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REVIEW

# Environment and justice: an analysis of the Márquez case and its impact on Argentine environmental law

## Ambiente y justicia: un análisis del caso Márquez y su impacto en el derecho ambiental argentino

María Belén Miño[1], Nicolas Grappasonno[1]

[1]Universidad Empresarial Siglo 21, Abogacia. Argentina.

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**ABSTRACT**

The text analysed the development of environmental law in Argentina as a response to the harmful effects of human activity on the environment. This field of law emerged with fundamental principles such as prevention, precaution, intergenerational equity, participation and sustainability. The 1994 constitutional reform, through Article 41, granted constitutional status to the right to a healthy environment, consolidating it as a fundamental right of collective incidence. Within this framework, national and provincial laws were enacted, such as the General Environment Law and specific regulations on waste, which established minimum standards for environmental protection. Authors such as Valls, Lorenzetti and Bidart Campos contributed comprehensive views on the environment, recognizing its natural, cultural and social dimensions. At the international level, the value of the environment as a basic human right has been highlighted since the 1972 Stockholm Declaration. In case law, the Supreme Court and other courts have reinforced the justiciability of this right through landmark rulings, validating environmental protection against state inaction. The case of Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda was presented as a paradigmatic example where the lack of waste management violated fundamental rights. The legal action brought by the community reflected the importance of citizen participation and the State's obligation to implement effective environmental policies. The analysis concluded that environmental law should be conceived not only as technical regulations, but as part of a collective commitment to a sustainable and equitable development model.

**Keywords:** Healthy Environment; Environmental Law; Case Law; Sustainable Development; Citizen Participation.

**RESUMEN**

El texto analizó el desarrollo del derecho ambiental en Argentina como respuesta a los efectos nocivos de la actividad humana sobre el entorno. Este campo jurídico emergió con principios fundamentales como la prevención, precaución, equidad intergeneracional, participación y sustentabilidad. La reforma constitucional de 1994, mediante el artículo 41, otorgó jerarquía constitucional al derecho a un ambiente sano, consolidándolo como un derecho fundamental de incidencia colectiva. A partir de este marco, se sancionaron leyes nacionales y provinciales, como la Ley General del Ambiente y normas específicas sobre residuos, que establecieron presupuestos mínimos de protección ambiental. Autores como Valls, Lorenzetti y Bidart Campos aportaron visiones integrales sobre el ambiente, reconociendo su dimensión natural, cultural y social. A nivel internacional, se destacó el valor del ambiente como derecho humano básico desde la Declaración de Estocolmo de 1972. En la jurisprudencia, la Corte Suprema y otros tribunales reforzaron la justiciabilidad de este derecho a través de fallos emblemáticos, validando el amparo ambiental frente a la inacción estatal. El caso "Márquez, Evangelina y otros c/Municipalidad de Colonia Avellaneda" fue presentado como

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un ejemplo paradigmático donde la falta de gestión de residuos vulneró derechos fundamentales. La acción judicial promovida por la comunidad reflejó la importancia de la participación ciudadana y la obligación del Estado de implementar políticas ambientales eficaces. El análisis concluyó que el derecho ambiental debe concebirse no solo como normativa técnica, sino como parte de un compromiso colectivo con un modelo de desarrollo sustentable y equitativo.

**Palabras clave:** Ambiente Sano; Derecho Ambiental; Jurisprudencia; Desarrollo Sustentable; Participación Ciudadana.

## INTRODUCTION

Rapid urban growth, industrialization without adequate controls, and indiscriminate exploitation of natural resources have led to growing concern in recent decades about the negative effects of human activity on the environment. In this context, environmental law has emerged as an autonomous branch of law, with the main objective of establishing a regulatory framework to govern the relationship between humans and their environment, promoting the preservation of natural resources and the quality of life of present and future generations.

This new legal approach involves a transformation of the traditional legal paradigm, incorporating specific principles such as prevention, precaution, intergenerational equity, and sustainability. In the case of Argentina, the enshrinement of the right to a healthy environment in Article 41 of the National Constitution, following the 1994 reform, marked a milestone in the evolution of environmental law, granting it constitutional status and recognizing it as a fundamental right of collective importance. Since then, a body of law has been consolidated that includes national and provincial laws aimed at establishing minimum standards for environmental protection, as well as institutional and procedural mechanisms for its defense.

This framework is enriched by valuable doctrinal contributions that broaden and deepen the concept of the environment, and by a growing body of case law that reaffirms the justiciability of environmental law. In particular, judicial intervention in cases of state failure to guarantee healthy living conditions has taken on special relevance in cases such as the Matanza-Riachuelo Basin, illegal deforestation, and poor urban waste management. In this regard, this paper analyzes the case of Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda, which is a paradigmatic example of how the lack of effective environmental public policies can violate fundamental rights, activating the mechanisms of environmental law in its constitutional, legal, and jurisprudential dimensions.

## DEVELOPMENT

Environmental law is a relatively recent branch of law that emerged in response to the growing ecological problems resulting from human intervention in the natural environment. This field of law is guided by fundamental principles such as prevention, precaution, intergenerational equity, citizen participation, and sustainability. Environmental law can be defined as "the set of rules that regulate people's social rights to enjoy a healthy environment, ensuring the necessary protection and defense against the aggression that voluntary and involuntary human action can cause to their common habitat".

In the Argentine National Constitution, the 1994 reform incorporated Article 41, establishing that all inhabitants have the right to a healthy, balanced environment suitable for human development and the duty to preserve it.[1] This principle recognizes the environment as a fundamental right and grants it constitutional status. In turn, this article imposes on the authorities the obligation to implement policies that ensure environmental protection, the rational use of natural resources, and access to environmental information and education.

This constitutional framework is complemented by a set of national and provincial laws that articulate the minimum requirements for environmental protection. Among these, the following stand out:

- General Environment Law No. 25.675,[2] which establishes the guiding principles for national environmental policy, including prevention, the precautionary principle, and access to information.
- Law No. 25.916,[3] which establishes minimum environmental protection requirements for the comprehensive management of solid urban waste.
- Law No. 25.612,[4] on the comprehensive management of industrial waste and service activities.
- Law No. 10.311,[5] of the province of Entre Ríos on urban solid waste management.

National doctrine has also provided important theoretical foundations. The author Valls[6] introduces the notion of the carrying capacity of ecosystems, highlighting the need to respect the limits of environmental resilience in order to achieve truly sustainable development. This idea is directly linked to the paradigm of

sustainable development enshrined in the Brundtland Report, which proposes meeting the needs of the present without compromising those of future generations.

For his part, Lorenzetti[7] defines the environment as a global system made up of natural and artificial elements, constantly changing due to human action, which highlights the dynamic and interdependent nature of the environment. Complementarily, Cafferatta[8] argues that environmental damage directly impacts relationships within the ecosystem, affecting both humans and other species.

From a more comprehensive perspective, authors such as Bidart Campos[9] propose broadening the concept of environment to include not only natural elements, but also cultural and social elements created by humans. Along these lines, Bustamante Alsina (1995) highlights quality of life as the cornerstone of environmental policies, linking human well-being with environmental conservation.

Alchourrón et al.[10] provide a useful tool for understanding axiological problems in the legal sphere, such as conflicts between rules and principles, which is particularly relevant in the case analyzed, where environmental protection regulations clash with the lack of efficient municipal public policies.

At the international level, since the 1972 Stockholm Declaration, the environment has been recognized as a basic human right.[11] Likewise, the International Covenant on Economic, Social and Cultural Rights (ICESCR)—which has constitutional status under Article 75(22) of the CN—establishes the obligation of States to adopt measures to ensure an adequate standard of living, including actions aimed at improving the environment.[12,13]

Case law has also been key in consolidating these rights. The Supreme Court of Justice of the Nation has ruled in multiple cases on the justiciability of the right to the environment and the admissibility of procedural tools such as environmental amparo actions, especially in contexts where there is a direct and imminent impact on collective rights,[14]

**Case law**

*1. Case "Mendoza, Beatriz Silvia et al. v. National State et al. for damages (damages resulting from the contamination of the Matanza-Riachuelo River)" – CSJN, July 8, 2008*

This landmark ruling by the Supreme Court of Justice of the Nation (CSJN) set a historic precedent in environmental matters in Argentina. The court ordered the National Government, the Province of Buenos Aires, and the Autonomous City of Buenos Aires to carry out a comprehensive cleanup plan for the Matanza-Riachuelo Basin, highlighting the State's obligation to guarantee the right to a healthy environment (Art. 41 of the Constitution).

This precedent is applicable to the Colonia Avellaneda case because it recognizes the state's responsibility for failing to comply with its legal environmental duties, especially when there is a direct impact on the health and quality of life of the inhabitants.

Relevant quote from the ruling:

"The right to a healthy environment is operational, collective, and justiciable. It is incumbent upon judges to ensure its effective enforcement when a concrete threat or harm is verified."

*2. Case "Environment and Natural Resources Foundation (FARN) v. EN – Secretariat of Environment and Sustainable Development on environmental protection" – Federal Administrative Court, 2009*

This ruling confirmed the standing of civil associations and non-governmental organizations to take legal action in defense of the environment, even when there is no specific individual interest, reinforcing the collective nature of environmental law.

It is applicable to the case of the Los Zorzales Neighborhood Commission, given that it was a community organization that brought the environmental amparo on behalf of the neighborhood.

"Collective environmental protection is admissible when a collective right relating to indivisible collective goods, such as the environment, is affected."

*3. Case "Villaverde, Marcela et al. v. Province of Mendoza on environmental protection" – SCJM, Mendoza, 2015*

The Supreme Court of Mendoza condemned the Province of Mendoza for the poor management of solid urban waste in the landfill in the town of Luján de Cuyo. The obligation to relocate the final disposal site was established due to its proximity to populated areas and its impact on health.

This case is very similar in fact and law to that of Colonia Avellaneda, as it also involves an open-air landfill with health consequences for the population.

Relevant excerpt:

"The proximity of the landfill to inhabited areas and the lack of a comprehensive waste management plan violate the constitutional right to a healthy environment and oblige the State to implement corrective

measures."

*4. Case "Neighborhood Association La Boca v. GCBA s/amparo" – Superior Court of Justice of the Autonomous City of Buenos Aires, 2011*

In this ruling, the Superior Court of Justice of the Autonomous City of Buenos Aires upheld the admissibility of the amparo as an appropriate means of protecting the environment against state inaction, even when other administrative remedies are available, when the damage or threat is serious and imminent.

This precedent reinforces the validity of the amparo filed in the Los Zorzales case, after years of administrative complaints without an effective response.

*5. Case "Salas Dino et al. v. Province of Salta on amparo" – CSJN, 2008*

This ruling ordered the suspension of deforestation authorized by the province of Salta in violation of the Forest Law (Law 26.331). It reaffirms that failure to comply with environmental regulations can be judicially reviewed and corrected.

Although it refers to deforestation, the central principle of the ruling applies to the case of Entre Ríos: when environmental regulations (such as Law 25.916[3] and Provincial Law 10.311[5]) are violated, judges can and must intervene.

The aforementioned case law consolidates the interpretation of the right to the environment as a fundamental right with collective impact, enforceable in court, and reinforces the legitimacy of environmental protection actions when the State fails in its duty to preserve the environment and guarantee decent living conditions. In all cases, the principle of prevention and restoration of environmental damage has been considered a priority by the courts.

In conclusion, the analysis of the case "Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda" is based on a constitutional, legal, doctrinal, and jurisprudential framework that recognizes the right to a healthy environment as a fundamental, collective, enforceable, and justiciable human right within the framework of a sustainable development model. Failure by public authorities to observe these principles constitutes a breach of the law that enables the judiciary to intervene to protect essential rights.

## CONCLUSIONS

Environmental law has become established in Argentina as an essential tool for the defense of a healthy, balanced environment suitable for human development. Its constitutional recognition in Article 41, together with the incorporation of international treaties that take precedence over domestic laws, has created a regulatory framework that requires authorities to act diligently to prevent and remedy environmental damage. This obligation is not only legal, but also ethical and political, as it is directly linked to the protection of life, health, biodiversity, and the general well-being of the population.

Doctrine and case law have played a fundamental role in the interpretation and effective application of these rights. Through landmark rulings, the courts have established clear criteria that reinforce the collective and justiciable nature of the right to the environment, enabling citizens and social organizations to resort to the courts when the State engages in omissions or actions that compromise the integrity of the environment. Thus, environmental protection is an indispensable procedural tool for guaranteeing the effective protection of these rights against current damage or imminent threats.

The analysis of the case "Márquez, Evangelina et al. v. Municipality of Colonia Avellaneda" highlights how the absence of local public policies on waste management can lead to situations of serious environmental and health impacts. This case reaffirms the responsibility of the State at all levels and the need to implement comprehensive, participatory, and sustainable policies that respect ecological limits and prioritize the well-being of the population. It also demonstrates that citizen action, combined with a timely and well-founded judicial response, can become an instrument of social transformation and effective protection of fundamental rights.

In short, environmental law cannot be understood solely as a set of technical rules, but as a manifestation of a collective commitment to a more just, supportive, and respectful model of development that respects the limits of the planet. Strengthening environmental law involves not only judicial action against state omissions, but also the construction of a legal and political culture that recognizes the environment as a common good, essential for life and human dignity.

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## AUTHOR CONTRIBUTION
*Conceptualization:* María Belén Miño, Nicolas Grappasonno.
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*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.