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# How in constitutional protection, the right to a healthy environment can be guaranteed

**Diego Bonilla-Morejón<sup>1</sup>**

<sup>1</sup>Professor MsC of Facultad de Jurisprudencia Ciencias Sociales y Políticas,  
Departamento de Investigación, Universidad Estatal de Bolívar, 020150,  
Guaranda-Ecuador  
Email: [dibonilla@ueb.edu.ec](mailto:dibonilla@ueb.edu.ec)

**Carlos Bucheli-Espinoza<sup>2\*</sup>**

<sup>2</sup>Universidad Estatal de Bolívar  
Professor of Facultad de Jurisprudencia Ciencias Sociales y Políticas,  
Departamento de Investigación, Universidad Estatal de Bolívar, 020150,  
Guaranda-Ecuador  
Corresponding Author  
Email: [cbucheli@ueb.edu.ec](mailto:cbucheli@ueb.edu.ec)

**Delia Samaniego-Quiguirí<sup>3</sup>**

<sup>3</sup>Professor of Facultad de Jurisprudencia Ciencias Sociales y Políticas,  
Departamento de Investigación, Universidad Estatal de Bolívar, 020150,  
Guaranda-Ecuador  
Email: [dsamaniego@ueb.edu.ec](mailto:dsamaniego@ueb.edu.ec)

**Ítalo Gaibor-Yáñez<sup>4</sup>**

<sup>4</sup>Professor of Facultad de Jurisprudencia Ciencias Sociales y Políticas,  
Departamento de Investigación, Universidad Estatal de Bolívar, 020150,  
Guaranda-Ecuador  
Email: [igaibor@ueb.edu.ec](mailto:igaibor@ueb.edu.ec)

**Fabian Toscano Broncano<sup>5</sup>**

<sup>5</sup>Dr of Postal Address: Consejo de la Judicatura, 020150, Guaranda-Ecuador  
Email: [fabian.toscano@funcionjudicial.gob.ec](mailto:fabian.toscano@funcionjudicial.gob.ec)

**Franklin Murillo Ramos<sup>6</sup>**

<sup>6</sup>Dr of Postal Address: Consejo de la Judicatura, 020150, Guaranda-Ecuador  
Email: [remigio.murillo@funcionjudicial.gob.ec](mailto:remigio.murillo@funcionjudicial.gob.ec)

### **Abstract**

In this essay, it dates from an analysis of the Constitutional Amparo to guarantee the right to a healthy environment, how and when the constitutional guarantees must be filed, their usefulness, additionally it is made known in a synthetic way, the different analyzes carried out by the Constitutional Court, when it becomes aware that constitutional rights and precepts have been violated. The Constitutional Guarantee on this occasion is focused as a guarantee of the right to a healthy environment, because the conditions have changed as we have evolved, from international law when we talk about human rights, until it has been included in the constitutions of the different countries.

**Keywords:** Healthy Environment, Constitutional Protection, Human Rights, Constitutional Guarantees.

## **Cómo, en la protección constitucional, se puede garantizar el derecho a UN medio ambiente saludable**

### **Resumen**

En este ensayo, data de un análisis del Amparo Constitucional para garantizar el derecho a un medio ambiente sano, cómo y cuándo deben presentarse las garantías constitucionales, su utilidad, además se da a conocer de manera sintética, los diferentes análisis realizados por el Tribunal Constitucional, cuando se da cuenta de que se han violado los derechos y preceptos constitucionales. La Garantía Constitucional en esta ocasión se enfoca como una garantía del derecho a un medio ambiente sano, porque las condiciones han cambiado a medida que evolucionamos, desde el derecho internacional cuando hablamos de derechos humanos, hasta que se ha incluido en las constituciones de los diferentes países.

**Palabras clave:** Ambiente Saludable, Protección Constitucional, Derechos Humanos, Garantías Constitucionales.

## 1. INTRODUCTION

When talking about the Protection Action as a Constitutional Guarantee, we will say that it is a resource through which the constitutional rights of people are protected even if we analyze the Protection Action has a double functionality, the first protects the citizen in its fundamental guarantees, and the second protects the supreme charter as is the constitution in order to guarantee the inviolability of the precepts contemplated and recognized by it. In this context it is intended to make known how to proceed against a violation against nature in order to guarantee the right to a healthy environment, because we must always think about the future, we will offer our descendants.

There have been pronouncements of the Constitutional Court before violations of rights against nature, so in our country if these cases have occurred, unfortunately not all are denounced so that our nature constantly suffers damage and as a consequence people live in a Polluted environment, especially in large cities where smog and pollution by factories are in greater intensity. For this reason the importance of the issue is that we know that there are resources or actions that ensure the guarantee of rights and precepts in our Constitution, but more is needed, so collective actions should be

created that are aimed at protecting interests groups so that when there is a violation, the environmental damage caused is repaired.

A) The constitutional protection, guaranteed of violated rights.

The constitutional protection is an extraordinary action, whose purpose is to guarantee the violation of constitutional, subjective rights of constitutional rank provided in international human rights instruments. (Guastini, 2001), ensures that "the guarantee of a right cannot be established by the same norm that confers it", because it is one thing to attribute a right and another to be able to guarantee it.

There are ordinary, appropriate, operable and effective ways to restore the rights violated, including (Pérez Ordoñez, 2000) argues that "the judge of the amparo action must limit its function to assess the constitutionality or unconstitutionality of the claimed act, to the rape concept light. It cannot examine or analyze legal or regulatory issues". There are Active subjects that according to the Constitution in our country, this can be proposed by any person for their own rights, by a legitimate representative of a community or group, by the Ombudsman, and according to what the Constitutional Control Law allows, any person, whether natural or legal, to be environmental protection may be an actor, in which he may justify that the affected party is unable to initiate the action and duly ratified within three days.

In constitutional protection we have intervening subjects and these are active and passive, The Active subjects according to the Constitution in our country, this can be proposed by any person for their own rights, by a legitimate

representative of a community or group, by the Ombudsman, and in accordance with the provisions of the Law Constitutional Control allows any person to be natural or legal because it is the protection of the environment can be an actor, in which he can justify that the affected is unable to initiate the action and duly ratified in three days.

The taxpayers of the Amparo Action, framed in the Constitution, may be proposed against any authority of the Public Administration, or against those acting by delegation or concession of public authority, or providing public services, and against of individuals if their way of acting directly and seriously affects a community interest, common or diffuse, the latter refer to subjective legal situations not titled by a single person, and the essential condition is that many people share the same in common interest, the diffuse adjective is used, in order to understand that the law is shared between different people who have the same interest. This is usually handled in Environmental Law, (Bidart, 1990) points out that “Co-participation in interests of this kind is found when talking about the diffuse interest of not contaminating a watercourse, or of preserving the purity of the environment ambient; or that there is no predation of fauna, flora, or cultural heritage; or that food sanitation is safeguarded, etc.”

While, to the collective right, (Bidart, 1990) points out that “The collective adjective has the same meaning, because it addresses the circumstance that the interest is diffused in a collective that covers an undetermined number of people, without individualizing in none of them and without circumscribing particularly in each one ”. Reason more than enough to determine that the collective interest prevails over

the individual, at least when it comes to environmental or nature issues.

Here are principles that govern Constitutional protection, for example:

- The Celerity, in order to eliminate any dilation that aims to delay the process.

- Protection, the amparo action seeks to protect constitutional rights.

- The Party Instance, in cases of constitutional protection, the judge cannot act *ex officio*, so it must be promoted by someone.

- Relativity of Judgment, the decision of the judge does not cause an *erga omnes* effect, because it is limited to the aggrieved individual and the violation of constitutional rights to which the action refers.

- Exclusivity of the Constitutional Law, the administrator of justice of the action must limit its function to appreciate the constitutionality or unconstitutionality of the claimed act, in light of the concept of violation, it is important to consider what it indicates (Rodríguez, 2007) “In The protection of constitutional rights is unquestionable the exercise of the jurisdictional function and its constitutional nature arises because the rights are directly protected by the constitution. There is therefore a constitutional jurisdiction, that is, the exercise of the jurisdictional function of the state to resolve litigation or constitutional conflicts”.

A) Nature and its rights recognized in the Constitutional Charter.

When we talk about the right to a healthy environment, it constitutes a fundamental right of people, of society, which in most countries is constitutionally recognized, therefore it must be respected, otherwise we would be violating what is established in the supreme norm, despite to which the law mandates, prohibits and permits, we must consider that the human being can destroy the environment if he wanted to, because his vast knowledge would contravene what is allowed, perhaps for a particular benefit.

The right to maintain a healthy environment arises in 1948, with the Universal Declaration of Human Rights, and that even within the framework of the International Conference on guarantees of the Human Right to a healthy environment, in the Lisbon Declaration of 1988, it was suggested that The states can implement mechanisms, in order to guarantee access to enjoy a healthy environment for the development of their life, and the individual can exercise and demand this right without delay. If we carry out a comparative law study, we find that many States in different ways, establish within their legal bodies, the right to a healthy environment as a fundamental right.

Although an article defined for example in the Constitution of Italy of 1948, based on jurisprudential basis, is not established, it relates to articles 9,32 and 41, which refer to the protection of historical and artistic heritage, to the protection of Health as the fundamental right of the individual. In the Fundamental Law of Bonn in Germany, in its article 20 it determines that the State will protect the natural and indispensable conditions for life. In the same way in the Greek Constitution of 1975, it states in Art. 24.1 The state is obliged to



protect the natural and cultural environment, so it must adopt preventive or repressive measures for its conservation.

As for Latin America, the Brazilian Constitution formally recognizes the environmental law determined in Art. 225, within which the environment is established is a right belonging to the present and future generations. In the supreme letter of Peru in 1979, it is a citizen's right to live in a healthy and ecologically balanced environment (art. 123), and in its current constitution, Article 2, paragraph 22 establishes the right of persons to be the right to the healthy environment.

In Venezuela the Constitution recognizes the right of the person even a healthy environment art. 127, similarly obliges the state and society, ensure that the population develops in an environment free of pollution. Within the Constitution of Argentina, it determines in its Art. 411, that all the inhabitants enjoy a right to a healthy, balanced environment, suitable for human development. Finally, the Constitution of Ecuador, within the rights of Good Living, establishes the Right to a Healthy Environment, as well as establishes principles related to Biodiversity and Natural resources. As we can see the right to a Healthy Environment is within the fundamental rights of the population, even this is contemplated in the different Constitutions of the States, so it has a worldwide impact.

#### A) The judges and their analysis from different perspectives

The judges have different criteria at the time of issuing resolutions and / or sentences, this leads to the violation of rights when they do not use their sound criticism, although they must be framed in

the principle of independence (COFJ, 2009), that is, they will act in based on the Constitution of the Republic of Ecuador, international human rights instruments, and the law; but I would not like to think that due to lack of objectivity, judgments that affect collective rights can be issued, without considering what is established by the Organic Law of Jurisdictional Guarantees and Constitutional Control Art.3 number 3, “Weighting, a preference relationship must be established between the principles and norms, conditioned to the circumstances of the concrete case ..... ..”(2009, Article 3).

When people feel that our rights are being violated, the Constitution of the Republic of Ecuador has established Jurisdictional Guarantees, for example, the Protection Action is aimed at the direct and effective protection of the rights that are determined in the Constitution, when There have been actions or omissions by any non-judicial public authority, but what happens if this Protection action is denied? If that happens, we have another resource that is the Extraordinary Protection Action, and these proceeds when there is a sentence or definitive orders in which it has been violated by action or omission of the rights recognized in the constitution and is imposed before the Constitutional Court.

How to act in Constitutional Amparo in order to guarantee the right to a healthy environment, if we are not satisfied with the resolution sent by the Administrative Authority, and in accordance with Art. 31 of the Organic Code of the Judicial Function “.... Impugnable in jurisdictional headquarters”, this is how a Protection

Action is filed, but in the case detailed below it is denied, which is why the example is cited below:

Example of an extraordinary protection action, case No.0507-12-EP.

“The antecedents date in which an extraordinary protection action is proposed, by Mr. S.G.Ll. as Provincial Director of the Ministry of Environment of Emeralds- Ecuador, who appeared on October 7, 2011 before the Single Chamber of the Provincial Court of Esmeraldas, which issued a judgment, on September 9, 2011, within the action of Protection No. 281-2011. By means of the ruling issued on October 17, 2011, the Chamber of Conjunctions of the Provincial Court of Justice of Esmeraldas decided to refer the file to the Constitutional Court.

For his part, the secretary of the Provincial Court of Justice Esmeraldas sent the application along with the file to the Constitutional Court on March 21, 2012, and was received by the Agency on March 26, 2012. In the same way the secretary general, certified that no other lawsuit with identity of object and action has been filed.

The Admission Hall in operation, by order dated April 27, 2012 at 08:10 a.m., considered the present case and, considering that the extraordinary protection action meets the formal requirements required to present the application, admitted the action and ordered to proceed to the respective draw.

Once the General Secretary of the Constitutional Court sent the file to the Constitutional judge, who once considered the case, ordered

the notification with the content of the claim to the passive and active legitimates and to third parties interested in the process.

*1.1. Sentence, order or resolution with force of contested sentence*

Relevant part of the judgment issued on September 9, 2011, by the Single Chamber of the Provincial Court of Justice of Esmeraldas.

“The Chamber ADMINISTRATING JUSTICE ON BEHALF OF THE PEOPLE'S SOVEREIGNTY OF ECUADOR AND BY AUTHORITY OF THE CONSTITUTION AND THE LAWS OF THE REPUBLIC, rejecting the appeal filed by the legal passive, Ministry of the Environment, confirms the sentence come in degree ..... NOTIFY.”

## **2. METHODOLOGY**

The acting actor García LL.S. As Provincial Director of the Ministry of the Environment, he points out in the main that the contested judgment violates the constitutional rights of nature to the extent that he does not know the declaration as a protected area to the Cayapas Mataje Ecological Reserve granted in 1995, in front of the shrimp farm owned by Mr. Manuel de los Santos Meza Macías who performs aquaculture activity in that area. The legitimized asset mentions that the protection action within which the contested

judgment was issued was presented against the resolution of the administrative process in which the shrimp wing was sanctioned, indicates that within both processes the Ministry of Environment would have scientifically proven with Satellite photographs through a multitemporal analysis of the occupation of the ecological reserve by the shrimp after its declaration of a protected area.

Likewise, it is indicated by the actuator that personnel specialized in the use and management of this type of studies were heard at the hearing before the judge of instance, where the system worked and a comparison was made over time in based on the photographs shown, showing that before it is declared as an ecological reserve by the shrimp after its declaration of a protected area. Likewise, it is indicated, on the part of the actuator, that personnel specialized in the use and management of this type of studies were heard at the hearing before the judge of instance, where it was exposed how the system worked and a comparison was made through the time based on the exposed photographs, showing that before it was declared as an ecological reserve in that area there was some infrastructure dedicated to the aquaculture activity. In spite of this, the legitimized asset maintains that the economic benefit of an individual over the general interest has been more widely estimated, ignoring at all the constitutional rights to which nature is recognized.

In this sense, the acquiring party indicates that the sentence issued by the Single Chamber of the Provincial Court of Justice of Esmeraldas violates the right to due process in the guarantee of motivation of the resolutions of the public powers; insofar as judges

accept the protection action brought by Mr. Manuel de los Santos Meza Macías, they have ignored the rights of nature recognized by the Constitution and have not considered the provisions of art. 404, 405, and 406.

With the foregoing set forth, the petitioner requests the following from this Constitutional Court: In accordance with art. 62 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, with the exposition made, I have clearly and concretely referred to the constitutional violation committed by the judicial authority, clarifying that such action will allow to solve the constitutional violation in the present case, to in order to establish a precedent that allows us to fully exercise respect for nature and good living, being today of national importance and relevance or issues such as these that concern the entire community.

Despite having been duly notified with the content of the order of avoco knowledge of the case issued on June 19, 2012, the judges of the Single Chamber of the Provincial Court of Justice of Esmeraldas have not submitted the corresponding discharge report within the term granted.

Appearance of third parties interested in the process

State Attorney General

The lawyer Marcos Arteaga Valenzuela, in his capacity as National Sponsorship Director, delegate of the State Attorney General's Office, appeared in a brief filed on June 28, 2012 and indicated the constitutional box for the respective notifications, as set forth in pages 23 of the constitutional file.

Manuel de los Santos Meza Macías.

In a brief filed on August 14, 2012, Mr. Manuel Meza Macías appeared as owner of the shrimp called MARMEZA, located in the Tolanos de los Ruanos, canton Eloy Alfaro, province of Esmeraldas, to indicate in the main that the action Santiago García Llore did not correspond to the active legitimation of this extraordinary protection action but to the Minister of the Environment who is the representative of the State Portfolio.

On the other hand, he argues that through payment vouchers No. 2273 and 2332 the rights of occupation of beaches and bays have been paid to the Navy of Ecuador, Captaincy of the Port San Lorenzo, on what constitutes the MORMEZA shrimp farm. Which demonstrates the use and permanence of the areas subject to the dispute as shrimp farms; This, prior to the issuance of Executive Decree No. 052 published in the Official Registry No. 822 by means of which the Mataje - Cayapas Ecological Reserve is declared. He adds that in Article 11 of said executive decree, it is established that the owners, concessionaires and users of the shrimp farms installed after the issuance of Decree No. 1907, which do not have the relevant permits, will be sanctioned in accordance with the Law and regulations of the matter, for which the sanctions established in the relevant laws will be applied. However, the appearing party indicates that he is not incurred in said prohibitions, since he had the corresponding permits and was not within the delimited area in favor of the State's forest heritage. Finally, on the basis of these arguments and by virtue of no violation

of constitutional rights, the citizen Manuel de los Santos Meza Macías requests that the demand for extraordinary protection action raised by Mr. Santiago García Llore be dismissed.

### **3. RESULTS and DISCUSSION**

The Constitutional Court is competent to hear and decide on extraordinary actions to protect against sentences, final orders and decisions with force of judgment in accordance with the provisions of articles 94 and 437 of the Constitution of the Republic in accordance with articles 63 and 191 numeral 2 literal d of the Organic Law of Jurisdictional Guarantees and Constitutional Control, in accordance with Art. 3 numeral 8 literal and third subsection of art 35 of the Regulation of Substantiation of Competition Processes of the Constitutional Court. The shareholder is entitled to file this extraordinary protection action by virtue of complying with the requirements established in Art. 437 of the Constitution of the Republic in accordance with Art. 439 *ibid.* Which establishes that constitutional actions may be presented. By any citizen or citizen individually or collectively and in accordance with article 59 of the Organic Law of Jurisdictional Guarantees and Constitutional Control.

As already stated in repeated pronouncements, the Constitutional Court, through extraordinary protection action, will rule on two main issues: the violation of constitutional rights or the



violation of due process rules. In this order, all citizens, individually or collectively, may file an extraordinary action to protect against judicial decisions in which rights recognized in the Constitution have been violated. Mechanisms provided for the competence assumed by the judges to be subordinate to the mandates of the supreme system and, above all, respect the rights of the procedural parties. The extraordinary protection action proceeds exclusively against final sentences or orders in which due to action or omission, due process or other constitutional rights recognized in the Constitution have been violated, once the ordinary and extraordinary resources have been exhausted within the term legal unless the lack of interposition of these remedies was not attributable to the negligence of the person who violated the constitutional right, as provided in Article 94 of the Constitution of the Republic. The sentence issued by the Single Chamber of the Provincial Court of Justice of Esmeraldas, on September 9, 2011. Does the right to due process violate the guarantee of the motivation of the resolutions of the public powers? The plaintiff states that the sentence lacks motivation because the judges accepted the protection action and recognize the apparent right of the MARMEZA shrimp, within the Manglares Cayapas-Mataje ecological reserve, ignored the declaration of protected area of this area and therefore, violated the constitutional provisions that enshrine the rights of nature.

Based on these arguments, this Court will analyze whether the contested judgment violates the guarantee of due process related to the

reasoning of the sentences, which is enshrined in Art. 76 numeral 7 literal I of the Constitution of the Republic which expressly states:

Art.76. - In any process in which rights and obligations of any order are determined, the right to due process will be ensured that would include the following basic guarantees (...)  
Based on this, it is understood that motivation is a mechanism that seeks to ensure the rationality of the decisions emanating from the bodies that exercise public powers.

According to the criteria set forth by the Constitutional Court, “the motivation implies an orderly explanation of the reasons that lead the authority, in this case, the judicial authority, to adopt a particular decision.<sup>1</sup>” The motivation seeks to control the arbitrariness of the sentencing, “It imposes on it the duty to justify the logical reasoning that followed to establish a conclusion and also guarantees the effective exercise of the right of defense of the parties, considering that they need to know the reasons for the decision to determine if they are satisfied with it<sup>2</sup>”.

It is worth mentioning what the Constitutional Court of Ecuador emphasizes that the motivation of the sentences is not exhausted in the mere issuance of the declaration of will of the judge in relation to a claim or in the finding of an explanatory, operative and expository part; in accordance with what was expressed by this body, this would be limited to carrying out a formal analysis of the contested resolution. With all this, the Constitutional Court states that the plaintiff argues the lack of motivation of the contested judgment as to the provincial judges have ignored the rights of nature recognized by the Constitution

of the Republic, making specific reference to what is established in the articles 71,72 and 73 of the Supreme Standard.

The court points out that although the rights of Nature constitute one of the most interesting and relevant innovations of the current Constitution, it moves away from the traditional conception “nature-object” that considers natures as property and focuses its protection exclusively on through the right of people to enjoy a healthy natural environment, to give way to a notion that recognizes their own rights in favor of nature. The novelty then consists in the change of paradigm on the basis of which, as a living being, nature is considered a subject of rights. Therefore, it is important to emphasize that the constitution of the Republic consecrates a double dimensionality on the nature and the environment in general, when conceived not only under the traditional paradigm of the object of law, but also as a subject, independent with specific or own rights.

Individuals, communities, peoples, nationalities and groups are holders and will enjoy the rights guaranteed in the Constitution and in international instruments. Nature will be subject to those rights recognized by the Constitution, with Ecuador being the first country to constitutionally recognize and protect the rights of nature.

As can be seen from the transcribed constitutional norm, it is important to note that citizens play a fundamental role in protecting the rights of nature, since every person can require the administrative and judicial authorities to observe and fulfill their rights. , for which the State is called to promote citizen participation for the exercise of mechanisms focused on its protection. In this sense, all citizens enjoy

active legitimacy to represent nature when their rights are being violated.

Under this context, the recognition of nature as a subject of rights includes the right to restoration, which implies repairing or enabling the environmental functionality of its life cycles, structure and evolutionary processes, without considering the additional obligations of an economic nature. (.....) This right does not refer to financial reparation but to restitution integrin, that is, to the full restitution of nature by repairing the damage caused to the physical environment until the original ecosystem returns as far as possible. The character erga omnes has the obligation to respect and ensure the rights of nature and indicates that “additionally we will see that this transversely applies not only specifically to environmental management policies or to the State's obligations to mitigate climate change, but those of health, education and others, reflecting the manifestations of transversely in a true regulatory framework (...) in effect, the rights of nature, as well as the human rights recognized in the constitutional framework without prejudice to those they make up the constitutional block, they are constitutional rights, and to that extent they must be interpreted and applied according to the Constitution.

In a case study, the court decides to reject the appeal filed and confirms the judgment that has come in grade, that is, the conservation of the MARMEZA shrimp within the Cayapas-Mataje Ecological Reserve. In this way and once the main arguments that supported the decision of the contested judgment have been identified, the Chamber

is evident, I analyze only the right to work and property. The Constitutional Court has indicated that “it is important to highlight the rights of nature that derive from the obligation of the state and its officials to encourage and promote respect for all the elements that are part of an ecosystem, and the right to respect nature in its entirety.” Aspect that has not been observed by the judges of the Single Chamber of the Provincial Court of Esmeraldas, who did not analyze the violation of the rights of nature within a process in which the central issue constituted conservation or not of a shrimp within the Cayapas-Mataje Ecological Reserve, the latter has a mangrove system with a great diversity of species of fauna and flora.

Since the Cayapas-Mataje ecological reserve has been declared, it constitutes an inalienable and imprescriptible heritage and no real right can be constituted on it, the Emerald Court Chamber disregarded the constitutional norms that enshrine integral respect for the existence and maintenance of nature. The Constitutional Court before the decision of the Chamber determines that the contested judgment within this extraordinary protection action is unreasonable. As for the logic, this element must be understood as the coherence and interrelation and causality that must exist between the budgets in fact, the norms applied and therefore with the conclusion adopted by the judges, in this sense The Constitutional Court after analyzing the factual awards and the regulatory awards in the subjudice case, the absence of interrelation between the elements is notorious, since it is analyzed that the judges of the Chamber when issuing the contested judgment contemplate the arguments of the trigger and analyze

regulations regarding the rights of nature as they had to do it, for that reason the Court determined that the sentence object of the extraordinary protection action is not duly motivated according to the logic parameter.

Finally, regarding the understandability, an element that refers to the use of clear language by the judges, so that the content of the judicial decision can be understood, the Court considers that the sentence is clear in its content and it uses an adequate legal language that makes what is decided by the Judges of the Chamber of the Provincial Court of Esmeraldas understandable, but it can be pointed out that the sentence lacks requirements such as reasonableness and logic. With everything described above for the Constitutional Court, it indicates that the contested judgment is not duly motivated, in accordance with the provisions of the legal norm.

Given this, the Constitutional Court states that “the violation of the constitutional right to due process is declared in the guarantee of motivation provided in Art. 76 numeral 7 literal I of the Constitution of the Republic; Accepts the Extraordinary Protection Action raised by the shareholder, and as integral reparation measures, it has been decided that the sentence issued on September 9, 2011, by the Single Chamber of the Provincial Court of Justice of Esmeraldas within Protection Action No. 281-2011 and all procedural acts, and other measures dictated as consequences thereof; roll back the process until the moment when the violation of constitutional rights occurred, that is, at the time of issuing an appeal sentence; and return the file to the Provincial Court of Justice of Esmeraldas, so that by lottery it will be

assigned to another room so that it knows and resolves the appeal in the terms indicated (Corte Constitucional del Ecuador). We can denote that nature has the right to have its existence fully respected and be able to maintain, regenerate its life cycles, structure, functions and evolutionary processes, so that justice administrators must bear in mind the character *erga omnes*.

#### **4. CONCLUSION**

Let us take into account that nature is subject to rights such as the right to a good and not only to a person, that is, the Pacha Mama where life is produced and carried out and has the right to fully respect its existence, maintenance and Basically your feedback. As we can see in Latin America, a development of environmental protection and maintenance or policies that make conservation of nature effective has to be established, analyzing that Latin America is the source of natural resources for the whole world due to its regeneration, but it is not necessary abuse our resources. There is a universal trend in environmental matters and it is aimed at the effective constitutional protection of human rights with a close relationship with the protection of the environment. Environmental rights, as well as the degradation or modification of ecosystems, have allowed the law to protect the ecosystem, which has given rise to the relationship between human rights and the environment, which has reached all the countries of the world by

proposing Challenges that States must face with all that this implies, that is, to make the ecosystem sustainable in the coming years.

## **REFERENCES**

BIDART CAMPOS. 1990. **Derechos Difusos**" en **"Enciclopedia Jurídica Omeba**, Tomo VI (Apéndice), Buenos Aires, Driskill, Pág 229.

Corte Constitucional del Ecuador, sentencia N° 020-13- SEP-CC- caso N° 0563-12- EP.

Corte Constitucional del Ecuador, sentencia N° 076-13- SEP-CC- caso N° 1442-10- EP.

Corte Constitucional para el periodo de transición, sentencia N° 017-12-SIN-CC, caso N° 0033-10-IN

Corte Constitucional, Sentencia N° 166-15-SEP-CC, caso N° 0507-12-EP

CODIGO ORGANICO DE LA FUNCION JUDICIAL, 2009.

Constitucion de la republica del ecuador.

GUASTINI, R. 2001. **Estudios de teoría constitucional**, México, Instituto de Investigaciones Jurídicas de la Universidad Autónoma de México / Fontamara, p. 220.

IURIS DICTIO. 2000. **Revista de Derecho Inicio**.Vol. 1, Núm. 1, Pérez Ordóñez.



JULIO PRIETO MÉNDEZ. 2013. **Derechos de la Naturaleza, Fundamento, contenido, y exigibilidad jurisdiccional, Quito.** Corte Constitucional del Ecuador.p 76-77.

RODRÍGUEZ DOMÍNGUEZ. 1997. **Derecho Procesal Constitucional.** Lima, Grijley. Pág. 18.



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