The environmental crisis has fundamental social determinants. In fact, popular sectors are frequently those who suffer most the nature degradation in their health and living-standards. The access to a healthy environment is recognized as a fundamental right by different international treaties. However, a less attended aspect is how the rights are applied, especially in developing countries.

The political and economic factors show the human condition of environmental claims. In order to understand how a demand on public health became to be a State policy this paper focuses in the “Beatriz Mendoza against National State and others” trial, better known as “Riachuelo-La Matanza” case. This lawsuit was considered a turning point in Argentine legislation and a model for other demands.

The Riachuelo river crosses the border of the Argentine capital city, Buenos Aires, and covers an extension of 65 kilometres in the most populous area of the country. According to the Statistics and Censuses Institute (INDEC), 4,885,000 persons live and work near the riverbanks. Therefore, 13.5% of the country's total population is affected by the quality of its waters.

A report from the Blacksmith Institute and the Green Cross Switzerland placed the Riachuelo among the ten "World's Worst Polluted Places". A long-term history of pollution caused by industrial activities and practically no State control were the reasons for the current situation. On July 14, 2004, a group of neighbours, who lived in an emergency settlement near the oil refineries in the riverbanks, sued the Federal and Provincial governments and 44 companies for "damages caused by the environmental pollution." The case was called after the social worker Beatriz Mendoza, the main propitiator of the demand.

The legal strategy was the highest point of demonstrations and people's claims. After years of hearings, researches on water quality and public health, the Supreme Court decided that the Federal government was the principal responsible for the river’s protection.

In order to understand how political traditions and legal discourse influence in environmental demands, this paper proposes an analysis of the long history of the river’s pollution, the neighbor's strategy and the hearings. The Court decision set a precedent of the public responsibility for the preservation of common goods.

Economic and legal crisis on the river

The Riachuelo’s history of pollution is related to economic and social changes in Argentina. There are records of the first industrial activity in the area at the beginning of 19th century. Due to its strategic location, close to the port and the city, the first leather and salted meat manufactures were placed in 1822. When the immigration process started in 1880, the zone became to be the new home for people from all over the world (especially from Southern Europe).

Developmental policies in the 1950s and 1960s encouraged the installation of chemical industries and oil refineries: Shell CAPSA, Salvoy, Petrobras and YPF built factories in Dock South. Due to the characteristics of the port, its utilization started diminishing until 1970, when the military government of Juan Carlos Onganía decided to close it with a total lack of foresight in the new uses of the port.

While the pollution increased in the river, the nearby neighborhoods impoverished. In fact, there is a close relationship between the impoverishment of the area and the contamination of the river. Middle-class neighbors moved westward as the contamination grew, and as the politicians didn’t plan any possible use for riverbanks, emergency neighborhoods began to settle in the area.

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pollution was recognized as a political issue in the beginnings of the 80s. The first cleaning policy was carried out by the military mayor of Buenos Aires city, Osvaldo Cacciatore, in the so-called "Riachuelo Operation." The police removed solid waste, as sunken ships and cars from the river’s bottom. However, successive sanitation plans were surrounded by corruption scandals. In 1993, the Secretary of the Environment and Natural Resources, María Julia Alsogaray, announced "The 1000 Day Plan", a project that promised to decontaminate the river in three years. This plan was a failure that ended with a trial and the condemnation of the Secretary. In fact, the cleaning project was the justification of a loan contracted by the National State in 1998 for more than US $250 million, without clear results.

In the same way, the legislation that controls the maximum levels of wastes thrown into the river was not on time. The first law that protects the environment against industrial activities was adopted in 2002 and placed the governments the "guarantor of ensuring protection, recovery, and control of the environment." According to the researcher of the National Technological University, Dr. Alejandro Malpartida, no legislation calculated the capacity of reception of the channels. The investigator explains that "this is the reason why a body of water that once qualified for the protection of aquatic life, and recreational use (…), become a body of water without admissible use".

To the confused legal order, it must be added the limits between municipalities and provincial administrations that diminished the application of a unified policy. Around the riverbanks, there were 14 municipalities and two provincial administrations, with different laws.

Goran Therborn argues that inequalities in developing countries are related to a long history of unequal access to natural resources, such as land property and clean waters. Kristina Dietz proposes social inequalities are the main aspect of the current ecological crises. The history of Riachuelo’s pollution shows the social component of the struggle for a healthy environment. At the early stages of the new millennium, it was estimated that there were 200 emergency neighborhoods located in the lower basin of Riachuelo, where more than half a million people lived. The 55% of this population didn’t have a sewer system and a 35% couldn’t access to clear water. There were 105 open-air dumps and hundred of illegal sewers that threw away untreated wastes into the river.

The first study on the health condition of the inhabitants of riverbanks was financed by the Japan International Cooperation Agency (JICA) in 2002 and 2003. A total of 149 children, aged from 7 to 11 years old, living in the Dock South, were analysed. The study found that more than 50% of the children had high levels of lead in their blood and that more than 85% of them had traces of benzene, toluene, and xylene, gasses considered carcinogenic and cause of other developmental diseases.

The main actors of the trial

Political traditions and cyclical economic crisis in Argentina gave distinctive characteristics of environmental movements. According to Gabriela Melinsky, the environmental demands are related to...
grass-routed organizations and their request exceeds the environmental problems as social and economic demands. During the economic crisis in 2001, demonstrations and protests were held throughout the country. The main leaders were linked to neighborhood meetings and grass-routed movements. These organizations transformed the political landscape, demanding more participation of the State in the economy. Besides, they were protagonists of the environmental claims at the beginnings of the century. In words of Lucrecia Soledad Wagner (2004 and 2005), ecological conflicts acquired a public scale, related to the crisis of the neoliberal project in Argentina. Maristella Svampa believes that the successful social movements in Latin America are related to their ability to associate with previous demands, political traditions and grass-routed groups. Indeed, the Court action in 2004 was the result of collective demands by Dock South neighbours. The experience of living and working in a polluted environment was decisive for a joint strategy. They claimed for a compensation of "damages derived from environmental pollution." Among the 17 neighbors, there were doctors and professionals of the Interarea Hospital "Pedro Fiorito". The social psychologist Beatriz Mendoza was the most active propitiator of the legal demand, and that's why the case is known with her name. Mendoza worked as a social psychologist in Dock South since 1998, and four years later she was diagnosed with polyneuritis. The professionals at the Hospital had noticed several times the contamination of the children and adults who lived in Dock South after the JICA researches. In addition to the social workers, the demand also included community leaders, such as Mary Brite. She was one of the most important social leaders after the protest in 2001. Her two children, Camila and Yard, aged 10 and eight years old, had asthma and skin problems caused by the pollution in the river. The link between community leaders and professionals was decisive in the trial. The lawsuit included two legal actions. On the one hand, it claimed for compensation because of the physical, moral and property damages due to the pollution. They request the payment for sanitary treatments received, a new location of the houses and future treatments for the children. The demand stipulated the sum of 5,161,500 pesos (less than US $ 2 million). On the other hand, it included the creation of the Environmental Compensation Fund with private and public participation. Moreover, the demand claimed to approve the loan contracted with the Inter-American Development Bank. A complex legal regulation explains why the actors did not appeal to the ordinary justice. The presentation to the Supreme Court was justified by the institutional severity of the lawsuit (the National, Provincial, and Municipalities governments were accused). In addition, the Argentine legislation recognizes International Human Rights Treaties with constitutional force, according to the article 75, subsection 22 of the National Constitution. Finally, navigable rivers, such as the Riachuelo, are federal property; therefore, any claim about it must be treated by the Supreme Court. The demand defined "environmental damage" as "any relevant alteration that negatively modifies the environment, its resources, the balance of ecosystems, or collective assets or values", according to the Law No. 25,675, promulgated in 2002. This law created the figure of an Environmental Compensation Fund charged with public funds, but it had never been regulated.

14Eduardo Mondino, Informe especial, 215.
In the public sphere, the demand was understood as the culminating point of a series of other demands. At the same time, a series of demonstrations called the attention to the environmental crisis in Argentina. In 2004 and 2005, a neighbourhood meeting in Famatina, at the Andes’ base, opposed to the mining company Barrick GoldandUruguayand Argentine citizens cut an international bridge against the construction of the Metsa-Botñiapaper factory. Both conflicts lasted more than five years. In this context, the Supreme Court of Justice decided to initiate a trial about the Riachuelo in June 2006. The first decision was to nullify the compensation demand due to a formal nature of the demand. The Supreme Court considered that individual reparations belonged to ordinary civil justice. The resolution accepted the second action, which was the creation of a Fund for sanitation and application of a cleaning program.

They considered the river basin as a "common good." Thus, it was established that "the present cause will have as its exclusive purpose the protection of the collective good. In that sense, prevention of future damage is an absolute priority, as (…) at the present time some activities that will continue to pollute (the river)."15

At the end of the resolution, an action plan was drawn. The Court requested a report of environmental damage to the companies and a State plan to sanitize the river. The first oral hearing was held on September 5, 2006.

The decision of the Supreme Court to attend the second action on demand was crucial for the development of the hearings that were focused in the application of the Healing Plan.

After the first resolution, six organizations were presented as third participants: Boca Neighbors Association, Metropolitan Association, City Foundation, Citizen Power, Legal and Social Studies Centre, Foundation Environment and Natural Resources (FARN) and Greenpeace Argentina Foundation. They offered evidence to support the complaint. Except for Greenpeace Argentina and FARN (that provided technical assistance), the other organizations were grass-rooted groups.

The characteristics of “Beatriz Mendoza case” show the importance of neighborhood organizations in the construction of joint strategies.

Cross-responsibility in “Beatriz Mendoza case”

Many jurists have pronounced about the responsibility regime in environmental demand cases. As Beatriz Mendoza case shows, it is hard to establish a linear liability16; if pollution is historical, how can we condemn present actors for the accumulated damages of the past? How to measure responsibilities in the accumulation of environmental damage? At the same time, on the riverbanks there were (and still there are) sewers coming from emergency neighborhoods with no access to the sanitary system. In this case, does the neighbors are part of the river’s pollution? Moreover, it is a danger to blame those who most suffer. Through the speeches on the hearings of “Beatriz Mendoza case”, it is possible to see the legal complexity of environmental liability and how fundamental rights are not necessary in accordance.

On the first day of the hearings, the Secretary of Environment and Sustainable Development, Romina Picolotti explained a study done by the University of Buenos Aires and the National Technological University about the river water’s quality. One of the most revealing data was that 50% of pollution came from the leather industries, 20% from chemical and petroleum factories (the main accused) and 30% from different sources (like untreated sewage system).

Picolotti presented a Healing Plan proposed by the Federal government. The plan included a comprehensive cleaning policy, the closure of open dumps, the control of industrial emissions, the relocation of oil refineries, and two water treatment plants. Beyond the technical characteristics of this project, the government created an independent decision-making agency for the river, called the Matanza Riachuelo Watershed Authority (ACUNAR). The organizations, as third participants, would become observers of the implementation of the plan.

The industries’ relocation became the debate focus of the first day of hearing. At the end of Picolotti’s

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dissertation, the Minister of Court Dr. Eugenio Zaffaroni mentioned a conflict between fundamental rights: “We must avoid that defending the human right to a healthy environment implies injury to another human right, which is the right to work”.

The following week (second day of hearings) was dedicated to the presentation of 44 industries, the social organizations, and the Ombudsman. During the second meeting, the most debated problem was the sharing responsibility for the demands industries. In fact, there were more than 3,000 enterprises in the riverbanks stipulated by the Secretary of Environment by that moment.

Both legal representatives of the companies Antivari (first to exhibit) and Ovroll (the third) expressed one of the central problems of the demand: what was the percentage of responsibility in the long history of pollution? The 44 industries represented only a small proportion of the industries settled close to the river, and most of them were established in the 90s. The Ovrol’s lawyer blamed the State for lack of environmental control. He described that Ovrol had passed successfully five technical inspections since 1993.

The Court’s president, Dr. Highton de Nolasco, changed the subject. She focused on the problems caused by the industrial relocation and asked the companies to make a list of employees that would be affected.

The next step was the presentation of representatives of the Petrochemical companies, Petrobras S.A., Shell CAPSA and Solvay Indulp S.A.I.C. The three speeches were focused on the technical description of the hydrocarbons production and procedures in industrial garbage. The Petrobras legal agent argued that the pollution sources were dumps and illegal sewers all over the river. He appealed to the argument of multiple responsibilities: “From the above, it is clear that there are different factors that affect the contamination of the Riachuelo”.

Additionally, the Salvoy Indulp S.A.I.C. representative explained the same argument: the problem of pollution was framed between the lack of State controls.

The legal manager of Shell CAPSA was the last one. He made a brief historical review of Shell Plant in Argentina, as it was the oldest oil refinery in the country, and then he described the technical conditions of the gas and effluent emissions from the plant and pointed out that there were illegal dumps, sewage and sanitary landfills on the riverbanks.

When Shell’s representative finished the presentation, the minister of Court Dr. Ricardo Lorenzetti clarified that there were doubts about the information given by the industries: “[After listening] you could come to the strange conclusion that the Riachuelo has been contaminated by itself.”

At the end of the second meeting, it was evident that problems in establishing responsibility exceeded the formalities of laws. However, the purpose of the trial was not to fix compensation but to ensure the collective good. The Court decision was focused on the responsibility of the State to control the health of the river. Industries were given a secondary punishment. At the second day, the president of the La Boca Neighbors Association gave an emotional presentation: “Ladies and Gentlemen Ministers of the Supreme Court: in this river there is no water, what we have is a toxic waste of human and industrial waste.”

After the hearings, ACUNAR began to apply the Healing Plan. The dumps were closed, and the Federal government provided emergency health care to inhabitants of the riverbanks.

The second, third and fourth hearings took place the following years. The Secretary of Environment explained the progress made in the implementation of the Healing Plan with evaluations carried by social organizations. After two years, the plan was in execution at the same time of the sentence. On July 8, 2008, the Supreme Court sentenced the State to apply the Healing Plan (several times modified). The judgment contained three essential issues:

1) Improvement of the quality of life of the inhabitants of the basin;

19 Ibidem, 12.
21 Ibidem, 47.
2) The decomposition of the environment in the basin in all its components (water, air, and soils);
3) The prevention of damages with sufficient and reasonable degree of prediction.22

The Court also ordered a public information system about the progress of the Healing Plan. Social organizations should be observers of the application of the project and should offer modifications for a better implementation. Finally, the Supreme Court created an ad-hoc court that would be in charge of the river.

For the first time, the responsibility of the State was established in an environmental damage case. The Court decision did not calculate compensations but ensured a policy of access to a healthy environment.

Conclusions
The “Beatriz Mendoza case” was the result of a long history of pollution and practically no control of the State. Social changing in the riverbanks was one of the most dramatic transformations in the Argentina during the XX century. The trial showed the economic determinants of the access to a healthy environment and how a social demand became a State policy.

After ten years of the Court ruling, some studies show opposite results. On the one hand, the condition of the inhabitants of the riverbanks, especially the Dock Sud, have changed a lot. The access to clear water has improved, and industrial control also has increased, but in large areas of the river, aquatic life is still impossible. However, the Court decision set a precedent for successive demands for a healthy environment.

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