

Environmental Law: “A Look at the Environment and its Care”

Derecho Ambiental: “Una Mirada hacia el Medio Ambiente y su Cuidado”

María Belén Miño¹, Nicolas Grappasonno¹

¹Universidad Empresarial Siglo 21, Abogacia. Argentina.

Cite as

Miño MB, Grappasonno N.
Environmental Law: “A Look at the
Environment and its Care”. SAP Land
and Architecture. 2024; 3:135. <https://doi.org/10.56294/la2024135>

Publication History

Submitted: 22-06-2023

Revised: 18-10-2023

Accepted: 12-04-2024

Published: 13-04-2024

ABSTRACT

The study analysed a ruling by Civil and Commercial Court No. 7 of Paraná, Entre Ríos, handed down on 15 May 2023, in the context of an environmental protection action brought by the Los Zorzaes Neighbourhood Commission against the Municipality of Colonia Avellaneda. The lawsuit arose from the poor management and disposal of urban and industrial solid waste on an unauthorised site, which created an open-air rubbish dump near the neighbourhood. The situation seriously affected the health of residents and damaged the local environment, violating fundamental rights. For more than a decade, the neighbourhood's residents filed multiple administrative complaints without receiving satisfactory responses. Finally, after exhausting all formal channels, they filed a lawsuit requesting the closure and relocation of the dump. The court considered that the injunction was the most appropriate procedure, given the urgency and seriousness of the environmental damage demonstrated, and decided to uphold the lawsuit, urging the Municipality to adopt measures to prevent further damage. The ruling recognised the violation of regulations such as National Law No. 25.916 and Provincial Law No. 10.311 on waste management, as well as the constitutional right to a healthy environment. It concluded that the municipal authorities had been negligent in failing to implement an adequate waste management system. The author agreed with the plaintiffs, pointing out the urgent need to review institutional practices and promote a responsible relationship with the natural environment.

Keywords: Environment; Waste; Protection; Pollution; Rights.

RESUMEN

El trabajo analizó un fallo del Juzgado Civil y Comercial N° 7 de Paraná, Entre Ríos, dictado el 15 de mayo de 2023, en el marco de una Acción de Amparo Ambiental presentada por la Comisión Vecinal “Los Zorzaes” contra la Municipalidad de Colonia Avellaneda. La demanda surgió a raíz del mal manejo y disposición de residuos sólidos urbanos e industriales en un predio sin habilitación, lo que generó un basural a cielo abierto en cercanías al barrio. La situación afectó gravemente la salud de los vecinos y deterioró el ambiente local, vulnerando derechos fundamentales. Durante más de una década, los habitantes del barrio realizaron múltiples reclamos administrativos sin recibir respuestas satisfactorias. Finalmente, tras agotar las vías formales, promovieron la acción judicial solicitando el cierre y la reubicación del basural. El tribunal consideró que el amparo era el procedimiento más idóneo, dada la urgencia y la gravedad del daño ambiental demostrado, y resolvió hacer lugar a la demanda, instando al Municipio a adoptar medidas para evitar la continuidad del daño. El fallo reconoció la violación de normas como la Ley Nacional N° 25.916 y la Ley Provincial N° 10.311 sobre gestión de residuos, así como el derecho constitucional a un ambiente sano. Se concluyó que el accionar municipal fue negligente, al no implementar un sistema adecuado de gestión de residuos. La autora coincidió con las demandantes, señalando la necesidad urgente de revisar las prácticas institucionales y de promover una relación responsable con el entorno natural.

Palabras clave: Ambiente; Residuos; Amparo; Contaminación; Derechos.

INTRODUCTION

This final graduation project focuses on a ruling on several environmental problems, more specifically, the significant environmental impact in the Los Zorzales neighborhood of Colonia Avellaneda, Entre Ríos province, where the president and vice president of the Neighborhood Commission filed an injunction against the Municipality of Colonia Avellaneda for the poor management and disposal of domestic and industrial solid waste without any prior procedure, which generates a large open-air garbage dump every day, causing odors, the presence of flies, and the burning of garbage, making it impossible for neighborhood residents to breathe and live.

This concern has been heightened by the environmentalists of the “The Zorzales” Neighborhood Commission due to the excessive number of cases of children, women, and men with serious illnesses. This open-air dump poses a danger to the people living in the area, as well as causing the deterioration and degradation of the environment.

For this reason, first of all, to open the analysis of the selected ruling, we will define the concept of environmental law as defined “a set of rules that regulate the social rights of individuals to enjoy a healthy environment, ensuring the necessary protection and defense against the aggression that voluntary and involuntary human action can cause in their common habitat”.

The environment is a contemporary, modern, and current concept linked to the negative effects of human society on the surroundings. In general terms, we can say that this is called pollution and, more specifically, environmental degradation. As we have stated on other occasions, the environment is the place or space where the lives of different organisms unfold, favoring their relationship and interaction. In other words, it is made up of different natural and artificial elements that are interconnected and transformed by human action through the various tools we use.

Likewise, the right to the environment is manifested in the reform of the National Constitution⁽¹⁾, more specifically in Chapter “New Rights and Guarantees” in ARTICLE 41, which states: “All inhabitants enjoy the right to a healthy, balanced environment suitable for human development and for productive activities that satisfy present needs without compromising those of future generations, and they have the duty to preserve it. Environmental damage shall give rise to the obligation to restore the environment, as established by law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of the natural and cultural heritage and biological diversity, and environmental information and education. It is the responsibility of the Nation to enact the regulations containing the minimum standards of protection, and of the provinces to supplement them, without altering local jurisdictions. The entry into the national territory of actual or potentially hazardous waste and radioactive waste is prohibited. In this regard, it establishes as a fundamental right of all inhabitants to enjoy a healthy, balanced environment suitable for human development, as well as for present and future generations.

In addition, the legal framework in our country includes specific environmental protection laws, such as the General Environmental Law No. 25675,⁽²⁾ which “defines the conditions for the defense of the environment, the preservation and protection of biological diversity, and the implementation of sustainable development in an appropriate manner, promoting the improvement of the quality of life of present and future generations as a priority.” The Law on Comprehensive Management of Industrial Waste and Service Activities (Law No. 25,612),⁽³⁾ The Law on Minimum Budgets for the Environmental Protection of Native Forests (Law No. 26,331),⁽⁴⁾ National Law No. 25,916,⁽⁵⁾ on Minimum Budgets for Environmental Protection for the Comprehensive Management of Urban Solid Waste, among others.

As author Bidart Campos⁽⁶⁾ points out, “the environment is not limited to the physical environment and its elements of water, biosphere, land, and subsoil; we must add all the elements created by humans, who also calculate natural resources and integrate cultural ingredients”.

Therefore, in today’s world, with urban development, population growth, transportation, urban product growth, the expansion of urbanized space, and the un r multiplication of interrelationships in an increasingly complex society, it is practically impossible to find environments that do not bear the traces and marks of human activity. When we refer to the various activities of the population that cause damage to the environment, major environmental problems are generated, such as water, air, and soil pollution, deforestation, and soil desertification, among others.

According to numerous authors such as Valls⁽⁷⁾, Lorenzetti⁽⁸⁾, Cafferatta⁽⁹⁾, Lamberti⁽¹⁰⁾, and Bustamante, they mention the protection of the environment:

The author Valls⁽⁷⁾ refers to “the destiny assigned to the environment, stating that humans can freely use and enjoy the environment, but there are certain conditions for doing so. Among these limitations, the one that stands out is that which refers to the carrying capacity of an ecosystem, that is, the capacity of nature to absorb and recover from anthropogenic aggressions. Here, he explicitly refers to the so-called paradigm of sustainable development that emerged particularly from the 1987 Report of the World Commission on Environment and Development (known as the Brundtland Report)”.

It is also important to highlight the line of thinking of the author Lorenzetti:⁽⁸⁾ “...The global system constituted by natural and artificial elements of a physical, chemical, or biological nature, sociocultural elements, and their interactions, in constant modification by human or natural action, which governs and conditions the existence and development of life in its multiple manifestations”.

On the other hand, the author Cafferatta⁽⁹⁾ states that “Damage to the environment affects above all the relationships within an ecosystem and, therefore, the effects on the surrounding environment, in particular on humans and other living beings, must be taken into account” (p. 59).

In addition, the author Morales Lamberti⁽¹⁰⁾ refers to the environmental liability associated with the deterioration of ecosystems or their components through the impact generated by natural and anthropogenic factors.

Another important issue to highlight is what author Bustamante Alsina⁽¹¹⁾ says about the “notion of quality of life that has emerged as a fundamental objective of natural resource conservation and environmental protection policy.”

Similarly, we can say that another fundamental point is the right to a “healthy environment,” which began to be recognized by international law in 1972.⁽¹²⁾ When the Declaration of the United Nations Conference on the Human Environment stated that “Man has the inherent right to freedom, equality, and the pursuit of a fulfilling life in conditions of well-being, and he has the solemn duty to protect and preserve the environment for future generations.”

Also worth mentioning is the widespread acceptance of international human rights instruments that refer to a healthy environment, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁽¹³⁾ which has constitutional status (Article 75, paragraph 22 C N), recognizes the right to an adequate standard of living and the duty of States to take appropriate measures to ensure this right, including through the most effective use of natural resources (Article 11). It also enshrines the right to health, and among the actions to be implemented to give full effect to this right, it mentions the improvement of the environment (Article 12).

The purpose of this paper is to analyze a ruling by Civil and Commercial Court No. 7 of the City of Paraná, Entre Ríos, in the case entitled: “Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda, Environmental Protection Action No. 22165, dated May 15, 2023.

This ruling is based on facts that are primarily established by constitutional law and general environmental law. The present analysis seeks to determine the environmental damage caused in the neighborhood of The Zorzaes, which filed an action for protection against the municipality of Colonia Avellaneda for the poor management and disposal of domestic and industrial solid waste, which generates a large open-air dump. In this case, the municipality is urged to close and reorganize the urban solid waste center away from the urban area due to the serious environmental consequences it is having on the neighborhood and the municipality’s failure to take into account the promotion and sustainable management of urban solid waste.

On the other hand, we are facing an axiological legal problem. according to authors Alchourron and Bulgin⁽¹⁴⁾, who state that “Axiological problems arise from legal conflicts between rules and principles (whether due to the incompatibility of a relevant property present in a legal rule, due to the absence of a relevant property that should have been taken into account in the formulation of the rule in order to comply with the requirements of a higher legal principle, or between legal principles in the resolution of a case).”

The legal problem of the ruling establishes that the municipal landfill in Colonia Avellaneda in the province of Entre Ríos is not authorized and does not have an urban solid waste management plan approved by the competent authorities, and that National Law No. 25.916 on Minimum Environmental Protection Budgets for the Comprehensive Management of Urban Solid Waste⁽⁵⁾ is not being observed, as well as Law No. 10311 on Comprehensive Management of Urban Solid Waste in Entre Ríos,⁽¹⁵⁾ meaning that household solid waste is not being properly managed and a healthy environment is not being created for the population.

METHOD

Reconstruction of the factual premise and procedural history and description of the court’s solution

Reconstruction of the factual premise

The factual premise is based on the ruling of Civil and Commercial Court No. 7 of the City of Paraná, Entre Ríos, in the case entitled: “Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda, Environmental Protection Action No. 22165, dated May 15, 2023.

Procedural history:

The facts begin with a dispute between the president and assistant treasurer of the neighborhood association “The Zorzaes” and the Municipality of Colonia Avellaneda, a municipality in the Sauce district of the Paraná department in the province of Entre Ríos, who requested the closure of the current urban solid waste disposal center and its relocation away from the urban area, where uncontrolled dumping of urban solid waste regularly occurs, as well as the dumping of sewage from the town of Colonia Avellaneda, which causes damage that significantly impairs the quality of life and health of an undetermined group of people living there.

Based on this environmental problem, an environmental protection action has been filed by the plaintiff, namely the neighborhood commission “Los Zorzaes” against the Municipality of Colonia Avellaneda, with the aim of obtaining the closure and relocation of the open-air dump located a short distance from their homes, where odors, smoke, fires, and all biodiversity are threatened, and where for decades the neighborhood residents have lived in an area ravaged by pollution and neglect.

It was first decided in May 2015 that the neighborhood commission would send a letter to the municipal president complaining about the problems in the neighborhood related to the landfill. In June 2015, a letter was also sent to the provincial secretary of the environment denouncing the systematic violation of provincial regulations governing integrated waste management, sewage, and tributaries.

After repeated complaints, a new letter was submitted to the municipal president on February 2, 2016, once again complaining about the impossibility of living with the garbage dump. On the same date, another letter was submitted to the provincial health minister expressing concern about the spread of dengue fever and the situation of the garbage dump.

Also in 2017, due to the lack of measures, a letter was sent to the provincial governor explaining what the residents were going through and the serious health problems caused by the open-air garbage dump.

In 2019, having received no response, another letter was sent to the municipality. More than 10 years passed without any solution.

After several years of complaints, in 2021, a hearing was held between municipal officials and residents, during which they were able to express their great concern about the presence of the landfill. At that meeting, they were informed of certain measures that were to be taken to prevent access to the landfill and to make improvements to the site.

Time passed and there was still no news of any improvements to the site by the Municipality, so the complaints were made to the National Ministry of the Environment.

In response to repeated denials of the problem facing the residents of the Los Zorzales neighborhood, another more appropriate legal and/or administrative procedure was initiated. The CSJN has demanded proof of the lack of other suitable means or procedures to resolve the conflict and, if applicable, evidence of specific and serious damage. In this case, the administrative files were presented, which summarily demonstrated and expressed the urgency of the intervention of the province and the Municipality of Colonia Avellaneda. Following the failure to comply and the actions indicated by the Municipality, which denied the facts in the lawsuit in general and in particular and disregarded the documentation, they recounted their version of the facts.

A conciliation hearing was requested, and the SAER was requested on April 10, 2023, at the request of the plaintiffs, to issue a new official letter responding specifically to the request made at the hearing on April 13, 2023. The SAER has again failed to comply with the request for specific and accurate information regarding the geographical location of the property and its layout. The parties did not reach a conciliation agreement.

RESULTS

Considering that in May 2023, the hearing was suspended, the trial period was closed, and both Ministries were notified, who in their digital submission dated May 5, 2023, requested an extension, which I granted, with the same date and for a total period of five days, expiring on May 10, 2023.

The representative of the Public Ministry of Defense responded on May 8, 2023, stating that he agreed with the plaintiff's claim. For her part, the prosecutor also responded on May 10, 2023, ruling that the action for protection was inadmissible.

The proceedings were ready for judgment and were entered into the court registry on May 10, 2023, a resolution agreed to by both parties.

As stated by the judge, following a ruling by the Supreme Court of Justice of the Nation, the constitutional status of the right to enjoy a healthy environment is recognized.

I consider that there is no other judicial procedure more appropriate than amparo, and I reiterate that I ordered the registration of this proceeding in the Registry of Collective Proceedings and in the Registry of Friends of the Court, both of the STJER, for proper registration and communication.

Therefore, the amparo proceeding, with respect to the admissible claims, is admissible and also admissible (Provincial Law on Constitutional Proceedings No. 8369 and amendments).

The Ratio Decidendi establishes the reasons on which it is based in an action for amparo, upholding the claim brought by Ms. Márquez and Ms. Gómez on behalf of the Neighborhood Commission "Los Zorzales" against the Municipality of Colonia Avellaneda, where the defendant must take all necessary measures to prevent further environmental damage to the neighborhood.

As stated by the judge, following a ruling by the Supreme Court of Justice of the Nation, the constitutional status of the right to enjoy a healthy environment is recognized.

I consider that there is no other judicial procedure more appropriate than amparo, and I reiterate that he ordered the registration of this proceeding in the Registry of Proceedings.

Collectives and in the Register of Friends of the Court, both of the STJER, for proper registration and communication, which ordered the notification of persons who might have an interest in the outcome of the litigation, have been duly summoned and called to public hearings to which the residents of the neighborhood were summoned, all of whom appeared and were heard, and the court values the compliance of said residents of the neighborhood for appearing at the hearing.

Therefore, the amparo proceeding, with respect to the admissible claims of March 23, 2023, is admissible and also admissible (Provincial Law on Constitutional Proceedings No. 8369 and amendments).

The court therefore ruled that the amparo is the most appropriate remedy to challenge and prevent environmental damage.

It also details this in Law No. 10.311⁽¹⁵⁾ on Urban Solid Waste Management and National Law No. 25,916 on Minimum Environmental Protection Budgets for Comprehensive Urban Solid Waste Management.⁽¹⁵⁾

Author's position:

After reviewing the above and based on various regulatory sources on the selected ruling "Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda S/Action for Protection (Environmental)," and considering the environment.⁽¹⁶⁾

In this regard, I agree with the environmentalists and representatives of the "Los Zorzales" Neighborhood Commission who filed an environmental protection action against the Municipality of Colonia Avellaneda because the importance of restoring soil care as one of the elements that make up the environment was never taken into account, and that soil contamination is currently a problem with serious consequences, in particular, garbage as the main health and environmental problem that indiscriminately affects all people, especially the neighborhood.^(17,18) From what I can tell, the municipal authorities did not take responsibility for the poor management and disposal of domestic and industrial solid waste,⁽¹⁹⁾ which generated a large open-air dump. This has caused countless problems, not only environmental but also for the health of the children and people in the neighborhood who are affected by such degraded environments, as the residents are in a state of total abandonment, in a polluted area that affects their lives, health, physical integrity, and many other rights.

CONCLUSIONS

In this paper, I have examined in great depth the selected ruling "Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda

S/Action for Protection (Environmental)” Civil and Commercial Court No. 7 of Paraná, Entre Ríos, dated May 15, 2023. This ruling establishes that the municipal landfill in Colonia Avellaneda in the province of Entre Ríos is not authorized and does not have an urban solid waste management plan approved by the competent authorities, where poor management of such waste is observed, generating a large open-air dump and, as a consequence, serious health problems for the people living there. In addition, there is complete environmental degradation (soil, water, air, biodiversity) and the burning of waste, with the consequent risk that this entails for households.

To conclude, on a personal level, I believe that in the face of the problems raised, we as a society must rethink and change the current model of production, consumption, spending, and waste, guided by a capitalist and instrumental rationality that is causing the environmental crisis of our time. On the other hand, technical issues also bring with them major environmental problems that arise as a result of the way in which human beings relate to nature in an irrational manner. In this sense, it is important to highlight the care of all the elements that make up the environment, because today it is almost impossible to find environments without human intervention.

Today, environmental problems clearly demonstrate both the need to incorporate them into the political sphere and the search for new global mechanisms. They have now become part of the political agendas and actions of public authorities at the local, regional, and global levels.

BIBLIOGRAPHICAL REFERENCES

1. Constitución de la Nación Argentina. Buenos Aires: Honorable Congreso de la Nación Argentina; 1994
2. Ley N° 25.675. Política Ambiental Nacional. Argentina: Honorable Congreso de la Nación; 2002 nov 28.
3. Ley N° 25.612. Gestión Integral de Residuos Industriales y de Actividades de Servicio. Argentina.
4. Ley N° 26.331. Presupuestos Mínimos de Protección Ambiental de Bosques Nativos. Argentina.
5. Ley N° 25.916. Presupuestos Mínimos de Protección Ambiental para la Gestión Integral de Residuos Sólidos Urbanos. Argentina: Boletín Oficial; 2004 sep 7.
6. Bidart Campos G. Manual de la Constitución Reformada. Tomo II. Editorial; 2002. p. 85-86.
7. Valls MF. Derecho Ambiental. 3.^a ed. Buenos Aires: Abeledo Perrot; 2016.
8. Lorenzetti P. La Función Preventiva de la Responsabilidad Civil y el Daño Ambiental en el Nuevo Código Civil y Comercial de la Nación; 2015.
9. Cafferatta NA. Introducción al Derecho Ambiental. México: Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT), Instituto Nacional de Ecología (INE), Programa de las Naciones Unidas para el Medio Ambiente (PNUMA); 2004. p. 59.
10. Morales Lamberti A. Instituciones de Derecho Ambiental. Córdoba; 2005.
11. Bustamante JA. Derecho Ambiental: Fundamentación y Normativa. Buenos Aires: Abeledo Perrot; 1995.
12. Conferencia de las Naciones Unidas sobre el Medio Humano. Principio 1. Estocolmo; 1972 jun 5-16.
13. Asamblea General de las Naciones Unidas. Pacto Internacional de Derechos Económicos, Sociales y Culturales (PIDESC) y su Protocolo Facultativo. Nueva York: ONU; 1966 dic 16. Artículos 11-12.
14. Alchourron C, Bulygin E. Definiciones y Normas. En: Autores. Análisis Lógico y Derecho. Madrid: Centro de Estudios Constitucionales; 1991. p. 439-464.
15. Ley N° 10.311. Gestión Integral de los Residuos Sólidos Urbanos. Entre Ríos: Boletín Oficial; 2014 jun 23.
16. Cafferatta NA. Derecho Ambiental en el Código Civil y Comercial de la Nación. [Lugar desconocido]: [Editorial desconocida]; 2014.
17. Constitución de la Provincia de Entre Ríos.
18. Ley N° 26.994. Código Civil y Comercial de la Nación. Argentina: Honorable Congreso de la Nación; 2014.

19. Ley N° 24.051. Residuos Peligrosos. Argentina; 1991.

FINANCING

None.

CONFLICT OF INTEREST

None.

AUTHOR CONTRIBUTION

Conceptualization: María Belén Miño, Nicolas Grappasonno.

Data curation: María Belén Miño, Nicolas Grappasonno.

Formal analysis: María Belén Miño, Nicolas Grappasonno.

Research: María Belén Miño, Nicolas Grappasonno.

Methodology: María Belén Miño, Nicolas Grappasonno.

Project management: María Belén Miño, Nicolas Grappasonno.

Resources: María Belén Miño, Nicolas Grappasonno.

Software: María Belén Miño, Nicolas Grappasonno.

Supervision: María Belén Miño, Nicolas Grappasonno.

Validation: María Belén Miño, Nicolas Grappasonno.

Visualization: María Belén Miño, Nicolas Grappasonno.

Writing – original draft: María Belén Miño, Nicolas Grappasonno.

Writing – review and editing: María Belén Miño, Nicolas Grappasonno.