

VI CONGRESS OF THE WORLD CONFERENCE ON CONSTITUTIONAL JUSTICE

Human Rights for Future Generations

SESSION A

The Preservation of Natural Resources and the Environment

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PANEL REPORT

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At the opening of Session A, Moderator Justice **Olga Sovgyria** of the Constitutional Court of Ukraine invoked the core principles of the 1992 Rio de Janeiro Declaration. She emphasised the imperative of reconciling economic progress with environmental justice and inter-generational equity. She poignantly recalled that the armed aggression against Ukraine has had serious ecological repercussions, amounting to a genuine environmental assault whose consequences will endure across generations.

Session A featured three complementary presentations offering a comprehensive perspective on the protection of the environment within contemporary legal frameworks. Chief Justice **Mandisa Maya** of South Africa presented a comparative analysis of constitutional approaches. Justice **Marco D'Alberti** of the Italian Constitutional Court examined the challenges in the interplay between national, regional, and international legal spheres. Justice **César Tolosa** of the Spanish Constitutional Court reviewed Spanish constitutional jurisprudence, highlighting its shift from an anthropocentric perspective toward moderate ecocentrism, culminating in his analysis of the landmark Judgment No. 142/2024, which recognised legal personality for the Mar Menor Lagoon—the first such decision in the Euro-Mediterranean region.

I. The Context of the Environmental Crisis

Speakers framed their contributions by recognising the acceleration of the environmental crisis. Chief Justice Maya stressed that scientists have declared a "code red", with extreme climate events becoming increasingly frequent and disproportionately impacting the least-developed countries and most vulnerable populations.

II. The Multi-Tiered Legal Framework

Justice D'Alberti structured his analysis around three normative tiers. At the international level, he highlighted the 2015 Paris Agreement, which set a ceiling of a 2°C rise in global temperature. At the supranational level, he referenced the European Climate Law, establishing climate neutrality by 2050, and the Nature Restoration Regulation, which promotes nature-based solutions. At the national level, he noted the diversity of constitutional and legislative models dedicated to environmental protection.

III. Constitutional Protection: Diversity of Models

Chief Justice Maya's comparative analysis revealed remarkable diversity among constitutional approaches.

Justice Tolosa contextualised this diversity historically, noting that constitutional regulation of the environment began in the 1970s, not in the countries most sensitive to environmental issues, but in those undergoing transitions to democracy, such as Greece, Portugal, and Spain. This wave of constitutional innovation enshrined the right to a healthy environment as a third-generation right.

In Africa, 16 out of 18 respondent States expressly provide constitutional environmental rights, with South Africa being notably progressive.

The Americas show marked variation: Canada does not impose explicit affirmative obligations, while Mexico and Brazil expressly guarantee the right to a healthy environment.

In Asia and the Middle East, India interprets the right to life as including the right to a clean and healthy environment.

In Europe, most countries impose positive obligations on the State. Justice Tolosa focused on Article 45 of the Spanish Constitution, which frames the environment simultaneously as a right and a duty—establishing it as a collective good, protected for the benefit of the community and requiring indispensable collective solidarity. The Spanish Constitutional Court has affirmed this as a constitutional subjective right surpassing mere service provision.

Justice D’Alberti highlighted the revision of the Italian Constitution in 2022, which now states that the Republic protects the environment, biodiversity, and ecosystems in the interest of future generations.

A common theme throughout many European constitutions is the recognition of inter-generational equity, present in the constitutions of Germany, France, Italy, and Poland.

IV. Constitutional Jurisprudence: Structuring Principles

Speakers underscored the increasingly active role of constitutional courts.

Justice Tolosa identified two principal doctrines: the principle of non-regression, meaning environmental laws and jurisprudence should not be altered if it would reduce previously achieved levels of protection; and the precautionary principle, which reverses the presumption in favour of development—where negative impacts are uncertain, activities should not proceed unchecked. These principles have informed landmark rulings, notably concerning hydraulic fracturing.

The link between environmental protection and public health was further emphasised, recognised by the Spanish Constitutional Court since Judgment No. 329/1993.

Justice D’Alberti noted three vectors influencing Italian Constitutional Court jurisprudence: a broad concept of environment as an "element determining quality

of life"; legislative competence allowing regions to exceed minimum protection standards; and the balancing of green infrastructure with nature-based solutions.

Chief Justice Maya presented jurisprudence connecting environmental protection and social justice. Among South African cases: **Deadly Air**, which condemned governmental inaction on air pollution; **Xolobeni**, which upheld communities' right to free, prior, and informed consent before granting mining rights; **Bengwenyama**, which reinforced the necessity of meaningful consultation.

V. Paradigm Shift: From Anthropocentrism to Moderate Ecocentrism

Justice Tolosa devoted significant attention to Judgment No. 142/2024 of the Spanish Constitutional Court, which recognised legal personality for the Mar Menor Lagoon and its watershed.

This judgment represents a qualitative advance in nature protection, inaugurating an ecocentric paradigm in the Euro-Mediterranean region. As the Court recognised, it is "a paradigm shift in protection from traditional anthropocentrism to moderate ecocentrism."

Traditionally, the anthropocentric paradigm regards the environment as a tool serving humankind, whereas the ecocentric perspective recognises the intrinsic value of nature, of which human beings are merely one element. This conceptual change supports the recognition of the rights of nature itself.

The Spanish Constitutional Court affirmed that Article 45 does not exclude any mechanism of environmental protection; it is an open-ended provision accepting all legal techniques, provided the goal of protection and improved quality of life is respected.

This legal evolution constitutes both technical innovation and a profound transformation in the relationship between law and nature, paving the way for other constitutional courts in Europe to explore similar legal frameworks.

VI. Protection of Future Generations: Concept to Effectiveness

Justice Tolosa examined the inter-generational dimension, noting that the rights of future generations were long ignored. Present-day decisions may significantly affect those born decades or centuries from now.

He identified key legal challenges: recognising current rights for persons not yet in existence (the "legal fiction" of future generations), which requires rigorous doctrinal development; and procedural standing—who is entitled to exercise those rights? Initiatives such as "citizen assemblies of the future" or "ombudsmen for the future" are currently impractical.

The case of six Portuguese youths who, in 2023, sued Portugal and 32 other European countries before the ECHR was noted; in April 2024, the Grand Chamber dismissed the case for failure to exhaust domestic remedies.

The German Federal Constitutional Court's landmark judgment of 24 March 2021 was highlighted, which ruled the 2019 Federal Climate Protection Act unconstitutional, finding that a 55% emissions reduction by 2030 was insufficient. The key innovative element was the protection of future generations. As Justice Tolosa remarked, the judge is now "a judge of the future," not just a judge of the present.

VII. Procedural Standing: Broadening Access to Justice

Chief Justice Maya identified ongoing evolution in procedural standing. Most jurisdictions, including France, Canada, India, Brazil, and South Africa, now allow citizens and NGOs to bring actions without proving individual harm. South Africa exemplifies this through its Constitution and National Environmental Management Act, which establishes *actio popularis*.

VIII. The International Dimension and Transnational Judicial Cooperation

Chief Justice Maya emphasised that environmental challenges cross borders and demand transnational judicial dialogue. In a recent advisory opinion, the International Court of Justice called for coordinated action by judiciaries worldwide to address the climate crisis.

In recent months, three international bodies have delivered landmark opinions:

- In May 2024, the International Tribunal for the Law of the Sea recognised climate change as a maritime matter and confirmed that States must prevent transboundary harm.
- In July 2025, the Inter-American Court of Human Rights declared that the prevention of irreversible environmental damage has attained *jus cogens* status.
- The ICJ also determined that States are legally obliged to adopt coordinated measures to reduce greenhouse-gas emissions.

IX. Implementation Challenges

Justice D’Alberti acknowledged persistent challenges. While constitutional courts take environmental protection seriously, their impact is predominantly national, whereas environmental protection issues are global. Asymmetries persist: lower-income countries rely on fossil fuels for inexpensive energy, and some developed nations remain dependent on coal.

Overcoming these gaps requires active roles for non-State actors and broad social compliance. Global awareness is crucial—deforestation or wetland loss anywhere affects the entire planet.

X. Questions & Answers

Discussion after the presentations allowed for deeper examination of key issues in environmental constitutional justice.

Influence of International Jurisprudence:

Speakers affirmed the influence of ECHR advisory opinions, with Justice César Tolosa noting that Spanish Constitutional Court reports extensively reference ECHR jurisprudence, highlighting effective transnational judicial dialogue.

Clarity of Language and Knowledge Sharing:

Chief Justice Maya emphasised the importance of clear language and sharing jurisprudential experience, especially in South Africa, where low literacy rates make judicial decision accessibility a matter of justice and social inclusion.

Application of the Precautionary Principle:

Justice César Tolosa explained that applying the precautionary principle in cases of scientific uncertainty must be balanced with proportionality, considering the anticipated negative impacts and feasibility of remediation. Justice D'Alberti added that scientific studies influencing decisions should come from internationally recognised bodies, emphasising the credibility of technical standards for judicial environmental rulings.

Social Repercussions of Constitutional Decisions:

Chief Justice Maya cited the Xolobeni case, where South African communities opposed mining rights in ancestral territories. This case shows how constitutional environmental decisions often pit economic extraction against the cultural, spiritual, and identity interests of affected communities. Courts, she stressed, must ensure these voices are effectively heard and respected; true environmental justice cannot be achieved without social justice.

XI. Conclusion

Session A's three presentations converge on a central message: environmental protection has shifted from a secondary concern to a pillar in the State-citizen relationship, operating across multiple legal levels which require coordination and coherence.

Constitutional courts play a vital and transformative role: broadly interpreting environmental rights; enforcing principles like non-regression and precaution; expanding access to justice; connecting ecological protection with social justice; and, as exemplified by Justice Tolosa in Judgment No. 142/2024, advancing a paradigm shift toward moderate ecocentrism recognising nature's intrinsic value.

The emergence of the constitutional judge as a "judge of the future," safeguarding the rights of future generations, is among the most significant developments in modern constitutionalism. The German Federal Constitutional Court, the French Conseil d'État, and the Spanish Constitutional Court have shown that courts must assess the adequacy of climate policy according to the principle of inter-generational responsibility.

Ultimately, as speakers underscored, the global nature of environmental challenges demands effective transnational judicial cooperation. Courts must support each other in building a shared jurisprudence of environmental justice, guided by recent international advisory opinions.

Chief Justice Maya concluded, repeating a message reinforced by many interventions during the session: the Earth does not belong to us; it is a legacy

entrusted by future generations. This essential truth—now legally recognised and protected—must continue to guide courts, legislators, and all actors in environmental protection, through coordinated efforts that cross both geographic and generational boundaries.