

USING HUMAN RIGHTS AS A WEAPON TO HOLD GOVERNMENTS AND CORPORATIONS ACCOUNTABLE ON CLIMATE CHANGE

THEMATIC REPORT
THE USE OF HUMAN RIGHTS IN CLIMATE CHANGE LITIGATION IN EUROPE

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- The Urgenda case
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NON O T C D D O R T N

Climate change litigation is booming around the world. Figures^[1] show that more and more climate cases are being brought before national and international courts. Europe is not immune to this phenomenon. Almost all European countries have climate cases that aim to increase climate ambition or ensure that existing climate obligations are properly implemented.

Many different legal tools can be used to bring a climate case forward. Then, why focus on human rights specifically? Several reasons can be given for answering this question. First, the link between climate change impacts and human rights violations is becoming increasingly clearer, as climate impacts themselves get increasingly tangible. At the international level, human rights have become an important issue during negotiations on climate change.

The Preamble of the Paris Agreement^[2] and, more recently, the Glasgow Climate Pact^[3] recognise the relationship between human rights and climate change. In addition, several reports by UN Special Rapporteurs highlight the specific impact of climate change on some of our most fundamental human rights (see Section II below). The mandate of the UN Special Rapporteur on human rights in the context of climate change was established in 2021, which also witnesses the growing awareness about the linkages between climate and human rights.

[1] Joana Setzer and Catherine Higham, Global trends in climate change litigation: 2022 snapshot, 2022.

[2] The Preamble of the Paris Agreement exposes that states should, “when taking action to address climate change, respect, promote and consider their respective obligations on human rights”.

[3] The Glasgow Climate Pact is the final written outcome of COP 26. Para 91 of the Pact “urges Parties to swiftly begin implementing the Glasgow work programme on Action for Climate Empowerment, respecting, promoting and considering their respective obligations on human rights as well as gender equality and empowerment of women”.

Second, human rights are a very useful tool to use in the climate governance framework. All European states have a human rights protection system. It can be used to fill the accountability gap when governments or corporate actors fail to deliver on their emission reduction promises, if there is a lack of specific accountability rules. Human rights can therefore provide remedies where there are no others, as long as the protection of environmental interest can be translated into human rights violations[4].

Finally, there is a real trend towards using human rights arguments and remedies in the courts to advance climate action. Several observers have witnessed a ‘rights turn’ in climate change litigation in recent years[5], and this trend has been confirmed by statistics and analyses[6]. The year 2023 will continue this movement, and strengthen it even further. For the first time, the European Court of Human Rights will consider several climate-related cases (see a case analysis of several of those cases in Section IV below). The hearings will take place in March and after the Summer[7], and we expect judgments to be issued by the end of the year. These cases would have important implications, as judgments of this Court are binding on 46 European states.

Box 1

What is (human rights-based) climate change litigation?

Defining climate change litigation is a difficult exercise. There are many legal cases aimed at influencing climate policy, and they do so in different ways in terms of the actors involved, the type of court being seized, the legal basis, the outcomes sought, etc. For the purpose of this report, we consider climate litigation to include “cases before judicial and quasi-judicial bodies that involve material issues of climate science, policy or law”[8]. Human rights-based climate litigation therefore includes such cases which specifically use arguments based on human rights law before courts.

This report provides an overview of the human rights protection system in Europe, focusing on climate change (Section 1), before exploring the relationship between climate change impacts and human rights violations (Section 2). It then analyses human rights-based climate litigation in Europe to date (Section 3). Finally, it focuses on specific cases brought or supported by European NGOs to illustrate the many ways in which human rights can be mobilised in court to advance climate action (Section 4).

[4] Annalisa Savaresi and Joana Setzer, ‘[Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers](#)’ (2022) *Journal of Human Rights and the Environment* 7; Annalisa Savaresi, ‘[Plugging the Enforcement Gap: The Rise and Rise of Human Rights in Climate Change Litigation](#)’ (2021) QIL 1.

[5] Jacqueline Peel and Hari M. Osofsky, ‘[A Rights Turn in Climate Change Litigation?](#)’ (2018) 7 *Transnational Environmental Law* 37.

[6] See, among many others, Setzer and Higham, *Global trends in climate change litigation* (n 1); Joana Setzer, Harj Narulla, Catherine Higham and Emily Bradeen, [Climate litigation in Europe - A summary report for the European Union Forum of Judges for the Environment](#), 2022.

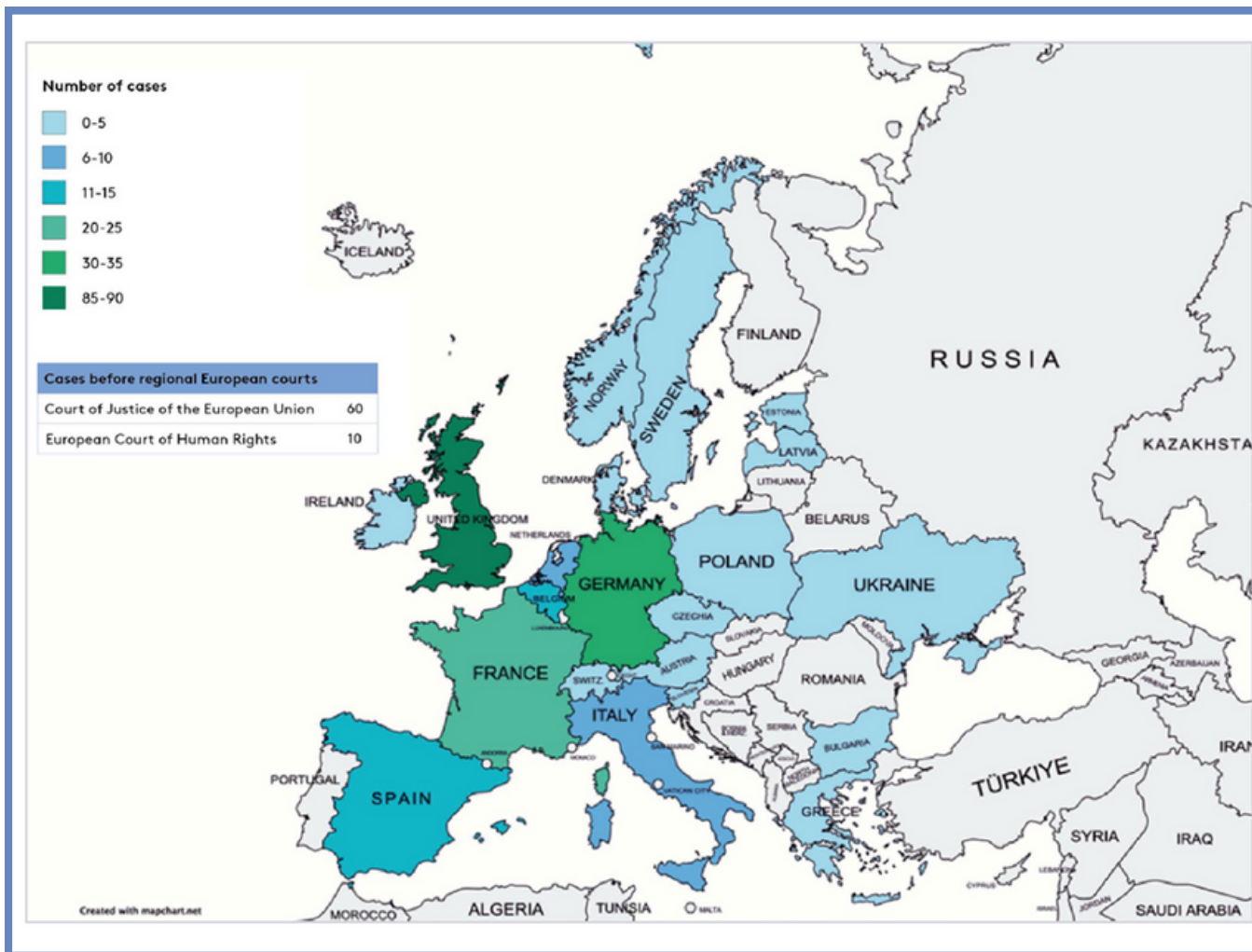
[7] According to a [press release](#) issued by the Registrar of the European Court of Human Rights on 9 February 2023.

[8] In accordance with the definition of the Sabin Center for Climate Change Law at Columbia Law School and the Grantham Research Institute on Climate Change and the Environment of the London School of Economics in Setzer and Higham, *Global trends in climate change litigation* (n 1) p. 6. This definition is used by the most established litigation databases: <https://climate-laws.org/> and <http://climatecasechart.com/>.

The objective of this report is twofold:

- It seeks to provide information on human rights based climate change litigation in Europe for a broad audience, non-specialist audience ahead of important milestones in 2023 - such as hearings in climate cases before the European Court of Human Rights.
- It aims to illustrate the many different ways in which human rights can be used in courts to advance NGO climate action.

Cases filed in European jurisdictions, 1993 to 2022



Source: Joana Setzer, Harj Narulla, Catherine Higham and Emily Bradeen, Climate Litigation in Europe - A summary report for the European Union Forum of Judges for the Environment (2022) 7.

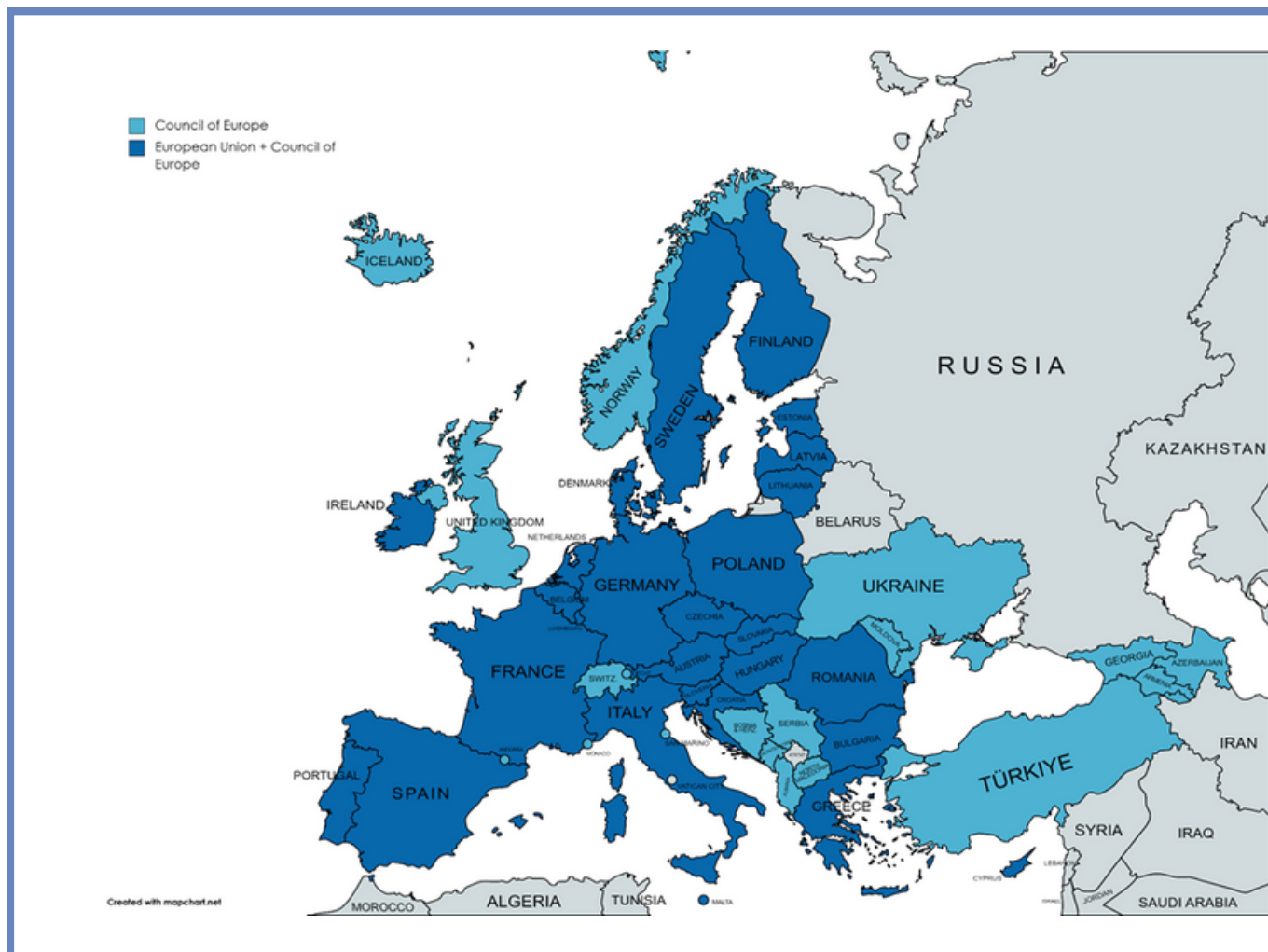
02 HUMAN RIGHTS IN EUROPE AND HOW THEY ARE TRANSLATED AT NATIONAL LEVEL

In Europe, human rights are protected at several levels. Some of these rights derive from international instruments, such as the UN International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These Covenants apply to all European states and go with specific obligations to report on implementation. However, the main instrument protecting fundamental rights in Europe is the European Convention on Human Rights. European countries also protect human rights through their own legal systems, including through their constitutions. It should be noted that the European Union also has a system for the protection of human rights, which has a specific scope of application.

The European Convention on Human Rights

The main instrument for human rights protection in Europe is the European Convention on Human Rights. This international treaty was adopted in 1950 to protect people's human rights and fundamental freedom. It applies to all 46 member countries of the Council of Europe [9], an international organisation founded after the second world war to promote democracy, rule of law and human rights protection in Europe. The Council of Europe is separate from (and much larger than) the European Union. All European Union countries are members of the Council of Europe.

[9] The full list of states members to the Council of Europe can be accessed on the [Council of Europe's website](#). Following its expulsion from the Council of Europe on 16 March 2022, the Russian Federation ceased to be a party to the European Convention on Human Rights on 16 September 2022.



Source: created with mapchart.net, 2023.

Box 2

The European Court of Human Rights

Governments, parliaments and courts in each country are mainly responsible for ensuring that the rights set out in the European Convention of Human Rights are complied with. However, the European Court of Human Rights acts as a safety net. This Court is based in Strasbourg and is composed of 46 elected judges, one from each member state.

Individuals can bring human rights complaints against any of the 46 member states to the court in Strasbourg after they have used up every possible chance of appeal at the national level. If the European Court of Human Rights finds that the applicant’s human rights have been violated, the country concerned has to provide justice to the individual.

The judgments of the Court have a binding force, which means that condemned states have an obligation to provide redress for the damage sustained by the applicant and remedy any consequences of the violation. The State must also make sure that no similar violation occurs, in other words that nobody else is a victim of the violation found. In practice this often gives rise to a change in legislation [10].

The European Court of Human Rights deals with complaints based on the European Convention of Human Rights and is based in Strasbourg. It should not be confused with the Court of Justice of the European Union which deals with complaints based on European Union law and is based in Luxembourg.

[10] Council of Europe, [The European Convention on Human Rights - A living instrument](#), 2022, p. 6.

The European Convention on Human Rights protects several absolute rights that can never be violated by states, such as the right to life or the prohibition of torture. It also protects other rights and freedoms which can only be restricted by law when necessary in a democratic society, and under strict conditions, such as the right to liberty and security or the right to respect for private and family life. A number of rights have been added to the initial text of the Convention with the adoption of additional protocols, such as the abolition of the death penalty, the protection of property, the right to free elections or freedom of movement[11]. Social and economic rights are protected under another instrument, the European Charter of Social Rights, and its respect is monitored through other procedures.

It should be noted that the Convention does not contain a specific provision or additional protocol protecting the environment, despite the clear acknowledgement over the years of a link between human dignity, human rights and the environment[12]. However, the European Court of Human Rights has interpreted the provisions of the Convention in a dynamic way, which means that several of its provisions now apply to situations that were unforeseeable at the time of its original adoption[13] - including on environmental issues. This is particularly the case with Articles 2 (protecting the right to life) and 8 of the Convention (protecting the right to a private and family life). These provisions have been extensively interpreted and the Court has deduced, inter alia, the following obligations for states:

- The duty to take steps to guarantee the rights of the Convention in the context of dangerous activities, such as nuclear tests[14], waste-collection sites[15] or man-made water reservoirs[16].
- The duty to prevent the loss of life in cases of natural disasters, even though they are, as such, beyond human control[17].

It should be emphasised that the purpose of the Convention is to protect individual human rights, and not the general aspirations or needs of the community taken as a whole[18]. In this respect, the Convention is not specifically designed to provide a general protection of the environment as such[19]. The Court will therefore only consider environmental damage if it can be directly linked to violations of individual human rights.

With regard to the climate crisis, the Court has not yet adopted a binding judgement on the obligations of states in relation to climate change. However, things will evolve rapidly in the course of 2023.

[11] *ibid.* 5.

[12] Council of Europe, [Manual on Human Rights and the Environment](#), 3rd edition, 2022, 9-10.

[13] Council of Europe, *The European Convention on Human Rights - A living instrument* (n 10) 7.

[14] *L.C.B v the United Kingdom* (application no. 23413/94) 9 June 1998.

[15] *Öneryildiz v Turkey* [CC] (application no. 48939/99) 30 November 2004.

[16] *Kolyadenko and Others v Russia* (applications nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05) 28 February 2012.

[17] *Budayeva and Others v Russia* (application nos. 15339/02, 211166/02, 20058/02, 11673/02 and 15343/02) 20 March 2008.

[18] Council of Europe, [Manual on Human Rights and the Environment](#) (n 12) 34.

[19] *Kyrtatos v Greece* (application no 41666/98) 22 May 2003, para 52.

More than 10 climate cases have been introduced to the Court since 2020. The Court is holding Grand Chamber hearings in three of these cases[20], and judgements in the others will follow afterwards[21]. A Grand Chamber hearing is an extraordinary procedure with 17 judges, as opposed to the traditional procedure at Chamber level where 7 judges deal with a case. This demonstrates that the Court takes these issues seriously. We hope to have final judgements on the first three climate cases by the end of the year 2023.

Human rights protection at national level

States that are parties to the European Convention on Human Rights can decide how to comply with their obligation to implement the provisions of the Convention[22]. In other words, they can decide how they want to translate these rights into their legal system. There is no given manner, but ultimately the substance of the rights and freedoms of the Convention must be secured under the domestic legal order[23].

Many countries protect fundamental rights in their constitution. For example, the prohibition from torture and the right to liberty or freedom are protected in the constitutions of the vast majority of European states[24]. Constitutional protection for human rights is essential: not only does the constitution represent the highest and strongest legal standard in a domestic legal system, but it also plays an important cultural role by reflecting a society's values and aspirations[25].

Some countries have also incorporated the whole European Convention of Human Rights directly in their legal system by giving it a constitutional status[26]. Other give to the Convention a super-legislative status[27] or legislative status[28].

[20] Duarte Agostinho and Others v. Portugal and 32 Others (application no. 39371/20); Verein Klimaseniorinnen Schweiz and Others v. Switzerland (application no. 53600/20); Carême v. France (application no. 7189/21). More information on the status of hearings in these cases on the [press release](#) issued by the Registrar of the European Court of Human Rights on 3 February 2022. See also a detailed analysis of the second case in section IV of this Report (the Swiss Ladies case).

[21] See the status of several pending climate cases on this [press release](#) issued by the Registrar of the European Court of Human Rights on 9 February 2022.

[22] Nikolina Katic, 'Implementation of the European Convention on Human Rights on national level' in Alessia Cozzi and others (eds) [Comparative study on the implementation of the ECHR at the national level](#) (Council of Europe 2016) 129, 132.

[23] Andrea Caligiuri and Nicola Napoletano 'The application of the ECHR in the domestic systems' (2010) The Italian Yearbook of International Law Online 125, 126.

[24] Ales Novak and others, 'Comparing constitutional protection of human rights in Europe - What can we learn from a comparative analysis?' (2007) Treatises and Documents - Journal of Ethnic Studies 70, 73.

[25] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Right to a healthy environment: good practices, 2020, A/HRC/43/53, p. 4

[26] E.g. in Albania, Austria, Bosnia and Herzegovina, the Netherlands and Norway.

[27] E.g. in Belgium, France, Georgia, Greece, Portugal, Serbia, Slovenia and Spain.

[28] E.g. in Denmark and in the United Kingdom. All data from Stephanie Bourgeois, 'The implementation of the European Convention on Human Rights at the domestic level' in Alessia Cozzi and others (n 22) 7, 10.

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It should be noted that states may well go beyond the rights and freedoms contained in the Convention - and many do so with respect to the environment. As a recent UN report points out[29], the right to a healthy environment is enshrined in the Constitution or legislation of many European states. Such a right can provide procedural[30] and substantive[31] legal protections with respect to the environment and is very often an easy entry point for climate change litigation.

Human rights protection at European Union level

The EU also has its own system for the protection of fundamental rights. Human rights protection is one of the core values of the Union, as emphasised in the founding Treaty of the EU[32]. The centrepiece of EU fundamental rights law and policy is the EU Charter for Fundamental Rights, which became binding in 2009 upon the entry into force of the Lisbon Treaty. It is considered to have the same legal value as the founding Treaties of the EU[33]. It has a specific provision relating to the environment which requires a “high level of environmental protection and the improvement of the quality of the environment” to be integrated into the policies of the Union[34].

The scope of application of the Charter at national level is limited. The provisions of the Charter are indeed addressed to the EU Institutions, agencies, and bodies; they apply to the Member States ‘only’ when they are implementing Union law[35]. This means that the Charter applies when EU countries adopt or apply a national law implementing an EU directive or when their authorities apply an EU regulation directly. In other words, where EU law applies, so does the Charter - but it requires the provisions of the Charter to be ‘hooked’ to a piece of EU law[36]. In cases where the Charter does not apply, the protection of fundamental rights is still guaranteed by the constitutions of EU countries, as well as by regional and international treaties such as the European Convention on Human Rights.

[29] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Right to a healthy environment: good practices (n 25) Annex II.

[30] E.g. by providing access to environmental information, public participation in environmental decision-making and access to justice.

[31] E.g. by requiring clean air, a safe climate, healthy and sustainably produced food, access to safe water and adequate sanitation, non-toxic environments in which to live, work and play, and healthy ecosystems and biodiversity.

[32] According to Article 2 of the Treaty on European Union: “The Union is founded on the values of respect for human dignity, freedom, democracy, equality and respect for human rights, including the rights of persons belonging to minorities”.

[33] Jan Wouters and Michal Ovádek, *The European Union and Human Rights: Analysis, Cases and Materials* (OUP 2021) 100.

[34] Article 37 of the EU Charter for Fundamental Rights.

[35] Article 51(1) of the EU Charter for Fundamental Rights.

[36] Wouters and Ovádek (n 33) 103.

03 THE LINKS BETWEEN CLIMATE CHANGE AND HUMAN RIGHTS

Climate change affects human rights in many ways. In recent years, several reports have shown the links between them. This section does not intend to provide a comprehensive overview, but aims to give examples of the concrete impacts that climate change will have and is having already on the enjoyment of human rights. It should be noted that litigation in Europe is most often based on the right to life, private and family life, the right to a healthy environment and even the right to equality and non-discrimination (as illustrated in the case analysis of Section 4), rather than on socio-economic rights such as the right to food, water or health. This is because in our legal systems, the first are historically more enforceable in court than the latter. In this section, however, we are seeking to highlight the linkages of climate change with civil and political rights, as well as with social and economic rights.

Right to water[37]

Safe and sufficient water is essential for life and well-being. The global water crisis has implications for several human rights, such as the right to life, the right to health, the right to sanitation, the right to food, the right of children, etc[38]. Climate change will of course exacerbate this water crisis by posing problems of access to safe drinking water. The Intergovernmental Panel on Climate Change (IPCC) already reported in 2014 that “about 8 per cent of the global population will see a severe reduction in water resources with a 1°C rise in the global mean temperature, rising to 14 per cent at 2°C”[39]. More generally, climate change intensifies the risks, consequences and inequities associated with water pollution, water scarcity and water-related disasters[40].

[37] The right to water is from the right to an adequate standard of living under the International Covenant on Economic, Social and Cultural Right. See UN Economic and Social Council, [General Comment No. 15](#), 2002, E/C.12/2002/11. This General Comment has an authoritative interpretation of the provisions of the Covenant. It means that states parties to this text are required to protect the right to water as part of the Covenant, but it does not mean that this right is automatically enshrined in domestic legislation.

[38] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, [Human rights and the global water crisis: water pollution, water scarcity and water related disasters](#), 2021, A/HRC/46/28, 5 to 10.

[39] IPCC, AR5 Climate Change 2014 - Impacts, adaptation and vulnerability - Part A: Global and Sectoral aspects, 250.

[40] UNESCO, [United Nations World Water Development Report 2020 - Water and Climate Change](#) (UN Water 2020).

Concerns have also been raised about water wars - conflicts over water scarcity, allocation and pollution issues[41].

Right to food

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The right to food is also expected to be severely impaired by climate change. For example, in 2016, the UN Special Rapporteur on the right to a healthy environment exposed that climate change is already affecting the ability of some communities to feed themselves, and that the number of those affected will only grow as temperatures rise[42]. The IPCC also stated that “all aspects of food security are potentially affected by climate change, including food access, utilization, and price stability”[43]. In addition, the increasing frequency and severity of droughts attributed to climate change present a major threat to the right to food[44].

Right to health through biodiversity loss

Climate change will also have disastrous impacts on biodiversity, which in turn will affect human health. This was clearly recalled at the recent COP 15 on Biodiversity in Montreal, where it was stated that “Biodiversity is fundamental to human well-being and a healthy planet, and economic prosperity for all people, including for living well in balance and in harmony with Mother Earth. We depend on it for food, medicine, energy, clean air and water, security from natural disasters as well as recreation and cultural inspiration, and it supports all systems of life on earth”[45]. Climate change threatens to devastate the other forms of life that share this planet with us, and the decimation of other species will also harm humans[46]. Pollution, in particular, is a major threat to biodiversity. For example, various air pollutants cause or contribute to acidification of lakes, eutrophication of estuaries and coastal waters and mercury bioaccumulation in aquatic food webs[47].

[41] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights and the global water crisis (n 38) 4.

[42] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, [Human rights obligations relating to climate change](#), 2016, A/HRC/31/52, p. 8.

[43] IPCC, AR5 Climate Change 2014 (n 39) 488.

[44] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights and the global water crisis (n 38) 6.

[45] Conference of the Parties to the Convention of Biological Diversity, [Kunming-Montreal Global biodiversity framework - Draft decision submitted by the President](#), 2022, CBD/COP/15/L.25, Annex, §1.

[46] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights obligations relating to climate change (n 42) 8-9.

[47] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, [Human rights obligations relating to clean air](#), 2019, A/HRC/40/55, p. 7.

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Other impacts

Terrestrial ecosystems are also damaged by air pollutants, including forests, grasslands and soils[48]. The global nature emergency has been shown to have clear negative effects on the enjoyment of several human rights, such as the right to life, the right to health, the right to food, the right to water and sanitation, the rights of the child, etc[49].

The above issues are just an illustration of how fundamental rights are affected by the impacts of climate change. The UN High Commissioner for Human Rights has developed reports on the impact of climate change on specific issues or categories of persons, such as the rights of people in vulnerable situations, older persons, persons with disabilities, the rights of the child, and on the enjoyment of the right to health.

In conclusion, climate change will have cross-cutting impacts on a wide range of human rights. As the IPCC stated in its special report on a global warming of 1.5°C, “climate-related risks to health, livelihoods, food security, water supply, human security, and economic growth are projected to increase with global warming of 1.5°C and increase further with 2°C”[50]. Impairments on those elements will have consequences on the enjoyment of human rights.

[48] *ibid.*

[49] UN Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, Human rights depend on a healthy biosphere, 2020, A/75/161, p. 10 to 16.

[50] IPCC, Special Report: Global warming of 1.5°C - Summary for policymakers, B.5.

04 ANALYSING THE USE OF HUMAN RIGHTS IN CLIMATE CHANGE LITIGATION IN EUROPE

When - The third wave or 'rights turn' in climate litigation

Scholars and commentators generally identify several 'waves' in climate change litigation[51], meaning that cases have evolved over time in their nature, in the defendants involved and in their geographical scope. The third and last (so far) commonly agreed wave is understood to have started around 2015, when the Paris Agreement was signed[52]. One of its main distinguishing features is the use of human rights and constitutional law arguments[53] - which is sometimes referred to as a 'rights turn' in climate change litigation[54]. Chronologically, rights-based climate litigation is therefore a recent phenomenon[55]. However, this recentness does not prevent a high number of cases from being filed. Since 2018, climate lawsuits based on human rights arguments have been lodged at a significantly increased pace[56]. This trend is expected to continue in the coming years, with the vast majority of climate cases being now argued on rights grounds[57].

[51] Setzer, Narulla, Higham and Bradeen, Climate litigation in Europe (n 6) 9; Jacqueline Peel and Hari Osofsky, '[Climate Change Litigation](#)' (2020) Annual Review of Law and Social Science 21; Golnaraghi and others, [Climate Change Litigation - Insights into the evolving global landscape](#) (The Geneva Association 2021) 13.

[52] Setzer, Narulla, Higham and Bradeen, Climate litigation in Europe (n 6) 9.

[53] *ibid.*

[54] Peel and Osofsky, 'A Rights Turn in Climate Change Litigation?' (n 5).

[55] Savaresi and Setzer, 'Rights-based litigation in the climate emergency' (n 4) 11.

[56] *ibid.* 12.

[57] Kumaravadivel Guruparan and Harriet Moynihan, [Climate change and human rights-based strategic litigation](#) (Chatham House 2021) 2.

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Where - Europe as a stronghold for rights based climate claims

Europe has been the most active region for rights-based climate litigation since 2015[58]. This geographical distribution differs from trends observed in general climate litigation[59], where the United State is usually the busiest jurisdiction for climate change lawsuits. This may be explained by the fact that Europe has the European Court of Human Rights, a body that has historically been supportive of the use of human rights claims to pursue environmental objectives[60] (as demonstrated in Section 1 above).

Who - Individuals vs states (and corporations)

Claimants in rights-based climate litigation are typically individuals and groups (or a combination of both)[61]. This can be explained by the fact that individuals are the main bearers of human rights.

Defendants in rights-based cases are in the vast majority states and public authorities. This can be explained by the fact that, in human rights law, states are the primary duty bearers. They are the main entities responsible to make sure that individuals' fundamental rights are guaranteed.

However, in recent years there has been a rapid increase in the number of cases brought against corporations on the basis of their human rights obligations. Claimants in those cases are resorting to a varied assortment of legislative tools to found their claims. Where possible under national law, they for example seek to have domestic courts to interpret corporate due diligence obligations in light of human rights law and temperature objectives of the Paris Agreement[62]. These cases also aim to reshape narratives about energy production and the consequences of climate change[63].

It should be noted that there are ongoing negotiations at EU level for the adoption of a Corporate Sustainability Due Diligence Directive. This text is an opportunity to bring clarity in the applicable regime and will help companies to assess their obligations through a clear and common legal framework.

[58] César Rodríguez Garavito, 'Litigating the Climate Emergency - The Global Rise of Human Rights-Based Litigation for Climate Action' in César Rodríguez Garavito (ed) *Litigating the Climate Emergency - How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (CUP 2022) 9, 10 and figure 1.2.

[59] Savaresi and Setzer, 'Rights-based litigation in the climate emergency' (n 4) 11-12.

[60] The same could be said about Latin America and the Inter-American human rights system. Savaresi and Setzer, 'Rights-based litigation in the climate emergency' (n 4) 11.

[61] *ibid.* 13.

[62] *ibid.* 14.

[63] Joana Setzer, 'The Impacts of High-Profile Litigation against Major Fossil Fuel Companies' in César Rodríguez Garavito (ed) *Litigating the Climate Emergency - How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action* (CUP 2022) 206, 208.

It will also provide more visibility on companies' legal risks across Europe. It should be noted that the trend of targeting companies in climate litigation will continue to develop with or without the above mentioned Directive - this text will simply make it clearer on what companies need to do to address their climate impacts.

04 How - The central and peripheral role of human rights in climate litigation

There are several ways in which human rights can be used in climate litigation. The first and most direct way is to put human rights grievances at the centre of the case^[64]. In such cases, human rights arguments are the only ones that are used before a court. This is for example what happens in cases that are dealt with by 'pure' human rights courts, such as the European Court of Human Rights. Cases focusing on pure human rights complaints seem to be on the rise^[65].

The second possibility is to make a 'peripheral' use of human rights arguments. In this case, human rights are used to corroborate and support complaints which are largely based on other obligations, such as administrative or private law obligations. Applicants usually argue that the defendant's obligations should be interpreted in light of human rights law.

Why - Filling the governance, ambition and accountability gaps

Claimants can seek a variety of outcomes in climate cases. The demands of plaintiffs are indeed different in each case and depend on the nature of the defendant. Some scholars have developed a typology of the different strategies used in rights-based climate litigation^[66] - the explanations below are a simplified version.

For cases brought against states or other public authorities, several strategies have been identified. First, rights-based litigation may seek to force states to increase their efforts or adopt more appropriate measures to tackle the climate crisis. These strategies aim to provide the post-Paris climate regime with mechanisms for translating the long term temperature goal of the Paris Agreement^[67] into legally binding commitments at the national level^[68]. As such, human rights are being used to fill the governance gaps and insufficient ambition in climate action. The Constitutional Complaint case in Germany (Section 5 below) is an example of such objectives. Second, cases may seek to force states to implement climate legislation that already exists - either on mitigation or adaptation policies, or both.

[64] Savaresi and Setzer, 'Rights-based litigation in the climate emergency' (n 4) 16.

[65] Savaresi, 'Plugging the Enforcement Gap' (n 4) 2.

[66] Savaresi and Setzer, 'Rights-based litigation in the climate emergency' (n 4) 19-27.

[67] The long term temperature goal of the Paris Agreement is to hold global average temperature increase to "well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels" (Article 2 (a)).

[68] Garavito, 'Litigating the Climate Emergency' (n 58) 16.

04

The underlying idea is that states cannot be in compliance with their human rights obligations if they breach environmental legislation that they themselves have adopted[69]. As such, human rights arguments are used as an accountability tool to ensure that governments comply with their commitments. A third strategy is to argue that states should refrain from authorising activities or adopting policies which could ultimately affect the enjoyment of human rights. The Greenpeace v Austria case (Section 5 below) is a good example of such a case. Finally, human rights arguments may seek to implement states' procedural environmental obligations. States must indeed ensure public access to environmental information, participation in environmental decision-making and access to environmental justice[70].

Although, as explained above, rights-based cases against corporate actors are a developing trend, several strategies can already be identified. First, such cases may argue that corporations have a positive duty to reduce their emissions and must therefore adopt measures to contribute to climate mitigation. This is what happened in the Milieudefensie v Shell case (Section 5 below). Second, human rights arguments can be used to argue that corporations have a duty to support climate policies and their enforcement rather than oppose them. Third, rights-based claims may aim to force corporations to refrain from activities that may cause harm. A good example is the case being brought in France by Friends of the Earth and 5 others NGOs against Total's Tilenga and EACOP projects[71]. These projects aim to develop a pipeline in Uganda and Tanzania which would provoke violations of human rights and serious environmental damage. Finally, human rights arguments can be used to force corporations to disclose their emissions, climate vulnerability and stranded assets (very few rights-based cases have been brought to date for this purpose).

What next?

The trend towards the use of human rights arguments in climate change litigation is set to continue in the future, as the link between climate change impacts and human rights violations becomes increasingly clearer (see section 2 above). In addition, the use of human rights arguments against corporate actors is likely to continue to increase. As mentioned above, the trend of targeting companies in climate litigation is expected to continue in the next few years. Finally, as evidence of climate change impacts increases, rights-based claims can be used to focus on issues that have not yet been much addressed by the courts - such as climate change adaptation and climate-induced displacement.[72]

[69] Savaresi and Setzer, 'Rights-based litigation in the climate emergency' (n 4) 22.

[70] In accordance with the Convention on access to information, public participation in decision-making and access to justice in environmental matters (Aarhus Convention). 46 European states and the European Union are parties to the Aarhus Convention.

[71] Les Amis de la Terre contre Total. More information on the [climate case chart website](#) (accessed 23 February 2022).

[72] *ibid.*

05 FOCUS ON SPECIFIC CASES IN WHICH HUMAN RIGHTS ARE USED TO STRENGTHEN CLIMATE ACTION

The cases described in this section aim to highlight the various ways in which human rights arguments can be used in court to advance climate action, by providing a detailed assessment of a selected number of cases in which NGOs have played an important role.

The Urgenda case

Urgenda Foundation v.
State of the Netherlands
District Court of the Hague
/ Court of Appeal of the
Hague / Netherlands
Supreme Court
Status: **decided**



Summary of the case

In 2013, the Urgenda Foundation, a Dutch sustainability NGO, and 886 Dutch citizens, filed a case before the District Court of the Hague, submitting that the Dutch government's failure to take greater steps to reduce greenhouse gas (GHG) emissions was unlawful.[73] The plaintiffs sought declaratory relief and a mandatory order that the State increase its climate mitigation efforts, notably in line with best available science and international consensus, as highlighted by the work of the Intergovernmental Panel on Climate Change (IPCC) and decisions of the United Nations Climate Change conferences (COP).[74] On 24 June 2015, the District Court found in favour of Urgenda and ordered the government to cut Dutch greenhouse gas emissions by at least 25% by the end of 2020, compared to 1990 levels.[75] The ruling required the government to immediately take action to strengthen its climate mitigation efforts.[76]

[73] Urgenda Foundation v The State of The Netherlands (2015) ECLI:NL:RBDHA:2015:7196 (official translation) (District Court).

[74] *ibid* [2.8]-[2.52].

[75] *ibid* [5.1].

[76] *ibid* [5.3].

The State appealed and, on 9 October 2018, the Court of Appeal of the Hague affirmed the decision of the District Court, on the basis of the State's positive obligations to protect human rights.[77] On 20 December 2019, the Supreme Court (the highest court in the country) upheld the judgment of the Court of Appeal, confirming the order requiring the Dutch government to do 'its part' to prevent dangerous climate change by reducing its GHG emissions by a minimum of 25% before 2020, compared to 1990 levels.[78]

The role played by rights-based arguments

The Dutch Supreme Court's approach to human rights protection and the interpretation of the European Convention on Human Rights (ECHR) was crucial to its determination.[79]

The Supreme Court's decision was based on the State's obligations under the European Convention on Human Rights (ECHR) – specifically, Articles 2 and 8 which protect the right to life and the right to respect for private and family life respectively.[80] The Court concluded that the Dutch State had an obligation to reduce its GHG emissions, owing to the risk of harm to these rights as a result of climate change.[81] Here, we set out some important aspects of the Supreme Court's decision.

Firstly, the Court recognized the dire urgency of the climate crisis. On the basis of "widely accepted" insights from climate science,[82] the Court concluded that there is "a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life", and that it is "clearly plausible that the current generation of Dutch nationals ... will have to deal with the adverse effects of climate change in their lifetime if global emissions of greenhouse gases are not adequately reduced." [83]

Secondly, the judgment confirmed that the ECHR offers protection in respect of the threat presented by climate change to human rights. Neither the fact that climate change affects "large groups or the population as a whole", nor that it "will only materialise over the long term" was considered a barrier to ECHR protection.[84] The Court also did not consider the global nature of climate change to be problematic.[85] Drawing on well-known principles of international law, the Court concluded that the Dutch State was obliged to reduce its GHG emissions "in proportion to its share of the responsibility" – i.e. to do "its part" or its "fair share". [86] This was also considered consistent with the right to effective legal protection under Article 13 ECHR.

[77] Netherlands v Urgenda Foundation [2018] Case No 200178245/01, 9 October 2018 (official translation) (Hague Court of Appeal).

[78] State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda (2019) ECLI:NL:HR:2019:2007 (official translation) (Supreme Court of the Netherlands, Civil Division).

[79] In light of Article 93 and 94 of the Dutch Constitution, the ECHR has direct effect in the Netherlands, making a breach of its provisions a tortious act under Article 6:162(2) of the Civil Code. In particular, the Dutch Supreme Court recognised the right of Urgenda as an NGO to bring a rights-based case under Dutch procedural law, which permits claims by non-governmental organisations under certain circumstances. See *ibid.* [5.9.2]

[80] The Court of Appeal also based its decision on the ECHR, while the decision of the District Court was based on the tort of hazardous negligence. The Court of Appeal and the Supreme Court did not disturb the ruling of the District Court.

[81] State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda (Supreme Court of the Netherlands, Civil Division). 20 December 2019. (English translation), [4.7], quoting the decision of the Court of Appeal.

[82] *ibid.* [4.1].

[83] *ibid.* [4.7], quoting the decision of the Court of Appeal.

[84] *ibid.* Summary. See also chapter 5.

[85] *ibid.* [5.6.1]- [5.8].

[86] *ibid.* Summary. See also [5.7.1]

Thirdly, having established that climate change presented a threat to Convention rights, the Court went on to determine what this meant in terms of concrete obligations for the State. Specifically, the Court asked whether Articles 2 and 8 ECHR required the Dutch State to reduce its emissions by 25% by 2020 against 1990 levels, as ordered by the lower courts. In interpreting Articles 2 and 8, the Court applied the “common ground method”.[87] This method, developed by the European Court of Human Rights, required the Court to take into account other relevant rules of international law along with “broadly supported scientific insights and internationally accepted standards”.[88] Taken together, the Court concluded that the “great degree of consensus on the urgent necessity for the Annex 1 countries to reduce greenhouse gas emissions by at least 25-40% in 2020”[89] necessarily informed the content of the State’s ECHR obligations.

Finally, contrary to the State’s assertion, an order requiring the State to reduce its GHG emissions by a minimum amount was not considered in breach of the separation of powers doctrine (*trias politicas*). The Court acknowledged that “determining the share to be contributed by the Netherlands in the reduction of greenhouse gas emissions is ... in principle, a matter for the government and parliament”.[90] However, it noted that “the courts can assess whether the measures taken by the State are too little in view of what is clearly the lower limit of its share in the measures to be taken worldwide against dangerous climate change.”[91] In this respect, the Court concluded that 25% represented the “absolute minimum” by which the State must reduce its emissions in order to discharge its positive obligation to protect the human rights of Dutch residents, in light of the real risk of harm presented by climate change. [92] Enforcing this minimum was, in the Court’s view, part of its constitutional role to check that the government was acting within the limits of the law, including those set down by the ECHR: “This mandate of the courts to offer legal protection, even against the government, is an essential component of a democratic state under the rule of law.”[93]

The effects of the case in Court and beyond

The Urgenda case is the first in the world in which a court ordered a government to reduce its GHG emissions by an absolute minimum amount, in order to comply with its positive obligations to protect human rights.[94] This case proved that public authorities can be held accountable in court for their insufficient climate mitigation efforts, and drastically influenced the trajectory of global climate litigation.[95]

[87] *ibid.* [5.4.1]-[5.4.3].

[88] *ibid.* Summary. See also [6.1]-[7.3.6].

[89] *ibid.* Summary. See also [6.1]-[7.3.6].

[90] *ibid.* [6.3].

[91] *ibid.* [6.3].

[92] *ibid.* [7.5.1].

[93] *ibid.* Summary. See also paras. 8.1-8.3.5.

[94] In 2019, the United Nations High Commissioner on Human Rights has stated that “the decision confirms that the Government of the Netherlands and, by implication, other governments have binding legal obligations, based on international human rights law, to undertake strong reductions in emissions of greenhouse gases.” Available at <https://www.ohchr.org/en/press-releases/2019/12/bachelet-welcomes-top-courts-landmark-decision-protect-human-rights-climate>.

[95] IPCC, Working Group III, ‘AR6 Climate Change 2022: Mitigation of Climate Change’ (2022). See section 13.4.2. stating that the Urgenda precedent: “motivated a wave of similar climate change litigation across the world”. The IPCC also dedicated an entire section to the impact of the Dutch climate case. See Box 13.8.

In particular, it has inspired a wave of similar human rights-based cases against governments around the world.[96] Building on arguments derived from the Urgenda decisions, litigants in such cases have pleaded that climate change threatens the enjoyment of a range of human rights – such as the right to life, the right to the highest attainable standard of health, the right to a healthy environment – and this gives rise to positive obligations on the part of the State.[97]

The success of the case transformed climate policies in the Netherlands. Following the decision of the Supreme Court, the Dutch government immediately closed one coal-fired power station; [98] committed to reduce the capacity of its remaining coal-fired power stations by 75%;[99] and announced a € 3 billion package of measures to reduce Dutch GHG emissions by the end of 2020, in line with the court order.[100] The case continues to have an impact domestically. In 2021, the Dutch government committed to spending an additional € 6.8 billion on climate change measures.[101] Most recently, in 2022, the government committed to make € 35 billion available for major climate action, including a hydrogen network and € 20 billion to change the industry to no/low carbon industry.[102]

The role played by the Urgenda Foundation

The Urgenda Foundation coordinated the litigation and the campaign supporting the case since its launch in 2013. Throughout the proceedings, Urgenda deployed significant advocacy efforts to keep the government's climate inaction under the spotlight and raise awareness on the risks of dangerous climate change, gathering enormous support from the public.[103] Following its groundbreaking victory, Urgenda also worked on a comprehensive climate mitigation plan with the help of 800 Dutch organisations, as a way to provide the government a helping hand in the implementation of the court's ruling. This collective effort led to a multisectoral proposal encompassing 54 affordable and widely-supported GHG reduction measures.[104] Urgenda calculated that the implementation of its "54 Climate Solutions Plan" would lead to a CO2 emissions reduction of 17 Mtons, enough to ensure compliance with the judgment of the Supreme Court. On April 24 2020, the Dutch government announced its plan to comply with the historic ruling of the Supreme Court. About 30 of these measures were lifted from Urgenda's "54 Climate Solutions Plan".[105]

[96] Including in Europe (Belgium, Czech Republic, France, Germany, Ireland, Italy, Norway, Poland, Spain, Switzerland and Sweden), South America (Colombia and Peru), North America (US and Canada) and Asia-Pacific (South Korea, Australia). For an overview of climate cases targeting governments' inaction, see: Joana Setzer and Catherine Higham, 'Challenging Government Responses to Climate Change through Framework Litigation' (Grantham Research Institute on Climate Change and the Environment 2022).

[97] *ibid.* See also Lucy Maxwell, Sarah Mead and Dennis Van Berkel, 'Standards for Adjudicating the next Generation of Urgenda-Style Climate Cases' [2021] *Journal of Human Rights and the Environment*.

[98] CE Delft, *Effects of closing three additional coal-fired power stations*, 2019. Available at <https://cedelft.eu/publications/effects-of-closing-three-additional-coal-fired-power-stations/>

[99] Urgenda, *Climate verdict leads to 75% reduction in use of coal-fired plants + €3 billion for Urgenda's '54 climate solutions' plan*, 24 April 2020. Available at <https://news.pressmailings.com/urgenda/dutch-climate-verdict-measures>.

[100] *The Guardian*, *Dutch officials reveal measures to cut emissions after court ruling*, 24 April 2020, Available at <https://www.theguardian.com/world/2020/apr/24/dutch-officials-reveal-measures-to-cut-emissions-after-court-ruling>.

[101] *Reuters*, *Dutch to spend billions on climate subsidies amid economic boom*, 21 September 2021. Available at <https://www.reuters.com/business/sustainable-business/dutch-spend-billions-climate-subsidies-amid-economic-boom-2021-09-21/>.

[102] Euractiv, *Dutch government sworn in with focus on climate*, 10 January 2022. Available at <https://www.euractiv.com/section/energy-environment/news/dutch-government-to-be-sworn-in-with-focus-on-climate/>.

[103] Examples of public support for the court case can be found online at <https://www.urgenda.nl/en/themas/climate-case/>.

[104] Additional information on the 54 Climate Solutions Plan can be found online at <https://www.urgenda.nl/en/themas/climate-case/dutch-implementation-plan/>.

[105] *Ibid.*

The Milieudefensie v Shell case



Milieudefensie c.s.et al. v. Royal Dutch Shell PLC
District Court of the Hague / Court of Appeal of the Hague
Status: **pending**

Summary of the case

On 5 April 2019, Milieudefensie – the Dutch branch of Friends of the Earth – together with six other NGOs (ActionAid NL, BothENDS, Fossilvrij NL, Greenpeace, Waddenvereniging and Young Friends of the Earth NL) and joined by 17,395 individual Dutch co-plaintiffs filed their summons against Royal Dutch Shell (RDS, further in short Shell, the Shell Groups parent company) at the District Court of The Hague. Shell was headquartered in The Netherlands and is one of the major players in the worldwide market of oil and gas, with total emissions that exceeds the CO₂ emissions of many states. Milieudefensie asked the court for an injunction on Shell to align its policy with the temperature goal of 1.5°C enshrined in Article 2 of the Paris Agreement. Therefore Milieudefensie demanded Shell to reduce its absolute scope 1, 2 and 3 CO₂-emissions by at least 45% by 2030 compared to 2019 levels.

The case builds on the strategy and case-law that was created with the also groundbreaking Urgenda case in which the Dutch Supreme Court in 2015 stated that states have a duty of care to prevent dangerous climate change (see the analysis of the Urgenda case above). As the Supreme Court explained, dangerous climate change due to CO2 emissions induces global heating, threatening the right to life (Art. 2 ECHR) and private family life (Art. 8 ECHR). The court enjoined the Dutch State to reduce its GHG-emissions by at least 25% in 2020 relative to 1990.

Despite the major differences between states and private corporations, the principle of duty of care in the Urgenda case could also be used against Shell. On 26 May 2021, the District Court of the Hague ruled in favour of Milieudefensie and against Shell. It is the first ruling in the world requiring a private company to change its future climate policies, rather than pay compensation for damage already done.

Shell appealed this decision. At the time of writing (February 2022), the appeal is pending before the Court of Appeal of the Hague.

The role played by rights-based arguments

Human rights as a reflection of the legal dimension of dangerous climate change

Article 2 of the Paris Agreement reflects a universal political consensus that global society should limit global warming to 1.5°C if we want to avert an existential crisis. This is a universal safety norm. It's undeniable that the effects of climate change have disastrous consequences for human life and therefore impede the enjoyment of fundamental human rights. Therefore, human rights law gives a legal dimension to the nature and magnitude of the climate crisis and how these facts should be assessed from a human rights perspective.

Horizontal effect of human rights – apart from states, corporations also have an obligation to protect human rights

Unlike states, corporations can't be party to human rights treaties, however they have an obligation to respect human rights. This obligation is based on the horizontal effect of human rights, which refers to the ability of legal requirements meant to apply only to public bodies to affect private rights. In the Shell-case Milieudefensie substantiated that corporations have an unwritten duty of care enshrined in Dutch tort law (Art. 6:162 of the Dutch Civil Code). To interpret the open norm of the duty of care, Milieudefensie invoked a.o. Article 2 ECHR (protecting the right to life) and Article 8 ECHR (protecting the right to a private family life). Milieudefensie also invoked the reflexive effect of soft law sources a.o. the UN Guiding Principles on Businesses and Human Rights (UNGPs). These rights and norms embed the basic principle that apart from states, businesses also have independent obligations to prevent and address the risk of adverse impacts on human rights linked to their business activity. In the Shell case, Milieudefensie stated that the interpretation of the duty of care based on the horizontal effect of ECHR and the reflexive effect of the UNGPs, leads to the obligation for Shell to reduce the absolute emissions of the Shell-group (scope 1), their suppliers (scope 2) and the emissions of their consumers (scope 3) by 45% by 2030. If Shell fails to do so, this threatens the human rights of the Dutch inhabitants. This would be an infringement of the duty of care and would therefore be unlawful.

The horizontal effect of human rights via open norms in tort law is important because in the context of climate change, human rights should weigh heavily in assessing whether or not a company can be obliged to reduce its emissions. An important aspect of why businesses have an independent legal obligation to respect human rights is the governance gap. Legal protection of fundamental rights was once established to protect individual citizens against the power of the state. However as a result of globalisation, multinational corporations have become equally if not more powerful actors in society, while they are insufficiently regulated by national governments. Consequently, human rights law has evolved and corporations can increasingly be held accountable for human rights violations linked to their business activity and the carbon emissions related to their business activity. In this context it is good to know that only four countries have greater carbon emissions than Shell, being the four major powers: the United States, China, Russia and India. In terms of CO₂ emissions Shell is thus not only comparable to a country, but it is comparable to a major state actor.

The effects of the case in Court and beyond

Judicial outcome

On 21 May 2021, Milieudefensie won the climate case against Shell. A landslide victory. For the first time in history a court held a company liable for contributing to dangerous climate change.

A few main points of this landmark judgment should be emphasised:

- Shell must reduce its net CO₂ emissions by 45% by 2030 relative to 2019 levels
- Shell has a direct obligation to adapt its corporate strategy accordingly and must take immediate action in this respect
- Shell not only has an effort obligation for the emission reduction of the Shell group and its suppliers (scope 1 & 2), but also has a best-efforts obligation for bringing down the carbon footprint of its customers (scope 3) by 45% by 2030.

In its judgement, the Court underlined that human rights law does not define direct human rights obligations on companies. However, at the same time, there is universal agreement that companies are bound to respect human rights. Businesses have their own responsibility. The Court's decision relied heavily on the UN Guiding principles on Businesses and Human Rights as a guideline to interpret the unwritten duty of care in the Dutch Civil Code. The duty of care implies that Shell has an obligation of its own to address climate change as an imminent threat to the human rights of current and future generations of inhabitants of The Netherlands. In this context, the court emphasised the importance of establishing the nature and severity of a violation of this responsibility, as well as the capacity to remedy.

Extra-judicial effects

The case against Shell has shown that all systemic players cannot just follow governments or monitor what happens in society. They have to be proactive. Anyone with the ability to prevent the global humanitarian crisis due to dangerous climate change must use that power. **All large emitters** have climate obligations.

This judgment is a clear sign to **investors**. Fossil fuel investments are high-risk investments. This increased risk perception will lead to an increased cost of capital for oil and gas projects.

“A better environment, starts with yourself” - that’s a longstanding narrative of the Dutch government. The ruling in the Shell-case and the campaign of Milieudéfense accompanying the procedure, contributed to a shift in the **public opinion**. It made people aware of the role of system-players like Shell in the energy transition and the impact of their emissions on dangerous climate change.

The role played by Milieudéfense

The role of campaigning

It’s important to note that the court case is part of a broader and extensive campaign. After the victory, Milieudéfense started an additional campaign and asked 29 other major emitters in the Netherlands to present their climate plans. Research on these plans showed that they are falling seriously short if we want to prevent global warming beyond 1.5°C. Milieudéfense warned the companies that if they do not improve their plans in line with the judgment against Shell, they might end up in court as well. Of course Milieudéfense’s goal is not to take all of these companies to court, but to achieve climate justice and to stop dangerous climate change. As a result of the campaign some of the companies are taking small steps in the right direction without a court case. But not all of them and of course Milieudéfense won’t hesitate to start another court case if needed. The combination of a campaign and the threat of a lawsuit is a winning combination!

The court-case against Shell took Milieudéfense a lot of effort and capacity. The preparations began in 2016, but it wasn’t until 2018 that Milieudéfense first presented Shell with an official letter holding the Shell Group liable for contributing to dangerous climate change. After the filing of the case in 2019, the laborious process continued on an even more intensive level. Any organisation willing to start a court case against a major carbon emitter should not hesitate to do so, but should also be aware of this and be able to invest in a long and intensive process that requires a lot of resources and capacity from the organisation. More cases that build on the case against Shell will strengthen the precedent and increase the pressure on all large emitters.

What next?

Shell is appealing this decision because:

- Shell believes that it is already doing enough to combat climate change.
- Shell claims that it has little influence over the fuel consumption of consumers.
- Shell says it’s unfair that it’s the only company being singled out to reduce its emissions.
- Shell argues it’s up to governments instead of courts to order emission reduction obligations on corporations.

In October 2022, Milieudéfense filed an extensive Statement of Reply and refuted all Shell’s arguments.

More information and resources

To best support groups working on this case or considering a similar law-suit, we've created two guides. In these two guides we describe exactly how we handled the lawsuit from communications to fundraising and what our legal strategy was. Both guides are available in English and Spanish

- https://Milieudéfensie.c.s.nl/actueel/md_how_we_defeated_shell_en_final.pdf
- https://en.Milieudéfensie.c.s.nl/news/defending_the_danger_line.pdf

English translations of the most important legal documents (especially the judgment of the Hague District Court of 21 May 2021 and the Statement of Reply of 18 October 2022) can be found on the website of Milieudéfensie and on the climate case chart of the Sabin Center:

- <https://en.Milieudéfensie.c.s.nl/news/overview-of-legal-documents-climatecase-against-shell>
- <http://climatecasechart.com/non-us-case/Milieudéfensie.c.s.-et-al-v-royal-dutch-shell-plc>

The Greenpeace v Austria case



Constitutional Court
of Austria / European
Court of Human
Rights
Status: **pending**

Summary of the case

The main applicants in this case were people, symbolically representing groups, that are already affected by the climate crisis today and are fighting for more climate action. One farmer, a climate scientist, the Greenpeace CEE director, a Fridays for Future activist and a multiple sclerosis patient. Furthermore, 8060 petitioners joined the case. They were represented by attorney Michaela Krömer and supported by Greenpeace as well as Ökobüro, an umbrella organisation of the Austrian environmental movement.

On 20 February 2020, the case was submitted to the Constitutional Court of Austria. After the case was rejected by the Constitutional Court on 30 September 2020, attorney Krömer filed a complaint before the European Court of Human Rights on 25 March 2021 against the Constitutional Court's rejection, focussing on one particularly affected individual (Mex M., see below).

Originally, the objective of the case was to invalidate the exemption of value added tax on international flights as well as the tax-exemption on kerosine for domestic flights, as they privilege air traffic against other (climate friendlier) modes of transportation, which have no such tax exemption. This approach was taken, since the Austrian Constitution does not allow it to legally challenge the state's general inaction in regards to combating climate change. Therefore it seemed more promising to focus on climate-damaging state action.

At the time of writing (February 2023), the case is still pending before the European Court of Human Rights.

The role played by human rights-based arguments

The petition was based on Articles 2, 8 and 13 of the European Convention on Human Rights (protecting respectively the right to life, the right to a private and family life and the right to an effective remedy when human rights are threatened), as well as Articles 2 and 7 the Charter of Fundamental Rights of the European Union (also protecting the right to life and the right to a private and family life respectively). It should be noted that, as a member of the European Union, the EU's fundamental law has constitutional status in Austria.

The line of argument was that the Austrian Federal Government fails to protect the applicants' rights to life and family life, since the tax-exemptions for aviation privilege environmentally destructive modes of transportation over more sustainable ones. It therefore actively drives temperature rise, which as a consequence is threatening basic human rights. The petition to the Constitutional Court also focused on the principle of equality before the law, guaranteed by the Austrian Constitution. It was argued that this constitutional principle is violated by the privileges for aviation, as citizens using environmentally friendlier modes of transportation are disadvantaged through the tax exemptions leading to lower prices for unsustainable modes of transportation. To rightfully claim that they were subject to the violation of this principle and in order to be eligible as plaintiffs, the applicants had to present train tickets, to prove that they are affected by the unjust regulations. Finally, Article 13 of the European Convention on Human Rights, which protects the right to an effective remedy when human rights are threatened, was used to submit a complaint before the European Court of Human Rights to challenge the Constitutional Court's rejection of the petition.

The effects of the case in Court and beyond

The petition to the Constitutional Court of Austria was rejected, because neither the Court nor the Austrian Minister of Finance shared the applicants opinion that Austria would fail to protect human rights by granting the respective tax-exemptions, nor the opinion that aviation and railbound traffic would be comparable modes of transportation and therefore subject to the principle of equality before the law. The link between tax-exemptions for aviation and the climate crisis was not recognized. Therefore, this ruling reduced the chances for combatting the climate crisis in Austria with legal instruments, as it created a precedent which denies individuals the right to challenge laws that are environmentally destructive. Since inactivity in regards to the climate crisis can't be contested, the prospect of using human rights to fight climate change in Austria is rather poor. For this reason the case was taken to the ECHR as a complaint against the Constitutional Court's ruling - the ECHR's answer to the complaint is still pending.

Apart from the disappointing ruling, the campaign around the case was a success in shifting awareness of the public on the climate crisis. By connecting human rights and the climate crisis, it was made clear that the global temperature rise does not only harm the famously cited polar bears, but every human being in their daily lives. Especially the argument of the injustice in taxation between train and flight transportation hit the nerve of a lot of people. Media interest was very high, and engagement as well as over 8000 people handed in their train tickets to be a plaintiff in the lawsuit.

More information and resources

<http://www.klimaklage.at/>



A Right to Future. The Constitutional Complaint in Germany

Neubauer, et al. v.
Germany
German Federal
Constitutional Court
Status: **decided**



Summary of the case

In February 2020, a group of nine young German people filed a constitutional complaint against Germany's Federal Climate Protection Act ("Bundesklimaschutzgesetz" or "KSG") before the Federal Constitutional Court. The applicants were between 15 and 32 years old, with their lives extending into the second half of the 21st century, when the impacts of global warming will reach a much greater intensity than is already the case. Their families worked in tourism or agriculture and live on islands like Pellworm or Langeoog. They are already experiencing the climate crisis in the form of extreme weather events and sea level rise, and they are worried about their future.

The applicants argued that individual provisions of the Federal Climate Protection Act are incompatible with their rights guaranteed in the Basic Law and therefore unconstitutional. In particular, the complaints pointed to the inadequate reduction target of - 55% greenhouse gas emissions by 2030 (compared to 1990), which is backed up by concrete emission quantities per sector. They also contested the possibility of being able to achieve these inadequate emissions reductions targets through emissions trading abroad. Finally, they argued that all these provisions, as well as Germany's actual legislative omission to implement measures that achieve a sufficient level of protection, violates the fundamental right to life and physical integrity (Art. 2.2 of the Basic Law) against risks of a life-threatening nature and of a numerically incalculable extent. They also argued that the guarantee of human dignity under Article 1 of the Basic Law is affected because the generation of the complainants is deprived of any options for action to protect itself.

The complainants argued that the Climate Protection Act does not take into account the most recent science or IPCC reports, nor does it take into account the binding international legal obligation of Germany and the EU under the Paris Agreement to hold the increase in the global average temperature to "well below 2 °C above pre-industrial levels" and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels.

In Germany, the fundamental rights of the Basic Law are to be interpreted in accordance with the European Convention on Human Rights (ECHR), in particular with Articles 2 and 8. The applicants argued that these provisions imply a right to climate protection, which is translated in each State's obligation to act to the extent of "its" share in preventing dangerous climate change, as the Dutch courts have already established in three instances (see Urgenda case above).

The complainants therefore requested that the Federal Constitutional Court model itself on the courts in the Netherlands when looking at climate science and interpreting legal standards, namely human rights, and the obligation of states to act on the climate crisis.

Three other groups of claimants filed simultaneous constitutional complaints targeting the government's climate protection measures: 1. BUND (Friends of the Earth Germany) and the Association of Solar Supporters and Others in November 2018; 2. Yi Yi Prue and other individuals from Bangladesh and Nepal in January 2020; 3. Steinmetz and other individual German youths in January 2020. The Constitutional Court decided jointly on these complaints.

Historic decision

In April 2021, the German Federal Constitutional Court (BVerfG) announced its decision to set a new standard for climate action and the protection of fundamental rights. The Court stated that today's insufficient climate policies affect tomorrow's freedoms and fundamental rights. It is a constitutional requirement to reduce greenhouse gas emissions and this must no longer be delayed at the expense of younger generations.

The ruling is both ground-breaking and historic. The decision raises the temperature goals of the Paris Agreement and the achievement of climate neutrality to a constitutional status: Article 20a of the Basic Law, which protects "in responsibility for future generations, the natural foundations of life and animals," becomes enforceable (justiciable). With its decision, the Federal Constitutional Court provided a contemporary redefinition of the concept of freedom in the climate crisis. The state's obligation to protect the freedom of the young generation in the future results in an obligation to do more to protect the climate in the present.

The Climate Protection Act was declared unconstitutional in large parts and it was requested to be improved accordingly. The court called on the legislature to follow scientific guidance and present a conclusive emissions reduction plan by the end of 2022 with a greenhouse gas neutrality objective. In doing so, the freedoms and fundamental rights of young and future generations must be safeguarded and the CO2 budget must be distributed in a way that is fair to all generations.

In its decision, the Federal Constitutional Court also emphasized Germany's international responsibility in the global climate crisis and noted that a state cannot evade its responsibility by referring to the greenhouse gas emissions of other states. Just like the Dutch courts in the Urgenda decision, the Federal Constitutional Court required that each state contributes its fair share to climate protection.

The decision was unanimous - no member of the Court disagreed. The core statements of the decision are as follows:

- Climate change is real and legislators must counteract it
- Climate protection is a human right
- Climate protection is justiciable, today and in the future
- Legislators must be guided by the requirements of science and present coherent concepts of what the path to greenhouse neutrality should look like.
- Today's generations are hindering the civil liberties of future generations by allowing themselves too many greenhouse gas emissions by 2030: the Climate Protection Act has inadmissibly shifted the burden of reduction to the future.

The Court did not dwell on admissibility. Unlike the Court of Justice of the European Union in the People's Climate Case (see case analysis below), the Federal Constitutional Court decided that complainants had standing in this case. It exposed that "the mere fact that a very large number of people are affected does not prevent an individual fundamental right from being affected" (with reference to the climate lawsuit before the Administrative Court of Berlin).

This decision is also groundbreaking. It continues the path that Dutch, French and Irish courts, and the Berlin Administrative Court, as well as international human rights bodies, have been paving for years. The decision will hopefully have an impact on the proceedings before the European Court of Human Rights, where several climate lawsuits are currently pending (see the Swiss Ladies case below), also against Germany. It has also inspired other climate cases, for example in [South Korea](#) or [Austria](#).

The decision will forever have considerable significance for environmental law proceedings of all kinds. Article 20a of the Basic Law, with its state objective of protecting the natural foundations of life for future generations, has been given teeth.

In Germany the young complainants and civil society organisations are observing closely the implementation of the Federal Constitutional Court's decision. The new measures announced by the government shortly after the ruling to reduce greenhouse gas emissions by 65% by 2030, 88% by 2040 and to achieve climate neutrality as early as 2045 - are major steps in the right direction. This would have been politically unthinkable before the ruling. It is unclear how these targets will be achieved in concrete terms and transferred to the individual sectors. These goals are not yet in line with the Paris Agreement and a temperature reduction to 1.5 degrees. There is still a way to go.

The role played by Germanwatch

The nine youths were legally represented by the attorney Roda Verheyen from Hamburg. The environmental NGO and CAN Europe member Germanwatch, together with Greenpeace and Protect the Planet, supported the constitutional complaint of the nine young people, but were not acting as complainants themselves. Germanwatch especially supported the plaintiff Lüke Recktenwald on Langeoog. His family were also plaintiffs in the People's Climate Case, supported by CAN Europe, Protect the Planet, Germanwatch and other CAN Europe member organisations.

Germanwatch supports strategic climate lawsuits to accelerate political solutions - such as for ambitious climate protection - where politics and business do not act sufficiently. Through climate litigation, affected people get a voice by presenting their concerns to the courts on behalf of a large number of affected people worldwide, thereby increasing the pressure on politicians and companies to respect human rights and promote sustainable business models. Germanwatch supports the climate plaintiffs with advice, expertise, networking and public relations work.

Since 2015, Germanwatch has been supporting the Peruvian farmer and mountain guide Saúl Luciano Lliuya in a civil climate lawsuit against the German energy company RWE. In this test case, Saúl Luciano Lliuya is demanding that RWE cover 0.5% of the cost for protective measures required at the glacial lake which has been growing menacingly causing the risk of a destructive flood wave. The lawsuit is being heard by the Higher Regional Court of Hamm and is currently in the evidentiary phase.

More information and resources

More information can be found on the following websites:

- <https://www.germanwatch.org/en/constitutional-complaint>
- <https://www.germanwatch.org/de/klimaklagen>
- [Judgment of the Federal Constitutional Court of 24 March 2021](#)
- [Press release of the Federal Constitutional Court - Constitutional complaints against the Federal Climate Change Act partially successful](#)
- [Summary of the Constitutional Complaint](#)
- [Short summary of the decision](#) (in German)
- [Constitutional Complaint](#) (unofficial English translation)
- <http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>
- [Saúl Luciano Lliuya v. RWE](#)

The People v Arctic Oil

The signs reads 'Because it is my right! §112'



Greenpeace Nordic et al v. Norwegian Ministry of Energy and Petroleum
Norwegian Supreme Court / European Court of Human Rights

Status: **pending**

Summary of the case

This case concerns the validity of the production licences awarded in the 23rd licensing round, the first licensing round opening areas in the Barents Sea for oil exploration (the oil industry's first step towards expanding into the Arctic on the Norwegian side). It was brought by two Norwegian NGOs, Greenpeace Nordic and Young Friends of the Earth Norway (YFoE Norway), against the Norwegian ministry for petroleum and energy.

Two major shifts happened leading up to the filing of this case. One of them being the adoption of the Paris Agreement a year before the case was launched. The other was a change to the Norwegian Constitution. More specifically, Article 110b was amended in 2014, resulting in a new Article 112 instead which strengthened the right to a healthy environment.



The case was filed in October 2016. It was before a local court in 2017 and a court of appeal in 2019. Finally, a decision was adopted by the Norwegian Supreme Court on the last working day of the court in 2020. All three levels of the court ruled that the licences were valid, but there were still several victories to be found in how the court interpreted the right to a healthy environment in the context of fossil fuel productions. The organisations, together with six individuals (all youths from YFoE Norway who had worked on the case) lodged a complaint before the European Court of Human Rights in June 2021, where it has been put on hold while awaiting rulings in other climate cases.

The analysis below only focuses on the Norwegian Supreme Court decision. It also provides notes about the ECtHR process where relevant.

The role played by rights-based arguments

Human rights were central to the case. The main argument, as well as all communications outside of the courtroom, were based on Article 112 of the Norwegian Constitution which protects the right to a healthy environment[106].

The centre of the dispute concerned whether the right to a healthy environment, as it is codified in Norwegian law, can be applied to the impacts of the fossil fuel industry. The major challenge that the organisations faced, and ultimately failed at, dealt with causality.

In simple terms, the argument was that the world has already discovered more fossil fuels than can be produced if we are to avoid the most hazardous effects of the climate crisis, and such effects constitute severe violations of all the rights invoked by the organisations. Furthermore, Norway is already emitting too much greenhouse gas emissions, and cannot allow new infrastructure which may lead to petroleum production beyond 2030. This is particularly true in light of Norway's lack of policies to back up existing climate pledges. The applicants also argued that, although it is technically possible to stop the development of an oil field at a later stage when the company applies for a plan for development and operation of petroleum deposits (PDO), it is practically impossible because a PDO application has never been denied in Norway. It was also argued that traditional environmental harms such as potential oil spills could constitute a violation of the right to a healthy environment.

In addition, the case made use of Articles 2 and 8 of the European Convention on Human Rights (protecting respectively the right to life and the right to family life). This was argued in length by the organisations' lawyers, but it ultimately received little attention from the judges. The Convention's Articles are only mentioned 12 times throughout the entire judgement, compared to Article 112 of the Norwegian Constitution being mentioned 94 times. Only four of the Convention's mentions are related to the Supreme Court's interpretation, leading to the conclusion that they basically ignored it.

[106] Article 112 of the Norwegian Constitution reads as follows:

"Every person has the right to an environment that is conducive to health and to a natural environment whose productivity and diversity are maintained. Natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well.

In order to safeguard their right in accordance with the foregoing paragraph, citizens are entitled to information on the state of the natural environment and on the effects of any encroachment on nature that is planned or carried out.

The authorities of the state shall take measures for the implementation of these principles".

The argument for Articles 2 and 8 of the European Convention of Human Rights was that the climate crisis amounts to a real and immediate threat, citing the Dutch Supreme Court's ruling in the 2019 Urgenda case (see case analysis above) that fossil fuels is one of the largest contributors to global warming, and that the history shows that no oil company has been rejected development of an oil field in Norway because of environmental concerns. The Government recognised the dangers of the climate crisis, but responded that organisations cannot claim victim status under the European Convention of Human Rights.

The effects of the case in Court and beyond

Judicial effects

The case resulted in a loss for the environmental organisations. The Norwegian Supreme Court concluded that, although Article 112 of the Norwegian Constitution might afford individuals some rights, its exact wording as well as some of the preparatory works of the Article indicates that there is no duty to abstain from certain policies, other than in cases of gross violations. The lawmakers must themselves be able to decide which measures to implement to safeguard the right to a healthy environment. The threshold for the court to overturn a decision based on Article 112 is therefore very high, and this case does not reach that threshold.

However, the decision also clearly says that at one point, the Government will itself have a duty to deny PDO on the basis of environmental harm and impact on the climate. The Court indeed exposes that “the authorities will have a right and an obligation to disprove the PDO if the general consideration for the climate and environment at the time so indicates”[107]. However, the judgement does not mention when this duty is triggered. According to the Norwegian National Human Rights Institution, the trigger should be the 1.5° C degree target, and new fossil fuel projects should therefore be declared illegal unless the specific project can prove how it is in line with 1.5° C. In addition, the judgement exposes that oil exploration was legal, but this does not necessarily mean that oil production is. The Court has left this ambiguous.

The Court also exposed that subsection 2 of Article 112 of the Norwegian Constitution required the impact assessment accompanying a PDO to include an assessment of how the oil field impacts the climate, including combustion emissions from any fossil fuels produced. Although Norway does not have direct responsibility for the combustion of emissions, it does have an obligation to provide information about those emissions.

These are major victories in Norwegian oil policy that should not be understated, although they are often left unmentioned because the overall case was lost.

[107] Para 223 of the judgment. An unofficial English translation can be found [here](#).

Extra judicial effects

The case received much criticism, especially in the early days, for politicising the courts and bringing important policy decisions outside of the democratic framework. However, it also gained a lot of support from legal communities and experts, with high-profiled law-professors calling it the case of the century. The case attracted major attention over several years. It has become a landmark case which is being taught at every law faculty in the country, both in the context of climate litigation and the law of right to review.

The role played by youth activists

Over the years, activists tagged “§112” outside town halls across the country, signs with text along the lines of “I’m demanding my right! §112” or “I’m suing the state §112” were frequently sighted at climate protests, and artists made ice sculptures with the text “§112”. Together with the more general slogan, “No Arctic Oil”, §112 became the brand of a larger movement behind the applicants. This was the first time §112 had been at the core of a lawsuit, and an important part of the case was to show that people outside the court were taking ownership of their right to a healthy environment.

What next?

The case is now pending before the European Court of Human Rights. It has been put on hold while awaiting rulings in other climate cases before the Grand Chamber of the Court: Verein KlimaSeniorinnen v. Switzerland (Swiss Ladies case below), Carême v. France, and Duarte Agostinho et al v. Portugal and 32 other states. Once judgments will be issued on these three cases, the People v. Arctic Oil case will be assessed by the Court.

The Swiss Ladies case

©Miriam Künzli KlimaSeniorinnen



Verein
KlimaSeniorinnen
Schweiz and Others
v. Switzerland
Swiss Supreme Court
/ European Court of
Human Rights
Status: **pending**

Senior Women for Climate Protection (plaintiffs) vs. Government of Switzerland
Supported by Greenpeace Switzerland

Third party interveners: Germanwatch, Greenpeace Germany and Scientists for Future, and many more

At Issue: Adequacy of Swiss government's climate change mitigation targets and implementation measures and possible infringement on human rights.

Summary of the case

In 2016, a group of senior women (supported by Greenpeace Switzerland), filed a lawsuit in Switzerland against the Federal Council, the Federal Department of the Environment Transport, Energy and Communications (DETEC), the Federal Office for the Environment, and the Federal Office for Energy, alleging that these bodies of the Swiss Government had failed to uphold obligations under the Swiss Constitution and European Convention on Human Rights (ECHR) by not steering Switzerland onto an emissions reduction trajectory consistent with the goal of keeping global temperatures well below 2°C above pre-industrial levels.

Specifically, the plaintiffs alleged the government had violated articles 10 (right to life), 73 (sustainability principle), and 74 (environmental protection) of the Swiss Constitution and articles 2 and 8 ECHR (protecting the right to life and the right to private and family life respectively).

The applicants argue that their demographic group is especially vulnerable to the heat waves expected to result from climate change. They called upon the Swiss Parliament and the relevant federal agencies to develop a regulatory approach to several sectors to achieve greenhouse gas emissions reductions of at least 25% below 1990 levels by 2020, and at least 50% below 1990 levels by 2050. The petition criticised both the targets under discussion at the time in Parliament (20% by 2020, and 30% by 2030) and the measures by which the Government would pursue those targets.

After a dismissal and a lost appeal with the final decision from the Swiss Supreme Court in May 2020, the Klimaseniorinnen had exhausted all national remedies available and decided on 26 November 2020 to file the case with the European Court of Human Rights (ECtHR). The core points of the case are as follows:

- Switzerland's inadequate climate policies violate the women's rights to life and health under Articles 2 and 8 ECHR.
- The Swiss Federal Supreme Court rejected their case on arbitrary grounds, in violation of the right to a fair trial under Article 6 ECHR.
- The Swiss authorities and courts did not deal with the content of their complaints, in violation of the right to an effective remedy under Article 13 ECHR.

The ECtHR preliminary accepted the case, granted it priority status and called on Switzerland to submit a response by 16 July 2021, which was timely filed.

On 13 October 2021, the plaintiffs replied to the Swiss government's response to the ECtHR, arguing once again that the Swiss government failed to protect their rights to life and private life by failing to adopt the necessary legislative and administrative framework to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels.

On April 26, 2022, the Chamber of the ECtHR relinquished the case to the Grand Chamber of the Court. The case is now being examined by the ECtHR's Grand Chamber of 17 judges on account of the fact that the case raises a serious question affecting the interpretation of the Convention (Art 30 ECHR).

On 2 December 2022, the plaintiffs submitted a petition highlighting observations on the facts, admissibility and the merits.

The role played by Germanwatch and other NGOs

23 third party interventions have been submitted to the court, including the intervention of CAN member Germanwatch, together with Greenpeace Germany and Scientists for Future. The objective of a third party intervention is to provide the court with information to assist it in reaching its decision. The case of the Klimaseniorinnen carries the potential of having a broad impact beyond the direct parties involved, so a third party intervention is an effort to ensure the development of good precedents and jurisprudence.

The intervention submitted by Germanwatch, Greenpeace Germany and Scientists for Future, focuses on the the applicability of the Convention and the legal reasoning of fundamental rights violations in this case, on the merits by presenting different dimensions of causality and different ways to determine the level of ambition of obligations of states to reduce emissions. The intervention also provides information on jurisdiction and attribution concerning scope 3 emissions.

Germanwatch has supported several climate cases in the past, for example the People's Climate Case together with CAN-Europe before the Court of Justice of the European Union and the Constitutional Complaint in Germany which lead to a groundbreaking ruling in 2021[108] and has become an important reference in many climate cases currently pending like the Swiss case.

What next?

On 29 March 2023, a public hearing will take place at ECtHR in Strasbourg (9:15 – 11.30). The Association of the Klimaseniorinnen counts more than 2000 members who will possibly be in Strasbourg to attend the hearing, supported by a big network of organisations and citizens.

On the same day, another hearing will be held in a French climate litigation case brought forward by the former mayor Mr.Careme of the city of Grande-Synthe against the French government. At issue: a violation of Article 8 of the ECHR based on exposure to climate risk caused by insufficient government action.

More information and resources

The legal team representing the Senior Women is composed of: Cordelia Bähr, Martin Looser, Raphaël Mahaim and, since November 2022, British lawyers Jessica Simor and Marc Willers. More information can be found on the following websites:

- <https://www.klimaseniorinnen.ch/>
- <https://www.youtube.com/watch?v=8u6qKHVVISw&t=13s>
- <http://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/>

[108] German Federal Constitutional Court, Neubauer et al. v. Germany, 29 April 2021. More information here: <http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>

The People's Climate Case

Armando Ferrão
Carvalho and Others
v. The European
Parliament and the
Council
Court of Justice of
the European Union

Status: **decided**



Summary of the case

In 2018, families from Portugal, Germany, France, Italy, Romania, Kenya, Fidji and the association Sáminuorra (representing the indigenous Sámi youth) brought an action before the courts of the European union. These plaintiffs alleged that the EU's 2030 climate target at that time was insufficient to avoid dangerous climate change and that it threatened their fundamental rights. The application had two objectives. The first one was to annul several key legislative acts of the EU climate architecture (the ETS, ESR and LULUCF Regulation). The second objective was to use extra-contractual liability to force the EU to set more stringent greenhouse gas emissions reduction targets. After a first dismissal based on procedural grounds by the European General Court, the applicants appealed the decision before the Court of Justice of the European Union (CJEU). The latter ultimately upheld the first decision and rejected the plaintiffs' claim as inadmissible on standing grounds for failing to demonstrate that they were individually affected by the climate policy of the EU.

The role played by rights-based arguments

The case aimed to draw the attention of the EU courts to the fact that, although climate change has been recognised as a problem since 1992 by the EU, it is still not taking adequate measures to protect the fundamental rights of the complainants, which have already been violated due to the impacts of climate change. The applicants argued that the three key pieces of legislation at the heart of the complaint (ETS, ESR and LULUCF) violated higher-ranking legal obligations contained in:

- The EU treaties, as they include a duty to protect human rights and the environment
- The EU Charter of Fundamental Rights, as it protects the right to health, the right to education, the right to work, the right to property and the right to equal treatment
- International Treaties including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement

The plaintiffs also argued that the EU's 2030 climate target, which at the time was to reduce greenhouse gas emissions by 40% compared to 1990 levels, was objectively insufficient to protect their human rights as outlined above.

The effects of the case in Court and beyond

Despite all the scientific evidence provided by the plaintiffs in their application and the Court's acknowledgement that the climate crisis is hitting them, the CJEU refused to speak about the merits (meaning the EU's climate inaction and its impacts on fundamental rights), but only focused on procedural rules. The Court announced that the plaintiffs did not have a right to challenge the EU for its climate inaction, based on old case law dating back to the 1960s, whereby an individual must be "uniquely" affected by an EU legislative act in order to be allowed to challenge it^[109].

The Court feared that, if this criterion of uniqueness was not applied, many people would then bring cases to challenge the EU on environmental grounds. This is in clear contradiction with the fundamental principle of human rights, as the interpretation of the EU courts means that the more universal and serious the problem, the fewer people can seek legal protection before the EU courts. With this decision, the EU courts have not joined the wave of national and supranational courts that play an important role in holding governments accountable for their climate inaction.

The Court's restrictive interpretation of this uniqueness criterion limits access to courts for citizens, and the People's Climate case therefore highlighted the lack of access to justice in the European Union on environmental and climate issues. Access to justice is a basic right that is protected by the Aarhus Convention, an international treaty that applies to the EU and all its member states^[110]. The judgement in this case reinforced the findings made by the Aarhus Convention Compliance Committee^[111], a board of independent experts in charge of monitoring the correct implementation of the Aarhus Convention. As a result, access to justice in environmental matters has been discussed several times in recent years.

[109] See Lena Hornkohl, ['The CJEU dismissed the People's Climate Case as inadmissible: the limit of Plaumann is Plaumann'](#) European Law Blog (published on 6 April 2021).

[110] See note 75 above. Article 9(3) of the Aarhus Convention states that "members of the public [must] have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."

[111] See for example the findings and recommendation made by the Aarhus Convention Compliance Committee towards the European Union in its case [ACCC/C/2008/32 Part I](#) (in 2011) and [Part II](#) (in 2017). The Committee found that "the jurisprudence established by the [CJEU] is too strict to meet the criteria of the Convention".

In 2021, the EU Aarhus Regulation^[112] was amended and its scope extended. This Regulation provides for access to justice to challenge non-legislative acts from EU institutions. It would not have been applicable in the People's Climate Case (which sought to annul 3 legislative acts), but this extension of the Aarhus Regulation's scope was a much needed step to start addressing the EU's environmental democracy and public accountability problem. More recently, during the legislative update of several key climate legislative files as part of the Fit for 55 negotiations, there was pressure to introduce provisions granting access to justice at national level. This initiative ultimately failed, but the European Commission has committed itself to assess access to justice in EU member states in 2024 and make legislative proposals where appropriate^[113]. Efforts to improve access to justice provisions at all levels will therefore continue in the near future.

The People's Climate case also contributed to another debate outside the court. Despite the fact that the CJEU refused to speak about the climate crisis, a massive number of citizens, scientists and NGOs supported the plaintiffs and eventually made the EU to increase its 2030 climate target to reduce greenhouse gas emissions to at least 55%. However this is still far from putting the EU on track to do its fair share under the Paris Agreement to limit global temperature rise to 1.5°C.

The People's Climate Case was the first lawsuit of its kind on the European level and supported by such a network of organisations from different countries who were in permanent contact with the plaintiffs and who coordinated the press, media and advocacy work around the lawsuit. The plaintiffs were legally represented by the attorney Roda Verheyen and Professor Gerd Winter. The scientists of the think tank Climate Analytics contributed interdisciplinary scientific background knowledge to this legal dispute and provided facts to demonstrate how the plaintiffs are affected by climate change and the feasibility of more ambitious EU climate targets by 2030.

List of organisations involved in the case: Notre affaire a tous (France) 2celsius (Romania), ZERO (Portugal), Green Transition Denmark, Germanwatch, Protect the Planet (Germany), CAN Europe.

More information and resources

<https://peoplesclimatecase.caneurope.org/>

<https://www.youtube.com/watch?v=1CvFjPmNL4Y&t=237s>

[112] Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

[113] Frederik Hafen and Romain Didi, '[Legal challenges by NGOs, citizens key to climate battle](#)' Social Europe (published on 22 December 2022).