 71, of 2012)

[...]

X - democratization of decision-making processes with participation and social control

The Federal Constitution, in its art. 225, *caput*, establishes that it is incumbent not only on the State, but also on individuals to protect the environment:

Art. 225. Everyone has the right to an ecologically balanced environment, an asset for common use by the people and essential to a healthy quality of life, imposing on the Government and the community the duty to defend and preserve it for present and future generations.

According to Articles 227 and 230, children and the elderly must be supported by the State, ensuring the community's right to participate in this process:

Art. 227. It is the duty of the family, society and the State to ensure the child, adolescent and young person, with absolute priority, the right to life, health, food, education, leisure, professionalization, culture, dignity, respect, freedom and family and community life, in addition to protecting them from all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

§ 1 The State shall promote comprehensive health care programs for children,

adolescents and young people, with the participation of non-governmental entities permitted, through specific policies and in compliance with the following precepts:

Art. 230. The family, society and the State have a duty to support the elderly, ensuring their participation in the community, defending their dignity and well-being and guaranteeing their right to life.

Finally, articles 79 and 82 of the ADCT provide for the participation of society in the Funds to Combat Poverty:

Art. 79. It is instituted, to be in force until 2010, within the scope of the Federal Executive Branch, the Fund for the Combat and Eradication of Poverty, to be regulated by a complementary law with the objective of enabling all Brazilians to have access to decent levels of subsistence, whose resources will be applied in supplementary actions of nutrition, housing, education, health, reinforcement of family income and other programs of relevant social interest aimed at improving the quality of life.

Single paragraph. The Fund provided for in this article will have an Advisory and Monitoring Council that includes representatives of civil society, under the terms of the law.

ADCT

Art. 82. The States, the Federal District and the Municipalities must establish Funds to Combat Poverty, with the resources referred to in this article and others that may be destined, and said Funds must be managed by entities that have the participation of civil society.

This way, the power and duty of civil society to participate in State activities is undeniable, including its role in protecting the environment and developing the economy, that is, in its participation in eco-development that can be conceptualized as:

Eco-development represents an approach to development whose time horizon is decades or even centuries ahead. It understands that the satisfaction of the needs of future generations must be guaranteed, that is, there

must be a diachronic solidarity without, however, compromising the synchronic solidarity with the present generation, already too much sacrificed by the current social disparities.

(LAYRARGUES, 1997)

Thus, planetary citizenship can be conceptualized as the recognition of the importance of all for the protection of the global environment, as conceptualized by Moraes (2016):

This way, the concept of planetary citizenship arises from an awareness that recognizes that, regardless of nationality and the context in which we live, we are all in the 'same boat', inhabiting the same planet that necessarily needs to be cared for, recognized, valued and loved. To do so, it is necessary to agree on common values, principles, attitudes and behaviors, without which we will not be able to face the systemic crisis, or rather, the polycrisis that has been affecting and jeopardizing the survival of our civilization.

Environmental citizenship is basically the inverse logic of harmful "small acts" that cause environmental degradation, that is, if everyone does their part and performs "small acts" in favor of the environment, it is understood that the sum of efforts can lead to a significant improvement in the quality of the environment.

## **CONTRAPOSITION WITH FREE INITIATIVE:**

Despite the unequivocal importance of planetary citizenship and the need to change paradigms, one cannot forget that free enterprise is also a fundamental principle, including one of the foundations of the Democratic State of Law itself, *in verbis*:

Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, constitutes a Democratic State of Law and is founded on:

[...]

IV - the social values of work and free initiative;

In this wake, it is necessary to make brief considerations on the Theory of Principles by Robert Alexy (2014, p. 5), which establishes that principles are optimization commandments, which do not have automatic prevalence among themselves, therefore, even the environment and life do not automatically take precedence over other principles such as free enterprise. On the subject Da Silva (2008, p. 34-35) states that:

[...] And even if there is a collision, contrary to what happens with conflicts between rules, none of the principles will be declared invalid. It will be necessary, on the contrary, to balance the conflicting principles in order to decide which one will have preference, which will be valid, as a conditional origin, only for that specific case. [...]

In the case of collision between principles, therefore, there is no way that one principle always takes precedence over the other. If that happens, we will not be facing a principle – at least in the sense used by Alexy.

Bobbio (1909, p. 41) also reinforces this notion of the inexistence of absolute rights when it comes to equally fundamental rights, as is the case, *in verbis*:

By “absolute value” I understand the status that belongs to very few human rights, valid in all situations and for all men without distinction. It is a privileged status, which depends on a situation that occurs very rarely; it is the situation in which there are fundamental rights that are not in competition with other equally fundamental rights. It is necessary to start from the obvious statement that a right cannot be instituted in favor of a category of people without suppressing a right of other categories of people. The right not to be enslaved implies the elimination of the right to own slaves, just as the right not to be tortured implies the elimination of the right to torture. These two rights can be considered absolute, since the action

that is considered unlawful as a result of its institution and protection is universally condemned. Proof of this is that, in the European Convention on Human Rights, both of these rights are explicitly excluded from the suspension of protection that affects all other rights in the event of war or other public danger (cf. art. 15 § 2). In most situations where a human right is at stake, on the contrary, it happens that two equally fundamental rights face each other, and one of them cannot be unconditionally protected without rendering the other inoperative. Just think, for an example, of the right to freedom of expression, on the one hand, and the right not to be deceived, excited, scandalized, insulted, defamed, vilified, on the other. **In these cases, which are the majority, one must speak of fundamental rights that are not absolute, but relative, in the sense that their protection finds, at a certain point, an insurmountable limit in the protection of an equally fundamental, but concurrent right. And since it is always a matter of opinion to establish where one ends and the other begins, the delimitation of the scope of a fundamental human right is extremely variable and cannot be established once and for all.** (without emphasis in the original)

The central idea is not to discredit or remove the protection of the environment, but only to require consideration, since constitutional principles cannot be removed *prima facie*, at the risk of annulling a constitutional right. In this sense, Da Silva (2014, p. 99-100) presents interesting examples of the risks of such decisions that *prima facie* rule out the application of the rule:

Excluding some behaviors, a *priori*, from the factual support of a fundamental right does not mean just deciding whether the drunk trumpeter who wants to make noise at dawn or the religious leader who wants to make human sacrifices “act without rights”. To take just one example, it would also mean deciding, in the abstract and a *priori*, whether showing one’s buttocks in public is an exercise of freedom of expression.

Based on the “intuition” that guides most of the arguments in favor of a restrictive factual support, or even on criteria such as Friedrich Müller’s *inexchangeability*, or even on common arguments in the STF jurisprudence, according to which fundamental rights cannot serve of protection for immoral or illicit conduct, the answer to this last problem could only be: showing one’s buttocks in public is not an exercise of freedom of expression and is therefore not included in its factual support. But, as you could see from the judgment of the STF itself, it is not possible to give a definitive answer to this question in advance. It is possible that the circumstances of the concrete case are decisive for this.

Starting from such premises, it appears that in the present case we are facing a conflict of principles, being on one side: freedom and free initiative, considering that it is a limitation of an individual freedom; and on the other: the environment, health and life, considering that the need to carry out planetary citizenship and the protection of the environment in favor of maintaining life on the planet.

## THE PROBLEM OF PLASTIC BAGS

The rampant use of plastic bags has always been a social, cultural and environmental problem, as warned by the United Nations (2021, p. 3) when pointing out that: “Every minute, 1 million plastic bottles are consumed in the world. Already the amount of plastic bags reaches 5 trillion per year”.

Due to this problem, Spain sanctioned Royal Decree Number: 293, of May 18, 2018, with the aim of reducing the consumption of

plastic bags:

Article 1. Object and purpose.

1. The purpose of this royal decree is to adopt measures to reduce the consumption of plastic bags, in order to prevent and reduce the adverse impacts that the waste generated by said plastic bags produce on the environment, with special attention to the damage caused to aquatic ecosystems, and in certain economic activities, such as fishing or tourism, among others. Likewise, it is intended to avoid the loss of material and economic resources that involves the abandonment of plastic bags and their dispersion in the environment.

2. The purpose of this royal decree is also to create the Registry of Product Producers, an administrative and declarative registry, which will be attached to the General Directorate of Quality and Environmental Evaluation and Natural Environment of the Ministry of Agriculture and Fisheries, Food and Environment.<sup>1</sup>

The Environmental Code of France, in its article L541-15-10, also establishes a rule in the same sense regarding the use of plastic bags, *in verbis*:

Item L541-15-10

Modified by LAW n°2021-1104 of August 22, 2021 - art. 22

Modified by LAW n°2021-1104 of August 22, 2021 - art. 23 (V)

Modified by LAW n°2021-1104 of August 22, 2021 - art. 24 (V)

[...]

II. – The provision, for a fee or free of charge, is terminated:

1° From 1 January 2016, single-use plastic checkout bags intended for packaging goods at the point of sale;

2° From 1 January 2017, single-use plastic

<sup>1</sup> Free Translation: Article 1. Object and Purpose.

1. This royal decree aims to adopt measures to reduce the consumption of plastic bags, in order to prevent and reduce the adverse impacts that the waste generated by said plastic bags produce on the environment, with special attention to the damage caused to aquatic ecosystems, and in certain activities economic activities, such as fishing or tourism, among others. Likewise, it aims to avoid the loss of material and economic resources caused by the abandonment of plastic bags and their dispersion in the environment.

2. This royal decree also has the purpose of creating the Register of Product Producers, an administrative and declarative register, which will be attached to the Directorate-General for Quality and Environmental and Environmental Assessment of the Ministry of Agriculture and Fisheries, Food and Environment.



bags intended for packaging goods at the point of sale other than checkout bags, except for compostable bags in home composting and made up, in whole or in part, of, biobased materials.<sup>2</sup>

Thus, it is clear that the problem of plastic bags is not recent, and its prohibition is even a public policy adopted by other countries, which obtained positive results, as reported by the United Nations (2017, p. 3): “During In a clean-up action along Coco Beach in Watamu, the team collected 534 kilograms of plastic waste, much less than what had been collected two months ago.”

In this vein, considering the existence of successful cases, it can be assumed that banning the use of plastic bags can also result in benefits for the city of Manaus.

One can also reflect that, despite the practicality of plastic bags, there are alternative products that can be used for the same purpose, such as: cardboard boxes, paper bags, returnable bags or even bags made of other biodegradable materials.

Some of these indicated solutions, despite being less polluting than common plastic bags, are not immune to criticism, as the problem is not just the use of the plastic bag, but the use of a disposable product, thus, the mere replacement by another biodegradable one would not be sustainable, as concluded by a report by the United Nations (2021, p. 41):

The single use of any product needs careful examination. Replacing one disposable product (e.g. made of plastic) with another

disposable product made of a diferente material (like paper, or biodegradable plastic) is Only likely to transfer the burdens and create other problems. Generally, the environmental impact of a product can be reduced the more it is used.<sup>3</sup>

As mentioned earlier, approximately five trillion bags are consumed per year, so even if the entire world were to replace their use with paper bags, there would still be a significant number of trees cut down just for this purpose. A simple arithmetic calculation can be done to arrive at this value. As reported in Pensamento Verde (2018), a tree produces an average of ten thousand A4-sized leaves:

Consider that a standard paper tree, which is eucalyptus, is capable of producing 20 reams of paper. As each ream has 500 sheets, 20 reams have 10,000 A4-sized sheets of 75 g/m<sup>2</sup> weight per trunk. If a tree is capable of giving life to 10,000 of these leaves, that means that to produce a sheet of paper, 1/10,000 of a tree is needed. (Green Thought, 2018)

If four A4 sheets are used to make a paper bag, one tree can produce an average of two thousand and five hundred paper bags. Soon, it will be necessary to cut down two billion eucalyptus trees – the wood most used for paper – per minute to meet the world demand of five trillion bags per minute. This, in turn, represents the deforesting of approximately ninety-nine thousand and ninety hectares of trees per minute, considering that on average two thousand and two hundred trees per hectare can be planted in a management with

2 Free Translation: Item L541-15-10

Amended by LAW Number: 2021-1104 of August 22, 2021 - art. 22

Amended by LAW Number: 2021-1104 of August 22, 2021 - art. 23 (V)

Amended by LAW Number: 2021-1104 of August 22, 2021 - art. 24 (V)

[...]

II. – The supply, whether for a fee or free of charge, is terminated:

1° As of January 1, 2016, disposable plastic bags intended for packaging goods at the point of sale;

2 As of January 1, 2017, disposable plastic bags intended for packaging goods at the point of sale other than bags of *checkout*, except bags that are compostable in home composting and made up, in whole or in part, of bio-based materials.

3 Free Translation: Single use of any product requires careful examination. Replacing a disposable product (eg plastic) with another disposable product made of a different material (such as paper or biodegradable plastic) can only shift the burdens and create other problems. Generally, the environmental impact of a product can be reduced the more it is used.

prepared seedlings, high soil quality and high technological level, according to information from Crestana and Moreira (2009):

Among the various conditions, the spacing and number of plants per hectare to be adopted must be in accordance with the level of technology available. Larger spacing can be adopted (3.5 x 3.0 to 3.5 m between streets x 3.0 m between plants) - approximately 950 plants per hectare - when the technological level is high and the mortality rate of planted seedlings is lower to 1%.

Smaller spacing (93.0m x 2.0m or 3.0m x 1.5m) - with 1,660 to 2,200 plants per hectare - should be adopted in planting where seedling selection, soil preparation, quality of forestry operations, among other factors, have not yet reached the desirable technological standard.

It is noteworthy that a eucalyptus tree takes six to ten years to become ready for cutting, as explained by AGEFLOR (2017):

#### Maturation time

In general, it is necessary to wait between six and 10 years from the moment of planting until the cutting, when the tree becomes adult and is suitable to be used for commercial purposes. This variation takes into account different factors, such as the eucalyptus category, climate and planting method.

Considering the minimum time of six years, which represents approximately three million, one hundred and fifty-three thousand, six hundred minutes, it is assumed that it will be necessary to plant approximately six quadrillion, three hundred and seven trillion, two hundred billion trees, occupying a approximate space of two billion, eight hundred and sixty-six million, nine hundred and nine thousand and ninety hectares for the sustainable management of these trees. Just for the purposes of a better size dimension, we can calculate that three and a third of "Brazil" trees and plants are needed, considering that the total area of Brazil is eight hundred and

fifty-one million and six hundred hectares.

Thus, even the use of biodegradable materials does not seem to be a viable solution to the problem.

Based on these elements, it appears that by weighing the optimization commandments, it is possible to conclude that it is possible to prohibit the consumption of plastic bags and other disposable materials with a similar impact.

## THE ADEQUACY AND CONSTITUTIONALITY OF THE MUNICIPAL LEGISLATION OF MANAUS

Manaus Municipal Law Number: 485/2021, of May 7, 2021, established the prohibition of free distribution in a generic way, in verbis: "Art. 1st. The free distribution of plastic bags to consumers for the packaging and transport of goods purchased in commercial establishments in the municipality of Manaus is prohibited", having been, on October 13, 2021, amended by Municipal Law of Manaus n° 2.799/2021, to prohibit the sale and establish greater *vacatio legis*:

Art. 1st are forbidden to **sale and free distribution** of disposable bags with polyethylene, polypropylene or similar compounds, in the city of Manaus, for consumers, commonly used in packaging and transport of goods purchased in **commercial establishments that belong to supermarket chains or that have more than two thousand square meters of individual built area, as of October 20, 2022, allowing the free distribution of biodegradable bags and returnable bags.**

§ 1st. **As of October 20, 2023**, the distribution and sale of plastic bags for **any composition, including biodegradable ones, allowing free distribution of returnable bags.**

§ 2nd. The prohibition referred to in § 1 of this article **applies to the establishment of any postage**, from the specified time. (gn)

From the analysis of the device, it appears

that the new wording prohibits the sale and free distribution from October 20, 2022 to supermarkets and large establishments and from October 20, 2023 prohibits the sale and free distribution of biodegradable bags to any establishment, allowing only the free distribution of returnable bags. In this line, the Constitution allows the limitation of free initiative in the protection of the environment:

Art. 170. **The economic order, founded** in valuing human work and **in free enterprise**, aims to ensure everyone a dignified existence, according to the dictates of social justice, **observing the following principles:** [...]

VI - **environment defense**, including through differentiated treatment according to the environmental impact of products and services and their preparation and delivery processes. (gn)

On the other hand, the original wording of the constitutional text established, in a generic way, the “environment” as a limiting principle, however after the enactment of constitutional amendment n° 42/2003, the expression “including through differentiated treatment according to the environmental impact” was added. of products and services and their elaboration and delivery processes”. In conclusion, we have that the different treatment is conditioned to the environmental impact.

At the same time, it can be established as a premise that non-biodegradable plastic bags cause environmental damage, however, it is clear that the bill does not present a scientific study, having been based on empirical information on the subject, according to the bill presented by Carrette (2020, p. 2):

It is estimated that one and a half billion plastic bags are consumed worldwide every day. (...) the bags have a high environmental cost: produced from oil or natural gas (non-renewable natural resources), after being used, usually only once, they are usually discarded incorrectly and take about 450

years to decompose.

(...)

It should also be added that the new Coronavirus (COVID-19) remains alive longer in plastic bags than in biodegradable materials, causing the virus to have an increased circulation, due to the wide use of bags.

On the other hand, it appears that the constitutional text does not expressly require the need for environmental impact in the legislative proposal, considering that art. 113 of the ADCT establishes this need only for laws that generate budget impact.

This way, since there is no rule that requires an environmental impact report for the legislative proposal with the purpose of environmental protection, as well as, there are studies on the impacts caused by plastic bags, as previously presented, the standard complies with the proposed environmental purpose and can be considered constitutional, especially considering that it takes into account both the impact of non-biodegradable and biodegradable bags.

## CONCLUSION

Based on the problem that motivated this research, namely: whether the adequacy and constitutionality of the Municipal Law of Manaus n° 485/2021, amended by the Municipal Law of Manaus n° 2.799/2021, considering that its alteration in a short period of validity and the conflict apparent constitutional principles. We sought to fulfill the objectives of the work by analyzing the concept of planetary citizenship, opposing it with the principle of free initiative, presenting considerations about the environmental problem of plastic bags and the use of disposable products in general, in order to, in the end, analyze the adequacy and constitutionality of the Municipal Law of Manaus, which prohibits the free sale and distribution of plastic bags in Manaus.

It is concluded that planetary citizenship involves constitutional principles of law, directing the need to change paradigms and the mentality of society itself, in which each one must contribute towards the quality of life. At the same time, it was verified that the right to a sustainable environment is one of the aspects of planetary citizenship and a constitutional right that can justify the imposition of limitations to individual guarantees and freedoms.

At the same time, it was found that freedom and free initiative can oppose the environment, health and life itself, and there is no hierarchy between principles, and the prevalence of one or the other must be analyzed case by case when there is a conflict.

It was observed that plastic bags are a severe environmental problem that can directly impact the guarantee of a future for society, as well as that even biodegradable bags also have a significant impact on the environment. Thus, within this specific conflict, there was a need for environmental protection to prevail, even if it means limiting individual freedom and free initiative.

Finally, the Municipal Law of Manaus nº 485, of May 7, 2021, amended by the Municipal Law of Manaus nº 2.799/2021, was analyzed, concluding that it was adequate and constitutional, however, it appears that the amendment of the law after five months after its enactment was caused by the lack of a previous environmental impact study, considering that, before the alteration, it presented the following legal and practical problems: 1) prohibition of free distribution, but the possibility of selling the bags; 2) banning the distribution of plastic bags in general, opening up the possibility of banning biodegradable plastic bags; and 3) immediate effectiveness, affecting businesses and industries without enabling companies to adapt gradually.

However, despite the absence of a

previous study, there is ample research on the environmental impact of plastic bags, with the latest version of the standard conforming to reports dealing with damage caused by not reusing bags. At the same time, despite the fact that there is no defect in the studied norm, it appears that carrying out a prior environmental study would be an essential tool to avoid possible legal discussions or, as in the case, the need to correct the norm, due to the risk not achieving its primary purpose.

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