

Sindicato de Trabajadores Independientes Procesadoras de Productos del Mar del Borde Costero Caleta Lo Rojas y otros c/ Central Termoeléctrica Bocamina I y II de ENDESA Chile S.A., Rol No. 9852-2013, Supreme Court of Chile (2014): https://microjuriscl.files.wordpress.com/2014/01/mjch_mjj36617.pdf

Local small-scale fishermen brought constitutional claims (by means of a Chilean legal action called a *recurso de protección*) against Endesa Chile S.A., claiming that Endesa's operation of the Bocamina Coal-Fired Power Plants I & II (located in the city of Colonel, in the Bío Bío Region) – and, more specifically, its intake and discharge of seawater for its cooling system – caused and will continue to cause the massive death of various marine species (via impingement and entrainment), thereby violating the plaintiffs' right to live in an environment free from contamination (enshrined in Article 19, Section 8, of the Constitution of Chile). The fishermen sought to suspend the operation of the coal-fired power plants until adequate measures are taken pursuant to a new comprehensive environmental assessment.

The Supreme Court accepted the *recurso de protección* brought by the fishermen and ordered Endesa to take measures necessary (1) to ensure that the operation of the power plants does not harm or threaten marine species, and (2) to comply with its environmental license (*Resolución de Calificación Ambiental*). The Court ordered the corresponding environmental authorities to periodically inspect the operation of the power plants and to adopt the measures necessary, potentially including the suspension of the power plants, to ensure seawater intake does not harm marine species. In its evaluation of the evidence before it, the Supreme Court mentioned that administrative authorities had undertaken investigations and found violations of the Fishing Law (*Ley de Pesca*) due to the illegal intake of marine species, and that there was no certainty that Endesa had adopted measures necessary to remedy the violations.

The Court concluded that the facts before it “undeniably constitute, at least, a threat to the right consecrated in Article 19(8) of the Constitution, not only with regard to the plaintiffs but also the entire community, given the particularities of the case at hand. The [threat] makes appropriate the adoption of measures necessary in order to avoid the danger . . . and constitutes sufficient justification to accept this *recurso [de protección]* in order to provide the affected community with protections that the situation demands and deserves, precisely to protect the aforementioned rights.” Para. Séptimo (Seven - 7) (ELAW's unofficial translation of “hechos que innegablemente a lo menos importan una amenaza a la garantía consagrada en el número 8° del artículo 19 de la Carta Fundamental, ya no tan sólo de la persona de los recurrentes sino que de que toda esa comunidad, dadas las particularidades del caso de que se trata. Lo anterior hace procedente la adopción de las medidas necesarias para evitar el peligro de la magnitud aludida y constituye suficiente razón para hacer lugar al presente recurso de manera de proveer a la comunidad afectada de los resguardos que la situación exige y amerita, precisamente en protección de los derechos aludidos precedentemente.”); see also

<http://www.reuters.com/article/us-chile-energy-endesa-idUSBREA090NP20140110>

Subsequent to this Supreme Court decision, the corresponding environmental law enforcement authority ordered the temporary suspension of Bocamina I (Bocamina II was already suspended by order of the Court of Appeals of Concepción on December 3, 2013), as well as monetary penalties. See Rol No. 15.737-2014, Supreme Court of Chile, November 6, 2014, available in Spanish at https://issuu.com/jorgemolinasanhueza/docs/fallo_final_bocamina; Rol No. 5.838-2015, Supreme Court of Chile, December 31, 2015, available in Spanish at <http://www.tercertribunalambiental.cl/wp-content/uploads/2016/01/Casacio%CC%81n-Bocamina.pdf>