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A B O G A D O S

The Citizen's Role in Environmental Matters

The Argentinean case

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I. Decision Making Processes

- **Law Nro. 25,675 (General Environmental Act)**

EIA



Public Hearing

- **Villivar Case**
 - ✓ In 2003, a Court in the Province of Chubut, issued an injunction.
 - ✓ It ordered the suspension of open-pit mining activities due to the failure of comply with a public hearing.



II. Access to Public Information

- **Law Nro. 25,675 (General Environmental Act)**
 - ✓ Sections 16, 17 and 18
- **Law Nro. 25,831 (Free Access to Environmental Public Information Act).**
 - ✓ It guarantees access to public records and files related to environmental matters.



III. Access to Justice

- **Where?**
 - ✓ Jurisdiction: Civil Courts or Federal Courts (if action against State).
 - ✓ Supreme Court?
 - ✓ Venue: location where facts occurred or defendant's domicile.



III. Access to Justice (cont.)

- **On What Grounds?**
 - ✓ Section 1,113 of the CC imposes strict liability on the owner or custodian for harm resulting from the risks or defects of a good.
 - ✓ Section 2,618 of the CC imposes liability for nuisance caused by smoke, heat, odors, light, noise, vibrations and the like, arising from activities in neighboring areas.
 - ✓ Liability arises when normal tolerance levels are exceeded as a result of such disturbances, taking into account the nature of the place, even if an administrative permit exists.



III. Access to Justice (cont.)

- ✓ General Environmental Act (GEA) Section 28: Who caused environmental damage must restore it to its prior condition (polluters pay principle).
- ✓ Environmental Injunctive Relief (Section 43 National Constitution) known as "recurso de amparo colectivo."
- ✓ Right to a healthy environment – Section 41 NC.
- ✓ Cease of contamination or injunction to prevent environmental damages.



III. Access to Justice (cont.)

- **Who** has legal standing?
 - ✓ Wide legal standing to file for an injunctive relief. (Section 43 NC)
 - ✓ Wide legal standing to bring claims on environmental damages: Federal government, Provinces, Municipalities, Ombudsman, NGO's and affected individuals. (General Environmental Act – GEA)
 - ✓ Affected individual vs. individual who owns an interest in the impaired resource.
 - ✓ Ability to sue on behalf of others vs. aggrieved party
 - ✓ No mandatory intervention of the Attorney General.
 - ✓ Possibility of suing in forma pauperis (waiver to litigate without cost).



III. Access to Justice (cont.)

- **The Mendoza Case and the Legal Standing of Non-Governmental Organizations (NGOs)**
 - ✓ The Supreme Court accepted certain NGOs to intervene as third-parties when their statutes include the objective to protection of the environment.

III. Access to Justice (cont.)

- **Who** can be sued?

Anyone suspected to have caused environmental damage. Exemption of liability: Proving that, despite victim's fault or a third party's fault, preventive measures have been adopted. Prove due diligence.

- ✓ No need for the plaintiff to bring the case first to the administrative authorities. However administrative files are important.
- ✓ Mediation : Mandatory prior lawsuit in some jurisdictions.
- ✓ No need for the plaintiff to gather previous evidence to be able to sue.
- ✓ Discovery period vs. Evidentiary period.



III. Access to Justice (cont.)

- **What** can be sought?
 - ✓ Environment restoration: environmental damage is any relevant alteration negatively affecting the environment.
 - ✓ If remediation technically unfeasible: Pay off to the Environmental Compensation Fund.
 - ✓ Compliance with legal limits for emissions and wastes release vs. environmental damage
 - ✓ Remediation
 - ✓ Enforcement authorities vs. Courts



III. Access to Justice (cont.)

- **The Halabi Case (Class Action)**

- ✓ The Supreme Court in *Halabi v Executive Branch* (2009) designed the features of class actions.
- ✓ The court upheld that it is “perfectly acceptable” for an individual affected, the Ombudsman or certain NGOs to file a collective claim on behalf of the class.
- ✓ The claim has to be focused in the common effects, not in the individual ones.
- ✓ Shall this collective action proceed in environmental matters?