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REVIEW

Urban Planning and the Environment in the City of Córdoba

Urbanismo y Medio Ambiente en la Ciudad de Córdoba

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ABSTRACT

Introduction: after the constitutional reform of 1994, environmental law gained prominence in the Argentine legal order. In this context, the case 'Gay Baridon, Alejandro c/ Municipalidad de Córdoba - Amparo Ambiental' was presented, in which the plaintiff challenged a building project authorised by the municipality, alleging a possible impact on the environment and the cultural heritage of the Villa Warcalde neighbourhood. The conflict involved tensions between economic interests and constitutional principles linked to a healthy environment.
Development: Alejandro Gay Baridon filed an environmental protection action on 24 June 2019 before the Administrative Chamber of 1st Nomination of Córdoba. His claim focused on preventing the 'Punto W - Complejo Villa Warcalde' project from being carried out without complying with current environmental and cultural regulations. The court partially admitted the action with respect to the possible environmental and patrimonial affectation, and rejected the rest of the claims, as well as the precautionary measure requested by the plaintiff, due to the lack of verisimilitude of the right invoked. The collective nature of the process was recognised. In its analysis, the court considered national and provincial laws such as the General Environmental Law No. 25.675 and Law 10.208 of Córdoba, prioritising the protection of the collective interest over economic development.
Conclusions: the ruling constituted a relevant precedent in Córdoba by balancing urban growth with environmental protection. The decision reflected a progressive interpretation of environmental law, promoting sustainability, cultural preservation and respect for collective rights.

Keywords: Environment; Heritage; Amparo; Sustainability; Jurisprudence; Case Law.

RESUMEN

Introducción: tras la reforma constitucional de 1994, el derecho ambiental adquirió protagonismo en el orden jurídico argentino. En este contexto, se presentó el caso "Gay Baridon, Alejandro c/ Municipalidad de Córdoba – Amparo Ambiental", en el cual el demandante cuestionó un emprendimiento edilicio autorizado por el municipio, alegando la posible afectación al ambiente y al patrimonio cultural del barrio Villa Warcalde. El conflicto involucró tensiones entre intereses económicos y principios constitucionales vinculados al ambiente sano.
Desarrollo: Alejandro Gay Baridon promovió una acción de amparo ambiental el 24 de junio de 2019 ante la Cámara Contencioso-Administrativa de 1° Nominación de Córdoba. Su pretensión se centró en evitar que el proyecto "Punto W – Complejo Villa Warcalde" se llevara a cabo sin cumplir con la normativa ambiental y cultural vigente. El tribunal admitió parcialmente la acción respecto de la posible afectación ambiental y patrimonial, y rechazó el resto de las pretensiones, así como la medida cautelar solicitada por el actor, por falta de verosimilitud del derecho invocado. Se reconoció el carácter colectivo del proceso. En su análisis, el tribunal consideró leyes nacionales y provinciales como la Ley General del Ambiente N° 25.675 y la Ley 10.208 de Córdoba, priorizando el resguardo del interés colectivo sobre el desarrollo económico.
Conclusiones: el fallo constituyó un precedente relevante en Córdoba al equilibrar crecimiento urbano con protección ambiental. La decisión reflejó una interpretación progresiva del derecho ambiental, promoviendo la sustentabilidad, la preservación cultural y el respeto por los derechos colectivos.

Palabras clave: Ambiente; Patrimonio; Amparo; Sustentabilidad; Jurisprudencia.

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INTRODUCTION

Environmental law, after the historic Argentine constitutional reform of 1994, is beginning to turn towards the future, with an increasingly protagonist role, and its dynamism shows that, at present, it is still in a process of full formation. This legal specialization crosses in a transversal way and is combined with both individual and collective law, and this is how the public and private are intertwined in this final degree work. In the description of those central elements, constitutional articles such as 41, 43 and 75, Law 21836; Article 48 of the Constitution of the Province of Córdoba, Law 10208 of Environmental Policy of the Province of Córdoba, Law 4915 and Municipal Ordinance 8256, where one of the interested parties will base its strongest claim, are manifested.

As I well mention, under all cited legislation, in the present note to judgment, in the proceedings "GAY BARIDON, ALEJANDRO C/ MUNICIPALIDAD DE CORDOBA - AMPARO AMBIENTAL"[1] dated 14/8/ 2019 (Expte. No. 8439616) and after critically weighing and evaluating the controversy in the present case, an axiological problem is interpreted, where the 1st Nomination Contentious-Administrative Chamber must resolve the tension between municipal public rules and constitutional principles that are promoted by the plaintiff, Alejandro Gay Baridon, requesting to observe in detail the enabling regulations for urban and commercial development, to preserve the cultural heritage, but above all, to preserve the cultural heritage of the city, but above all, the right to a healthy, protected and balanced environment is not violated. On the other hand, the Municipality of Córdoba, defendant, through EXCHEQUER S.A.S., enables the building development, "Punto W" - Villa Warcalde Complex, seeking to promote economic development, generate new jobs, improve vehicular accessibility and thus provide comfort to the neighbors of the northwest area of the city of Córdoba.

Descriptive phase

a) Factual premise

In the city of Córdoba, an environmental protection action was filed by Alejandro Gay Baridon, a neighbor of Barrio Villa Warcalde, whose claim consists of the environmental and cultural heritage damage that could be caused by the feasibility of the construction of the Punto W-Complejo Villa Warcalde development, in the event that it does not comply with environmental, heritage or land use regulations, as well as the applicability of the environmental impact assessment of Law No. 10,208. The present lawsuit is filed against the defendant, the Municipality of Córdoba, and adds that the Neighborhood Center of Villa Warcalde and Alto Hermoso and Exchequer S.A.S. are interested third parties.

b) Procedural history

On June 24, 2019, Mr. Gay Baridon, Alejandro, filed an environmental protection action before the Administrative Chamber of 1st Nomination of Córdoba, which upheld the action due to possible damage to the environment and cultural heritage of Villa Warcalde.

c) Decision of the court

- To formally admit the action filed only in relation to the possible damage to the environment and cultural heritage that could be caused by the feasibility of the "Punto W-Complejo Villa Warcalde" development, in the event that it does not comply with environmental, heritage or land use regulations.
- To reject in limine the amparo action as to the rest of the claims set forth in the complaint.
- To establish the collective nature of this amparo proceeding.
- Not to grant the requested precautionary measure.

d) Ratio decidendi

In the complaint and accompanying documents, it is considered appropriate to formally admit the amparo action filed specifically with respect to the possible impact on the environment and cultural heritage that could be caused by the feasibility of the "Punto W-Complejo Villa Warcalde" project, in the event that it does not comply with environmental, heritage or land use regulations, as well as the applicability of the environmental impact assessment of Law No. 10.208. Regarding the rest of the claims presented in the lawsuit, it is worth mentioning the lack of precision in the delimitation of the object of the action, as well as the absence of a specific indication of the actual or imminent damage or injury for which protection is requested. When evaluating the basic assumptions for the admission of the action chosen, it is noted that neither the complaint nor its documents show a priori the ostensible or manifest injury or threat invoked, which makes its authorization impossible.

With respect to the precautionary measure requested, it is clear from the complaint and the accompanying documents that the requirement of verisimilitude of the right invoked (fumus bonis iuris) has not been sufficiently met, since the existence of a possible actual or imminent impairment of sufficient magnitude to make the exercise of this judicial power necessary has not been proven.

Description of the conceptual analysis, doctrinal and jurisprudential background

After carrying out a detailed study of the ruling in question, it is essential to address the general concepts that focus us and give us a reference from which we must start to understand everything related to the environment in order to be able to carry out the specific analysis of the corresponding judicial resolution. Valls[2] introduces us to this relationship of environment and law indicating that:

Environmental law regulates the creation, modification, transformation and extinction of legal relationships that condition the use, enjoyment, preservation and improvement of the environment. Its purpose is to condition human conduct with respect to that use, enjoyment, preservation and improvement, inducing actions and abstentions in favor of the protection of the environment. Its

content is diffuse, since it encompasses the relations regulated by the whole legal spectrum insofar as these relations condition the environment.

The concurrence of constitutional protection is a fundamental piece in what concerns the environment, but we must not leave aside the general environmental legislation, law 25.675,[3] which, within its policy, seeks not only the preservation and protection of biological diversity but also the protection of biological diversity, but also citizen participation, access to information and the generation of behaviors and attitudes information and generate behaviors and attitudes in accordance with a balanced environment. For all these reasons and continuing with the constitutional guidelines, we find in section 75, sub. 22 the statement of Basterra[4] that expresses:

The norms of environmental law, to the extent that they integrate the content of international human rights conventions, have constitutional hierarchy, and although they do not form part of the text of the Constitution, they are outside it at the same level in the block of federal constitutionality. Most of the provinces establish in their constitutions the right to a healthy environment and its preservation in accordance with the provisions of the National Constitution. However, before the incorporation of this right into the National Constitution, some provincial charters already provided for the protection of the right to the environment, which was especially taken into account by the constituents.

In relation to the possibility of deducting an action of environmental protection by the plaintiff, Irina Daiana Brest[5] makes a brief description of the Argentine constitutional reform of 1994 when sections 41 and 43 were incorporated, where the defense of the environment must be operative and not only be set down on paper.

In the case that concerns us, it is necessary to make reference to the provincial environmental policy, law 10208, Cordoba legislation that in exercise of competence established in section 41 of the National Constitution, Gelli[6] makes reference to that:

The environmental competence was delegated to the federal orbit only in what refers to the minimum protection budgets. In all other matters, the provinces retained powers to complement and extend environmental protection. This is so because, although there are needs and problems common to the whole country, each region requires protection and specific solutions of its own. Therefore, within each local jurisdiction, the responsibilities of the provinces are primary and fundamental to extend protection and enforce legal regulations.

In re-categorizing the process in question, Cafferatta[7] points out: What matters is to determine whether there is objective damage to the protected social good. The party with standing does not act, even if it is an individual affected, with the effect of fragmenting the interest of the group. The affected party does not individualize the collective interest; on the contrary, such intervention produces a necessary integration of the collective interest, which would otherwise be abandoned.

In relation to the precautionary measure requested by the defendant, it does not take place due to the absence of indispensable requirements for the judge, Cafferatta[7] defines it as follows: Section 30 in fine of Law 25.675[3] General of the Environment expressly enables the proceeding of a precautionary measure of cessation of activities by way of judicial protection. Creating a subtype of protection very close to the popular action, it claims, once again, a prudent jurisdictional legitimizing opening (with a clear tendency to the adoption of a popular action), to give effectiveness to the protection concerned. It is a question of achieving the cessation of activities generating collective environmental damage, for which the law does not spare reservations or limitations of access to justice.

Another of the main points of the lawsuit is the possible damage to the cultural heritage represented by the Molino de Torres, its history is detailed in the newspaper article La Voz: A few meters after entering Villa Warcalde there are two very old buildings: the Molino de Torres, built in the eighteenth century, and a building dating from 1650. According to Daniel Bravo Tedín, the oldest structure was a post, used by the ox carts that transported lime from La Calera to the city of Córdoba. Those lands were part of the grant given by the founder of Córdoba, Jerónimo Luis de Cabrera, to his sergeant Juan Molina Navarrete. Sometime later, his grandson began to do business with the Jesuits, who had acquired the estancia of La Calera.

In the province of Entre Ríos, an undertaking by Altos de Unzué SA, on a protected natural area, on a wetland that may affect a water basin, therefore a basic and elementary requirement must be met before starting any activity, that is the accreditation that the environmental impact study has been approved.

Majul, Julio J. v. Municipality of Pueblo General Belgrano and others s/ action for environmental protection - 10/15/2019.[9]

In the following rulings of the city of Córdoba we can rescue the importance of sections 41; 43 of the National Constitution, sections 48, 66 of the Constitution of the Province of Córdoba and the importance of diffuse interests and their characteristic of collective scope, in sections 14, 240 and 241 of the C.C.C.N.[10,11,12,13,14]

"Neighborhood Center of Cerro Valley Neighborhood v. Municipality of Córdoba - Environmental Protection ". Date: May 17, 2019. (Expte. No. 7944709).[15]

"Neighborhood Center of Jardín Espinosa and Jardín Espinosa Expansion Neighborhoods v. Municipality of Córdoba"- Date: November 13, 2018. (File No. 7294440).[16]

" Chavero, Emiliano Gabriel and others v. Municipality of Río Cuarto and another - Amparo "- February 26, 2019.[17]

Author's position

After making a deep analysis of the whole context in environmental matters, it is important to refer to the global state of the environmental problem, to be aware that we are participants of this kind of triad human being - environment - culture, which is certainly not static, but is in constant movement, a kind of dynamism that leads us not only to the loss of biodiversity, air pollution, the lurking climate change but also the drastic reduction and pollution of fresh water and behold, This last example is where we find one of the conflicts raised in the lawsuit, therefore, knowing how to place ourselves in the scenario is essential to be able to interpret

the claims of the actors, to understand which capital is more important for the social field in question, if there is a dominance of economic aspirations over cultural capital, if a balance is sought or if personal goals are simply valued more to the detriment of the common good as a society. In my opinion, this is where the axiological problem of the ruling in question lies, the lack of understanding and citizen solidarity, knowing and being able to use and enjoy with due conscience without disturbing the tranquility and general welfare. Once all possible avenues of solution between the interested parties have been exhausted, unfortunately it must be resolved in the courts, which is what happened in the ruling we are dealing with today, where the Administrative Contentious Chamber of First Nomination of the Province of Cordoba, acting on a lawsuit filed against the Municipality of Cordoba, decided to grant the plaintiff's request and in my opinion correctly only in relation to the possible impact on the environment and cultural heritage that could be affected by the construction of the building complex. It is worth mentioning what happened with the precautionary measure not to innovate filed by the plaintiff, which was rightly rejected for not complying with the necessary requirements and constitutes part of the object itself of the action of amparo in order to be admissible. I also consider that the jurisprudential case analyzed sets a particular precedent for the way of approaching the concept of environmental protection in the city of Cordoba, since due to the exponential urban and population growth it will generate these controversies and vicissitudes among its citizens, and it is there where the judge will find its bases and legislative pillars; in articles 71 "The environmental protection proceed when it is filed in relation to the protection and defense of the environment and biodiversity, preserving from depredations, alterations or irrational exploitation, the soil and its fruits, the flora, the fauna, the mineral resources, the air, the waters and the natural resources in general....", and 73 "Those individuals or legal entities -public or private- who, directly or through third parties, are responsible for facts, acts or omissions that generate the disturbance, deprivation, damage, threat or impairment of the diffuse interests or collective rights..." of the Environmental Policy Law of the Province of Cordoba No. 10.208 and contemplating those minimum requirements of the General Environmental Law No. 25675.

CONCLUSIONS

In order to achieve a detailed analysis of the legal branch that summons us, it is necessary as a first step to have a holistic view of the Environment, to take it in its generality and then to be critical and be able to develop, distinguish and analyze with certainty each particular point of the ruling "GAY BARIDON, ALEJANDRO C/ MUNICIPALIDAD DE CORDOBA - AMPARO AMBIENTAL" in which we find main aspects such as the formal admission of the amparo action in a partial manner, the recategorization as a collective process and the denial in relation to the precautionary measure requested, for not complying with the necessary requirements for its acceptance. In my opinion, the decision rendered by the 1st Nomination Contentious-Administrative Chamber is complete and correct in solving the totality of the claims presented, beyond having a normative overlap between national and provincial laws, decrees, resolutions or provisions, it manages to elucidate the main problem originated by the collision between the rules of law and the superior principle of the legal system. Last but not least, I wanted to highlight the relevance of the analyzed ruling, which is added as a precedent in the City of Córdoba, a city in full development, in search of modernity and urban expansion, many times disproportionate, leaving nature subordinated, forgetting its finiteness in the resources it offers us, therefore it is a social commitment, to preserve its cultural and environmental characteristics and thus allow the development of the human being, without compromising the environment of future generations.

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FINANCING

None.

CONFLICT OF INTEREST

The authors declare that there is no conflict of interest.

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