

**A COMPARATIVE ANALYSIS OF THE EVOLUTION OF  
ENVIRONMENTAL LAW IN THE DOMINICAN REPUBLIC AND  
THE EUROPEAN UNION**

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INTRODUCTION

In 1968, Sweden suggested that the United Nations Economic and Social Council hold a conference focused on human interactions with the environment.<sup>1</sup> By 1972, the United Nations (UN) held the first worldwide conference on the environment, the Conference on the Human Environment, which was held in Stockholm.<sup>2</sup> Representatives from 113 countries, 19 inter-governmental agencies, and more than 400 inter-governmental and non-governmental organizations attended this Conference; it is widely recognized as “the beginning of modern political and public awareness of global environmental problems.”<sup>3</sup> The Declaration of the UN Conference on the Human Environment brought to the forefront

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1. John W. McDonald, *The United Nations Conference on the Human Environment*, 1 INT’L NEGOT. 223, 223 (1996).

2. *Id.*

3. GÖTZ KAUFMANN, ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT: WITH A CASE STUDY IN BRAZIL’S AMAZON USING Q METHODOLOGY 150 (2d ed. 2012).

the problems that developed and developing nations were facing regarding the protection and improvement of the human environment, which “affects the well-being of peoples and economic development throughout the world.”<sup>4</sup> “Under-development” created most of the environmental problems developing countries faced—the natural growth of the population continuously presented problems for the preservation of the environment.<sup>5</sup> As a result, it was declared that:

Through ignorance or indifference we can do massive and irreversible harm to the earthly environment on which our life and well-being depend. Conversely, through fuller knowledge and wiser action, we can achieve for ourselves and our posterity a better life in an environment more in keeping with human needs and hopes.<sup>6</sup>

Therefore, “man must use knowledge to build, in collaboration with nature, a better environment,” because “defend[ing] and improv[ing] the human environment for present and future generations has become an imperative goal for mankind—a goal to be pursued together with, and in harmony with, the established and fundamental goals of peace and of worldwide economic and social development.”<sup>7</sup>

Environmental law in the Dominican Republic and the European Union (EU) was originally scattered and uncoordinated. During the 1970s, specifically after the Conference on the Human Environment, environmental law in the Dominican Republic and the EU began to take shape and has evolved into its present state.<sup>8</sup> However, the approaches taken have been very different. The Dominican Republic’s environmental law primarily focuses on protection, conservation, and education.<sup>9</sup> Tied to the internal market, EU law has a stronger focus on economic

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4. U.N. Conference on the Human Environment, *Report of the United Nations Conference on the Human Environment*, 3, U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

5. *Id.*

6. *Id.*

7. *Id.*

8. See DECRETO 2,889 20-03-1977 (Dom. Rep.) (regulating and protecting subterranean waters and fisheries); U.N. Secretary, *Status of the United Nations Convention on the Law of the Sea, of the Agreement Relating to the Implementation of Part XI of the Convention and of the Agreement for the Implementation of the Provisions of the Convention Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, UNITED NATIONS, <https://perma.cc/B5ZX-RC35>; see generally Third United Nations Conference on the Law of the Sea, *Final Act of the Third United Nations Conference of the Law of the Sea*, U.N. Doc. A/CONF.62/121 (Oct. 27, 1982) (listing Dominican Republic as one of the signatories).

9. LEY GENERAL SOBRE MEDIO AMBIENTE Y RECURSOS NATURALES [LEY 64-00] [Civ. Code] arts 1, 4, 15(6) (2000) (Dom. Rep.).

development.<sup>10</sup> Moreover, both the EU and the Dominican Republic have taken it upon themselves to include environmental issues in the objectives for their future development.<sup>11</sup> This article analyzes the similarities and differences regarding the evolution of environmental law in the Dominican Republic and the EU. Part I addresses the development of environmental law in the Dominican Republic and the EU. Part II analyzes Dominican Republic Law 64-00 and its aftermath, and environmental law in the EU following the Treaty of Lisbon. Finally, Part III examines access to environmental justice in the Dominican Republic and the EU.

## I. THE EVOLUTION OF ENVIRONMENTAL LAW IN THE DOMINICAN REPUBLIC AND THE EUROPEAN UNION

### *A. Dominican Republic*

In order to understand current environmental law in the Dominican Republic and the EU, knowledge of internal and external influences is important. The foundation of environmental law in the Dominican Republic can be traced back to the Royal Decree of 1539, when Spanish Emperor Carlos V ordered the *tainos* (the indigenous population of the Dominican Republic) to replant trees around town.<sup>12</sup> During Haiti's occupation of the Dominican Republic, it implemented the Rural Code of 1826, which led to the deterioration of natural resources in the country.<sup>13</sup> As a result in 1844, after the Dominican Republic gained its independence from Haiti,<sup>14</sup> the Dominican Republic implemented Decree No. 2295 on October 3, 1844, regarding the conservation of forests and jungles.<sup>15</sup>

From 1930 to 1961, under Dictator Trujillo's regime, various laws were implemented in order to prevent the deforestation of the Dominican Republic.<sup>16</sup> These laws include: Law No. 1321 of 1937, reinforcing the

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10. See Emanuela Orlando, *The Evolution of EU Policy and Law in the Environmental Field: Achievements and Current Challenges 2* (Transworld, Working Paper No. 21, 2013), <https://perma.cc/C3D8-MXTA> (explaining environmental law in the EU).

11. See U.N. Conference on the Human Environment, *supra* note 4, at 4 (listing the Stockholm principles that pertain to protecting the environment); LEY 64-00 [CIVIL CODE] art 1 (Dom. Rep.).

12. Frinette Padilla, *Derecho Ambiental Dominicano (Marco Jurídico Ambiental Nacional)*, in *DERECHO PENAL DEL MEDIO AMBIENTE* 149, 151 (Marco Antonio Besares Escobar ed., 1st ed. 2001).

13. *Id.*

14. *Id.*

15. *Id.*

16. Jesús Batista Gonzalvo, *Origen y Avances de la Educación Ambiental en la República Dominicana (1972-2012)*, *VANGUARDIA DEL PUEBLO*, <https://perma.cc/W6KE-F6NW> (last visited Sept. 10, 2016).

prohibition of cutting down trees unless one planted 20 trees for each tree cut down; Law No. 1464 of 1938, prohibiting cutting down coffee and cacao trees without authorization from the Secretary of State for Agriculture;<sup>17</sup> and Law No. 4371 of 1956, declaring reforestation as a national interest and prohibiting clearing trees for cultivation.<sup>18</sup> Concern for the protection and conservation of natural resources and the environment became evident with the implementation of Law No. 85/31, regarding hunting and fishing.<sup>19</sup> Forestry Law No. 5856 of 1962 created the General Forest Directorate (DGF).<sup>20</sup> Law No. 331 of 1968 regulated the indiscriminate use of pesticides.<sup>21</sup> Decree No. 2550 of 1970 created a Commission charged with providing information about contaminants in the environment.<sup>22</sup>

The Dominican Republic began to promote environmental education after participating in the Stockholm Conference of 1972.<sup>23</sup> The Universidad Nacional Pedro Henríquez Ureña held the Symposium Towards 2000 and the conference entitled “del Mar,” addressing two categories of problems facing the Dominican Republic.<sup>24</sup> The Symposium focused on physical and biological changes in the environment, and the conference analyzed the country’s pollution problem.<sup>25</sup> This led to the creation of the first environmental groups in the northern part of the Dominican Republic.<sup>26</sup> Law No. 67 of 1974 created the National Park Directorate to protect and conserve the country's recreational and historic areas.<sup>27</sup> Decree No. 114 of 1975 created the National Zoo in order to promote environmental education.<sup>28</sup> The Ecological Society of Cibao (SOECI) and the Ecological Society of Santo Domingo, created in 1977, paved the way for environmental awareness in the Dominican Republic.<sup>29</sup>

Between 1977 and 1982, the government emphasized development programs and projects for environmental education.<sup>30</sup> The Dominican

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17. LEY NO. 4371 QUE DECLARA DE INTERÉS NACIONAL LA REPOBLACIÓN FORESTAL, EN TODO EL TERRITORIO DE LA REPÚBLICA. [LAW NO. 4371 DECLARING REFORESTATION AS A NATIONAL INTEREST] [CIVIL CODE] (Feb. 4, 1956) (Dom. Rep.).

18. *Id.*

19. Gonzalvo, *supra* note 16.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

Republic promulgated Law No. 295 to make environmental education a mandatory part of public and private school curriculums; however, the law was not well-received by the public.<sup>31</sup> In 1990, the National Commission for Environmental Education was created in collaboration with the UN Educational, Scientific and Cultural Organization (UNESCO).<sup>32</sup> The government worked alongside nongovernmental organizations and universities to promote environmental education.<sup>33</sup> The Rio Conference in 1992 influenced the Dominican Republic's implementation of Law 300-98 in 1998, which required the teaching of environmental issues in all school curriculums.<sup>34</sup> In the same year, President Leonel Fernandez issued Decree No. 152-98, creating the Coordinating Committee of Natural Resources and the Environment to draft an environmental law.<sup>35</sup> This led to the implementation of General Environmental Law 64-00 in 2000.<sup>36</sup> The objective of Law 64-00 is to establish norms for the conservation, protection, betterment, and restoration of the environment and natural resources, ensuring their sustainable use.<sup>37</sup>

### *B. European Union*

EU environmental law also began to take shape during the 1970s, expanding dramatically after the first Environmental Action Programme in 1973, which established the Environment and Consumer Protection Service.<sup>38</sup> However, to understand why economic development is tied to EU environmental law, it is important to regress to 1957. The original text of the European Economic Community Treaty, signed on March 25, 1957, did not contain any explicit provision regarding the protection of the environment.<sup>39</sup> Originally, the EU's goal was to create a common market through integration.<sup>40</sup> This becomes evident in Article 2 of the Treaty of Rome, which states:

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31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. LEY 64-00 [CIVIL CODE] art 1 (Dom. Rep.).

38. *Id.*

39. *See* Treaty Establishing the European Economic Community, Mar. 25, 1957 (as in effect 1958) (repealed by TFEU) [hereinafter EEC Treaty] (unpublished treaty) (on file with journal) (omitting any mention of the environment in the treaty's text).

40. *Id.*

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.<sup>41</sup>

Moreover, at that time, environmental concerns were not a priority.<sup>42</sup> The first significant political statement on environmental issues that the EU made was the Commission on a Community Environmental Programme's communication on a community environmental policy adopted in 1971.<sup>43</sup> The Member States reached a political agreement on the guiding principles of a community environmental policy in 1972 at the Paris Summit, leading to the first Environmental Action Programme in 1973.<sup>44</sup> The Environmental Action Programme of 1973 declared:

Whereas in particular, in accordance with Article 2 of the Treaty; the task of the European Economic Community is to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion, which cannot now be imagined in the absence of an effective campaign to combat pollution and nuisances or of an improvement in the quality of life and the protection of the environment;

Whereas improvement in the quality of life and the protection of the natural environment are among the fundamental tasks of the Community; whereas it is therefore necessary to implement a Community environment policy.<sup>45</sup>

However, "according to the principle of conferral, which governs EU action internally, . . . the EU may legislate only on the basis of explicit powers endowed by the treaties and within the objectives, procedures and conditions set out therein."<sup>46</sup> In the absence of express authority, former

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41. Treaty of Rome, art. 2, Mar. 25, 1957, 298 U.N.T.S. 11.

42. See EEC Treaty (as in effect 1958) (repealed by TFEU) (omitting any mention of the environment in the treaty's text).

43. Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States Meeting in the Council of Nov. 22, 1973, pmb., 1973 O.J. (C 112) 1-2 (EC).

44. *Id.*

45. *Id.*

46. Orlando, *supra* note 10, at 3.

Article 100 of the Treaty Establishing the European Economic Community created the first EU environmental measures. The treaty stated: “The Council, acting by means of a unanimous vote on a proposal of the Commission, shall issue directives for the approximation of such legislative and administrative provisions of the Member States as have a direct incidence on the establishment or functioning of the Common Market.”<sup>47</sup>

One example is Directive 70/220, which addresses air pollution from motor vehicles and was intended to prevent enacting different emission standards that “could create indirect trade barriers.”<sup>48</sup> While Directive 70/220 had an “important environmental impact, it was adopted under [A]rticle 100 on the approximation of national legislations for the creation of a single market,”<sup>49</sup> as evident in the preamble to the directive.<sup>50</sup> Article 100 provided the legal coverage necessary to implement environmental measures by linking the policies to the smooth functioning of the internal market.<sup>51</sup>

Moreover, Article 235 of the Treaty Establishing the European Economic Community, states:

If any action by the Community appears necessary to achieve, in the functioning of the Common Market, one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall enact the appropriate provisions.<sup>52</sup>

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47. EEC Treaty art. 100 (as in effect 1958) (repealed by TFEU).

48. Federica Cittadino, *The Ascent of EU Environmental Policy: A Case for Unintended Consequences* 18 (European Diversity & Autonomy Papers, Working Paper No. 01, 2015), <https://perma.cc/FA82-S9MZ>.

49. *Id.*

50. See Council Directive 70/220 of Mar. 20, 1970 on the Approximation of the Law of the Member States Relating to Measures to be Taken Against Air Pollution by Gases from Positive-Ignition Engines of Motor Vehicles, *pmbi.*, 1970 O.J. SPEC. ED. (L 76) 1 (EC) (“Whereas those provisions are liable to hinder the establishment and proper functioning of the common market; whereas it is therefore necessary that all Member States adopt the same requirements, either in addition to or in place of their existing rules, in order, in particular, to allow the EEC type - approval procedure which was the subject of the Council Directive (3) of 6 February 1970 on the approximation of the laws of the Member States relating to the type approval of motor vehicles and their trailers to be applied in respect of each type of vehicle.”).

51. *Id.*

52. *Id.*

The EU used Article 235 “as a legal basis for adopting directives that were not concerned with ‘the operation of the common market, as such.’”<sup>53</sup> One example is, Directive 75/440/EEC of June 16, 1975, concerning the disparity between the provisions on the quality of surface-water intended for drinking in Member States.<sup>54</sup> Additionally, Directive 76/160 of December 8, 1975, concerns the quality of bathing water.<sup>55</sup> Directive 79/409, also known as the “Birds Directive,” created a regime of protection for a number of species of wild birds.<sup>56</sup>

During the 1980s, EU environmental policy started to become more consistent. This was due to the successful use of Articles 100 and 235, and the European Court of Justice playing a crucial role in invoking environmental protection as one of the objectives of general interest.<sup>57</sup> In *Commission of the European Communities v. Kingdom of Denmark*, the European Court of Justice held that the protection of the environment is “one of the Community's essential objectives.”<sup>58</sup> The objective justifies certain limitations of the free movement of goods, a view that the Single European Act confirms.<sup>59</sup> Moreover, the European Court of Justice, in the *Danish Bottle* case,

made one of the first applications of the environmental integration principle . . . and held that environmental protection constituted one of the mandatory requirements which, according to the *Cassis de Dijon* case, . . . could under certain circumstances justify the imposition of trade restrictions on goods from other member states.<sup>60</sup>

In 1986, the Single European Act was adopted, which introduced an “explicit legal basis for environmental legislation at the European level, thus representing a significant step forward in the process of progressive

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53. Cittadino, *supra* note 48, at 13.

54. *Id.*

55. Council Directive 76/160 of Dec. 8, 1975, Concerning the Quality of Bathing Water, pmbl., 1975 O.J. (L 31) 1 (EC) (stating that surveillance of bathing water is necessary in order to attain, within the framework of the operation of the common market, the Community's objectives as regards the improvement of living conditions, the harmonious development of economic activities throughout the Community and continuous and balanced expansion).

56. Council Directive 79/409 of Apr. 2, 1979 on the Conservation of Wild Birds, pmbl., 1979 O.J. (L 103) 1 (EC).

57. Case 240/83, *Procureur de la République v. Ass'n de Defense des Bruleurs D'Huiles Usagées*, 1985 E.C.R. 531.

58. Case 302/86, *Comm'n of the European Cmty. v. Kingdom of Den.*, 1988 E.C.R. 4627.

59. *Id.*

60. Orlando, *supra* note 10, at 5.

consolidation of European environmental policy.”<sup>61</sup> Previously, the EU used Articles 100 and 235 of the Treaty to implement environmental instruments, but the Articles were heavily biased toward, and dependent on, economic integration being the legislation.<sup>62</sup> Under Article 100A, the Act introduced the “qualified majority voting rule for harmonization measures, in order to accelerate the realization of the Single Market.”<sup>63</sup> The Single European Act “also added Title VII to the Rome Treaty, whereby a shared competence to legislate, by unanimous vote, on environmental matters was granted to the Community.”<sup>64</sup> Moreover, the “Fourth EAP (1987-1992), [] acknowledged environmental regulation as a ‘pillar for a lasting economic and social progress.’”<sup>65</sup>

The 1990s saw the further “communitarization” of EU environmental law.<sup>66</sup> A prime example is the *France v. Commission* decision,<sup>67</sup> where the European Court of Justice clarified that,

deviations from the harmonised rules should be notified to the Commission that must give its reasoned approval to the exceptions applied at the Member State level. This decision is relevant since it regarded a more restrictive[—]more environmental[ly] friendly[—] regime on the use of pentachlorophenol (PCP) applied by Germany in contradiction with the European directive[,] Directive 91/173.<sup>68</sup>

Moreover in case C-435/97, the Court stated, “a Member State cannot undermine the attainment of a directive’s objective by applying an alternative regime when the case at hand would instead require the application of European rules.”<sup>69</sup>

In 1993, with the entrance into force of the Treaty of Maastricht,<sup>70</sup> the protection of the environment finally received a permanent place in Article 2, stating:

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61. Cattadino, *supra* note 48, at 13.

62. *Id.*

63. *Id.* at 14.

64. Orlando, *supra* note 10, at 5.

65. *Id.*

66. Cattadino, *supra* note 48, at 18.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Treaty of Maastricht on European Union*, EUR-LEX, <https://perma.cc/DU2J-F6EF> (last updated Oct. 15, 2010).

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities . . . to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, [and] a high degree of convergence of economic performance . . . .<sup>71</sup>

Finally, in 1999 under the Treaty of Amsterdam, the “strategic environmental impact assessment was introduced.”<sup>72</sup> Article 6 mandated that Article 3 integrate environmental protection requirements into the definition and implementation of EU policies and activities.<sup>73</sup> The objective was to promote balanced and sustainable development.<sup>74</sup>

## II. DOMINICAN REPUBLIC LAW 64-00 AND EUROPEAN UNION ENVIRONMENTAL LAW POST-LISBON

After 30 years of diverse laws and regulations, Law 64-00 became the Dominican Republic’s first general environmental law; Law 640-00 created the Secretary of State for the Environment and Natural Resources, which helped regulate and control environmental activities in the country.<sup>75</sup> Article 6 of Law 64-00 states that the liberty of citizens to use natural resources is based on every individual’s right to enjoy a safe environment.<sup>76</sup> As a result, the government will ensure the country’s communities and inhabitants participate in the conservation, management, and sustainable use of natural resources and the environment, as well as have the right to information.<sup>77</sup> Some of the main objectives of Law 64-00 are set out in Article 15 and include the prevention, regulation, and control of any activities that deteriorate the environment, contaminate the ecosystem, or destroy national and cultural heritage.<sup>78</sup> Law 64-00 also established the methods, forms, and opportunities for conservation and sustainable use of natural resources, the correct use of physical space, and strengthened the

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71. Treaty of European Union art. 2, July 29, 1992, 1992 O.J. (C 191) 5 (as in effect 1992) (replacing article 2 with text that includes “respecting the environment”).

72. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts art. 12, Nov. 10, 1997, 1997 O.J. (C 340) 1.

73. Orlando, *supra* note 10, at 6.

74. *Id.*

75. LEY 64-00 [CIVIL CODE] art. 1 (Dom. Rep.).

76. *Id.* at art. 6.

77. *Id.*

78. *Id.*

National System of Protected Areas to guarantee biodiversity.<sup>79</sup> This ensured sound management of watersheds and water systems, and promoted environmental education as a means to encourage a society in harmony with nature.<sup>80</sup>

From 2002 to 2004, the Dominican Republic along with international and local environmental specialists, designed a strategic plan to mobilize and sensitize the Dominican population and teach them the benefits of conserving and protecting the environment.<sup>81</sup> On January 26, 2010, a new Constitution entered into force in the Dominican Republic.<sup>82</sup> The Constitution designated Chapter IV to natural resources, protected areas, and the enjoyment of natural resources and constitutionally recognized the importance of protecting the environment for the first time in Dominican history.<sup>83</sup> Thus, the Dominican Republic recognized “protection, conservation and sustainable use of natural resources for the good of humanity.”<sup>84</sup> It created the “effective protection of the environment as an essential duty of the State” by adopting a policy related to the environment and the general population, recognizing the principle of caution and requiring all institutions to participate in its execution.<sup>85</sup> Article 66 of the 2010 Dominican Republic Constitution “recognizes collective and diffusive rights and interests, which are executed in the conditions and limitations established by the law” and as a result, protects and conserves the ecological equilibrium of the flora, fauna, and the environment.<sup>86</sup>

Moreover, Article 67 specifically provides for the protection of the environment, making pollution prevention and environmental protection for present and future generations a duty of the State.<sup>87</sup> As a result,

Every person has the right, both individually and collectively, to the sustainable use and enjoyment of the natural resources; to live in a healthy, ecologically balanced and suitable environment for the development and preservation of the various forms of life, of the landscape and of nature.<sup>88</sup>

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79. *Id.* at art. 15.

80. *Id.*

81. Gonzalvo, *supra* note 16.

82. LEY 64-00 [CIVIL CODE] art. 14, 16, 18 (Dom. Rep.).

83. *Id.*

84. *Legal Framework for Business Activities Environmental Protection: Law 64:00*, PELLERANO & HERRERA, DOMINICAN TODAY (Aug. 6, 2015, 2:56PM), <https://perma.cc/MUF5-A8UP>.

85. *Id.*

86. Constitución de la Dominican Republic, art. 66, Gaceta Oficial No. 10561, 26-01-2010.

87. *Id.* at art. 67.

88. *Id.*

Article 75 of the Dominican Constitution states that the

fundamental rights recognized in this Constitution determine the existence of an order of judicial responsibility and morality, which forces the conduct of the man and woman in society. As a result, the development and dissemination of Dominican culture and protection of the country's natural resources were declared fundamental duties of the people, guaranteeing the conservation of a clean and safe environment.<sup>89</sup>

Finally, the Ministry of Environmental and Natural Resources, in accordance with the goals set out in Law No. 1-12, which established the 2030 National Strategy for Development, will seek to promote a society of environmentally sustainable production and consumption that adapts to climate change.<sup>90</sup> Three of the Ministry's major goals are environmental sustainability, effective risk management to minimize economic and environmental casualties, and adequate adaptation to climate change.<sup>91</sup>

While Law 64-00 reaffirmed the Dominican Republic's longtime commitment to the preservation and conservation of the environment and education, the Lisbon Treaty "reaffirmed the EU commitment to environmental protection and sustainable development and expressly emphasize[d] the internal and external dimensions of [EU] action in the field."<sup>92</sup> The Lisbon Treaty introduced a specific European competence in the field of energy policy and investments, and "extended the ordinary co-decision procedure to the fields of transport, energy, fisheries, external trade, [and] regional and agricultural policy."<sup>93</sup> The importance of environmental protection in the EU is seen in the preamble of the Treaty on European Union (TEU), which states that the EU is: "DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection."<sup>94</sup>

Article 4 of the Treaty on the Functioning of the EU (TFEU) lists the environment as one of the shared competences between the EU and the

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89. *Id.*

90. LEY 1-12 [CIVIL CODE] art. 10 (Dom. Rep.).

91. *Id.*

92. Orlando, *supra* note 10, at 2.

93. *Id.* at 13.

94. Consolidated Version of the Treaty on European Union pmb., June 7, 2016, 2016 O.J. (C 202) 15 [hereinafter TEU].

Member States.<sup>95</sup> Article 11, one of the horizontal clauses, declares that environmental protection must be integrated into EU policies and activities.<sup>96</sup> Additionally, Articles 191 to 193 set out the main elements of EU environmental policy, ranging from its objectives to the legislative procedure applicable when adopting environmental laws.<sup>97</sup> In the TEU, Articles 3 and 21 “confer constitutional relevance to the EU[’s] intention to play a leadership role in the promotion of sustainability at the global level and in its relations with third countries, and reaffirm its commitment to multilateralism.”<sup>98</sup> Moreover, Title XX specifically deals with the environment.<sup>99</sup> Article 191 of the TFEU states that:

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. . . .

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.<sup>100</sup>

Article 193 also allows Member States to maintain or introduce more stringent, protective environmental measures than the ones introduced by the EU.<sup>101</sup> Although the EU has implemented more than 200 regulations and directives in order to help harmonize environmental standards and create the regulatory framework for environmental protection in the EU, the

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95. Consolidated Version of the Treaty on the Functioning of the European Union art. 4, June 7, 2016, 2016 O.J. (C 202) 51 [hereinafter TFEU].

96. *Id.* at art. 4.

97. TEU arts. 191–94.

98. Orlando, *supra* note 10, at 16.

99. TFEU tit. XX.

100. *Id.* at art. 191.

101. *Id.* at art. 193.

regulations still have a focus on economic development and the internal market.<sup>102</sup> As a result, environmental concerns become secondary, making the legislation less successful.

Finally, the Seventh Environmental Action Programme, which entered into force in January 2014, guides European environmental policy until 2020 and sets out a vision for the growth of environmental law through 2050.<sup>103</sup> According to the Seventh Environmental Action Programme: “In 2050, we live well, within the planet’s ecological limits. Our prosperity and healthy environment stem from an innovative, circular economy where nothing is wasted and where natural resources are managed sustainably, and biodiversity is protected, valued and restored in ways that enhance our society’s resilience.”<sup>104</sup>

Our “low-carbon growth has long been decoupled from resource use, setting the pace for a safe and sustainable global society.”<sup>105</sup> The Programme identifies three key objectives: “to protect, conserve and enhance the Union’s natural capital, to turn the Union into a resource-efficient, green, and competitive low-carbon economy, and to safeguard the Union’s citizens from environment-related pressures and risks to health and well-being.”<sup>106</sup> Although key objectives include protecting and conserving the environment, it all circles back to the internal market. The Dominican Republic’s 2030 National Strategy for Development also mentions the economy, but instead of being the central focus of the policy, it is secondary.<sup>107</sup> Its primary goal is still the protection of the environment and natural resources and the promotion of environmental education.<sup>108</sup>

### III. ACCESS TO JUSTICE IN THE DOMINICAN REPUBLIC AND THE EUROPEAN UNION

Environmental law in the Dominican Republic and the EU has the conservation of the environment for the good of its citizens as one of its main objectives.<sup>109</sup> As a result, both have created institutional structures and systems in order to help hold natural and legal persons accountable for

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102. ENVIRONMENT, INCENTIVES AND THE COMMON MARKET 5 (Frank J. Dietz et al. eds., 1995).

103. Council Decision 1386/2013, 2013 O.J. (L 354) 171, 172 (EU).

104. *Id.*

105. *Id.*

106. *Id.* at 174.

107. LEY 1-12 [CIVIL CODE] pmb. (Dom. Rep.).

108. *See generally id.* (explaining that protecting the environment and natural resources is one of the Constitution’s main objectives).

109. *Id.*; Council Directive 2008/99, 2008 O.J. (L 328) 28 (EC); Council Decision 1386/2013, *supra* note 103.

violating environmental law.<sup>110</sup> Law 64-00 provides that any person or association of citizens has a legitimate right to file a grievance or complaint for any act or failure to act that has caused, is causing, or will cause damage, contamination, or deterioration of the environment and natural resources.<sup>111</sup> Any natural or legal person with a legitimate interest in enforcing environmental law may intervene by providing evidence relevant to the case and may challenge an act.<sup>112</sup> On the other hand, the protection of individuals against breaches of EU environmental law by public authorities of the Member States or by other individuals, “through the doctrines of direct effect, consistent interpretation and state liability, is largely effected through national procedures.”<sup>113</sup> However, if an individual objects to the very substance of EU environmental law, he or she has few means to obtain a remedy at the national level, because the national court is not competent to pronounce its validity.<sup>114</sup> Therefore, the national court must avail itself of Article 267 of the TFEU and refer the matter to the European Court of Justice.<sup>115</sup> Unlike Law 64-00, which offers individual direct legal protection when an individual objects to the substance of an environmental law, EU treaties do not offer such direct legal protection. However, under Article 263(4) of the TFEU, “[a]ny natural or legal person may . . . institute proceedings against an act addressed to that person or which is of direct and individual concern to them. . . .”<sup>116</sup> Like Law 64-00, EU environmental law, under the Plaumann doctrine, allows “persons other than those to whom a decision is addressed [to] claim to be individually concerned.”<sup>117</sup> However, the decision must affect “them by reason of certain attributes[,] which are peculiar to them[,] or by reason of circumstances in which they are differentiated from all other persons.”<sup>118</sup>

Under Law 64-00, the Ministry of the Environment and Natural Resources, the Prosecutor for the Defense of the Environment and Natural Resources, and courts are in charge of ensuring the implementation of Law 64-00 and preventing violations of said law.<sup>119</sup> The National Service for the Protection of the Environment is part of the Ministry of the Environment

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110. Council Directive 2008/99, *supra* note 109, at 28.

111. Elvys Duaret, *El Dano Ecológico y su Responsabilidad Penal en la Republica Dominicana*, MONOGRAFIAS, <https://perma.cc/GHB6-DB96> (last visited Sept. 02, 2016).

112. LEY 64-00 [CIVIL CODE] art. 180 (Dom. Rep.).

113. JANS H. JANS & HANS H.B. VEDDER, *EUROPEAN ENVIRONMENTAL LAW: AFTER LISBON* 237 (4th ed. 2012).

114. *Id.*

115. *Id.*

116. TFEU art. 263(4).

117. JANS & VEDDER, *supra* note 113, at 239.

118. *Id.*

119. Duaret, *supra* note 111.

and Natural Resources.<sup>120</sup> It takes preventative measures necessary to avoid violations of Law 64-00, receives complaints, and gathers preliminary evidence to present to the Prosecutor in charge of environmental crimes.<sup>121</sup> The Prosecutor for the Defense of the Environment and Natural Resources is in charge of prosecuting environmental crimes.<sup>122</sup> Finally, the Courts of First Instance have the competence to judge any violation of Law 64-00.<sup>123</sup> On the other hand, according to Article 19(1) of the TEU, Member States are responsible for providing sufficient remedies to ensure effective legal protection in the fields covered by EU law.<sup>124</sup> Therefore, private individuals are dependent on the legal procedures established under national law. Although the implementation of EU environmental law is at the discretion of the Member States, increasingly, the Commission “possess powers to take acts in the field of or related to the environment.”<sup>125</sup> For example, Articles 107 and 108 of the TFEU give the Commission “the power to approve national environmental aids, not to approve them or to make aid subject to certain conditions, and other, more procedural decisions can also be taken.”<sup>126</sup> Moreover, persons to whom acts of the Commission with an environmental impact are addressed can file appeal under Article 263 of the TFEU before the General Court of the European Court of Justice.<sup>127</sup>

With regard to criminal matters in environmental law, Article 170 of Law 64-00 states that in order to determine the magnitude of the damages incurred, the court must take into account the reports prepared by inspectors and the formal reports provided by the Secretariat of the Environment and Natural Resources and any other environmental agencies of the State.<sup>128</sup> Article 174 states that anyone who violates Law 64-00 has committed a crime against the environment.<sup>129</sup> Articles 176 and 183 set out sanctions that may be imposed on natural and legal persons, including a prison sentence or a fine based on the minimum public sector salary.<sup>130</sup> Article 176 states that a legal person will be subject to a fine of 5,000 to 20,000 pesos when the damages result in the poisoning of individuals, the destruction of habitats, or the irreversible contamination.<sup>131</sup> The activity causing the

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120. *Id.*  
121. *Id.*  
122. LEY 64-00 [CIVIL CODE] art. 165 (Dom. Rep.).  
123. *Id.* at art 177.  
124. TEU art. 19.  
125. JANS & VEDDER, *supra* note 113, at 238.  
126. *Id.*  
127. *Id.*  
128. LEY 64-00 [CIVIL CODE] art. 170 (Dom. Rep.).  
129. *Id.* at art. 174.  
130. *Id.* at arts. 176, 183.  
131. *Id.* at art. 176.

damage will be prohibited for a period of one month to three years, or the judge can order the person to cease and desist the harmful activity.<sup>132</sup> Article 183 states that the Court of First Instance can subject legal or natural persons to the following sanctions:

1. a prison sentence of six days to three years; and/or
2. a fine of ¼ of the minimum public sector salary up to 10,000 public sector salaries; . . .
4. the obligation to economically indemnify the people who have suffered damages; . . .
11. the obligation to respect, restore, redress, or rehabilitate to its original state, as far as possible, the natural resource damaged, destroyed, impaired, or adversely modified.<sup>133</sup>

These sanctions are meant to have a chilling effect and deter future offenders from committing a crime against the environment, in order to preserve a healthy environment and natural resources.

On the other hand, tackling environmental crime in the EU had primarily been left to the Member States. However, in 2008, the EU adopted Directive 2008/99/EC to protect the environment through criminal law because it was “concerned [with] the rise in environmental offences and . . . their effects, which are increasingly extending beyond the borders of the States in which the offences are committed. Such offences pose a threat to the environment and therefore call for an appropriate response.”<sup>134</sup> The Directive forces Member States to “provide for criminal penalties in their national legislation in respect of serious infringements of provisions of Community law on the protection of the environment.”<sup>135</sup> Moreover, “[s]pecific environmental offences listed in the directive, such as particular discharges or emissions, shipment of waste or operation of a plant in which a dangerous activity is carried out, must have been committed unlawfully and intentionally, or at least with gross negligence, to meet the criminal law provisions.”<sup>136</sup> However, the Directive does not stipulate what kind of sanctions or penalties can be imposed, leaving it to the Member States and in turn, creating disparity among them.<sup>137</sup>

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132. *Id.*

133. *Id.* at art. 183.

134. Council Directive 2008/99, *supra* note 109, at 28.

135. *Id.*

136. Michael G. Faure, *The Implementation of the Environmental Crime Directives in Europe*, in NINTH INTERNATIONAL CONFERENCE ON ENVIRONMENTAL COMPLIANCE & ENFORCEMENT 360, 360 (2011).

137. Council Directive 2008/99, *supra* note 109, at 28.

## CONCLUSION

Environmental law in the Dominican Republic and the EU was originally scattered and uncoordinated. The Conference on the Human Environment served as the steppingstone for the evolution of environmental law in the EU and the Dominican Republic. However, both of their legal systems are products of their unique histories. Environmental conservation and preservation in the Dominican Republic dates back to 1844, and has continued to play a central role in the development of environmental law and education in the country. Likewise, the EU cannot escape its economic roots; therefore, over 200 directives and regulations on the environment are tied to economic development and the common market.<sup>138</sup> One can argue that implementation problems regarding environmental law arise because of the “overspecification and rigidity of goals,” and “the failure to engage relevant actors in decision-making.”<sup>139</sup> The Dominican Republic has been able to overcome this problem by creating General Environmental Law No. 64-00. Environmental law in the EU, however, remains scattered. Moreover, the leeway given to Member States to implement directives, and Member States transposing EU environmental regulations without properly enforcing them, results in disparities. Effectively implementing environmental law in the Dominican Republic and the EU is contingent upon citizens, institutions, and governments cooperating on access to information, knowledge of the law, and deterrence.

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138. ENVIRONMENT, INCENTIVES AND THE COMMON MARKET, *supra* note 102, at 5.

139. Christoph Demmke, *Towards Effective Environmental Regulation: Innovative Approaches in Implementing and Enforcing European Environmental Law and Policy* 6 (The Jean Monnet Ctr. for Int'l & Reg'l Econ. Law & Justice, Working Paper No. 5/01, 2001), <https://perma.cc/EGB6-LF76>.