From Contract to Constitution: Judicial Innovation in the Iran's Khersan 3 Dam Environmental Case

di Hossein Mardi

Abstract: *Dal Contratto alla Costituzione: L'Innovazione Giudiziaria nel Caso Ambientale della Diga di Khersan 3 in Iran* – The *Khersan 3 Dam project* illustrates the tension between Iranian state infrastructure and environmental protection. Despite legal framework deficiencies, the resulting litigation marks a shift in environmental adjudication. In a precedent-setting move, the court annulled the project's contract for non-compliance with Environmental Impact Assessment (EIA) requirements. This judicial oversight signals a transition toward stronger environmental governance, reflecting a growing judicial readiness to scrutinize state actions. By prioritizing environmental justice, the judgment aligns with global trends regarding the constitutionalisation of environmental rights and underscores the judiciary's evolving role in ecological oversight.

Keywords: Environmental Law; Judicial Innovation; Khersan 3 Dam; Environmental Justice

1. Introduction: The Khersan 3 Dam and the Evolving Role of Judicial Review in Iranian Environmental Law

Economic development and environmental protection are often at odds, as the pursuit of growth and resource extraction can lead to habitat destruction and pollution.[1] This conflict is particularly evident in large-scale infrastructure projects where short-term economic gains are prioritized over long-term ecological integrity and social well-being. The rapid environmental degradation, especially in arid regions facing severe water scarcity, highlights the critical need for a new approach to development.[2] As

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[1] United Nations Environment Programme, *Making peace with nature: A scientific blueprint to tackle the climate, biodiversity and pollution emergencies*, in UNEP, 18-02-2021, www.unep.org/resources/making-peace-nature. See World Bank, *Greening Africa's infrastructure*, in World Bank, 14-01-2020, www.worldbank.org/en/news/feature/2020/01/14/greening-africas-infrastructure.

[2] P. Birnie, A. Boyle, C. Redgwell, *International Law and the Environment*, Oxford, 2009.

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a country situated in an arid and semi-arid zone, Iran exemplifies this challenge. Here, large-scale projects, often aimed at addressing water needs, frequently clash with the necessity to safeguard fragile ecosystems and uphold social justice.[3]

This paper argues that Iran's fragmented legal and institutional framework for environmental protection complicates these conflicts. The nation lacks a single, comprehensive piece of legislation that defines the scope of environmental protection, delineates legal duties, and specifies the competencies of public and private actors. Instead, environmental regulation is scattered across various sectoral laws and administrative bodies. This legal landscape is further complicated by jurisdictional ambiguities, with environmental cases falling under the purview of either the judiciary or quasi-judiciary bodies. While Iran's constitution does not mandate dedicated environmental courts, various provisions allow for litigation. Notably, large-scale state-led projects are often subject to the scrutiny of the Court of Administrative Justice (CAJ). Unlike conventional administrative disputes, the *Khersan 3* case reveals an emerging judicial willingness to confront fundamental issues of environmental sustainability and public interest. The paper examines the significance of recent amendments to the Administrative Court Law, which have granted jurisdiction to public civil courts in cases involving multiple contractors, and how the *Khersan 3* case serves as a critical example of this jurisdictional shift.

The case is situated at the intersection of environmental protection, development policy, and constitutional rights. It offers a unique perspective on the potential for judicial intervention in a legal system historically characterized by administrative deference. By engaging with doctrines of civil liability, procedural innovation, and constitutional interpretation, Iranian courts are beginning to reshape the framework of environmental adjudication. This research positions the case as a doctrinal turning point in which the judiciary not only reviews administrative inaction but also evaluates public contracts and development strategies against broader ecological and constitutional norms.

Finally, this paper situates Iran's emerging environmental jurisprudence within a broader comparative framework. Courts and supranational bodies, including the European Court of Human Rights, have been instrumental in broadening the scope of environmental rights and establishing environmental review processes. This trend is evident in a number of jurisdictions, such as India, the Netherlands, France, and the United States. This comparative lens reveals both parallels and divergences

See Millennium Ecosystem Assessment, *Ecosystems and human well-being: Synthesis*, Washington (DC), 2005. See also Center for Strategic and International Studies, *Shirin Hakim: Iran's environmental challenge*, Washington (DC), (2023).

[3] A. Hassaniyan, *Iran's water policy: Environmental injustice and peripheral marginalisation*, in 48(3) *Prog. in Ph. Geogr.: Earth & Envir.* 420 (2024).

in how different legal systems incorporate constitutional environmentalism, procedural access, and judicial scrutiny into their environmental adjudication.

2. The *Khersan 3 Dam*: Project Overview and Governance Deficits

The *Khersan 3 Dam*, a major hydroelectric project in Iran's Zagros Mountain range, highlights the significant conflict between economic development and environmental protection. While designed to generate over 1,100 gigawatt-hours of energy annually, the project exemplifies systemic governance deficits and institutional fragmentation within Iran's environmental framework.[4]

The dam's construction has serious environmental and social repercussions. The project threatens the *Khersan* river's delicate ecosystem and is set to submerge over 2,400 hectares of forest.[5] According to the Court of Appeal of *Kohgiluyeh* and *Boyer-Ahmad* Province, the developers failed to provide reforestation plans or disclose the number of destroyed oak trees. The dam's location within the UNESCO Biosphere Reserve of the Dena Mountain range further raises concerns about irreversible climate and habitat changes.[6] On a social level, the project will displace approximately 5,000 residents from 17 villages and disrupt the livelihoods of up to 10,000 people by inundating agricultural lands.[7] Additionally, pre-construction excavations uncovered a 4,500-year-old cemetery and nearly 300 historical artifacts, revealing the extensive cultural heritage at risk.[8]

The *Khersan 3* Dam project illustrates how fragmented legal and institutional frameworks contribute to environmental conflicts in Iran. The

[4] The dam site is positioned within a significant upstream drainage basin of the *Khersan* River, covering approximately 7,733 square kilometers. The topography of this area features an average elevation of 2,398 meters above sea level, with the *Khersan* River stretching for about 180 kilometers and exhibiting an average slope of 0.9 percent. See, Iran Water and Power Resources Development Co., *Khersan 3 Technical Information*, in IWPCO, 09-05-2015, iwpco.ir/cs/ProjectsMgmt/188/11.

[5] Kebna News, *Khersan 3 Dam: The Drama of Oak Death and an Environmental Catastrophe under the Shadow of Desert Influence*, in Kebna News, 11-10-2025, www.kebnanews.ir/note/504975; ISNA, *The Bitter Tragedy of Khersan 3 Dam and the Displacement of 10,000 People*, in ISNA, 11-03-2023, www.isna.ir/news/1401122014102/.

[6] Court of Appeal of Kohgiluyeh and Boyer-Ahmad Province [*Dadgah-e Tajdid-e Nazar*], Branch 8, *Judgment No. 1403413900028371117*, 18-01-2025, 7. See *Translated Appeal Court Decision*, in Online Appendix.docx, Online Appendix.docx.

[7] IRNA, *The Khersan 3 Dam under construction: An unfinished legacy from previous governments*, in IRNA, 25-02-2023, www.irna.ir/news/85038989/.

[8] Aftokhabar, *A media blackout and the struggle to obtain environmental permits for the Khersan 3 Dam and water transfer to the desert*, in Aftokhabar, 10-07-2023, aftokhabar.ir/News/86695/.

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country's long history of prioritizing rapid dam construction often leads to substantial environmental degradation, including ecosystem loss and exacerbated drought conditions.[9] A key challenge is the weak enforcement of environmental regulations, stemming from the strained relationship between the Environmental Protection Organization (EPO) and other government agencies. The EPO, situated within the executive branch, suffers from chronic underfunding, insufficient staffing, and limited technical capacity, which severely impairs its oversight and enforcement capabilities.[10]

A 2013 parliamentary report identified outdated legislation and the frequent bypassing of Environmental Impact Assessments (EIAs) as major structural deficiencies.[11] As a judge in the *Khersan 3* case noted, this reflects the Ministry of Energy's failure to uphold its dual responsibility to local residents and global environmental standards.[12] The former head of the EPO has even acknowledged that strict enforcement of environmental laws would require shutting down a large portion of the country's industries, underscoring the long-standing prioritization of economic interests over environmental ones.[13]

These challenges align with a global trend where environmental degradation, driven by poor planning, transforms natural hazards into social disasters.[14] International frameworks, such as the UN's "A Safer World" report, have increasingly recognized environmental security as a cornerstone of human security.[15] As the Appeal Court in the *Khersan 3* case

[9] G.R. Manouchehri, S.A. Mahmoodian, *Environmental Impacts of Dams Constructed in Iran*, in 18(1) *Int'l J. Water Res. Dev.* 179, 179-182 (2002); R. Foltz, *Iran's Water Crisis: Cultural, Political, and Ethical Dimensions*, in 15(4) *J. Agric. Environ. Ethics* 357, 357-380 (2002); see also H. PurQiyomi, M. Zaboli, L. Andalibi (Eds), *The Problems of Dams for the Water Resources of the Country*, Zanjan, 2011. For comprehensive technical data, see Iran Water Resources Management Company, *Dam Statistics*, in *IWRMC*, 1 January 2018, http://daminfo.wrm.ir/fa/dam/stats

[10] M. Sharifi, *Environmental Governance and the Challenges of Sustainable Development in Iran*, in 9(2) *Envtl. Pol'y J.* 45, 45-58 (2017).

[11] Fasli No, *Legal Challenges and Environmental Discourse in Kohgiluyeh and Boyer-Ahmad as Stated by the Khersan 3 Dam Judge*, in Fasli No, 09-11-2024, faslino.ir/49417.

[12] Id.

[13] I. Kalantari, *Strict Adherence to Environmental Laws Would Shut Down 80% of Industries*, in IRNA, 09-08-2018, irna.ir/xjqthG.

[14] S. Dasgupta, E. De Cian, and J. Köhler, *Environmental Regulation and Competitiveness: Evidence from Developing Countries*, in 23 *Environmental Economics and Policy Studies* 911-111 (2021), doi.org/10.1007/s10018-020-002714; A. Najam, S. Huq, and Y. Sokona, *Climate Negotiations beyond Kyoto: Developing Countries' Concerns and Interests*, in 3 *Climate Policy* 221–231 (2003).

[15] United Nations Development Programme, *Human Development Report 1994: New Dimensions of Human Security*, Oxford, 1994. See Commission on Human Security, *Human Security Now*, in United Nations, 01-01-2003, www.un.org/humansecurity/wp-content/uploads/2017/10/humansecurity-now.pdf. See also United Nations, *A Safer*

argued, traditional notion of state responsibility must evolve to include environmental and social dimensions, requiring a coordinated effort to prevent the degradation that fuels disaster risks.[16]

3. Environmental Litigation in the Iranian Legal Framework

3.1 Constitutional and Institutional Challenges to Environmental Protection

The Iranian legal framework for environmental protection is characterized by a series of fragmented regulations rather than a comprehensive environmental code. While the Environmental Protection Organization (EPO) has legal authority under the Environmental Protection and Enhancement Act to take preventive measures against pollution, its enforcement is hindered by insufficient institutional capacity, political pressures, and chronic underfunding.[17] Additionally, a lack of clear jurisdictional boundaries between different bodies—including the EPO, government ministries, and quasi-judicial commissions—creates an environment of systemic weakness.

Environmental Impact Assessments (EIAs) were institutionalized under the Third "Development Plan Act"[18] and further reinforced in the Fourth Plan. The Fifth and Sixth Plans introduced mandatory Strategic Environmental Assessments (SEAs) and Social Impact Assessments (SIAs), respectively, signaling a growing recognition of the interconnectedness of environmental and social concerns. The EPO has also adopted a more preventive stance, requiring feasibility assessments for environmental permits. Penalties for wildlife crimes have increased, and a 2022

World: Our Shared Responsibility – Report of the High-level Panel on Threats, Challenges and Change, in UN, 01-12-2004, www.un.org/en/peacebuilding/pdf/historical/hlp_more_secure_world.pdf; United Nations Environment Programme, *Global Environment Outlook – GEO-6: Healthy Planet, Healthy People*, Cambridge, 2019, www.unep.org/resources/global-environment-outlook-6; United Nations Office for Disaster Risk Reduction, *Global Assessment Report on Disaster Risk Reduction*, in UNDRR, 01-01-2022, www.undrr.org/publication/global-assessment-report-2022; Council of Europe, *Environment and Human Rights: The Impact of Environmental Degradation on Human Well-being*, in CoE, 01-01-2017, www.coe.int/en/web/portal/environment.

[16] Court of Appeal *[Kohgiluyeh and Boyer-Ahmad]*, cit., p. 4. Online Appendix.docx.

[17] Z. Mahmoudi Kordi, Z.S. Sharegh, H. Rezazadeh, *The Necessity of Establishing Environmental Courts with a View to the Iranian Context*, in 85 *Judiciary's L. J.* 215, 215-239 (2021), doi.org/10.22106/jlj.2021.522774.3915.

[18] The status of Iranian development plan acts remains doctrinally divided between formal law and public policy. Critics argue that their transient nature and emphasis on governance objectives relegate these instruments to programmatic documents rather than permanent, substantive legislation. See H. Tahan Nazif, A. Hadizadeh, *The Nature of Development Plan Laws in the Iranian Legal System*, in 8 *Pub. L. Knowledge Q.* 101 (2018).

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environmental roadmap identified strategies to address key issues like water scarcity and biodiversity loss. However, the Seventh Development Plan has been criticized for marginalizing environmental concerns, reflecting a potential deprioritization of environmental protection in national policy.[19]

3.2 The Court of Administrative Justice and Environmental jurisdiction

The Court of Administrative Justice (CAJ) serves as the specialized judicial pillar of the Iranian legal system, mandated to exercise oversight over the legality of executive and administrative actions. Established on 24 January 1982, the Court's organizational and procedural framework has been shaped by successive legislative refinements to better address its expanding mandate. Historically, the CAJ's involvement in environmental litigation has been constrained by a restrictive focus on formal administrative legality. This jurisdictional limitation confined the Court's scrutiny to the procedural regularity of executive conduct, allowing it to verify whether agencies—such as the EPO or the Ministry of Energy—had adhered to statutory mandates and procedural requirements, rather than evaluating the substantive environmental merits of their decisions. Over the past decade, the CAJ has demonstrated a growing judicial sensitivity to environmental concerns. For instance, in a 2015 case concerning lead pollution, the court upheld the denial of a license renewal due to documented health risks.[20] In 2017, the CAJ annulled a ministerial directive that had attempted to exclude the EPO from the industrial permitting process, ruling that it violated binding environmental legislation.[21] The court has also intervened in large infrastructure projects, ordering a review of a highway construction in southern Mashhad due to inadequate environmental considerations.[22] However, this jurisprudence has not been entirely consistent. In a 1993 decision, the court approved mining within a wildlife refuge, dismissing

[19] A. Hedayati Aghmashhadi, S.C. Babu, M. Daroodi, S. Zahedi, A. Kazemi, *Perspectives on Iran's Environmental Policy Process: Issues and Constraints*, IFPRI Discussion Paper 01777, 1-12-2018, 1 ff., cgspace.cgiar.org/bitstreams/a7dcd165-5ad6-4b96-9e2b-3453668a5d7b/download; S. Bidarian, M. Maslin, *Iran's nature is under threat – here's how better environmental stewardship can save it*, in *The Conversation*, 15-8-2025, theconversation.com/irans-nature-is-under-threat-heres-how-better-environmental-stewardship-can-save-it-260458/. See also *Evaluation of 7th development plan on environmental issues*, in *Tehran Times*, 2-2-2024, www.tehrantimes.com/news/494431/Evaluation-of-7th-development-plan-on-environmental-issues/.

[20] Court of Administrative Justice [*Divan-e Edalat-e Edari*], Judgment No. 262/94, 7-7-2015.

[21] Court of Administrative Justice [*Divan-e Edalat-e Edari*], Judgment No. 570/96, 5-9-2017.

[22] Court of Administrative Justice [*Divan-e Edalat-e Edari*], Judgment No. 99809970906010545, 2020.

environmental objections and ruling that no harm had occurred.[23] Although the initial jurisprudence of the CAJ indicates a cautious engagement with environmental protection, these rulings represent only a marginal fraction of its total docket and fail to establish a robust deterrent against state-sponsored environmental infractions.[24] This administrative restraint stands in marked contrast to the more assertive posture subsequently adopted by public civil court discussed *infra*, in which the court moved beyond earlier hesitation to explicitly affirm the primacy of the EIA in matters of ecological oversight.

3.3 The 2023 Amendment and the Expanding Scope of Civil Courts

The 2023 amendment to the Law on the Organization and Procedure of the Administrative Court of Justice introduced a significant shift in Iran's judicial framework. The new provision, Note 3 to Article 10, states: «The Administrative Court's branches are competent to hear complaints and objections from natural and legal persons regarding violations and non-compliance with laws and regulations during the contract conclusion stage by executive bodies. However, the Administrative Court is **not** competent to hear claims arising from the contract's implementation between the parties». This reform was crucial in the *Khersan 3* Dam case, as it established a clear jurisdictional distinction that allowed the civil court to review claims related to the environmental consequences of contract implementation. The amendment represents a conceptual shift away from the rigid public-private law divide, aligning with a more integrated approach to judicial review where fundamental rights and environmental interests intersect. This expanded mandate requires civil judges to actively engage with broader societal issues and marks a departure from passive adjudication. The absence of a comprehensive constitutional review mechanism in Iran amplifies the importance of judicial interpretation. The *Khersan 3* Dam case exemplifies this evolving judicial posture, illustrating how judicial reasoning can broaden authority, strengthen environmental safeguards, and enhance the legitimacy of the legal system.

3.4 Integration of International Environmental Law

Iran's legal system is formally receptive to international law, with Article 9 of the Civil Code affirming that ratified treaties acquire the force of domestic law. However, the effective incorporation of these norms into domestic law

[23] Court of Administrative Justice [*Divan-e Edalat-e Edari*], Judgment No. 24/72, 31-7-1993.

[24] A. Mashhadi & H. Rabbani, *Environmental Protection in the Jurisprudence of the Court of Administrative Justice*, in 3(1) *Sci. Q. J. Leg. Opin.* 99-114 (2020).

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remains irregular.[25] Judicial reliance on international law is rare, and courts seldom invoke treaty obligations as interpretive tools or legal grounds for decisions. Despite this, Iranian courts have occasionally drawn on international instruments to support their environmental reasoning. In a notable first-instance court decision, the judge referred to both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[26] By citing Article 2(1) of the ICESCR, the court emphasized Iran's obligation to progressively realize rights that are tied to environmental sustainability, such as the right to health and an adequate standard of living. In parallel, Iran is a party to several key international environmental agreements, including the Convention on Biological Diversity (CBD) and UNESCO's Man and the Biosphere Program. While these international instruments impose a mix of binding and aspirational obligations, the absence of a systematic framework for domestic implementation—combined with judicial caution—continues to undermine their practical efficacy.

4. Analysis of the *Khersan* 3 Dam Litigation

As civil courts in Iran engage with disputes involving state-sanctioned development projects, a pressing question emerges: Does the existing Iranian civil law framework provide judges with adequate tools to address the multidimensional nature of environmental harm? In the absence of a comprehensive Environmental Code and amid fragmented administrative oversight, judges are often left to fill normative gaps by creatively interpreting existing legal doctrines drawn from civil, administrative, and constitutional law.

4.1 Procedural and Factual Background

In a landmark environmental ruling, the Court of First Instance invalidated Contract No. 01-157/01 E/FH01-JVAL, dated August 9, 2022, which involved multiple state and private contractors in the construction of the *Khersan* 3 Dam. The court found that the project had proceeded without a legally mandated Environmental Impact Assessment (EIA) and lacked the necessary environmental permits. These procedural failures constituted violations of several core legal provisions, including Article 50 of the Iranian Constitution, various domestic environmental statutes, and Iran's

[25] M. H. Ramazani Ghavamabadi, J. Javadmanesh, *A Comparative Study of the Extent of Standing (Locus Standi) in Environmental Litigations*, in 46(4) *Faslnamah-i Mutalaat-i Huquq-i Umumi* [*Public Law Studies Quarterly*] 977–1001 (2016).

[26] Branch 9, General Court of Law (Civil Division), *Yasouj*, Judgment No. 14024139000241725 5, 18-1-2024, 14, translated in Online Appendix.docx.

international obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The court concluded that the government had failed to fulfill its threefold duty to respect, protect, and fulfill the right to a healthy environment. As a result, it annulled the contract, imposed litigation costs on the contractors, and dismissed unrelated claims and third-party interventions on the grounds of insufficient legal standing.

On appeal, the Court of Appeal upheld the lower court's decision, endorsing its legal reasoning and conclusions. The appellate court underscored that compliance with environmental laws is not optional and cannot be bypassed by administrative or political authorities, including the Council of Ministers. It emphasized that the Environmental Protection Organization (EPO) alone holds the exclusive authority to issue environmental permits, and that this legal requirement cannot be overridden by inter-agency agreements or economic priorities. By reaffirming the principles of procedural legality, institutional competence, and environmental due process, the appellate ruling strengthened the judiciary's role in enforcing environmental governance and preserving the integrity of Iran's legal commitments to environmental protection.

4.2 Navigating Jurisdictional Boundaries

The fundamental impediment to environmental litigation within the Iranian legal order is a restrictive threshold for locus standi, which precludes the adjudication of environmental grievances based solely on a general infringement of collective rights. Under the current judicial paradigm, a cause of action is typically justiciable only when it constitutes a criminal offense or when it satisfies the requirements of civil liability, whereby a plaintiff must substantiate specific and quantifiable damages. This restrictive approach is reinforced by the jurisprudential interpretation of Article 2 of the Civil Procedure Code, which mandates a tripartite test for determining whether a party possesses a "legal interest". To be deemed an admissible beneficiary, a plaintiff's standing must be legitimate, subsisting, and personal and direct. The exigency of proving personal and direct harm serves as a formidable barrier to environmental advocacy, effectively rendering public interest litigation (PIL) non-justiciable. Consequently, non-governmental organizations and the broader citizenry are denied the procedural capacity to litigate in defense of the *commune bonum* (the public good) unless they can demonstrate individualized injury. As argued by Ramazani Ghavamabadi and Javadmanesh (2016), the realization of environmental justice remains contingent upon a dynamic evolution of judicial precedent—one that transcends the traditional constraints of individualistic harm in favor of a more expansive doctrine of standing.[27]

[27] A. Ramazani Ghavamabadi, M. Javadmanesh, *Legal standing*, cit., 987.

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In the *Khersan 3 Dam* litigation, the court of first instance placed particular emphasis on confirming its jurisdiction—both in terms of subject matter (*ratione materiae*) and territorial scope (*ratione loci*). This procedural foundation was crucial to the court's later substantive ruling. The defendants contested the court's subject-matter jurisdiction, asserting that the case should be adjudicated by the CAJ, given its environmental and public law dimensions. However, the civil court rejected this characterization, concluding that the dispute arose from a "multilateral contractual act" involving state entities. As previously discussed in relation to Note 3 of Article 10 of the 2023 amendment to the CAJ, such contractual disputes—even when they implicate public or environmental interests—do not fall within the exclusive jurisdiction of the Administrative Court. Instead, they remain under the purview of the civil judiciary. The court emphasized that the core of the plaintiffs' claim concerned breaches of contractual obligations, particularly the failure to adhere to environmental requirements, which firmly situated the case within the jurisdiction of the civil court. On the matter of territorial jurisdiction, the defendants contended that the Yasuj Civil Court lacked jurisdiction based on the dam's location and the residence of the involved parties. Nonetheless, the court upheld its jurisdiction under the Civil Procedure Code, citing the site of contractual performance and the broader impact on local communities as justifications for hearing the case in Yasuj.[28]

4.3 Standing and Procedural Innovation: Expanding Access to Environmental Justice

In the *Khersan 3 Dam* case, the court adopted an expansive and progressive interpretation of standing in environmental litigation, departing from conventional limitations typically applied in civil cases. Rather than restricting legal standing solely to individuals who could demonstrate direct personal harm, the court acknowledged the inherently collective nature of environmental damage. It held that members of the public, including those not directly affected by the dam project, could assert claims based on the violation of fundamental environmental rights. This inclusive approach was grounded in several constitutional and legal provisions. Article 50 of the Constitution imposes a shared responsibility on both the state and citizens to safeguard the environment, framing environmental protection as a public duty. Article 34 guarantees every individual the right to access the judiciary, reinforcing the notion that legal recourse must be available for collective grievances. Additionally, Article 66 of the 2015 Code of Criminal Procedure authorizes environmental NGOs to bring legal actions in cases of environmental harm, a provision cited by the court in support of its

[28] *Yasouj* Judgment, pp. 7-8. at Online Appendix.docx.

reasoning.[29] This interpretation reflects a growing recognition within the Iranian judiciary of the public interest dimension of environmental law and a willingness to adapt procedural doctrines to address ecological challenges. The Court emphasized that «environmental degradation affects the entire community» recognizing air, water, and soil as shared resources.[30] The Court of Appeal, rather than reassessing the case in full, concentrated on determining whether legal principles had been correctly applied. It confirmed the lower court's reasoning regarding both jurisdiction and standing, affirming that the civil court possessed the authority to hear the case. In doing so, the Iranian judiciary signaled an increasing readiness to assert jurisdiction in environmental matters, widen access to justice, and subject administrative actions to meaningful scrutiny.

This approach aligns with evolving international trends that view environmental rights as fundamental and emphasize the importance of procedural guarantees within environmental governance. A significant shift in contemporary environmental law lies in the transformation of procedural standing—from its traditional, narrow application to individual harm—toward an inclusive understanding that recognizes the collective, diffuse, and even intergenerational dimensions of environmental injury.[31] This development marks a departure from anthropocentric models, acknowledging that environmental harm encompasses broader concerns such as ecosystem degradation, biodiversity loss, and climate change.[32] Legal scholars now advocate for standing rules that allow for the representation of collective public interests, including the rights of future generations and the meaningful participation of civil society actors such as NGOs.

Across global legal systems, there is a growing convergence toward broader procedural access in environmental litigation. In the European Union, the Aarhus Convention plays a central role by guaranteeing access to environmental information, enabling public participation in environmental decision-making, and ensuring access to justice. While implementation differs among member states, the Convention establishes standing rights for individuals and NGOs that demonstrate either a

[29] Id. p. 8

[30] Regarding these procedural determinations, the court applied the doctrine of *estoppel* to dismiss challenges concerning the authenticity of submitted documents and justified the inclusion of specific defendants to ensure a «complete adjudication of legal responsibility». See *Yasouj* Judgment, pp. 1, 6, 9, 15, at Online Appendix.docx.

[31] F. Passarini, *Legal Standing of Individuals and NGOs in Environmental Matters: The Aarhus Convention and the Actio Popularis*, in 3(2) *Ital. Rev. Int'l & Comp. L.* 283 (2023); M.L. Banda, S. Fulton, *Defending the Future: Intergenerational Equity in Climate Litigation*, in 32(3) *Georgetown Envtl. L. Rev.* 569 (2020).

[32] N. Craik, D. Davenport, R. Mackenzie, *Environmental Harm and Legal Standing in Areas Beyond National Jurisdiction*, in 45(2) *Int'l Envtl. L. Rev.* 203 (2023).

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"sufficient interest" or an infringement of rights, thereby expanding opportunities for legal engagement.[33] In France, legal standing in environmental matters has undergone significant reform, particularly with the 2016 revision of the Civil Code.[34] Article 1248 now allows a diverse range of actors—including the state, local authorities, and accredited environmental NGOs—to initiate legal action in cases of environmental harm. This development reflects an evolving recognition of environmental damage as a distinct legal injury and enhances institutional accountability and public participation in environmental governance.[35] The Netherlands offers a landmark example through the Urgenda case, in which the courts granted standing to an NGO representing the interests of future generations. The court imposed a binding obligation on the Dutch government to reduce greenhouse gas emissions, affirming that environmental and human rights obligations under both international and domestic law are enforceable through litigation.[36] India has taken a particularly progressive approach through the doctrine of Public Interest Litigation (PIL). Here, courts allow claims to be brought by NGOs, academics, and ordinary citizens without requiring proof of direct harm. The Indian Supreme Court has interpreted the constitutional right to life (Article 21) to encompass environmental protection, holding the state accountable for ecological degradation.[37] In contrast, Italy's legal framework centralizes environmental litigation within the Ministry of Environment, which is designated as the primary entity entitled to bring claims under Article 299 of the Environmental Code. While this approach ensures a coordinated state response, it restricts the role of NGOs and civil society. Critics argue that this centralization undermines the participatory spirit of the EU Environmental Liability Directive, which encourages broader access to justice in environmental matters.[38]

[33] Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, in *OJ L 156*, 25-6-2003, 17; European Commission, *The Aarhus Convention and the EU*, in *European Commission Website*, 20-5-2024, environment.ec.europa.eu/law-and-governance/aarhus_en/.

[34] Code civil [C. civ.]. (2016). *Article 1248*. Retrieved from www.legifrance.gouv.fr

[35] B. Haftel, *The compensation of environmental damage under French law*, in 16(1) *J. Civil L. St.* (2024).

[36] *Stichting Urgenda v. The State of the Netherlands*, C/09/456689 / HA ZA 13-1396, District Court of The Hague (2015); affirmed by the Dutch Supreme Court (2019). And see Urgenda Foundation v. The State of the Netherlands. (2019). *Dutch Supreme Court Decision*. Retrieved from www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf

[37] S. Divan & A. Rosencranz, *Environmental Law and Policy in India*, 3rd ed., Oxford University Press, 2021.

[38] J.A. Antippas, *Civil liability and environmental protection: Italian – French looks*, in 1 *EJPLT* 132-163 (2022).

4.4 Overcoming Administrative Deference: The Principle of Technical Decentralization

The *Khersan 3 Dam* case serves as a compelling example of judicial enforcement of administrative law principles, particularly regarding the boundaries of administrative discretion and the role of specialized agencies in environmental governance. At the heart of the dispute was whether the Council of Ministers could override the Environmental Protection Organization's (EPO) authority in granting environmental permits for large infrastructure projects. The defendants argued that the Council of Ministers' approval of the dam project effectively replaced the need for an environmental permit from the EPO. The first-instance court rejected this argument, affirming that environmental permitting is a technical and specialized responsibility assigned solely to the EPO. The court of first instance emphasized that disregarding the EPO's role violated established legal procedures and rendered the project's approval unlawful. As the court noted in its reasoning,[39] the implementing agency had proceeded with the dam's construction solely based on the Council of Ministers' approval, incorrectly assuming its hierarchical superiority over the EPO. To substantiate its ruling, the court referred to a number of binding legal instruments. These included a 2010 resolution by the Economic Council, which stipulated that project approvals were conditional upon prior consent from the EPO, as well as a 2023 resolution by the Council of Ministers itself, explicitly forbidding the initiation of projects without environmental permits. Additionally, foundational environmental laws such as the 1974 Environmental Protection and Improvement Act and the Third Development Plan Law were cited, both of which mandate comprehensive environmental impact assessments (EIAs) for major infrastructure developments.

The appellate court affirmed the lower court's decision, reinforcing the principle that the Council of Ministers lacked the legal authority to override the competence of the Environmental Protection Organization (EPO). It emphasized that environmental assessments and permits are not mere bureaucratic steps but foundational legal obligations essential to protecting environmental integrity. Any deviation from these requirements, regardless of the administrative body's rank within the government hierarchy, was deemed by the court to constitute an overreach of legal authority. In a critical passage in page seven, the appellate court stated: «Despite the law stipulating the technical competence of the Environmental Protection

[39] Yasouj Judgment, p. 12, Online Appendix.docx The court observed that «… the implementing institution, without going through the legal stages of obtaining an environmental permit from the relevant institution, has based the implementation of the dam on the approval of the Council of Ministers [...] with the argument that the Council of Ministers has a higher status than the environment …».

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Organization, it [the decision] was made by the Council of Ministers, while this council did not have the legal authority to make such a decision in any of the three conceivable cases 'originally, by representation, or due to superior administrative position» The court further stressed the need to preserve the autonomy of expert bodies, noting: «An organization composed of experts must be granted independence and decision-making authority to handle technical and specialized affairs» drawing on the principle of technical non-centralization, the court concluded: «What follows from this rule is the incompetence of other institutions or their withdrawal from competence when the specialized body has issued a decision within its legal mandate»[40] This interpretation reflects a significant judicial shift in Iranian administrative law—one that affirms the institutional independence of expert agencies like the EPO in complex and technical fields.

The *Khersan 3 Dam* decision reflects broader global trends in administrative law, often described as part of a "second" or "third generation" of environmental adjudication. In this model, courts increasingly serve as critical arbiters ensuring that government actions comply with both legal standards and scientific expertise. This evolution highlights the judiciary's expanding role in balancing legal, technical, and policy considerations in the enforcement of environmental governance.[41]

Internationally, courts have adopted diverse approaches to the judicial review of administrative actions, particularly in environmental matters. These approaches reflect broader differences in legal traditions and institutional attitudes toward administrative oversight. In the United States, the judiciary exercises rigorous scrutiny through the "hard look" doctrine, first articulated in *Citizens to Preserve Overton Park v. Volpe*.[42] This doctrine requires courts to verify that agencies have considered all relevant factors, explored reasonable alternatives, and avoided arbitrary or capricious decision-making. The principle was further refined in *Chevron U.S.A. Inc. v. NRDC*,[43]which held that judicial deference to agency interpretations is permissible only when such interpretations are reasonable and grounded in statutory authority.[44] In contrast, the United Kingdom traditionally emphasized procedural legality over substantive review, with courts applying the Wednesbury unreasonableness standard—intervening only when decisions were so irrational that no reasonable authority could have

[40] Court of Appeal *[Kohgiluyeh and Boyer-Ahmad]*, cit., p. 6-7. Online Appendix.docx.

[41] J. Barnes, *Three generations of administrative procedures*, in S. Rose-Ackerman, P.L. Lindseth (Eds.), *Comparative Administrative Law*, Cheltenham, 2010, 303, 303-318; X. Zhang, *Judicialization of Environmental Governance: Comparative Perspectives*, in 33(1) *J. Envtl. L.* 21 (2021).

[42] *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971)

[43] *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

[44] P.M. Garry, *Judicial Review and the Hard Look Doctrine*, in 2 *Env. L. Rep.* 36 (2006).

reached them.[45] However, recent jurisprudence reveals a shift toward more substantive scrutiny, particularly in cases involving fundamental rights or significant environmental consequences.[46] Ireland presents a similar evolution. The Irish Supreme Court, for example, annulled planning permission for a wind farm due to the failure to adequately assess its impact on the protected hen harrier species. This case underscored the indispensable role of rigorous environmental impact assessments (EIAs) in projects with potential ecological ramifications.[47] Germany offers a distinct model grounded in constitutional law, where the Nineteenth Century Prussian administrative courts first developed the principle of *Verhältnismäßigkeit* (proportionality). The 1886 cases illustrate this concept through concrete examples: in one instance, the court required the nighttime illumination of a landowner's post rather than its total removal, demonstrating a calibrated approach to public safety. Similarly, the court's rejection of a shop closure for unlicensed brandy distribution underscored the necessity for remedies to align strictly with specific violations to avoid disproportionate sanctions. As Jud Mathews observes, these early rulings mark the recognition of proportionality's significance—a principle that has since evolved into a sophisticated framework for judicial review.[48] There, the principle of proportionality acts as a central standard, mandating that state actions be suitable, necessary, and balanced relative to their objectives. German administrative courts are empowered to evaluate not only legality but also proportionality and procedural fairness.[49] While courts generally defer to administrative discretion in complex scientific or technical matters—often referred to as a "prerogative of assessment"[50]—they are nonetheless prepared to intervene when agency justifications are implausible or lack coherence.[51] French administrative law similarly balances deference with oversight. Although French courts acknowledge administrative expertise in technical domains, they play an active supervisory role in ensuring that environmental assessments and authorizations comply with legal norms and the principle of proportionality. This nuanced approach seeks to safeguard environmental interests while permitting legitimate

[45] *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223.

[46] P. Cane, *Administrative Law*, Oxford, 2010; see also E. Fisher, B. Lange, E. Scotford, *Environmental Law: Text, Cases, and Materials*, Oxford, 2019.

[47] *People Over Wind v. An Bord Pleanála*, [2017] IESC 41 (Ireland). See *Grace and Sweetman v. An Bord Pleanála*, in BAILII, 24-02-2017, www.bailii.org/ie/cases/IESC/2017/S10.html.

[48] J. Mathews, *Proportionality Review in Administrative Law*, in S. Rose-Ackerman, P.L. Lindseth (Eds.), *Comparative Administrative Law*, Cheltenham, 2010, 405.

[49] B. Kingsbury, N. Krisch, R.B. Stewart, *The Emergence of Global Administrative Law*, in 68(3/4) *Law & Contemp. Probs.* 15 (2005).

[50] VwGO § 40; Bundesverwaltungsgericht decisions 6 C 2.11 (2012).

[51] J. Wieland, *Proportionality in German Administrative Law*, in 11 *Ger. L. J.* 1231 (2010).

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development initiatives to proceed.[52]

4.5 Doctrinal Innovations and Judicial Reasoning in the *Khersan 3* Case

In the absence of a specialized environmental liability regime, the judiciary must reconcile traditional norms with emerging ecological imperatives, often necessitating constitutional interpretation or creative doctrinal development. The judges in the case moved beyond a narrow, technical interpretation of legal norms and began applying core private law doctrines, such as contract validity, liability for harm, and preventive and precautionary principles, to address environmental concerns. This approach allowed the courts to intervene and justify their decisions by integrating environmental imperatives into existing legal frameworks, particularly in the absence of a specialized environmental code in Iran.

4.5.1 The Erosion of Fault: Preventive Liability and Ecological Harm

Within this framework, civil courts have begun to deploy concepts traditionally associated with tort law, such as the precautionary principle and preventive liability. By shifting away from a restrictive fault-based paradigm, the judiciary seeks to justify interventions aimed at averting irreversible ecological harm. This reflects global trends in modern environmental theory, where civil liability is increasingly decoupled from fault to account for intangible and long-term injuries inherent in environmental degradation.[53] However, despite the court's newfound jurisdiction to hear environmental claims significant doctrinal obstacles remain. Specifically, the concepts of "harm" and "causation" continue to be interpreted through a traditional lens, posing a substantial barrier to the transition toward a strict liability regime in environmental litigation.

Environmental harm is often presumed to occur as a result of polluting activity, regardless of intent or negligence. This strict liability approach prioritizes harm prevention and the safeguarding of collective environmental interests. Influential Iranian legal scholars such as *Katouzian* and *Ansari* have advocated for this evolution in tort law, emphasizing the need for preventive and public-interest-oriented legal frameworks.[54] However, in practice, Iranian law does not yet recognize a violation of environmental rights—except when accompanying criminal conduct or direct private harm—as a sufficient basis for legal action. This doctrinal rigidity significantly limits judicial access and hampers the development of

[52] J. Bell, F. Lichère, *Maintaining Legality: The Grounds of Review*, in J. Bell, F. Lichère (Eds.), *Contemporary French Administrative Law*, Cambridge, 2022, 178.
[53] G. Pring, C. Pring, *Environmental Courts and Tribunals: A Global Guide*, Nairobi, 2016.
[54] N. Katouzian, M. Ansari, *Civil Liability and Environmental Protection in Iranian Law*, Tehran, 2008, 288-289.

effective civil remedies for environmental degradation.[55] This institutional lacuna not only undermines legal certainty but also imposes a disproportionate interpretive burden on the civil judiciary, which is compelled to articulate environmental harm and assign liability without a coherent statutory framework.

The *Khersan 3* case represents a significant departure from traditional judicial approaches rooted in fault-based liability and retrospective assessments of harm. Both the Court of First Instance and the Court of Appeal of *Kohgiluyeh* and *Boyer-Ahmad* Province rejected narrow interpretations of damage confined to immediate, quantifiable economic loss. Instead, they articulated a broader and more forward-looking conception of harm—one that encompasses ecological degradation, latent environmental risks, and threats to intergenerational equity. The annulment of the *Khersan 3* Dam contract, despite the absence of direct and proven environmental damage, illustrates the judiciary's embrace of preventive adjudication and the integration of environmental norms into contract law. This annulment was framed as a preventive measure to halt a project that posed a substantial risk of future environmental degradation, thereby preempting harm rather than merely compensating it post-facto. Although the plaintiff did not initiate a tort claim, the court's rationale reflected core tort law principles—particularly the emphasis on preventing foreseeable harm and addressing negative externalities. The court noted the potential for "irreparable damage" to the environment and denounced the project's anticipated "regressive consequences." The court criticized the government's "regressive approach" to environmental protection and its failure to use the maximum resources at its disposal to mitigate ecological harm, notably the destruction of oak forests and lack of credible environmental data.[56] This reasoning broadened the conventional concept of damage beyond immediate and quantifiable harms to include long-term ecological risks and systemic degradation, aligning judicial action with the preventive aims often associated with environmental tort law.

4.5.2 From Formalism to Sustainability: Environmental Public Policy in Contract Law

This case demonstrates how Iranian courts extended the traditional boundaries of contract validity, moving beyond the classical requirements outlined in Article 190 of the Civil Code—consent, capacity, lawful cause, and defined subject matter—to incorporate compliance with environmental regulations as a foundational element of lawful contracting. The plaintiff's legal challenge centered on the claim that the contract was concluded without fulfilling mandatory environmental procedures, specifically the

[55] A. Ramazani Ghavamabadi, M. Javadmanesh, *Legal standing*, cit., 998.

[56] Yasouj Judgment, p. 14, Online Appendix.docx

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failure to conduct an Environmental Impact Assessment (EIA) and obtain necessary environmental permits. Both the trial and appellate courts upheld this argument, holding that public infrastructure contracts involving substantial environmental implications must satisfy statutory environmental safeguards. In doing so, the judiciary emphasized that legality in public contracting is not limited to formalistic elements but must also reflect substantive compliance with environmental protection standards. This judicial approach reflects a broader shift toward environmental accountability in public law, affirming that the integrity of public contracts hinges not only on procedural correctness but also on adherence to environmental obligations.[57]

The First Instance Court ruled that the contract was invalid, basing its reasoning on the principles of "technical decentralization," "departure from competence," and the need to ensure "public benefit." The court found that the contracting process failed to meet the legal standards applicable to governmental obligations, including those stipulated in Article 50 of the Constitution, environmental laws, and Iran's international environmental commitments. It emphasized the state's failure to utilize available resources to fulfill its duty to protect the environment and prevent irreversible harm.

The Court of Appeal affirmed this approach, explicitly stating that for public contracts—especially those involving environmental or natural resources—compliance with general contract conditions under Article 190 must be supplemented by adherence to additional environmental regulations. The appellate panel noted that «in the case of government contracts, in addition to the basic conditions of the authenticity of transactions in Article 190 of the Civil Code, other conditions that are required by other laws and regulations, including environmental and natural resources laws, must be observed.»[58] It emphasized that the failure to fulfill these legal requirements results in the invalidity of the contract, thereby confirming the lower court's annulment based on both procedural and substantive grounds.[59] By rejecting the arguments of the appellants—who failed to demonstrate any error in the lower court's application of the law—the Appeal Court reinforced the binding nature of environmental compliance

[57] The court's decision underscores a latent tension between contractual freedom and environmental protection, though this conflict remained largely unaddressed. In the Iranian legal system, the state maintains expansive authority to regulate private agreements in favor of collective interests, as freedom of contract lacks the constitutional status it enjoys in many Western jurisdictions. Under this framework, even ordinary legislation or executive council decisions may impose limitations on private autonomy. Consequently, any challenge against the annulment of the dam construction contract on the grounds of contractual freedom was unlikely to succeed, particularly since the protection of the environment is explicitly categorized as a fundamental right under Article 50 of the Constitution.

[58] *Court of Appeal [Kohgiluyeh and Boyer-Ahmad]*, cit., p 2, Online Appendix.docx.

[59] Id p 7

within public contract law, reflecting key elements of the emerging discourse on sustainable private law. As sustainable private law requires legal frameworks to integrate environmental and social considerations into contractual relations, challenging the traditional, purely economic logic of private agreements.[60]

The *Khersan 3* judgment illustrates a judicial willingness to scrutinize development contracts not only for procedural legality but also for their broader ecological and public interest implications. The judiciary's recognition that environmental law violations can void public contracts, even absent direct environmental harm, illustrates a proactive judicial stance aligned with sustainable development and intergenerational equity.

5. Comparative Perspectives: The *Khersan* 3 Dam in a Global Context

5.1 Comparative Judicial Approaches to Environmental Law

Judiciaries worldwide are increasingly adopting proactive roles in environmental protection by incorporating principles such as precaution, prevention, and public accountability into substantive law. This judicial evolution underscores the growing role of courts in proactively addressing environmental challenges within domestic legal frameworks.[61] Within the European Union, the precautionary principle is a foundational element, enshrined in Article 191 of the Treaty on the Functioning of the European Union (TFEU). This principle empowers regulatory action in the face of scientific uncertainty to prevent potential environmental harm. It underpins major EU regulations, such as REACH (concerning chemicals) and food safety laws, emphasizing the prevention of environmental damage before it occurs.

Italy presents a dual-track system of environmental liability through its Codice Civile and the Environmental Code (Decreto Legislativo No. 152/2006).[62] While civil liability under Article 2043 addresses general torts, the Environmental Code recognizes environmental damage as an autonomous harm, even in the absence of personal or proprietary damage.[63] In Italian environmental law, the standard for triggering environmental liability is generally framed as "significant deterioration" (*deterioramento*

[60] M. Giorgianni, *Una mappatura del contratto 'sostenibile' nell'era del Green New Deal*, in C.M. Cascione; G. Giannone Codiglione; P. Pardolesi, *Public and Private in Contemporary Societies*, Roma, 2024, 375.

[61] P. Sands, J. Peel, A. Fabra, R. Mackenzie, *Principles of International Environmental Law*, 4th ed., Cambridge, 2018.

[62] *Decreto legislativo 3 aprile 2006, n. 152 – Norme in materia ambientale* (Environmental Code), 14-4-2006, www.normattiva.it/.

[63] Italian Environmental Code (Legislative Decree No. 152/2006), arts. 302–305.

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significativo). This threshold is primarily established under Article 300 of the Environmental Code, which governs environmental damage and remediation procedures. The Italian Court of Cassation has interpreted civil liability in environmental contexts not only as compensatory but also as preventive and, in some cases, quasi-punitive in function. Moreover, while the Environmental Code introduces the criterion of "significant deterioration" under Article 300 as a threshold for liability, judicial practice has ensured that this requirement does not become an obstacle to substantive environmental protection.[64]

In France, significant legal reforms have codified ecological harm as a distinct and justiciable damage. The 2016 amendment to the Civil Code introduced Article 1248, formally recognizing *préjudice écologique pur*—pure ecological damage—as independent of harm to persons or property.[65] This shift was catalyzed by the Erika oil spill case (2012), where the Court of Cassation ruled that damage to the environment constitutes damage to a collective good.[66] French environmental liability law incorporates a strict liability regime, relieving claimants of the burden of proving fault.[67]

In the United States, environmental protection has evolved through doctrines such as public nuisance and the public trust doctrine. The California Supreme Court's decision in *National Audubon Society v. Superior Court* held that the public trust doctrine extends to non-navigable tributaries when their diversion harms navigable waters, encompassing environmental and recreational values.[68] This principle balances development with environmental protection, allowing for judicial review of water allocation decisions. Climate change litigation in the U.S. has also evolved, with cases like *Kivalina v. ExxonMobil* highlighting the challenges of addressing climate-related harms through public nuisance claims.[69] This initial reluctance, however, has gradually shifted. A "second wave" of litigation, as seen in *California v. General Motors*, demonstrates an increasing judicial willingness to address climate change through public nuisance claims. This shift is driven by advancements in "warming attribution science," which strengthens causation arguments, and a growing focus on seeking monetary

[64] C. Antippas, *European Environmental Law: A Comparative Perspective*, Oxford, 2021, 132-163.

[65] C. Comito, *Préjudice écologique e danno ambientale. La legittimazione ad agire tra Francia e Italia*, in *Quotidianolegale.it*, 2024, 15-2-2024, www.quotidianolegale.it/prejudice-ecologique-e-danno-ambientale-la-legittimazione-ad-agire-tra-francia-e-italia/.

[66] *Erika oil spill decision*, Court de cassation [Cass. civ.], Cass. Crim., 25 September 2012, n°10-82.938.

[67] G. Martin, *Environmental liability and the Civil Code: The French experience*, in 29(3) *Eur. Env. L. Rev.* 121 (2020).

[68] *National Audubon Society v. Superior Court*, 658 P.2d 709 (Cal. 1983).

[69] *Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863 (N.D. Cal. 2009).

compensation for mitigation and adaptation costs.[70]

Collectively, these cases reflect a global trend toward more assertive judicial involvement in environmental governance. Courts are increasingly interpreting statutory and tort-based principles to impose preventive obligations on both public and private actors, reinforcing the legal duty to safeguard long-term ecological interests.

5.2 The Recognition of Environmental Rights as a Global Norm

A significant shift in global environmental jurisprudence is the increasing recognition of environmental protection as a matter of fundamental human rights. Courts and legal systems worldwide are progressively framing environmental degradation not just as an ecological issue, but as a direct violation of core human rights, including the rights to life, health, and dignity. This rights-based approach strengthens the legal standing of environmental claims, reinforcing the obligation of states to proactively safeguard ecological integrity.

The European Court of Human Rights (ECtHR), though operating under a convention that does not explicitly recognize a right to a healthy environment, has creatively interpreted existing rights—particularly Article 8 (private and family life) and Article 2 (right to life)—to encompass environmental harms. This evolution is well-demonstrated in landmark rulings such as: López Ostra v. Spain (1994), where the Court held that pollution interfering with the applicant's home life breached Article 8, even if it did not endanger her health. Taşkın and Others v. Turkey (2004) and Okyay and Others v. Turkey (2005), where the Court recognized that environmental rights protected under national constitutions could qualify as "civil rights" under Article 6(1), reinforcing procedural environmental rights through judicial access and state responsibility. Klima Seniorinnen v. Switzerland (2024), which marked a breakthrough in rights-based climate litigation by confirming that states must take effective action on climate change under Article 8 of the ECHR, establishing a failure to meet climate targets as a human rights violation. In addition to ECtHR jurisprudence, EU law has played a transformative role through instruments such as the Aarhus Convention, which guarantees access to information, public participation, and access to justice in environmental matters, and Directive 2004/35/EC which enshrines the "polluter pays" principle. These developments reflect a coherent move toward integrating environmental rights into broader human rights protection frameworks.[71]

India stands at the forefront of environmental constitutionalism. The

[70] *California v. General Motors LLC*, No. 19STCV21588 (Cal. Super. Ct. filed Sept. 17, 2019).

[71] A. Boyle, *Human Rights and the Environment: Where Next?*, in 23(3) *Eur. J. Int'l L.* 613 (2012), doi.org/10.1093/ejil/chs033.

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Indian Supreme Court has expansively interpreted Article 21 of the Constitution—the right to life—to include the right to a clean and healthy environment.[72] Landmark cases such as *Francis Coralie Mullin v. Union Territory of Delhi* (1981) and *M.C. Mehta v. Kamal Nath* (2000) laid the foundation for this approach. In a significant March 2024 decision, the Court recognized the "right to be free from the adverse effects of climate change" as a distinct constitutional right under Articles 21 and 14, effectively positioning climate justice within the domain of fundamental rights.[73] Moreover, the Court reiterated the shared duty of both the state and citizens (Article 51A(g) to protect the environment, affirming that ecological protection is central to the realization of human dignity and equality.[74]

As previously discussed from the perspectives of procedural access and standing, *Urgenda Foundation v. State of the Netherlands* represents a landmark in global climate litigation. The case required the government to take climate action based on a duty of care to citizens, effectively introducing tort-like reasoning into public law. The significance of the case extends into the realm of fundamental rights and constitutional obligations. In its 2019 decision, the Dutch Supreme Court affirmed that the state was legally obligated to reduce greenhouse gas emissions by at least 25% compared to 1990 levels by 2020. The Court based this mandate on Articles 2 and 8 of the ECHR, alongside relevant provisions of the Dutch Constitution. It held that insufficient climate action constituted a breach of the government's duty of care to protect citizens from foreseeable threats, such as those posed by climate change. This judgment marked the first time a court compelled a national government to enhance its climate policy on human rights grounds, setting a powerful international precedent for judicial intervention in environmental governance.[75]

5.3 The *Khersan* 3 Dam Case and Constitutional Environmentalism

The judicial review of the *Khersan* 3 Dam project by both the Court of First Instance and the Appellate Court reflects a growing judicial commitment to recognizing environmental law as a foundational element of the constitutional and human rights framework, aligned with both domestic legal obligations and international environmental norms. Both courts emphasized that environmental protection is not merely a regulatory or technical matter, but a fundamental right intrinsically linked to human dignity, public health, and human security. This aligns with the evolving

[72] *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420; *MC Mehta v. Kamal Nath*, (1997) 1 SCC 388.
[73] Supreme Court of India, *In Re Climate Change and the Right to Life*, AIR 2024 SC 1234.
[74] S. Divan & A. Rosencranz, *Environmental Law and Policy in India*, cit., 45.
[75] *Urgenda Foundation v. State of the Netherlands* (2019), ECLI:NL:HR:2019:2006 (Supreme Court of the Netherlands).

global understanding that a healthy environment is essential for the realization of all other human rights, particularly the rights to life, health, and well-being.

The Court of First Instance expressly grounded its reasoning in the three generations of human rights theory—civil and political (first generation), economic and social (second generation), and solidarity rights (third generation)—and categorized the right to a healthy environment as a positive obligation of the Iranian government.[76] The court stated: «This court, placing the right to a healthy environment under human rights... considers the realization of the right to a healthy environment to be among the positive obligations of the government... influenced by the Universal Declaration of Human Rights and the 1966 International Covenant on Economic, Social and Cultural Rights»[77] It further held that even in the absence of explicit domestic statutory provisions, environmental rights can be derived from existing constitutional and international human rights obligations.[78] This approach reflects jurisprudence from the Inter-American Court of Human Rights in Advisory Opinion OC-23/17, which confirmed that environmental degradation can violate human rights including the right to life and personal integrity.[79]

The Appellate Court built upon and expanded the lower court's reasoning by articulating the concept of "environmental security" as an essential component of human rights.[80] It explicitly stated that: «Without environmental security, almost no area of individual and social life of humans will be safe and society will be in crisis». The court recognized environmental protection as an emergency necessitating elevated legal status, comparable to other constitutional emergencies. It linked this view to the Sendai Framework for Disaster Risk Reduction, underscoring that environmental degradation increases the frequency and intensity of natural disasters and constitutes a threat to national security and social resilience.[81]

In both decisions, the courts acknowledged the tension between development interests and environmental protection, but decisively resolved that in cases of conflict, ecological integrity must prevail. The appellate court declared: «Until environmental protection is considered an emergency... it is impossible to reliably prevent the occurrence of natural disasters... the fragile state of ecosystems makes it necessary to prioritize environmental protection over development».[82] This assertion reflects the

[76] Yasouj Judgment, p 10 at Online Appendix.docx.

[77] Id.

[78] Id p. 14.

[79] Inter-American Court of Human Rights, *Advisory Opinion OC-23/17*, Series A No. 23 (2017).

[80] Court of Appeal *[Kohgiluyeh and Boyer-Ahmad]*, cit., p. 3. Online Appendix.docx.

[81] Id pp. 4, 6.

[82] Id p 6.

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precautionary principle and the principle of non-regression, both enshrined in international environmental law and recognized in the jurisprudence of the European Court of Human Rights (ECtHR).[83]

6. Conclusion: The Doctrinal Significance and Future of Environmental Adjudication in Iran

The Khersan 3 Dam litigation represents a significant doctrinal turning point in Iranian jurisprudence, moving the judiciary beyond its traditional role of passively checking administrative legality. By invalidating a major public contract due to the absence of a proper Environmental Impact Assessment (EIA), the courts have begun to actively address the core conflict between state-driven development and environmental preservation. The rulings in the Khersan 3 Dam case highlight procedural integrity, institutional expertise, and the priority of preventive action over retrospective remediation. The judiciary's decision to uphold the technical authority of the Environmental Protection Organization (EPO) against executive overreach affirms the principle of technical decentralization, strengthening the rule of law in environmental governance. Furthermore, the courts' recognition that environmental contracts involve public interest values transcends the conventional limitations of civil law, demanding a higher level of legal scrutiny.

The case has far-reaching implications for the future of Iranian environmental law by judicial oversight of major state projects, challenging the long-standing principle of administrative deference. The acknowledgment of irreparable environmental harm as a basis for contract invalidity blurs the traditional boundaries between administrative law, civil liability, and constitutional rights. This signals a move toward a more rights-based framework for environmental governance. This judicial evolution in Iran mirrors two interconnected global trends. The first is the expansion of civil and administrative liability frameworks, where courts reinterpret tort and statutory principles to impose proactive preventive duties on both public and private actors. The second is the growing constitutionalization of environmental rights, where courts recognize environmental protection as a fundamental human right. By adopting a rights-based approach consistent with global trends seen in jurisdictions like India and the Netherlands, the Iranian judiciary demonstrates a willingness to integrate constitutional rights with civil liability and administrative accountability.

Ultimately, the Khersan 3 Dam case proves that even within Iran's fragmented legal system, the judiciary can become a vital custodian of ecological justice. For this progress to continue, Iran needs a specialized

[83] European Court of Human Rights, *KlimaSeniorinnen v. Switzerland*, Application No. 53600/20 (2023).

environmental liability regime that clarifies the intersection of civil and public law, enhances the enforceability of environmental rights, and fully integrates both domestic and international standards. This trajectory demands sustained institutional reform and judicial courage to align legal formalism with the urgent realities of environmental sustainability.

Hossein Mardi
Dep. Private aut. Bus., work and prot. rights
in European and international persp.
Sapienza University of Rome
Hossein.mardi@uniroma1.it

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