

Courts are demanding Environmental care

A. Introduction

Climate change and the depletion of natural resources with current production and consumption patterns are undeniable and represent an existential threat to humanity. For years, multiple ecological disasters, species extinction, loss of biodiversity and temperature changes (among others) have been warning us that all our actions, no matter how small, have consequences on the environment.

As philosopher Fritjof Capra teaches, we must think of the world as a network in which there is mutual and equitable dependence, and in which all the factors involved benefit, complement and cooperate in various ways with each other. However, for a long time we have decided to ignore and continue to abuse the goodness and patience of our planet.

Faced with this reality, young people have long been calling on world leaders to take urgent action against climate change and to take concrete measures to care for the planet under the slogan “don’t burn our future”.

Today, it has taken a pandemic to put climate change, environmental care and the redesign of our economies on the agenda.

B. A Healthy Environment as a Human Right

The “ecological paradigm”¹ arising from the relationship between human rights and the environment is increasingly recognized (the right to a healthy environment is enshrined in more than 100 constitutions around the world) since one cannot be enjoyed without the other.² In fact, the inclusion of environmental preservation and the enshrinement of the right to a healthy environment in the Argentine Constitution (Chapter Two, “New rights and guarantees”) is undoubtedly one of the most positive aspects of the Constitutional Reform of 1994. What until then was interpreted as included among the rights not enumerated in section 33 of the Constitution, now has the highest hierarchy.³

A similar evolution occurred at the international level, which initially recognized an implicit relationship between human rights and the environment. However, uncontrolled environmental pollution and the “impossibility of the enjoyment and

¹ Morales, G. CAPRA, CONTESTACIÓN POSMODERNA Y PARADIGMA ECOLÓGICO. Revista de Ciencias Ambientales (Trop J Environ Sci). (Junio, 2005). EISSN: 2215-3896. Vol 29 (1): 32-43. Available at: <https://dialnet.unirioja.es/descarga/articulo/7094687.pdf>

² UN Environment Programme. *What are environmental rights?* Available at: <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what>

³ López Alfonsín M. y Tambussi, C. *El Medio Ambiente como Derecho Humano*. Capítulo XI. Available at: [capXI.pdf\(gordillo.com\)](http://capXI.pdf(gordillo.com))

exercise of human rights in environmentally unfavorable conditions”⁴ have somehow brought to light the intimate link between human rights and the environment. Thus, the environmental problem as a “right to the environment” is beginning to be reflected in international instruments such as the World Charter for Nature approved by the UN in 1982, which provides not only for the duty of States, but also for the right and responsibility of individuals to protect the environment, aware that the human species is part of Nature and that life depends on the uninterrupted functioning of natural systems.⁵

For its part, the UN has also said that “our human rights are interrelated with the environment in which we live. Environmental harm interferes with the enjoyment of human rights and the exercise of those rights contributes to protecting the environment and promoting sustainable development.”⁶ Along these lines, said organization has listed the Framework Principles on Human Rights and the Environment, among which it has included the responsibility of States to ensure a safe, clean, healthy and sustainable environment to respect, protect and fulfill human rights and that States respect and protect the rights to freedom of expression, association and peaceful assembly in relation to environmental issues.⁷

Fortunately, today, practically no modern constitutional instrument ignores that the right to a healthy environment is a fundamental human right, and a prerequisite for the enjoyment and exercise of all other rights.⁸

C. The European Bet

In December 2019 the European Commission (EC) adopted the European Green Deal (EGD) as a new strategy to, on the one hand, modernize the EU and reach zero net greenhouse gas emissions by 2050; and, on the other hand, generate economic growth decoupled from the use of natural resources. The EGD’s priorities are: (i) making Europe climate neutral; (ii) protecting human, animal and plant life by reducing pollution; (iii) helping European companies to become world leaders in clean technologies; and, (iv) ensuring that the green transition is just and inclusive.⁹

In March last year, in line with the EGD, the EC proposed the first European Climate Act to ensure an irreversible transition. A few months later, the EC doubled the stakes

⁴ *Id.*

⁵ *Id.*

⁶ Naciones Unidas. *Principios Marco sobre los Derechos Humanos y el Medio Ambiente*. 2018. Available at: [FP_ReportSpanish.PDF \(ohchr.org\)](#)

⁷ *Id.*

⁸ López Alfonsín M. y Tambussi, C. *El Medio Ambiente como Derecho Humano*. Capítulo XI. Available at: [capXI.pdf \(gordillo.com\)](#)

⁹ Open access Government. *The European Climate Pact*. 2021. Disponible en: [The European Climate Pact \(openaccessgovernment.org\)](#)

and presented a plan to further reduce emissions by 2030 (55% compared to 1990), in order to make Europe the first climate-neutral continent by 2050. The European Climate Pact (launched last December) provides an opportunity for the institutions to work closely together to create an enabling framework for civil society and citizen participation, building on existing consultation processes.

The EC has said that this “strategy shows how Europe can lead the way towards climate neutrality”.¹⁰ However, many have criticized this initiative as insufficient. What is needed now is a rapid and effective transformation, which makes a 30-year proposal seem empty. This is how the German Supreme Constitutional Court understood it in a recent ruling, as explained below.

D. Germany’s Wink Towards Sustainability

A few weeks ago, following a lawsuit filed by environmental groups, Germany’s Supreme Constitutional Court ruled that the climate protection measures contained in the country’s current legislation are insufficient to protect future generations. In this landmark ruling, the judges have forced the German government to strengthen legislation to protect young people and have thus given the executive branch until the end of 2022 to improve its Climate Protection Act and ensure that greenhouse gas reduction targets for 2030 are met more immediately. The court based its decision on the need to protect the “fundamental rights to the human future” of young people, considering that the law, as it stands, contemplates objectives focused on future dates that are too distant, and that more urgent and shorter-term measures are needed to meet the commitments made in the 2015 Paris Agreement.

The Court explains that the objective duty of protection arising from Article 20a of the German Fundamental Law encompasses the need to treat the natural foundations of life with such care and to leave them in such a state that future generations who wish to continue to preserve these foundations will not be forced into “radical abstinence.”¹¹

The Court adds that “[p]ractically all freedoms are potentially affected by these future emission reduction obligations, as almost all areas of human life are related to greenhouse gas emissions and are therefore threatened by drastic restrictions after 2030.”¹² The main criticism is that there was no roadmap for the lapse between 2031 and 2050.

¹⁰ Comisión Europea. Estrategia a largo plazo para 2050. Available at: https://ec.europa.eu/clima/policies/strategies/2050_es

¹¹ Meyer, D. Climate bombshell: German court tells government it must do more to save future generations from ‘radical abstinence’. Fortune. 2021. Available at: <https://fortune.com/2021/04/29/germany-climate-court-ruling-emissions-targets-2030-2050-radical-abstinence-fridays-for-future/>

¹² Connolly, K. ‘Historic’ German ruling says climate goals not tough enough. The Guardian. 2021. Available at: <https://www.theguardian.com/world/2021/apr/29/historic-german-ruling-says-climate-goals-not-tough->

Recall that, prior to the EGD, European countries had signed the Paris Agreement in 2015, committing to reduce the global average temperature increase by between 1.5 C° and 2 C°, compared to pre-industrial levels, through more urgent and shorter-term measures. Finally, the Court explained that the law was not sufficiently detailed on how the reductions would occur.¹³

For its part, the German government was quick to respond to the ruling with a promise of rapid implementation of these changes in the law.

E. A Europe that follows in their footsteps?

Another decision that could set a strong precedent in this area is that of a Dutch Court (District of The Hague) which on May 26th ordered Royal Dutch Shell, the Anglo-Dutch energy giant, to reduce its carbon emissions by a net 45% by 2030 compared to 2019 levels.

The Court found that the multinational's current reduction plans were not sufficiently concrete, and that even though the Paris Agreement commitments have been made by countries, the private sector also has a responsibility to respect the right to a healthy environment and contribute to its preservation. However, it did not specify how the company should achieve the mandated cut, making it clear that the company "has full freedom to meet its reduction obligation and to shape Shell group corporate policy"¹⁴.

That said, it would seem that the tendency for courts to demand that effective measures be taken is "contagious". In just a few weeks, Courts in two of Europe's most influential countries have ruled in this regard and have urged both public and private actors to take action as a matter of urgency. Let's hope that this is only the beginning....

It is the young people who are filing the lawsuits that give rise to these judgments, getting the courts to recognize their right to receive the natural resources that will also allow them to meet their needs in the future.

We know that we must change, but we are about to lose the opportunity to do so in time, and young people have taken an active role, aware that in order to survive it is essential to take care of the planet.¹⁵

[enough?utm_campaign=Carbon%20Brief%20Daily%20Briefing&utm_content=20210430&utm_medium=email&utm_source=Revue%20Daily](https://www.abcnews.com/International/wireStory/court-orders-royal-dutch-shell-cut-carbon-emissions-77915666)

¹³ *Id.*

¹⁴ Corder, M. *Court orders Royal Dutch Shell to cut net emissions by 45%*. Abc News. 2021. Available at: <https://abcnews.com/International/wireStory/court-orders-royal-dutch-shell-cut-carbon-emissions-77915666>

¹⁵ In a recent ruling by a court in Australia, a judge ruled that the Minister for the Environment of that country has a duty to protect young people from the climate crisis, thus recognizing the duty of the Executive to ensure that no future harm is caused to young people.

F. Argentina going forward

In Argentina, the process of “awareness raising” is already a fact and has been enshrined in constitutional regulations. However, a much more complex process is still pending: internalization.

It is often thought that the development of a country and the preservation of the environment do not go hand in hand, but nothing could be further from the truth. “The success lies in establishing harmony between both issues, through the issuance of serious and reasonable regulations, in accordance with the reality in which they will be applied.”¹⁶ Laws such as the General Environmental Law, the law for the integral management of industrial waste and other service activities, or for the management of water resources are worthy of celebration and demonstrate that this presumed dichotomy and incompatibility is nothing more than a mistake. “The control and preservation of natural resources must necessarily arise from a programmed application of coherent and reasonable measures of economic, legal and political content.”¹⁷

There is still a long way to go in this area, and the recent rulings of the German and Dutch courts mentioned above should be taken as an example and a driving force for further progress.

G. Conclusion

The global crisis caused by the Covid-19 pandemic highlighted the interdependent relationship on our planet and the need to achieve solutions through a systemic approach. We can no longer return to the old, fragile “business as usual”, but must move towards a more sustainable future.

We must create new ways of interacting with Nature that ensure a more socially just world and allow for the regeneration of natural resources.

We are the first generation aware of our impact on the use of natural resources and perhaps the last capable of taking the necessary measures to mitigate it and protect the right of future generations to a healthy and sustainable environment.

This work must be done jointly and in harmony between public and private actors: the former, through the approval of regulations with solid foundations; and the latter, through internal programs specifically designed to reduce, to the greatest extent possible, the negative environmental impacts of their activities. The implementation of

¹⁶ López Alfonsín M. y Tambussi, C. *El Medio Ambiente como Derecho Humano*. Capítulo XI. Available at: [capXI.pdf \(gordillo.com\)](#)

¹⁷ *Id.*

these programs will require the participation of professionals trained in this area who understand the regulations and help companies to take advantage of their benefits.

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Please feel free to contact any of the persons listed below if you have any questions on this important development:



Laura Ocampo

Partner

locampo@curtis.com

Buenos Aires: +54 11 5196 8321

**Maria Hortensia
de la Peña**

Associate

mdelapena@curtis.com

Buenos Aires: +54 11 5196 8300