

EELF

European Environmental
Law Forum

ENVIRONMENTAL COURTS - EFFECTIVE JURISDICTIONAL PROTECTION IN ENVIRONMENTAL LAW

| The third generation of environmental rights

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SUMMARY:

- **1. The third generation of environmental rights: Effective jurisdictional protection (concept)**
- **2. The environmental law framework:**
 - 2.1. International Law
 - 2.2. European Union Law
- **3. The global experience of Environmental Tribunals and Courts**
 - 3.1. Classification of ETCs
- **4. Proposal for the Portuguese jurisdictional organization.**
- **5. Conclusions**



1. The third generation of environmental rights: Effective jurisdictional protection

CAUSES:

- High level of environmental protection;
- The humanization of International law;
- Environmental rights as individual and fundamental rights.



1. The third generation of environmental rights: Effective jurisdictional protection

THE THIRD GENERATION RIGHTS:

- Information;
- Participation;
- Access to justice: effective jurisdictional protection.



2.1. International law

- Aarhus Convention 1998 - a restricted access to justice
- Bali Guidelines 2010
- Declaration of Rio 2012
- CEPAL project of convention – effective jurisdictional protection



2.1. International law

Article 9.º CEPAL convention

“Each Party shall guarantee the right of access to justice in environmental matters within a reasonable time by administrative and / or judicial means, within a fair process that provides due guarantees based on the principles of legality, effectiveness, publicity and transparency, equitable, timely and independent. The Parties shall ensure the right to appeal to a higher administrative and / or judicial body.”



2. The environmental law framework

2.2. European Union law

- **Regulation 1367/2006CE, from European Parliament and Council**
- **Directive 2003/35/CE, from European Parliament and Council**
 - Very restricted access to justice, far from effective jurisdictional protection.



3. Global Experience of Environmental Tribunals and Courts

3.1. Classification of ETCs

- **Difference between Tribunals and Courts (ETCs)**
 - Diversity and classification of ETCs:

1. COURTS:

a) Fully independent courts – these are judicial courts, but not included in the ordinary judicial organization, that rules in first level with the right to appeal to regular second level courts, but with administrative independence and with their own budget;



3. Global Experience of Environmental Tribunals and Courts

3.1. Classification of ETCs

- b) Environmental Courts with specialized competence – these are courts of the ordinary judicial system, but with specific competences on environmental matters, they decide only about environmental questions. The procedure rules are very open in order to permit a wide range of proof. They are formed with regular judges;
- c) Environmental Courts with mixed formation – these are courts from the judicial system, with special competences in environmental matters, but they are formed with regular judges and other experts in environment;
- d) Special designed Environmental Courts – these are general courts specially assigned for environmental cases. These are courts *ad hoc* based on the judge experience or vocation for environmental questions;



3. Global Experience of Environmental Tribunals and Courts

3.1. Classification of ETCs

e) Regular Courts with generic competences – regular courts that decide generic causes, but that gave their judges formation in environmental law.

2. TRIBUNALS

These are administrative independent authorities that decide about environmental claims.



And What About Europe?

- . Very low number of environmental courts.
- . The European Union Court of Justice jurisprudence is also very restrictive – (e.g. Case **Stichting Natuur en Milieu** and **Pesticide Action Network Europe** vs. European Commission)

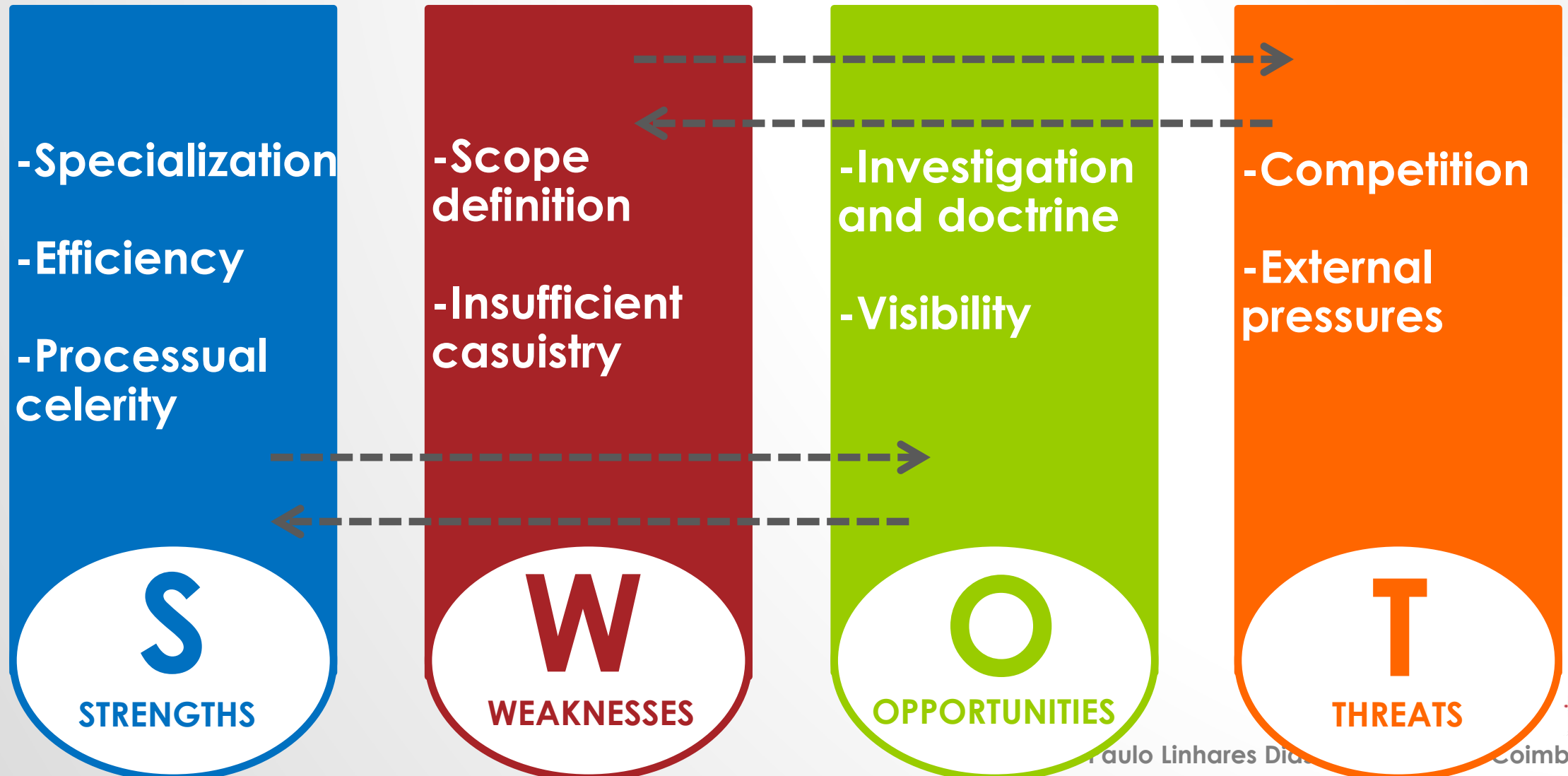


4. Proposal for Portuguese jurisdictional organization

- . Portuguese jurisdictional system is based on regular or common jurisdiction and administrative and tax jurisdiction;
- . Both jurisdictions can (and it is desired to) have specialized courts;
- . Both jurisdictions are structured on similar vertical pyramid: First level court; Appeal Court and Supreme Court;
- . We sustain that Environmental Courts should be a specialized administrative court.



5. Conclusions





“The true rule of law cannot exist without ecological sustainability and an independent judiciary”

(Antonio Herman Benjamin, Supreme Court of Brazil)

Thank you for your attention!



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