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## **Litigating for Biodiversity: Comparative Insights from Iran and the European Union\***

Postępowania sądowe na rzecz bioróżnorodności: porównawcze spojrzenie z perspektywy Iranu i Unii Europejskiej

**Abstract:** This essay explores the potential for biodiversity litigation in Iran, where biodiversity loss has become a serious concern. Article 50 of the Iranian Constitution emphasises the need for environmental protection, yet most environmental cases are adjudicated by the Administrative Court of Justice, ignoring the precautionary principle. The paper examines the legal foundation for such claims under Article 10 of the Court's legislation and compares Iran's approach with the more efficient legal framework of the European Union. The objective is to enhance the efficacy of biodiversity litigation in Iran.

**Keywords:** biodiversity liability, legal basis, Administrative Court of Justice, fault-based liability, precautionary principle

**Abstrakt:** Niniejszy artykuł analizuje potencjał postępowań sądowych dotyczących ochrony bioróżnorodności w Iranie, gdzie jej utrata stanowi poważny

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problem. Artykuł 50 Konstytucji Iranu podkreśla potrzebę ochrony środowiska, jednak większość spraw środowiskowych rozstrzygana jest przez Administracyjny Trybunał Sprawiedliwości, często z pominięciem zasady ostrożności. W artykule omówiono podstawy prawne takich roszczeń w świetle artykułu 10 ustawy o Trybunale oraz porównano podejście Iranu z bardziej efektywnym systemem prawnym Unii Europejskiej. Celem jest zwiększenie skuteczności pozwów dotyczących ochrony różnorodności biologicznej w Iranie.

**Słowa kluczowe:** postępowania sądowe dotyczące ochrony bioróżnorodności, podstawa prawna, Administracyjny Trybunał Sprawiedliwości, odpowiedzialność oparta na winie, zasada ostrożności

## 1. Introduction

Biodiversity, the complex web of life that comprises all living organisms and their interactions, is facing an extreme crisis. This biological annihilation<sup>1</sup> “is not merely an environmental concern, but a profound threat to human well-being and the planet’s life-support systems”.<sup>2</sup>

Whereas the legal scholarship has provided significant conceptual underpinning for humankind’s shared concerns, the notion remains poorly developed in substance. Recent developments in state practice can help provide much-needed substance for the concept of these shared concerns, while other analyses have been primarily restricted to theoretical inquiry and political declaration.<sup>3</sup> The Convention on Biological Diversity (CBD), signed and ratified by Iran and many other countries, is evidence of the growing recognition of the value of biodiversity and concern over its loss.<sup>4</sup> Article 1 explicitly includes the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

<sup>1</sup> G. Ceballos, P.R. Ehrlich, R. Dirzo, *Biological Annihilation Via the Ongoing Sixth Mass Extinction Signaled by Vertebrate Population Losses and Declines*, “Proceedings of the National Academy of Sciences” 2017, vol. 114, no. 30, p. 1, <https://doi.org/10.1073/pnas.1704949114>.

<sup>2</sup> Ibidem.

<sup>3</sup> F. Biermann, “Common Concern of Humankind”: *The Emergence of a New Concept of International Environmental Law*, “Archiv des Völkerrechts” 1996, vol. 34, no. 4, p. 426.

<sup>4</sup> I. Koziell, *Diversity Not Adversity: Sustaining Livelihoods with Biodiversity*, International Institute for Environment and Development, London 2001, p. 8.

Thus, any balance between the claims of national sovereignty and those of collective responsibility must be underpinned with a rigorous framework for elaborating on biodiversity rights and burdens.<sup>5</sup> This essay examines a judicial method for pursuing biodiversity claims in Iran, which is legally obligated by its Constitution and the ratification of the CBD, an international legal instrument. It compares Iranian and EU legal procedures for biodiversity-related lawsuits in order to find practical strategies for improving biodiversity protection mechanisms.

Iran is one of the Middle East's top biodiversity conservation destinations,<sup>6</sup> with deserts, forests, mountains and marshes that are home to over 500 bird species, 160 mammals, 164 reptiles and 8,200 plant species – 2,500 of which are indigenous.<sup>7</sup> Climate change – characterised by rising temperatures; declining precipitation and worsening desertification in regions such as the Caspian Sea; and human activities like unsustainable hunting, water mismanagement, infrastructure development and urban expansion – threaten fragile ecosystems that protect endangered species like the Asiatic cheetah, now confined to central Iran.<sup>8</sup> National studies accept climate change's negative effects on biodiversity, yet habitat destruction and unlawful hunting continue to threaten leopards, zebras, reptiles and tiny birds.<sup>9</sup> However, anthropogenic activities, such as the management of water resources, can accelerate the impacts. Furthermore, the development of infrastructure can lead to biodiversity loss and habitat destruction.<sup>10</sup> Thus, Iran needs stronger legal enforcement, including biodiversity lawsuits, to punish violators and preserve environments.

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<sup>5</sup> E. Casetta, J.M. da Silva, D. Vecchi, *From Assessing to Conserving Biodiversity: Conceptual and Practical Challenges*, Springer, Cham 2019, p. 436.

<sup>6</sup> H. Jowkar, S. Ostrowski, M. Tahbaz, P. Zahler, *The Conservation of Biodiversity in Iran: Threats, Challenges and Hopes*, "Iranian Studies" 2016, vol. 49, no. 6, p. 1073, <https://doi.org/10.1080/00210862.2016.1241602>.

<sup>7</sup> B. Selajgeh, H. Bahmanpour, *Environmental Literacy Educational Package for Educators and Facilitators: Biodiversity*, Zarnevesht Publishing, Tehran 2020, p. 41 (in Persian).

<sup>8</sup> *Ibidem*.

<sup>9</sup> I. Emadodin, T. Reinsch, F. Taube, *Drought and Desertification in Iran*, „Hydrology” 2019, vol. 6, no. 3, p. 66, <https://doi.org/10.3390/hydrology6030066>.

<sup>10</sup> M.L. Richardson, B.A. Wilson, D.A. Aiuto, J.E. Crosby, A. Alonso, F. Dallmeier, G.K. Golinski, *A Review of the Impact of Pipelines and Power Lines on Biodiversity and Strategies for Mitigation*, "Biodiversity and Conservation" 2017, vol. 26, no. 8, p. 1813, <https://doi.org/10.1007/s10531-017-1341-9>.

## 2. Legal Framework for Environmental Protection in Iran

Iran's environmental legislation, which is divided into general and special laws, aims at preventing damage and maintaining sustainable development, with the general conservation laws playing a secondary role and the special laws directly protecting the environment. Effective enforcement and revision of the latter are essential to protecting biodiversity.

### 2.1. Iranian General Laws on Protecting Biodiversity

According to Article 50 of the Iranian Constitution, future generations have the right to enjoy the environment. This principle states that protecting the environment, which is essential for future generations, is a civic obligation in the Islamic Republic. This statement reflects Iran's current constitutional position, emphasising future generations' rights and environmental sustainability. Other clauses of this legislative instrument also indicate the importance of protecting the environment. Article 43 aims to meet the basic needs of the population: food, shelter, clothing, healthcare and medical treatment. This provision highlights the need to meet the requirements of both current and future generations and the connection between sustainable development and a healthy environment, as meeting basic human needs requires responsible use of natural resources and natural ecosystems. Article 43 of the Constitution emphasises environmental preservation. Maintaining ecological balance and minimising disruption to natural resources is crucial for future generations' survival. The General Inspection Organisation, which is responsible for implementing Article 174 of the Constitution and is overseen by the judiciary, allows citizens to file complaints about government institutions' environmental performance.<sup>11</sup>

In the last two decades, Iran's environmental indicators have declined significantly, from 80th among 180 countries<sup>12</sup> at the beginning of its Sixth Development Plan (2017–2022) to 133rd at the end of the same Plan.<sup>13</sup> The

<sup>11</sup> M.H. Riyazi, M. Faqih Habibi, M. Pournouri, M. Mansour, *A Study of Intergenerational Rights and Obligations to Achieve Sustainable Development Goals: With Emphasis on Article 50 of the Iranian Constitution*, "Environmental Science and Technology" 2023, vol. 25, no. 2, p. 51 (in Persian).

<sup>12</sup> Z.A. Wendling, J. W. Emerson, D. C. Esty, M. A. Levy, A. de Sherbinin, *2018 Environmental Performance Index: Iran Country Profile*, Yale Center for Environmental Law & Policy, Columbia University Center for International Earth Science Information Network, New Haven 2018, p. vii

<sup>13</sup> H. Gholampour Arbastan, M. Rezaei, *Examining the 7th Development Plan Bill: Environment and Presenting Proposed Rulings (19072)*, "Monthly Expert Reports of Islamic Council Research Center" 2023, vol. 31, no. 4, p. 8 (in Persian).

non-fulfilment of environmental goals in previous development plans can be attributed to sectionalism, poor communication, insufficient executive guarantees and insufficient deterrence of environmental crime.<sup>14</sup>

The Islamic Penal Code is another important source of protecting the environment in general and biodiversity as a part of that. Article 680 of the Islamic Penal Code prohibits the hunting of certain animals and protected wild animals, while Article 686<sup>15</sup> specifically prohibits cutting down trees in urban green spaces.

A major criticism of these legal restrictions is their inadequate enforcement mechanisms. Short-term imprisonment or fines may not be enough to discourage perpetrators. Importantly, these articles do not demand compensation for biodiversity destruction. Article 11 of the Civil Liability Law may also apply in this context. This article outlines the responsibility of government workers, municipalities and related organisations when others are harmed. The policy clearly identifies losses resulting from instrument or equipment failure, and it assigns compensation responsibilities to the relevant department or institution.<sup>16</sup>

Another part of this article that plays a role in the legal analysis of environmental damage is the exception related to the exercise of state sovereignty.

The Iranian Civil Code, following Islamic jurisprudence (*Fiqh*), delineates the provisions regarding liability for inflicting harm outside contractual relationships into two categories: direct causation (*Itlaf*) and indirect causation (*Tasbib*). *Itlaf* refers to the direct infliction of harm, while *Tasbib* pertains to the indirect infliction of harm through the act of an object, animal or another person. In the context of civil liability, Articles 328<sup>17</sup> to 330 of the Civil Code address *Itlaf*, while Articles 331<sup>18</sup> to 335 are dedicated to *Tasbib*.<sup>19</sup> When a law relating to environmental damage, including damage to biodiversity, states that possible damages can be brought before the competent court, the claim for damages is usually brought in the general civil court, citing these general civil-law provisions.

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<sup>14</sup> Ibidem.

<sup>15</sup> Art. 686 of the Islamic Penal Code of the Islamic Republic of Iran.

<sup>16</sup> Art. 11 of the Civil Liability Law of 1940 of the Islamic Republic of Iran.

<sup>17</sup> Anyone who destroys another's property, whether intentionally or unintentionally, tangible or intangible, is liable and must compensate its value or price.

<sup>18</sup> Anyone who causes financial loss must compensate its value, and if a defect or flaw is caused they must bear the cost of repair.

<sup>19</sup> I. Babaei, *The Status of Differentiating Direct Harm and Indirect Harm in Civil Liability Law*, "Legal Research" 2016, vol. 19, no. 76, p. 87 (in Persian).

Some Iranian jurists argue that private-law and fault-based accountability have limitations in cases of environmental harm. They believe that the environment is often not considered private property that can be protected under private law.<sup>20</sup> Environmental damage victims are rarely identified. Determining the link between environmental impact and behaviour is legally and scientifically challenging.<sup>21</sup> The complex relationship between contaminants and the ecosystem is hard to show. However, when Iranian legal restrictions are silent, general civil responsibility laws must be applied. Lawsuits involving environmental issues such as biodiversity fall between public and private law.<sup>22</sup>

Islamic jurisprudence permits the imposition of strict liability without proof of fault;<sup>23</sup> this is grounded in the principle of “no harm” (*La darar*).<sup>24</sup> Unfortunately, Iranian courts’ fault-based approach cannot avoid environmental damage, although absolute culpability in jurisprudence is effective and accepted.

The environmental policy of the EU, based on the “polluter pays” principle that was incorporated in the 1992 Rio Declaration and Environmental Liability Directive, holds polluters accountable for compensation for environmental damages, but its application faces difficulties in defining pollution, the responsible polluters and the extent of their liability.<sup>25</sup> Although adopting absolute liability is challenging, it provides a legal basis for payment without requiring proof of negligence despite the fact that Iran’s internal rules do not specifically require absolute accountability for environmental damage, including biodiversity loss.<sup>26</sup>

<sup>20</sup> N. Katouzian, M. Ansari, *Liability Arising from Environmental Damages*, „Private Law Studies” 2008, vol. 38, no. 2, p. 290 (in Persian).

<sup>21</sup> *Ibidem*.

<sup>22</sup> A. Rajabi, *Environmental Damage Litigation: Stray Between Public and Private Law*, [https://clcl.ut.ac.ir/article\\_530.html](https://clcl.ut.ac.ir/article_530.html) [access: 14.02.2025].

<sup>23</sup> A. Gohari, M. Bejjani, *Strict Liability in Environmental Degradation from a Jurisprudential Perspective*, „Private Law Studies” 2011, vol. 38, no. 2, p. 142 (in Persian).

<sup>24</sup> S. Bouzari, *Compensation for Damage to the Environment by Emphasizing the Crisis of Urmia Lake and Invoking the Rule of No Harm and Loss and Causation*, „Bioethics Journal” 2021, vol. 11, no. 36, p. 2, <https://doi.org/10.22037/bioeth.v11136.34906> (in Persian).

<sup>25</sup> A. Bleeker, *Does the Polluter Pay? The Polluter-pays Principle in the Case Law of the European Court of Justice*, „European Energy and Environmental Law Review” 2009, vol. 18, no. 6, p. 293, <https://doi.org/10.54648/eelr2009024>.

<sup>26</sup> F. Karimi Khanjari, M. Sajadi Kia, *Civil Liability for Environmental Damage in Iranian Law and International Instruments*, „Environment and Interdisciplinary Development” 2021, vol. 6, no. 73, p. 23 (in Persian).

## 2.2. Iranian Special Laws on Biodiversity Protection

Iran customised its laws to handle environmental and biodiversity protection problems, rather than just depending on criminal law. While criminal laws are often employed to address environmental issues, their overuse and irrationality have resulted in crime inflation.<sup>27</sup> This issue not only burdens the judiciary with numerous infractions and inefficiency, but it also weakens the deterrent effect of criminal legislation.<sup>28</sup> For a more balanced approach, specialised legislation must address environmental deterioration and biodiversity loss, emphasising preventive measures, regulatory frameworks and sustainable development goals. Specific laws control activities that affect natural ecosystems and biodiversity, distinguishing them from general rules. Assessing their breadth, capabilities and opportunities for development might enhance their effectiveness in protecting Iran's environmental legacy.

The 1967 Law on the Protection and Exploitation of Forests and Rangelands (amended 2020) and the 1974 Environmental Protection Act constituted Iran's first legislation for conservation, mandating environmental impact assessments, punishment through fines and inspection by the Department of Environment, while Article 8 of the 2018 Genetic Resources Law addresses offences against biodiversity, though it ineptly defines the competent authorities for compensation.

The EU legislation also addresses environmental offences. The 2024 Directive introduces new requirements for interstate collaboration in criminal matters and delineates new categories of and stronger criminal penalties for environmental offences in EU Member States.<sup>29</sup> It will expand the definition of environmental crime beyond the current parameters in Iran.

The main distinctions between Iran and the EU in criminalising environmental degradation are the fines and circumstances. Under Iranian law, environmental harm is a minor crime with ineffective punishments. Directive 2024/1203, on the other hand, requires effective, dissuasive and appropriate penalties. This principle, based on CJEU case law, requires Member States to implement directives with penalties that meet minimum standards of effecti-

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<sup>27</sup> S.E. Ghodsi, H. Goldouzian, *Explanation of the Crime of Environmental Pollution: With Reflection on Article 688 of the Islamic Penal Code*, "Rah-e Vekalat" 2013, vol. 5, no. 9, p. 193. (in Persian).

<sup>28</sup> *Ibidem*.

<sup>29</sup> R. Pereira, *A Critical Evaluation of the New EU Environmental Crime Directive 2024/1203*, "eucrim – European Law Forum: Prevention, Investigation, Prosecution" 2024, p. 159.

veness, proportionality and dissuasiveness to ensure proper enforcement and deter infringements.<sup>30</sup>

Although Iran is a party to the Rio Declaration, which includes the precautionary principle as one of its key principles, the country voiced concerns about the application of this principle during the negotiations on combating plastic pollution. Iran emphasises that the precautionary principle should not be interpreted so as to limit national sovereignty and countries' right to use their natural resources nor to impose disproportionate pressure on developing countries. Iran also believes that this principle should be applied by taking into account the different capacities and conditions of countries in order to avoid imposing additional economic and social burdens on them. This stance reflects Iran's concern about the possible consequences of implementing this principle in the areas of national development and the use of natural resources.<sup>31</sup>

Although Iran became a signatory to the Convention on Biological Diversity in 1996, the precautionary principle has little reflection in its national law; however, scholars make its application dependent upon Islamic law, which mandates preventive action against catastrophic or questionable threats for the protection of life, honour and property.<sup>32</sup> Since the precautionary principle is not clearly reflected in the regulations, courts rarely invoke it as a legal basis for judgments.

### 3. Biodiversity Lawsuits and Procedure

Degradation of biodiversity due to illegal wildlife trade, deforestation, pollution and mining has significant ecological, social and economic impacts. To address these repercussions, legal systems must reinforce rules, enhance monitoring and guarantee that officials recompense for damages. While laws, methods and enforcement tactics differ by country, many offer legal remedies for environmental damage, notably in the EU.<sup>33</sup>

<sup>30</sup> M.G. Faure, *The Environmental Crime Directive 2008/99/EC*, "Revue Européenne de Droit de la Consommation" 2011, no. 1, p. 203.

<sup>31</sup> *Iran Inputs on Preamble, Objectives, Principles and Scope*, [https://resolutions.unep.org/incre/uploads/cg1-sub\\_cg1.1-iran\\_inputs\\_on\\_preamble\\_objectives\\_principles\\_and\\_scope\\_0.pdf](https://resolutions.unep.org/incre/uploads/cg1-sub_cg1.1-iran_inputs_on_preamble_objectives_principles_and_scope_0.pdf) [access: 1.06.2025].

<sup>32</sup> Z. Asadi, M. Khorsandiyan, *A Comparative Study of the Principle of Precaution in Modern Law and Iranian and Islamic Law*, "Comparative Studies on Islamic and Western Law" 2022, vol. 9, no. 2, p. 26 (in Persian).

<sup>33</sup> C.A. Jones, J. Pendergrass, J. Broderick, J. Phelps, *Tropical Conservation and Liability for Environmental Harm*, "Environmental Law Reporter" 2015, vol. 45, p. 11047.

The compensation process for environmental issues entails lawsuits, the legal basis and the relevant courts. Iran has provisions regarding compensation and penalties for detrimental environmental behaviour. The nature of this responsibility differs greatly from that in the European Union. Case law, expert assistance and practical experience in environmental disputes are still evolving in many nations. It may be difficult to define environmental damage and determine suitable legal remedies. Environmental lawsuits are challenging to identify defendants and prove a causal link between their conduct and injury.<sup>34</sup>

The framework for biodiversity-related legal claims must be transparent so that these challenges can be effectively addressed and managed. Biodiversity claims may be defined as “[a]ny legal dispute at the national, regional or international level that concerns conservation of, sustainable use of”, access to and benefit-sharing of “genetic resources, species, ecosystems and their relations”.<sup>35</sup>

### 3.1. Legal Standing

One of the primary questions in biodiversity litigation is determining the individuals or entities against whom a claim can be brought to enforce species protection laws. This determination affects the type of claim that can be brought and the possible damages. In the European Union, claims are usually brought against Member States,<sup>36</sup> while in Iran they may be brought against individuals or entities, as discussed above. In the European Union, while Member States have been sued for failure to implement directives such as the Habitats Directive, the central EU institutions have remained largely immune to direct challenges.<sup>37</sup> The EU and its Member States have acceded to the Aarhus Convention, which requires parties to provide for the possibility of public objection to acts and omissions by regulatory bodies and the private sector that are contrary to environmental law.

Although Iran has no direct counterpart to the Aarhus Convention, certain domestic legal frameworks allow for limited public participation in environ-

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<sup>34</sup> M. Burger, J. Wentz, R. Horton, *The Law and Science of Climate Change Attribution*, “Columbia Journal of Environmental Law” 2020, vol. 45, no. 1, p. 148, <https://doi.org/10.7916/cjel.v45i1.4730>.

<sup>35</sup> C. Rodríguez-Garavito, D.R. Boyd, *A Rights Turn in Biodiversity Litigation?*, “Transnational Environmental Law” 2023, vol. 12, no. 3, p. 498–536, <https://doi.org/10.1017/s2047102523000171>.

<sup>36</sup> Y. Epstein, *Adversarial Legalism and Biodiversity Protection in the United States and the European Union*, “Transnational Environmental Law” 2018, vol. 7, no. 3, p. 495, <https://doi.org/10.1017/s2047102518000109>.

<sup>37</sup> *Ibidem*.

mental governance.<sup>38</sup> In Iran, whether the defendant is a government entity or a natural person determines which competent authority will hear the claim, which is explained in detail below.

In Iran, Article 34 of the Constitution declares that the right to legal action is an inalienable right and anyone can seek legal action through the courts. All citizens have the right to access the courts, and no-one can be denied entrance to a court they are entitled to use by law. Observing environmental damage should allow for a court review if protecting the environment is a public duty. However, difficulties occur in practice.

Although Iran has implemented a programme of criminalisation and compensation for environmental damage, one of the main concerns in this regard is the determination of persons or institutions that have the right to launch a lawsuit in cases of environmental damage. Clearly, direct victims have the right to sue and submit to legal authorities. One topic to consider is the legal framework for non-governmental organisations (NGOs) to file lawsuits for environmental damage that impacts the public interest.

In the EU, Regulation 1367/2006, implementing the Aarhus Convention, allows environmental NGOs to request internal examination of specific actions or omissions.<sup>39</sup> This was challenging historically. For instance, two Belgian high courts which environmental organisations frequently appeal to have tightly interpreted the criterion of sufficient interest for claimants, limiting their admissibility. Critics argue that this interpretation violates the ideals of wide access to justice under Article 9(2) of the Aarhus Convention and the right to justice under Article 1.<sup>40</sup>

The case of *Lesoochránárske zoskupenie VLK v. Ministry of the Environment of the Slovak Republic* is a major CJEU decision on the interpretation of Article 9(3) of the Aarhus Convention. This significant case clarifies Member States' duty to offer environmental NGOs access to courts under EU environmental law.<sup>41</sup> The case stemmed from issues in Slovakia, where the environmental NGO *Lesoochránárske zoskupenie VLK* sought party status in administrative procedures to exempt brown bears from species protection regulations. According to the Slovak Ministry of the Environment, the organisation lacked legal

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<sup>38</sup> Art. 10 Administrative Court Act.

<sup>39</sup> Y. Epstein, *Adversarial Legalism and Biodiversity Protection ...*, p. 496.

<sup>40</sup> M. Pallemmaerts (ed.), *The Aarhus Convention at Ten: Interactions and Tensions Between Conventional International Law and EU Environmental Law*, Europa Law Publishing, Groningen 2011, p. 347.

<sup>41</sup> Judgment of the CJ of 8 March 2011, C-240/09, *Lesoochránárske zoskupenie VLK v. Ministerstvo životného prostredia Slovenskej republiky*, EU:C:2011:124.

capacity in the matter. The Slovak Supreme Court asked the CJEU to interpret Article 9(3) of the Aarhus Convention and its implications under EU law. This provision mandates that public members – including NGOs – may challenge environmental law violations through administrative or judicial action. However, it does not directly affect EU law or provide immediately enforceable rights in national courts. Despite the lack of direct impact, should national courts follow Convention and EU requirements for effective judicial protection in interpreting domestic procedural norms?

The Court of Justice ruled that while Article 9(3) of the Convention does not directly apply, national courts must interpret procedural rules in accordance with the Aarhus Convention and the principle of effective judicial protection in EU law.<sup>42</sup> Granting environmental NGOs standing in environmental litigation is difficult, especially in mature legal systems like the EU's. Although several laws and regulations in Iran acknowledge the importance of NGOs in environmental protection, their right to file lawsuits is still limited. Environmental NGOs may face constraints due to legal ambiguity, insufficient enforcement or institutional barriers in recognising their role as public plaintiffs.

In the 2013 Criminal Procedure Code, Article 66 emphasised NGOs' participation in the criminal process in the form of reporting crimes, participating in trials and objecting to votes in order to protect vulnerable groups and crimes that do not have a specific victim. However, in the 2015 amendments, the right of NGOs to object to votes was eliminated. This change, along with the *ex post* supervision of the Head of the Judiciary, had a direct impact on the presence and actions of NGOs. Although the *ex post* supervision was amended with the approval of the Permanent Provisions Law on the National Development Programs in 2017,<sup>43</sup> the right of NGOs to object to votes in Article 66 was not restored.

Article 66 of the Criminal Procedure Code requires NGOs to meet four conditions for participation in criminal proceedings: being an NGO, complying with their statute and scope of activity, obtaining the consent of victims and being approved by the Head of the Judiciary. Recently, the requirement for the Head of the Judiciary to approve the list of organisations was changed in 2016.

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<sup>42</sup> A. Danthinne, M. Eliantonio, M. Peeters, *Justifying a Presumed Standing for Environmental NGOs: A Legal Assessment of Article 9(3) of the Aarhus Convention*, "Review of European, Comparative & International Environmental Law" 2022, vol. 31, no. 3, p. 414, <https://doi.org/10.1111/reel.12450>.

<sup>43</sup> Permanent Provisions Law on the National Development Programs, ratified by the Islamic Consultative Assembly in 19 February 2017, Official Gazette No. 96683/32.

An NGO can only benefit from the rights set out in Article 66 if it has been properly established in accordance with the laws and regulations. However, enacting strict and complex conditions for establishing NGOs can have negative consequences on the participation of these organisations; the details of these conditions, due to their extensiveness, are beyond the scope of this discussion.<sup>44</sup> Article 66 allows NGOs that protect children, adolescents, women, the environment, natural resources and cultural heritage to participate in the criminal process under certain conditions.

The fourth criterion in Article 66 stipulates that an NGO shall be on a specific list, updated in February 2017 by the Law on Permanent Provisions of National Development Programs. Article 66 that allows non-governmental organizations to take part in criminal proceedings shows a very restricted approach towards public interest litigation. The following amendments that took away their power to appeal to the judiciary's decisions greatly restricted the role played by NGOs during proceedings. This contrasts greatly with the purpose of Article 9(3) of the Aarhus convention whose intent is to improve the justice system for environmental NGOs. Though the provision is non-binding in the EU, its interpretative weight underlines the comparatively restricted NGO standing in Iran.

An example of standing in the context of Iran's environmental law is seen in the case where a shipping company was sued on grounds of environmental pollution. Following the pollution episode, which caused great harm to marine life, the relevant authorities—the Ports and Shipping Organisation, the Environmental Protection Organisation, and the Fisheries Company—filed a suit against the company in question. The legal case aimed at seeking remediation, through the process of removing the sunk containers and emptying the fuel tank of the ship, and compensation for damages. It is the Tehran General Court, Third Branch, that found the company guilty on March 23, 1997.<sup>45</sup>

## 3.2. Judicial Pathways

### 3.2.1. General Courts

Iranian laws and regulations do not specify the requirements for prosecuting environmental offences, and crimes are handled in a broad and absolute man-

<sup>44</sup> Executive Regulations on the Establishment and Activities of Non-Governmental Organizations of 2005.

<sup>45</sup> F. Karimi Khanjari, M. Sajadi Kia, *Civil Liability for Environmental Damage...*, p. 30.

ner. Criminal activity affecting the environmental can result in two types of lawsuit: a public lawsuit that protects public order and rights or private action seeking damages or legal penalties for the victim.<sup>46</sup>

Article 11 of the Criminal Procedure Code assigns responsibility for public prosecution and defines the plaintiffs for private claims; Article 25 provides for the establishment of specialised prosecutors without the requirement of stipulating an environmental office; and Article 301 assigns environmental crimes to the service of the General Criminal Court, except as otherwise stipulated by law.

Do the Dispute Resolution Councils have the authority to hear cases with criminal penalties of IRR 200 million or less, as stated in Article 9h of the Councils Law? The answer is absolutely negative. Dispute Resolution Councils do not have jurisdiction over issues involving public or state property, as the environment is considered public property.<sup>47</sup> This limitation is due to the main philosophy behind the Dispute Resolution Councils, which is to focus on amicable dispute settlement in cases. Cases related to public and state property may only be referred to arbitration if approved by the Council of Minister and with the knowledge of the Islamic Consultative Assembly.<sup>48</sup>

The general court handles liability and compensation issues, but where a duty or authority is performed by government agents in the capacity of the government or in charge of a public matter – and such acts are performed or omitted in violation of the law and result in damage to individuals – in order to determine whether the government has exceeded its authority, the matter is heard in the court, and then the claim for damages is raised and heard in the general court, since such a matter in itself can be better judged based on the expertise of administrative courts.<sup>49</sup>

### 3.2.2. The Competent Court in Claims against Government Organisations

According to Article 10 of the Organisation and Procedure of the Administrative Court of Justice Act of 2013, the victims of harm caused by environmental pollution or the actions of an administrative agency may file complaints before

<sup>46</sup> Article 9 of the Criminal Procedure Code.

<sup>47</sup> Clause “t” of Article 10 of the Dispute Resolution Councils Law.

<sup>48</sup> M. Hemmati, *Filing a Lawsuit for Environmental Damage Compensation in the Iranian Legal System*, “Judicial Legal Perspectives Quarterly” 2023, vol. 23, no. 81, p. 242 (in Persian).

<sup>49</sup> J. Kashani, *The Competent Forum for Hearing Responsibility Cases Against the State*, “Judicial Law Views Quarterly” 2016, vol. 21, no. 73, p. 133 (in Persian).

the Administrative Court of Justice, which adjudicates over complaints against government authorities, whose actions can affirm victims' civil remedy rights. As an example, the General Assembly of the Administrative Court of Justice struck down a directive from the Forests, Range and Watershed Management Organisation that suggested transferring nurseries, forest parks and seed stations to private persons or corporations. The court invalidated the order that allowed private firms to take control over these resources, which would have potentially lowered government oversight and worsened environmental damage to forests and rangelands. Annuling the order avoided illicit exploitation and human meddling in natural regions, highlighting the need to preserve and prevent the degradation of natural resources.<sup>50</sup>

The Court's decision to nullify the decree may seem like a step towards environmental protection, but it was based on bureaucratic concerns and lacks environmental awareness or aggressive measures to safeguard nature. The Court ruled that the directive breached the law by transferring nurseries, forest parks and seed stations to private entities without proper government monitoring. The ruling highlights concerns about laws and government control over public resources, rather than the intrinsic value of natural places. The decision's phrasing indicates that the Court prioritised legal and administrative soundness over environmental protection, but it does not explicitly address environmental issues and it overlooks the significance of protecting biodiversity and natural ecosystems.

Note that this judgment is from 2001. Before 2013, the Administrative Court of Justice was limited to reviewing procedural and bureaucratic aspects of cases and did not examine the substance of disputed matters. The Court could only rule on infractions of regulations or laws, not on the aims, implications or substantial impacts of administrative judgments. Following the 2013 amendments the Court's jurisdiction was expanded, and it now has the power to examine administrative judgments.<sup>51</sup>

In 2014 the Administrative Justice Court struck down the Anzali Free Trade Zone extension decisions issued by the Coordinating Council of Free Trade-Industrial Zones Ministers. The resolutions would have reduced the size of Anzali National Park and protected zones, despite the High Council of Environmental Protection having the jurisdiction to set and change boundaries (as per

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<sup>50</sup> Judgment of the Administrative Justice Court of Iran of 15 July 2001, Case No. 129–1380.4.24, <https://rc.majlis.ir/fa/law/show/102305> [access: 14.05.2025].

<sup>51</sup> M.J. Shariat Bagheri, M.R. Kord Firoozjaji, *Substantive Proceedings in the Administrative Justice Court*, "Judicial Legal Perspectives Quarterly" 2023, vol. 26, no. 96, p. 113 (in Persian).

legislation). Placing these zones in the free trade area takes them from council oversight and places them under the Free Zone Authority, perhaps causing more ecological degradation. Therefore, the court nullified these resolutions.<sup>52</sup>

Though reforms since 2013 have broadened the jurisdiction of the Court of Administrative Justice, the Court has failed to utilise this authority to tackle issues of substance on the environment, demonstrating a shallow application of legal processes and a lost opportunity to enhance environmental protection.

The *Waddenze* case illustrates how the Iranian Administrative Court of Justice and the Court of Justice of the European Union differ in their approach to environmental law, particularly in integrating formal and substantive principles. Although the Iranian Administrative Court of Justice emphasises procedural procedures, the CJEU's ruling in the *Waddenze* case emphasises environmental protection and the precautionary principle.<sup>53</sup>

The *Waddenze* case (C-127/02) revolved around the interpretation of the EU Habitats Directive. It examined whether mechanical shellfish harvesting in the Wadden Sea, which is a Natura 2000-protected area, qualifies as a plan or project requiring an environmental assessment under Article 6(3) of the Directive.<sup>54</sup> According to the Court of Justice, any activity that may significantly impact a protected site requires an environmental evaluation. The Court underlined the precautionary principle, holding that even with scientific uncertainty, any risk of environmental damage requires preventive action. This judgment prioritises environmental protection and ecosystem preservation over commercial interests and administrative reasons.

One distinction is the application of the precautionary principle. In the *Waddenze* case the Court emphasised the importance of carefully assessing actions that may impact protected habitats, especially if there is no scientific assurance about the environmental impact. This precautionary approach prioritised environmental factors in decision-making. After 2013, the Iranian Administrative Court of Justice gained competence to assess cases, but did not examine ecological implications from privatisation. The court prioritised formal rules over precautionary considerations for environmental preservation.

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<sup>52</sup> Judgment of the Administrative Justice Court of Iran of 20 September 2014, Case No. 856–1393.6.29. <https://qavanin.ir/Law/TreeText/?IDS=12161583974501531390> [access: 22.04.2026].

<sup>53</sup> Judgment of the CJ of 7 September 2004, C-127/02, *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij (Waddenzee)*, EU:C:2004:482, para 44.

<sup>54</sup> *Ibidem*, para 48.

## 4. Conclusion

This essay demonstrates how despite having constitutional and legislative provisions for the protection of biodiversity, weak enforcement mechanisms, fault-based liability and the judiciary's restrictive application of principles such as the precautionary principle hinder effective environmental litigation. The Administrative Court of Justice, despite having broader jurisdiction since 2013, is still generally procedural and does not deal with the substantive ecological issues, which differs significantly from the European Union's more sophisticated system, where principles such as the precautionary principle and "the polluter pays" are entrenched judicially. Strengthening Iran's biodiversity litigation relies not only on more open legal standing for citizens and NGOs, but also on a shift towards substantive judicial reasoning that acknowledges ecological integrity alongside administrative legality. Comparative lessons drawn from EU practice suggest that including precaution, enhancing access to justice and instituting stricter liability regimes can transform Iran's biodiversity litigation into a more effective tool for conservation and sustainable development.

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