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Edited by
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A definitive Rights Turn in Climate Change Litigation

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Rights Turn in Climate Change Litigation

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Introduction

This collection of essays has been developed within the framework of a Jean Monnet European project dedicated to the "Rights Turn in Climate Change Litigation" and brings together the outcomes of research and teaching activities carried out as part of a university course specifically designed to analyse the growing centrality of fundamental rights in the governance of the climate crisis. Its purpose is to offer young scholars a comprehensive and interdisciplinary overview of the ongoing normative and jurisprudential transformations, in the awareness that climate change today also constitutes a matter of genuine constitutional pedagogy.

The contributions illustrate the current state of play of climate change litigation at both the national and supranational levels, tracing the evolution of the international regulatory framework and the gradual consolidation of climate-related obligations. The reference to the advisory opinion requested from the International Court of Justice highlights the increasing significance of the legal dimension of climate protection as a parameter of state responsibility, while strategic litigation – from the Juliana model to the Urgenda *experience – demonstrates how the language of rights has become the primary instrument for pursuing more ambitious national climate policies.*

Within this framework, the judgment in Verein KlimaSeniorinnen Schweiz v. Switzerland *of the European Court of Human Rights plays an emblematic role and is presented as a paradigmatic case study. The Strasbourg decision illustrates how issues such as access to climate justice, victim status, causation and scientific evidence now stand at the core of the protection of fundamental rights, resulting in the recognition of increasingly enforceable positive obligations.*

Alongside the supranational dimension, the collection highlights the contribution of administrative jurisdiction as the forum in which the climate responsibility of public authorities assumes an immediate operational form. The case of Greenpeace v. Spain *shows how administrative courts are called upon to engage with questions of legality, discretion and judicial review of administrative inertia, with administrative law playing a particularly significant role in balancing procedural guarantees with substantive rights connected to climate protection.*

Another important aspect concerns the role of the European Union, which has become progressively more decisive in shaping instruments and climate policies with tangible effects on the configuration of public obligations (as shown by the Green Deal, nature-based solutions, and the ongoing development of a regulatory model that recognises the protection of ecosystems as a precondition for the effectiveness of rights).

Finally, particular attention is devoted to non-governmental organisations, not only as promoters of strategic climate litigation but also as actors of democratic participation and channels through which constitutional principles are given concrete implementation, ranging from the protection of substantive equality to responsibility towards future generations.

This collection is addressed especially to young scholars, in the conviction that engagement with the climate issue has now become an integral part of a conscious legal culture. Training jurists capable of reading reality through the lens of climate justice means, today more than ever, contributing to the construction of a more responsible, attentive and future-oriented constitutional citizenship.

Patrizia Magarò

The State of Play in Rights-Based Climate Change Litigation

SUMMARY: 1. Introductory remarks. – 2. The evolution of the international climate regulatory framework. – 3. Climate obligations and the advisory opinion of the International Court of Justice. – 4. The rights perspective in climate change litigation. – 5. Rights-based strategic climate litigation: the *Juliana* model. - 6. The expansion of the *Urgenda* doctrine in Europe. – 7. Further trends in climate rights cases. – 8. Towards the recognition of a right to a life-sustaining climate system*?*

ABSTRACT: The article analyses the rise of rights-based climate litigation within the broader evolution of the international climate framework. It examines how recent developments – including the advisory opinion request before the International Court of Justice – are reinforcing the understanding of climate protection as a legal obligation grounded in fundamental rights. From the *Juliana* litigation in the United States to the diffusion of the *Urgenda* doctrine in Europe, courts are increasingly called upon to assess the adequacy of State climate action. The article then reviews emerging trends, showing how judicial reasoning is gradually converging towards the idea of a life-sustaining climate system as a necessary condition for the enjoyment of human rights. While not yet recognised as a fully autonomous right, this entitlement is progressively taking shape through judicial practice, paving the way for a new phase of climate constitutionalism.

1. *Introductory remarks*

This contribution aims to offer a critical overview of the evolving dynamics of contemporary climate litigation, with particular attention to what has been defined as the "rights-based"[1] turning point in judicial action concerning climate matters. What initially appeared as a "legal experiment promoted by climate activists and monitored by legal scholars" has now become a "mainstream global phenomenon"[2], whose most significant developments this analysis seeks to outline.

From this perspective, no preliminary historical or scientific considerations will be provided of the developments that first fostered the consolidation of climate research and the study of global temperature increase caused by human-generated carbon dioxide emissions, and then led to the definitive affirmation of a "climate science"[3].

[1] See J. PEEL, H. M. MOSOFSKY, A *rights turn in climate change litigation,* in *Transnational Environmental Law* 7(1), 2018, 37 ff.

[2] K. POUIKLI, *Editorial: a short history of the climate change litigation boom across Europe*, *ERA Forum,* vol. 22, 4, 2021, 572.

[3] For these aspects, see, in particular, H. LE TREUT, R. SOMERVILLE, U. CUBASCH, Y. DING, C. MAURITZEN, A. MOKSSIT, T. PETERSON, M. PRATHER, *2007: Historical Overview of Climate Change*, in IPCC, *Climate Change 2007: The Physical*

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Our analysis proceeds from the premise that climate change is not a matter of opinion, but rather a "fact", grounded in objective and on verifiable data, around which a broad scientific consensus has formed. This consensus finds its most authoritatively synthesis in the periodic Reports of the Intergovernmental Panel on Climate Change (IPCC), the main international scientific forum on climate issues. Established in 1988 by the World Meteorological Organisation and the United Nations Environment Programme (UNEP), the IPCC constitutes the global reference institution for the assessment of climate change, with the task of providing a clear and scientifically sound overview of the current state of knowledge and of the potential environmental and socio-economic impacts of the phenomenon[4].

Nor is it necessary to dwell on the causes that have undermined the climate balance since the late 18th century. Scientific research has amply demonstrated the anthropogenic nature of climate change, to the point that the term "Anthropocene"[5] has been coined to designate the era in which humans, through their activities, constitute the main driver of environmental and climatic alteration. Climate change is a phenomenon originating from the development process that began with the Industrial Revolution, through the release of greenhouse gases into the atmosphere resulting from the increasing consumption of fossil fuels (coal, oil and natural gas) in the production of goods and services. These emissions intensify the greenhouse effect, causing global warming and climate alterations, whose consequences are not confined to the places where they originate, but extend on a planetary scale.

As such, anthropogenic climate change is a "cosmopolitan issue by definition", concerning the "governance of human activities that determine climate balance, with potentially harmful effects on ecosystems, on human life and on other living beings"[6]. It is a phenomenon whose

Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Cambridge, 2007.

[4] The IPCC is the intergovernmental body tasked with reviewing the state of scientific knowledge on climate change, assessing its impacts, and formulating recommendations and strategies for its mitigation. Its first assessment report dates back to 1990 and has since been followed by five further reports up to 2023, which constitute a key point of reference for both the scientific community and international climate negotiations. Technical and advisory in nature, the IPCC examines scientific evidence, evaluates the environmental and social consequences of climate change, and provides guidance to policymakers in the development of relevant regulatory and intervention strategies. On the role of the IPCC, see, for example, K. De Pryck, M. Hulme (eds.), A *Critical Assessment of the Intergovernmental Panel on Climate Change,* Cambridge, 2022; H. Hughes, *The IPCC and the Politics of Writing Climate Change,* Cambridge, 2024.

[5] See P. J. Crutzen, E. F. Stoermer, *The Anthropocene,* in *Global Change Newsletter,* 2000, 41, 17–18; P. J. Crutzen, *Welcome to the Anthropocene!,* Milano, 2005, 35, places the beginning of the Anthropocene – "the geological epoch of man" – in 1784, when James Watt invented the steam engine and humanity consequently "began to influence the overall balance of the planet". For further studies, see L. J. Kotzé, *Global Environmental Constitutionalism in the Anthropocene,* Oxford, 2016; N. Wallenhorst, C. Wulff (eds.), *Handbook of the Anthropocene. Humans between Heritage and Future,* Cham, 2023; D. Amirante, *Environmental Constitutionalism. Legal Atlas for the Anthropocene,* Bologna, 2022.

[6] See A. Pisanò, *The Climate Issue as a Cosmopolitan Issue. Together We Stand, Divided We Fall,* Torino, 2024, 16-18.

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impacts may manifest themselves in indeterminate future timeframe and across non-delimitable physical spaces. Moreover, the consequences of climate change are unevenly distributed across territories, depending on the level of economic development, the vulnerability of individual countries and the adaptive capacity of their populations. A similar asymmetry characterizes historical responsibility, as the States' contribution to greenhouse gas emissions has varied markedly over time.

The severity of these effects has led the global scientific community to describe the situation as a veritable "climate emergency"[7], requiring immediate and decisive action by States (as reiterated by the IPCC in the latest Synthesis Report of its Sixth Assessment Report[8]).

The criticality of the problem is further accentuated by the increasing probability, associated with each additional rise in the global average temperature, of exceeding the so-called "tipping points", that is, thresholds beyond which the climate system undergoes irreversible transformations, with no possibility "to return to the initial state even if the drivers of the change are abated"[9] .

For the purposes of this study, it seems particularly significant to focus attention on the progressive development of international cooperation on climate issues. It is precisely through the elaboration of "globally" oriented legal instruments that the international community has sought to provide a coordinated response to one of the most urgent contemporary emergencies. In this perspective, the growing use of climate litigation must be understood against the backdrop of the persistent fragility of international climate governance instruments. Although they have facilitated the establishment of important frameworks for cooperation, these instruments have often proved incapable of ensuring concrete results, both in terms of effectively reducing climate-changing emissions and guaranteeing an adequate level of protection for rights compromised by the effects of the climate crisis.

The slowness of multilateral negotiation processes and the absence of genuinely effective enforcement mechanisms, together with the ongoing lack of climate ambition on the part of

With specific reference to the Italian debate on the constitutional implications of climate change, see M. CARDUCCI, *Cambiamento climatico (diritto costituzionale)*, in *Digesto delle discipline pubblicistiche*, Torino, 2021, 51 ff. On environmental and climate constitutionalism, see D. AMIRANTE, *Costituzionalismo ambientale. Atlante giuridico per l'Antropocene*, Bologna, 2022; D. AMIRANTE, S. BAGNI (eds), *Environmental Constitutionalism in the Anthropocene*, Lonon-New York, 2022; D. AMIRANTE, R. TARCHI (eds), *Il costituzionalismo ambientale fra antropocentrismo e biocentrismo. Nuove prospettive dal diritto comparato*, DPCE Online, vol. 58, SP2, 2023.

[7] The global climate emergency was confirmed by the international scientific community in early 2020: see W. J. RIPPLE, C. WOLF, T. M. NEWSOME, P. BARNARD, W. R. MOOMAW, *World Scientists' Warning of a Climate Emergency,* in *BioScience,* Vol. 70 (1), 2020, 8–12. Within the European Union, the official declaration "on the climate and environment emergency" was adopted by the European Parliament in its resolution of 28 November 2019 [2019/2930 (RSP)].

[8] See IPCC, *2023: Summary for Policymakers,* in *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)], Geneva.

[9] IPCC, 2018: *Annex I: Glossary* [Matthews, J.B.R. (ed.)], 559.

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States, have contributed to encouraging civil society to pursue alternative legal strategies. Local communities, associations, youth activists and even sub-national authorities have gradually identified the judicial system – at national, supranational and international level – as a privileged channel for demanding accountability, strengthening political pressure on public authorities (and corporations) and stimulating the adoption of more effective measures to fight climate change.

2. *The evolution of the international climate regulatory framework*

The environmental question was first addressed as a "major issue" in 1972, on the occasion of the Stockholm Conference[10], which resulted in the adoption of a Declaration, an Action Plan and, above all, the establishment of the United Nations Environment Programme (UNEP). The aim of the Declaration was to set up guidelines for environmental protection, to urge States to take the necessary measures "in order to ensure that serious or irreversible damage is not inflicted upon ecosystems" and to establish a duty of cooperation between industrialised and developing countries, also introducing the principle of "sustainable development" (a concept that would later be further elaborated in subsequent international instruments).

The Stockholm Conference provided a "considerable stimulus"[11] to international cooperation on environmental issues[12]. Building on the institutional impetus of UNEP, the World Charter for Nature was adopted in 1982 and, three years later, the Vienna Convention for the Protection of the Ozone Layer was concluded. The same period also witnessed significant developments in the protection of oceans and seas, most notably through the 1982 Montego Bay Convention, which established key rules on the use of marine and oceanic natural resources.

[10] See UNITED NATIONS, *Report of the United Nations – Conference on the Human Environment, Stockholm, 5-16 June 1972,* New York, 1973.

[11] See A. CARLISLE, *The United Nations Conference on The Human Environment Stockholm 1972,* in *Forestry chronicle,* 1972, Vol. 48 (3), 118.

[12] It should be clarified from the outset that the concept of "climate system" has its own autonomy with respect to the broader notion of "environment", to the point that, even at the global level, an autonomous field of study has developed distinct from traditional environmental law. It is no coincidence that reference is now made to "global climate constitutionalism" and "climate change law" as autonomous and distinct subject areas. See, on this point, M. MEHLING, *The Comparative Law of Climate Change*, in *Review of European Community and International Environmental Law*, 3, 2015, 341 ff. ; D. FARBER, M. PEETERS (eds), *Climate Change Law*, Cheltenham 2018; J. JARIA-MANZANO, S. BORRAS (eds), *Global Climate Constitutionalism*, Cheltenham 2019; and, for a comprehensive reconstruction of the positions taken in academic literature, P. VIOLA, *Climate Constitutionalism Momentum: Adaptive Legal Systems*, Berlin, 2022, 42 ff. On the concept of "global climate constitutionalism", see in particular J. JARIA-MANZANO, S. BORRÁS (eds.), *Research Handbook on Global Climate Constitutionalism*, Cheltenham, 2019. See also A.O. JEGEDE, *Climate Change and Environmental Constitutionalism: A Reflection on Domestic Challenges and Possibilities*, in E. DALY, J.R. MAY (eds.), *Implementing environmental constitutionalism: Current global challenges*, Cambridge, 2018.

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The first World Climate Conference[13] was held in Geneva in 1979, on the initiative of the World Meteorological Organisation. It was attended mainly by representatives of the scientific community, and for the first time concerns about the risks associated with potential global climate change were raised in an international forum[14]. The Conference's final declaration (the World Climate Conference Declaration) urged States to "utilize existing knowledge of climate and climatic variation in the planning for social and economic development".

Within this broader context of international cooperation and growing concern for the fate of the planet, the well-known "Our Common Future" report (the "Brundtland Report")[15] published in 1987 by the United Nations World Commission on Environment and Development, also played a crucial role. It established a number of core principles that have profoundly influenced the global environmental debate, among them the definition of sustainable development as that which "meets the needs of the present without compromising the ability of future generations to meet their own needs" stands out. The Report also proposed integrated strategies to reduce energy and resource consumption in developed countries, control demographic growth, ensure access to basic resources (food, water, energy) and enhance the conservation of ecosystems.

The Brundtland Report provided the conceptual basis for the 1992 United Nations Conference on Environment and Development (the "Rio Conference"), which marked the official entry of climate change into the international political agenda, leading to the adoption of the United Nations Framework Convention on Climate Change (UNFCCC).

The Convention, which entered into force in 1994 and currently counts 197 States Parties in addition to the European Union, constitutes the main international legal instrument on climate protection. The objective of the treaty, as set out in Article 2, is to "stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system". Such a level must be achieved within a time frame sufficient to allow ecosystems to adapt naturally, to safeguard food security, and to enable sustainable economic development.

The UNFCCC has the merit of having introduced for the first time, in an international agreement, a legal definition of climate change, considered a "common concern of humankind". According to Article 1(2), it consists of "a change which is attributed directly or

[13] The meeting, known by the acronym WCC-1, was convened by the WMO in cooperation with several United Nations specialized agencies, including UNESCO, FAO, UNEP, ICSU (International Council for Science), together with numerous other scientific partners of international relevance. See WORLD METEOROLOGICAL ORGANISATION, *Proceedings of the World Climate Conference,* Geneva, 1979.

[14] WORLD METEOROLOGICAL ORGANISATION, Declaration of the World Climate Conference, Geneva, 1979.

[15] G. H. BRUNDTLAND, *Report of the World Commission on Environment and Development, Our Common Future,* Geneva, UN Document A/42/427, 1987.

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indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods"[16].

The same provision also incorporates, from the scientific literature, the notions of "climate system" and "adverse effects" of climate change. The climate system is defined as "the totally of atmosphere, biosphere, hydrosphere, geosphere and their interactions", that is, a dynamic interconnected complex whose functioning depends on delicate equilibria and feedback loops. "Adverse effects" refer to those changes "in the physical environment or in animal and plant life due to climate change that have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems for the functioning of socio-economic systems or for human health and well-being".

Although it is the first global legal instrument on climate change, the UNFCCC does not set binding quantitative emission reduction targets[17], but establishes general obligations requiring Parties to adopt national policies and measures to mitigate climate change and to limit greenhouse gas emissions. The Convention was deliberately designed as a flexible framework, capable of subsequent integration through Protocols intended to introduce specific and binding commitments.

The UNFCCC also laid down the key principles of international climate governance: intergenerational responsibility, the precautionary principle, equity and, above all, that of "common but differentiated responsibilities". This principle implies that all States share responsibility for addressing climate change, albeit with obligations reflecting their economic capacities and historical contributions to emissions[18].

Developed countries are required to assume a leading role in reducing emissions and in providing financial and technological support to developing countries. In order to facilitate cooperation, the foundations have been laid for the establishment of a common and uniform methodology for calculating anthropogenic greenhouse gas emissions.

The flexibility of the mechanisms provided for was necessary to facilitate the ongoing negotiations between the Parties and, for this purpose, an *ad hoc* body was created – the

[16] On the legal definitions of climate and climate change in international law instruments, see, for example, D. BODANSKY, J. BRUNNÉE, L. RAJAMANI, *International Climate Change Law,* Oxford, 2017, 34 ff.

[17] On this subject, see, for example, D. BOANSKY, *The United Nations Framework Convention on Climate Change. A commentary,* in *Yale Journal of International Law,* 1993, 451 ff.; P. SANDS, *The United Nations Framework Convention on Climate Change,* in *Review of European Community and International Environmental Law,* 1992, (3) 270 ff.; J. WERKSMANN, *Designing a compliance system for the UN Framework Convention on Climate Change,* in J. CAMERON, J. WERKSMANN, P. RODERICK (eds.), *Improving compliance with international environmental law,* London, 1996, 90 ff.

[18] On this point, see, among many others, M. WEISSLITZ, *Rethinking the Equitable Principle of Common but Differentiated Responsibility,* in *Indiana Journal of Global Legal Studies,* 2002, 473-509; L. RAJAMANI, *The Reach and Limits of the Principle of Common but Differentiated Responsibilities and Respective Capabilities in the Climate Regime,* in *Oxford Handbook of International Climate Change Law,* Oxford University Press, 2016.

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Conference of the Parties (COP) – which brings together almost the entire international community and serving as a standing forum for deliberation on climate issues.

In implementation of the UNFCCC, during the third meeting of the COP, held in Japan in 1997, the Kyoto Protocol was adopted (which entered into force in 2005, after a complex ratification process and is currently binding on 192 Parties, including the European Union). Under the Protocol, industrialized countries and those with economies in transition – the States listed in Annex I of the UNFCCC – were obliged to reduce their greenhouse-gas emissions, over the period 2008–2012, by 5.2 per cent compared with 1990 levels.

However, the Protocol immediately showed some significant limitations; the United States – one of the largest historical emitters – signed but never ratified it, and many developing countries were exempted from reduction obligations, in accordance with the principle of historical responsibility of the industrialized nations[19].

The need for a shift in the global approach to the climate crisis therefore prompted the international community to elaborate a new, more inclusive and flexible international treaty, which was adopted in 2015 and entered into force in 2016. Some States, which had previously been exempted from binding reduction target (notably China and India) had become among the world's largest emitters of greenhouse gases. For this reason, it was essential to revise the understanding of common but differentiated responsibilities and overcome the previous undifferentiated classification of developing countries.

Unlike the Kyoto Protocol, the Paris Agreement provides for universal participation. All States – both developed and developing – undertake to keep the increase in the global average temperature well below 2°C above pre-industrial levels, with the ambitious goal of limiting it to 1.5°C. The main operational tool for doing so is the "Nationally Determined Contributions" *(*NDCs), that is, national emission reduction plans, which are to be updated and made progressively more effective every five years[20].

From a legal perspective, the achievement of the objectives is not binding *strictu sensu*; what is binding, instead, are the procedural obligations relating to the preparation, communication and updating of NDCs, as well as those concerning transparency and monitoring of the actions taken (albeit in the absence of sanctioning mechanism).

Like all international climate instruments, the Paris Agreement focuses on two complementary types of action: on the one hand, addressing the causes of climate change, and on the other, responding to its effects, both directed towards achieving climate neutrality,

[19] On these aspects, see, *inter alia*, A. M. ROSEN, *The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change,* in *Politics & Policy,* Vol. 43, (1), 2015, 30 ff.

[20] See Articles 2, 3 and 4 of the Paris Agreement. On this subject, see, for example, J. BLAU, *The Paris Agreement. Climate Change, Solidarity, and Human Rights,* Cham, 2017 and S. MALJEAN-DUBOIS, L. RAJAMANI, *L'Accord de Paris sur les changements climatiques du 12 décembre 2015,* in *Annuaire français de droit international,* vol. 61, 2015, 615 ff.

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understood as a balance between emissions produced and those removed from the atmosphere, by the second half of the 21st century.

The first category includes mitigation measures (which require coordinated global action), and are defined as "human intervention to reduce emissions or enhance the sinks of greenhouse gases", in order to bring the global warming within controllable limits. Mitigation has a preventive character, is science-based, and is calibrated to the so-called "carbon budget"[21]. Only these measures are aimed at effectively reducing anthropogenic greenhouse gas emissions into the atmosphere, which are responsible for the average increase in global temperatures in recent decades.

Adaptation, on the other hand, refers to initiatives – mainly undertaken at local level – to reduce vulnerability and the harm caused by the adverse effects of climate change, consisting of a "process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities" (according to the IPCC definition)[22].

3. *Climate obligations and the advisory opinion of the International Court of Justice*

The legal instruments and documents referred to above help to outline the complex "source" from which the climate obligation that States are required to fulfil originates. It derives from the UNFCCC, the Paris Agreement, and is further supplemented by related sources, such as the IPCC Reports, in addition to domestic constitutional and legislative provisions on environmental and climate matters. Within the European Union legal order, reference should also be made to European Union law, both primary and secondary, which transposes and reinforce the UNFCCC and the Paris Agreement.

As already highlighted, the Paris Agreement (and for EU member States, EU legal provisions) binds the Parties to the pursuit of a long-term goal, to be achieved through a planning and periodic review mechanism based on five-year cycles. At the end of each cycle, every Party must submit an updated national action plan reflecting "the highest possible ambitions", in line with a logic of progressively enhancement of commitments. This obligation is grounded in the principle of common but differentiated responsibilities, which remains a

[21] THE IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, H. Lee and J. Romero (eds.)], Geneva 2023, 121 defines the "carbon budget" as "the maximum amount of cumulative net global anthropogenic CO2 emissions that would result in limiting global warming to a given level with a given probability, taking into account the effect of other anthropogenic climate forcers. This is referred to as the Total Carbon Budget when expressed starting from the pre-industrial period, and as the Remaining Carbon Budget when expressed from a recent specified date".

[22] On this subject, see, for example, B. LIM, E. SPANGER-SIEGFRIED, *Adaptation Policy Frameworks for Climate Change: Developing Strategies, Policies and Measures,* Cambridge, 2004 and J. B. SMITH, S.S. LENHART, *Climate change adaptation policy options,* in *Climate Research,* 6/1996, 193-201.

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key parameter for the equitable distribution of global climate burdens. Through the NDCs, States communicate not only the measures envisaged to reduce greenhouse gas emissions, but also those aimed at increasing the capacity to adapt to the already manifest effects of climate change. The Agreement also includes specific international solidarity commitments, designed to support the most vulnerable countries both in mitigation processes and in the development of greater resilience.

However, it should be recalled that the Paris Agreement does not impose quantified obligations relating to emission reductions but leaves to individual Parties the discretion to determine autonomously the scope and intensity of their national efforts. The only legally binding constraint concerns the adoption and periodic updating of NDCs, which must "undertake rapid reduction thereafter in accordance with the best available science".

The Paris Agreement has therefore set out a precise science-based climate obligation, underpinned by IPCC assessments, which States are required to pursue through a "maximum effort" or "due diligence" standard in order to achieve the overall objective set out in the UNFCC, namely the stabilization of greenhouse gas concentrations in the atmosphere "at a level that would prevent dangerous anthropogenic interference with the climate system".

Within the European Union, which participated in the global negotiations as a regional economic integration organisation, the Member States adopt a collective climate target expressed through a common NDC[23] .

In implementing the Agreement[24], however, the EU has effectively transformed the due diligence obligation into an obligation of result, through two regulations (adopted in 2018[25] and in 2021[26] respectively). The first introduced binding annual emission-reduction obligations for Member States for the period 2021-2030, while the second – within the

[23] See the document Update of the NDC of the European Union and its Member States, 16 October 2026.

In 2021, the European Commission presented a package of reforms ("Fit for 55"), as part of the wider European strategy to combat climate change (the so-called "European Green Deal"), whose ultimate objective is to achieve climate neutrality in Europe by 2050. On this subject, see V. ZEBEN, *The European Green Deal: The future of a polycentric Europe?*, in *European Law Journal*, No 26/2022, 300 ff.

[24] The Paris Agreement was ratified in 2016 by the European Union, which recognized its compliance with the environmental objectives set out in Article 191 TFEU, with the aim of "ensuring a secure, sustainable, competitive and reasonably priced energy supply for its citizens".

[25] Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 amended in 2023 [Regulation (EU) 2023/857 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement, and Regulation (EU) 2018/1999].

[26] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law").

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framework of the European Green Deal – set out the legal architecture for achieving climate neutrality. Both regulations imposed mandatory reduction target on Member States and, in particular, the 2021 regulation established climate neutrality by 2050 and an intermediate target of -55% by 2030, further supplemented by the Commission's recommendation (in February 2024) of a 90% reduction of such gases by 2040[27].

As mentioned above, under the Paris Agreement, Parties are required to engage in legislative and political processes directed towards the formulation, administration and enforcement of the relevant measures set forth in their NDCs; however, the wide margin of discretion left to the States risks reducing the effectiveness of climate action in the absence of mechanisms to sanction insufficient efforts.

Furthermore, it is true that the achievement of the substantive objectives of climate law requires collective action by the international community, with particular regard to the historically largest emitting States, but the correct observation that "inaction, fake activism, downward activism" do not appear to be "legitimate options falling within the States' discretion"[28], clashes with contemporary political reality, which highlights a growing tendency in some countries to deny or downplay the magnitude of the climate crisis, accompanied by a persistent reluctance to fully implement international obligations. The United States offers a paradigmatic example: after rejoining the Paris Agreement in 2021, it initiated the withdrawal process once again, further weakening multilateral cooperation[29]. Such choices – frequently driven by fossil-fuel economic interests – undermine the overall effectiveness of the Agreement and exacerbate the tension between climate protection needs and the political-economic priorities of domestic legal systems.

[27] See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Securing our future. Europe's 2040 climate target and path to climate neutrality by 2050 building a sustainable, just and prosperous society, Strasbourg, 6.2.2024, COM (2024) 63 final.

[28] A. PISANÒ, *The climate issue as a cosmopolitan issue,* cit., 50-51.

[29] On 20 January, President Donald Trump adopted a series of executive orders announcing the withdrawal of the United States from both the 2016 Paris Agreement on climate change and the World Health Organisation. These measures have raised concerns regarding their potential repercussions for climate policy, public health, international cooperation. By means of the executive order "Putting America First in International Environmental Agreements", the President instructed the U.S. Ambassador to the United Nations to officially notify the withdrawal from the 2016 Paris Agreement, stating that the withdrawal and all related obligations should take immediate effect. The ambassador was at the same time instructed to communicate withdrawal from any other agreements or commitments connected to the United Nations Framework Convention on Climate Change.

However, Article 28 of the Paris Agreement provides that a withdrawal becomes legally effective only one year after formal notification, unless a different date is stipulated. The United States – the world's largest historical emitter of greenhouse gases – had already withdrawn from the Paris Agreement in 2020 (during President Trump's first term) and subsequently rejoined in 2021 (under President Biden).

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It should also be noted that there are still differences in interpretation regarding the nature and extent of state obligations, as defined by sources of climate law[30]. Some scholars emphasise the substantive and procedural flexibility of the Agreement, while others have denied that the NDCs constitute legally binding obligations, describing them instead as political commitments or programmatic aspirations[31].

The identification of the specific obligations incumbent on the States Parties is also particularly controversial. Legal scholars have struggled with the difficulty of translating concepts such as "maximum possible effort" in the definition of NDCs, or "progression" in subsequent climate commitments, into legally operative terms. In doctrinal debate, these formulations are variously characterized either as obligations of result[32] or as obligations of conduct, the latter being confined to the adoption of policies and measures without any guarantee of actual achievement of the stated objectives[33].

The interpretative uncertainties surrounding the scope and legal content of States' climate obligations have conferred particular significance upon the recent intervention of the International Court of Justice (ICJ). In its advisory opinion of 25 July 2025[34], the Court provided useful interpretative clarifications to better understand the nature and the extent of the international climate obligations.

The request originated from a resolution adopted by the United Nations General Assembly in 2023[35], inviting the ICJ to identify the obligations incumbent upon States under international

[30] On the legal standard of conduct under the Paris Agreement, see C. VOIGT, *The Paris Agreement: What is the standard of conduct for parties?,* in *Questions of International Law,* Zoom-in 26, 2016, 19, recalling that Article 4(2), second sentence, "which provides that 'Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such NDCs' […] has been interpreted as not establishing an individual obligation on each Party to implement or achieve its NDC". On this subject, see also D. BODANSKY, *The Legal Character of the Paris Agreement,* in *Review of European, Comparative, and International Environmental Law,* 2016, 142-150; L. RAJAMANI, *Ambition and Differentiation in the 2015 Paris Agreement,* in *International and Comparative Law Quarterly,* vol. 65, 2, 2016, 493 ff.; C. VOIGT, *The Compliance and Implementation Mechanism of the Paris Agreement,* in *Review of European, Comparative & International Environmental Law,* vol. 25, 2: The Paris Agreement, 2016, 137.

[31] On these aspects, see, in particular, L. RAJAMANI, *The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations,* in *Journal of Environmental Law,* 28, 2016, 337 ff. and D. BODANSKY, *The Legal Character of the Paris Agreement,* cit., 148; B. MAYER, *Obligations of conduct in international law on climate change: A defence*, in *Review of European, Comparative & International Environmental Law*, 27, 2, 2018, 101 ff.

[32] See P. MAYER, *The Paris Agreement and the Concept of Legal Obligation,* in *Climate Law,* 2018, 179-202; A. SAVARESI, *The Paris Agreement: A New Beginning?* in *Journal of Energy & Natural Resources Law,* 2016, 16-26.

[33] For broader reflections, see for instance J. BRUNNÉE, *Reflections on the Paris Agreement,* in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht,* 2016, 897–930; D. FRENCH, A *Reappraisal of Sovereignty in the Light of Global Environmental Concerns,* in *Legal Studies,* 2001, 376–399.

[34] INTERNATIONAL COURT OF JUSTICE, *Obligations of States in respect of Climate Change,* Advisory Opinion of 23 July 2025.

[35] UN GENERAL ASSEMBLY, *Resolution 77/276, Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change,* adopted on 29 March 2023, A/RES/77/276. The issue

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law "to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases", for the benefit of both present and future generations. The General Assembly also asked the Court to clarify "the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment".

The proponents of the request argued that States are, under both conventional and customary international law, already subject to individual duties of prevention. The principle of no-harm, according to which States have an obligation to refrain from causing significant environmental damage beyond their national jurisdiction, would also apply to greenhouse gas emissions, that can be classified as a form of transboundary pollution. Several interventions also drew attention to the advisory opinion of the International Tribunal for the Law of the Sea[36], emphasising that greenhouse gases can be considered a form of marine pollution and pointing out that the causal link between the emissions attributable to specific States and the resulting climate harm can be scientifically determined.

Following a procedure marked by a very high level of participation, the ICJ unanimously[37] issued an opinion clarifying the nature and scope of States' climate obligations and providing significant guidance on the criteria for assessing the adequacy of State action (with corresponding implications for corporate responsibility as well).

The Court first described climate change as "an urgent and existential threat", affirming that "the global climate system should be protected for both present and future generation because it is an integral and vital component of the environment".

The central issue before the Court concerned whether climate change should be treated as a separate phenomenon, regulated primarily by specific treaties (as argued by the main polluting countries), or whether it instead falls within the broader framework of general international law on transboundary harm and State responsibility (as maintained by many small island countries).

In its carefully reasoned opinion, the ICJ is unequivocal in affirming the binding character of both mitigation and adaptation obligations deriving from the corpus of principles, customary rules and treaty provisions that together form the architecture of international climate law, irrespective of whether they are framed as obligations of result or of conduct.

Equally significant is the Court's confirmation that international climate obligations do not constitute a detached *lex specialis*, but must instead be regarded as an integral part of general

was referred to the Court by the United Nations General Assembly in 2023, at the initiative of a broad coalition of States led by Vanuatu, one of the Pacific microstates whose very survival is threatened by sea-level rise. The initiative – originally launched by a group of university students – gradually gained the support of a large number of States, NGOs and scientists worldwide.

[36] INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA, *Request for an advisory opinion submitted by the Commission of Small Island States on Climate Change and International Law.* Advisory opinion of 21 May 2024.

[37] INTERNATIONAL COURT OF JUSTICE, *Obligations of States in respect of climate change,* Advisory Opinion of 23 July 2025.

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international law and interpreted accordingly in light of relevant general principles and customary norms – including equity (also in its intergenerational dimension), good-faith cooperation, the prohibition of causing significant environmental harm within or beyond national jurisdiction, sustainable development, the principle of common but differentiated responsibilities, the precautionary principle, and the rules governing State responsibility for internationally wrongful acts.

The ICJ accordingly concludes that the customary rules on State responsibility also apply to climate change. Of particular interest is the Court's statement that, since analogous principles are reflected in other international environmental treaties (to which it expressly referred), it follows that even States which are not Parties to the UNFCCC or to the Paris Agreement remain bound by these obligations as a matter of general international law, and may incur international responsibility where their conduct results in significant environmental harm or in substantial increases in greenhouse-gas emissions (an implicit allusion, in this respect, to the position of the United States).

Adopting the 1.5°C threshold endorsed by the Parties to the Paris Agreement as the primary benchmark guiding mitigation and adaptation efforts, the Court further held that State compliance must be assessed in the light of a "rigorous" standard of due diligence. This constrains State discretion in the definition of NDCs and governs both the obligation to formulate, communicate and maintain progressively more ambitious contributions – subject to meaningful monitoring and informed by the best available science – and the adoption of the necessary legislative, administrative, budgetary or other measures to give them effect[38].

The Court also rejected the so-called "drop in the ocean" argument[39], frequently invoked by governments to deny the causal relevance of emissions attributable to a single State. What constitutes the internationally wrongful act is not the emission of greenhouse gases as such, but the breach of the obligation to protect the climate system against harmful effects arising from those emissions. While recognizing that climate change is the result of cumulative emissions, the Court emphasizes that "it is scientifically possible to determine each State's total contribution to global emissions, taking into account both historical and current emissions"[40].

Precisely because scientific evidence now makes it possible to determine with sufficient accuracy the contribution of specific State (or private actor) conduct to climate-related harm, it follows that "the failure of a State to take appropriate action to protect the climate system from [greenhouse gas] emissions, including through fossil fuel production, fossil fuel

[38] For the ICJ, NDCs, "rather than being entirely discretionary [...] must satisfy certain standards under the Paris Agreement" and their implementation through mitigation measures is not merely a domestic matter but constitutes an obligation of international conduct (para. 249).

[39] See in this regard, among many others, M. CRAIG, *Drops in the Ocean: The Hidden Power of Rights-Based Climate Change Litigation*, in *Case Western reserve Journal of International Law*, vol. 56, 1, 2024, 151 ff.

[40] INTERNATIONAL COURT OF JUSTICE, *Advisory Opinion of 23 July 2025,* para. 429.

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consumption, the granting of fossil fuel exploration licenses, or the provision of fossil fuel subsidies, may constitute an internationally wrongful act which is attributable to that State".

The ICJ's opinion falls within a field – international environmental law – which has so far been governed mainly by soft law instruments[41] and, although formally not binding, offers an authoritative interpretation of both treaty-based and customary obligations[42]. It will therefore be interesting to observe the extent to which this opinion will, in practice, influence State conduct in the direction of adopting more ambitious targets to urgently bridging the emissions gap and securing compliance with their international obligations.

This is all the more relevant given that, as of 10 October 2025, nearly 134 States have yet to submit their updated NDCs[43] (including the European Union itself), on the basis of which a clear assessment may be made of the seriousness of national commitment to addressing climate change and of the extent to which the Court's reasoning is taken into consideration.

The examination of further aspects of the ICJ's opinion, which are certainly destined to fuel a broad doctrinal debate in the coming years, lies beyond the scope of the present analysis, that remains deliberately limited to those elements most closely connected with the issues addressed here. It may be observed, in conclusion, that although the opinion does not settle all outstanding interpretative questions, it nevertheless provides an authoritative framework capable of guiding not only academic debate but also the future implementation of the Paris Agreement and the further development of judicial practice[44].

In this regard, it should be noted that the flexible approach – at times even described in doctrine as "lax"[45] – that has characterised many national climate policies, frequently marked

[41] See, for example, P. De Stefani, *Climate change: the CIG and the Italian Court of Cassation mark a turning point in climate justice,* in Annuario dei diritti umani, 28 July 2025.

[42] For an assessment of the "emissions gap", namely the difference between the estimated global greenhouse gas emissions resulting from the full implementation of the latest nationally determined contributions and the emissions levels under the least-cost pathways required to limit warming to specific thresholds (from 1.5°C up to 2°C), see, in particular, United Nations Environment Programme, *Emissions Gap Report 2024: No more hot air … please! With a massive gap between rhetoric and reality, countries draft new climate commitments,* Nairobi, 2024, 26 ff.

[43] See the information available on the website of Climate Action Tracker , in the section "2035 Climate Target Update Tracker".

[44] On the ICJ's Advisory Opinion on climate change, see the debate hosted on Verfassungsblog and, in particular, the contributions by D. R. Boyd, *A Right Foundational to Humanity's Existence. World's Highest Court Embraces the Right to a Healthy Environment*, 30 July 2025; M. A. Tigre, M. Bönnemann, A. De Spiegeleir, *The ICJ's Advisory Opinion on Climate Change. An Introduction*, 24 July 2025; C. Heri, *Human Rights in the ICJ's Climate Opinion. A Comparative Evaluation*, 1 August 2025; J. A. Carrillo Bañuelos, S. A. Samuel, *Judicial Convergence on Climate Change. The Advisory Opinions of the ICJ, the IACtHR, and the ITLOS*, 16 September 2025; C. Voigt, *"Doing the Utmost". Due Diligence as the Standard of Conduct in International Climate Law*, 3 September 2025; M. Gehring, *When Custom Binds All States Reflections on Customary International Law in the ICJ Climate Advisory Opinion*, 15 August 2025; N. S. Reetz, *State Responsibility and the ICJ's Advisory Opinion on Climate Change. One Step at a Time*, 7 August 2025.

[45] See A. Pisanò, *Il diritto al clima. Il ruolo dei diritti nei contenziosi climatici europei,* Napoli, 2022, 143.

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by low levels of ambition and inadequate implementation, has led to a pronounced gap between the obligations assumed at the international level and the measures effectively adopted at the national level.

It is precisely in response to this gap that the phenomenon of climate litigation has progressively emerged and consolidated over the past decade, giving rise to an increasingly extensive and interdisciplinary body of literature, and the ICJ itself seems to have taken its most recent developments into account.

The opinion, in fact, may be understood as providing additional arguments in support of those who seek more robust State action in addressing the climate emergency, thereby likely contributing to a further rise in litigation. These disputes are typically aimed, on the one hand, at preventing public authorities from engaging in climate-harmful conduct, and, on the other, at requiring the adoption of positive protective measures against the risks associated with climate change (including, in certain cases, corporate liability, for instance with respect to the granting of fossil-fuel extraction or use permits)[46].

The Court also expressly affirmed that States' human rights obligations extend to the adverse effects of climate change, significantly referring to national and regional case law[47]. While unanimously recognizing that the right to a clean, healthy and sustainable environment constitutes not only a human right but also a necessary precondition for the effective enjoyment of all other fundamental rights, the Court did not, however, articulate the normative consequences flowing from this acknowledgement. Nonetheless, the opinion clearly reinforces the "rights-turn" that now increasingly characterises the expanding landscape of climate litigation, to which more detailed reflections will be devoted later in this study.

4. *The rights perspective in climate change litigation*

As we have seen, the general climate obligation incumbent upon the State takes the form of a complex legal construction which intertwines heterogeneous fragments of international

[46] In this regard, see, for example, J. UDELL, F. TAN, *New Standards in Government Framework Litigation: Legal Implications of the ICJ Advisory Opinion on Climate Change,* in *Climate Law. A Sabin Center blog,* 5 August 2025, who observe that "one major area of climate litigation that the advisory opinion will impact is 'government framework' litigation – that is, cases that challenge governments' weak mitigation ambition (so-called 'Ambition Gap cases') or failure to implement measures to meet their targets (so-called 'Implementation Gap cases')". On this point, see also L. MAXWELL, A. WILLIAMSON, S. MEAD, *Future Trends in Climate Litigation Against Governments,* in *Climate Law. A Sabin Center blog,* 4 April 2024. According to Z. WEISE, *World's top court says climate inaction can breach international law*, in *Politico*, 23 July 2025, the ICJ's opinion "also opened the door to countries hit by climate disasters and sea-level rise suing big polluters such as the U.S. and the EU".

[47] On this point, see, for example, J. UDELL, F. TAN, *New Standards in Government Framework Litigation: Legal Implications of the ICJ Advisory Opinion on Climate Change,* in *Climate Law. A Sabin Centre blog,* 5 August 2025.

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law and unfolds across multiple normative layers. Its sources have progressively expanded, and, in addition to those belonging to domestic legal orders – which translate international obligations into constitutional, legislative and regulatory provisions and thereby contribute to delineating a multi-level architecture of climate responsibility – one must also include, within the European legal space, the European Convention on Human Rights; similarly, in other regional systems, an equivalent protective function is performed by the American Convention on Human Rights and the African Charter on Human and Peoples' Rights.

The decisive turning point is once again represented by the Paris Agreement, which marks a departure from earlier approaches not only with respect to the shift towards a global and inclusive climate strategy, but also – and above all – in view of its connection with the protection of human and fundamental rights[48].

Although the Paris Agreement does not formally constitute a human rights treaty[49] (being an international climate instrument adopted under the UNFCCC and not centred on codifying specific legal obligation in this area), it nevertheless contains an important recognition of the role of rights in climate action.

This acknowledgement is made explicit in the Preamble, which provides that "Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, the empowerment of women and intergenerational equity".

This express reference, although not binding, has significantly influenced the development of case law and public policies inspired by a climate justice approach, which systematically integrates the dimension of rights into the fight against climate change[50].

It should nevertheless be noted that the close link between rights and climate change had already been formally recognised in previous instruments and international declarations, so that the Paris Agreement represents rather the consolidation of an interpretative paradigm that was already in the process of taking shape.

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[48] See, in this regard, B. J. PRESTON, *The influence of the Paris Agreement on Climate Litigation: Legal Obligation and Norms (part. I)*, in *Journal of Environmental Law*, 33, 1, 2021.

[49] It is worth noting, however, that the Brazilian Federal Supreme Court has essentially attributed the nature of a human rights treaty to the 2015 Paris Agreement. See *Arguição de descumprimento de preceito fundamental: ADPF 708,* 4/07/2022, in which the Court stated (para. 17) that "the Constitution recognizes the supra-legal nature of the international treaties on human rights to which Brazil is a party, under the terms of its article 5, §2. And there is no doubt that the environmental issue fits in that category. […] Environmental law treaties are a species of the genus human rights treaties and enjoy, for this reason, supranational status. Thus, there is no legally valid option of simply omitting to combat climate change".

[50] See, in particular, A. SAVARESI, T. MCVICAR, *Human Rights and the Paris Agreement's Implementation Guidelines: Opportunities to Develop a Rights-based Approach,* in *Review of European, Comparative & International Environmental Law,* 30(1), 2021, 54 ff.

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A first important step in this direction can be found in a 2008 resolution of the United Nations Human Rights Council, which states that climate change "poses an immediate and far-reaching threat to people and communities around the world"[51]. This position was followed, in 2009, by the Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the relationship between climate change and human rights[52]. That document reiterated the first principle of the 1972 Stockholm Declaration on the Human Environment, recognising the existence of a "fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being". The report also highlighted how the effects of climate change disproportionately affect people who are already in situations of vulnerability, due to factors such as poverty, gender, age, disability or minority status.

A further step was taken in 2019, when the United Nations Human Rights Council reaffirmed that climate change increases both the frequency and the severity of sudden-onset disasters and slow-onset events, thereby significantly impairing the full enjoyment of human rights[53]. A decisive turning point occurred in October 2021, when the same body, for the first time, recognised the right to a clean, healthy and sustainable environment as a universal human right[54]. This recognition was subsequently reinforced by the landmark resolution adopted by the United Nations General Assembly in July 2022[55], which affirmed that this right is closely linked to existing international law and therefore requires the full implementation by States of multilateral environmental agreements[56].

The link between climate change and fundamental rights has since been corroborated through a wide range of documents and initiatives originating from United Nations bodies and agencies (including, in particular, several reports by the Special Rapporteur on the human right to a clean, healthy and sustainable environment). In 2020, a Joint Statement on Human Rights and Climate Change was adopted by five UN committees[57]; in 2021, the OHCHR published the

[51] UN HUMAN RIGHTS COUNCIL, *Resolution 7/23 – Human Rights and Climate Change,* 28 March 2008.

[52] UN HUMAN RIGHTS COUNCIL, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights,* A/HRC/10/61, 15 January 2009.

[53] UN GENERAL ASSEMBLY, Resolution 41/21, *Human Rights and Climate Change,* adopted by the Human Rights Council on 12 July 2019, A/HRC/RES/41/21.

[54] UN GENERAL ASSEMBLY, Resolution 48/13, *The human right to a clean, healthy and sustainable environment,* adopted by the Human Rights Council on 8 October 2021, A/HRC/RES/48/13.

[55] UN GENERAL ASSEMBLY, Resolution 76/300, *The human right to a clean, healthy and sustainable environment,* 28 July 2022, A/RES/76/300.

[56] These obligations had already been outlined in *the Framework principles on human rights and the environment,* in *the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* (UNITED NATIONS GENERAL ASSEMBLY, UN Doc. A/HRC/37/59 (2018).

[57] UN, INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, *Statement on human rights and climate change,* 14 May 2020, HRI/2019/1.

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"Frequently Asked Questions on Human Rights and Climate Change"[58], UNEP issued its "Making Peace with Nature" report[59], and various UN agencies endorsed a joint declaration recognising the right to a healthy environment[60].

It is also worth recalling that "environmental" and "climate" rights include procedural guarantees such as the right of access to environmental information, the right to participate in decision-making processes, and the right of access to justice. These procedural rights are increasingly invoked in climate litigation, particularly in cases aimed at establishing State responsibility for inaction or insufficient ambition in reducing greenhouse-gas emissions.

In this perspective, rights-based climate litigation, that is, litigation founded on the alleged violation of human or fundamental rights, operates as the mechanism through which climate inaction is translated into legal responsibility. It represents a dynamic form of legal action rooted in the intersection between international obligations, the protection of fundamental rights, and principles of extra-contractual civil liability (with reference, in common law systems, to tort law and the principle of duty of care)[61].

As already noted, a distinctive feature of the regime outlined in the Paris Agreement lies in the particularly wide margin of discretion left to States in defining their Nationally Determined Contributions. The essentially voluntary and self-determined nature of these commitments, combined with the absence of sanctioning mechanisms, generates a significant asymmetry between the scientific urgency of mitigation and the weak legal enforceability of State obligations.

Individuals and civil society organisations lack direct channels through which to trigger the international responsibility of States, and they cannot bring claims before bodies such as the International Court of Justice, which remain reserved for inter-State disputes. This structural absence of international enforcement mechanisms has fostered the emergence of domestic and regional courts as the only realistically accessible means of protection. Applicants thus tend to frame State climate inertia as a breach of positive obligations to protect rights (such as the rights to life, to health, and to a clean environment, as well as the principle of intergenerational equity).

Access to domestic and regional rights jurisdictions therefore operates not merely as an individual remedy, but as a response of civil society to governmental inaction, functioning as a means to induce States to adopt more ambitious climate policies. In this sense, climate

[58] UN HUMAN RIGHTS, Office of the High Commissioner, *Frequently Asked Questions on Human Rights and Climate Change,* New York and Geneva, 2021.

[59] UN ENVIRONMENT PROGRAMME, *Making Peace with Nature,* February 2021.

[60] UNITED NATIONS AGENCIES, *Joint Statement on the Right to a Healthy Environment,* 8 March 2021.

[61] On the use of tort law to establish liability in relation to climate change, see R. COX, *A Climate Change Litigation Precedent: Urgenda Foundation v The State of the Netherlands*, in *CIGI Papers*, No. 79, November 2015, 1-2.

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litigation now constitutes a concrete judicial mechanism for assessing the adequacy of State mitigation efforts.

In this regard, it should be noted that, according to the definition adopted by the United Nations Environmental Programme, "climate change litigation" (or "climate litigation") includes "cases that raise material issues of law or fact relating to climate change mitigation, adaptation or the science of climate change. Such cases are brought before a range of administrative, judicial and other adjudicatory bodies"[62]. This is a deliberately broad definition, intended to encompass a heterogeneous spectrum of proceedings, differing in their purposes, actors, legal bases and procedural instruments[63].

Overall, since the 2000s, such litigation has experienced unprecedented growth, with a significant concentration in the United States of America. In recent years, however, within this dynamic scenario, what scholars have defined as a "rights turn"[64] has progressively emerged

[62] See UNITED NATIONS ENVIRONMENT PROGRAMME - SABIN CENTRE FOR CLIMATE CHANGE LAW, *Global Climate Litigation Report: 2025 Status Review*. Climate change in the courtroom. Trends, impacts and emerging lessons, Nairobi, 2025, 1. This definition guides the collection of cases included in the Climate Change Litigation Databases, developed and maintained by the Sabin Center for Climate Change Law at Columbia Law School.

D. MARKELL, J. B. RUHL, *An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?*, in *Florida Law Review*, vol. 64, 2012 (1), 27, define climate change litigation as "any piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts".

[63] Scholars have proposed various classifications of climate litigation, based, for example, on the nature of the defendant (public authorities, private companies, multinationals), the legal sources invoked (administrative law, environmental legislation, constitutional norms, international treaties, etc.), and the objectives pursued (compensation, prevention of future damage, adjustment of public policies, sanctions). On the different typologies of climate litigation, see, for example A. M. MORENO MOLINA, *El derecho del cambio climàtico. Retos, instrumentos y litigios*, Valencia 2023, 543 ff. For a survey of climate cases by jurisdiction and legal forum, see CENTER FOR HUMAN RIGHTS AND ENVIRONMENT, INSTITUTE FOR GOVERNANCE & SUSTAINABLE DEVELOPMENT, *Compendium of key climate change jurisprudence*, 10 June 2025.

On climate litigation more generally, see for example S. BALDIN, P. VIOLA, *L'obbligazione climatica nelle aule giudiziarie. Teorie ed elementi determinanti di giustizia climatica*, in *DPCE*, 3/2021, 597 ff.; J. SETZER, L. C. VANHALA, *Climate change litigation: A review of research on courts and litigants in climate governance*, in *WIREs Climate Change*, 10, 3, 2019, 580 ff. On the typology of different claims that may arise in climate change litigation see D. MARKELL, J. B. RUHL, An empirical Assessment of Climate Change In The Courts: A New Jurisprudence Or Business As Usual?, in *Florida Law Review*, vol. 64, 1, 16 ss. On the differences between environmental and climate litigation, see M. A. TIGRE, D. WINTER DE CARVALHO, J. SETZER, *IEA v. Brazil: When a court accepts the legally disruptive nature of climate change*, in *Climate Law, A Sabin Center blog*, 21 December 2021.

[64] See J. PEEL, H. M. MOSOFSKY, A *rights turn in climate change litigation,* cit., 37 ff. A. SAVARESI, J. AUZ, *Climate change litigation and human rights: pushing the boundaries*, in *Climate Law*., vol. 9, 2019, 244 ff.; K. YOSHIDA, J. SETZER, *The trends and challenges of climate change litigation and human rights*, in European Human Rights Law Review, vol. 2, 2020, 140 ff.

On this topic, see C. RODRÍGUEZ-GARAVITO, *Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action*, in C. RODRÍGUEZ-GARAVITO (ed), *Litigating the Climate Emergency: How Human Rights, Courts and Legal Mobilization Can Bolster Climate Action*, Cambridge, 2021. This strand of climate

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at a global level. This is a paradigmatic shift in which legal actions are grounded not only (or not primarily) in administrative law and traditional environmental regulations, but increasingly on international, supranational and constitutional law concerning human and fundamental rights[65].

This procedural strategy broadens the legal framework of reference, enabling claimants to rely on obligations derived from instruments such as the European Convention on Human Rights (ECHR), the American Convention on Human Rights and other regional charters, as well as from national constitutions protecting rights to life, health and, in some cases, explicitly the environment.

Rights-based climate litigation therefore assumes an inherently "strategic" dimension[66], as legal action are brought not merely to secure judicial redress but also – and often primarily –

litigation encompasses (i) cases in which governments are held responsible for violations of human rights or of a "duty of care" owed to their citizens; and (ii) cases challenging the constitutionality of legislation relating to climate mitigation or adaptation, or its incompatibility with international obligations.

[65] According to M. GOLNARAGHI, J. SETZER, N. BROOK, W. LAWRENCE, L. WILLIAMS, Climate Change Litigation. Insights into the evolving global landscape, The Geneva Association, 2021, 6, "the first wave of climate litigation (pre-2007) was predominantly in the U.S. and Australia, with cases primarily against national governments to raise environmental standards. The second wave (2007–2015) involved a surge in climate cases with expansion to European countries and courts, primarily against governments to accelerate climate policy and tortious cases against corporations for their causal contribution to climate change. The third wave (post-2015) is characterized by the expansion of litigation to other jurisdictions, increases in volume and pace, and new types of claims. The most prominent cases involve novel causes of action and the application of established legal duties. These include shareholder actions against corporate leadership or claimants using constitutional and human rights laws to force governments and companies to adopt more ambitious climate policies".

[66] As K. GURUPARAN, H. MOYNIHAN, *Climate change and human rights-based strategic litigation*, Chatham House, 2021, 1, "climate change and human rights-based strategic litigation" constitutes a deliberate legal strategy aimed at achieving broader social transformation and "is helping to bridge a gap between international pledges and governmental action at the national level, constituting an important 'bottom-up' form of pressure on governments to do their 'fair share' in tackling climate change". Strategic climate cases typically rely on carefully selected claimants in order to shape a suitable narrative. See J. Peel, R. Markey-Towler, *Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases*, in German Law Journal, 22(8), 2021, 1484 ff.

On strategic litigation more generally, see H. DUFFY, *Strategic Human Rights Litigation. Understanding and Maximizing Impact*, Oxford, 2018. In the Italian debate, A. PISANÒ, *La responsabilità degli Stati nel contrasto al cambiamento climatico tra obbligazione climatica e diritto al clima*, in *Ethics & Politics*, XXIV, 2022, 3, 362, notes that climate change litigation constitutes "a particular species of strategic litigation, calibrated on the 'climaltering legal relationship' that interweaves human activities and climate change"; see also S. VALAGUZZA, *Liti strategiche: il contenzioso climatico salverà il pianeta?*, in *Diritto processuale amministrativo*, 2021, n. 2, 293 ff.

According to J. SETZER, C. HIGHAM, Global trends in climate change litigation: 2025 snapshot, London, 2025, 3 and 8, "Strategic litigation can be understood as litigation where the claimant seeks to both win the individual case and influence the public debate or change the behaviour of a targeted group of actors in relation to climate action". In 2024, "at least 226 new climate cases were filed […] bringing the total number of cases filed to date to 2,967 across nearly 60 countries globally. Over 80% of 2024 case filings can be considered strategic".

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to catalyse quantitative and qualitative improvements in State climate policies. In this way, these proceedings operate simultaneously as a mechanism of legal accountability and as instruments of political and social pressure, since on the one hand they seek judicial outcomes capable of constraining or directing public action, while on the other they aim to raise public awareness and stimulate more ambitious governmental intervention[67].

The "Global Climate Change Litigation Database" (the most comprehensive repository on the matter, set up in 2011 and regularly updated by the "Sabin Centre for Climate Change Law" at Columbia Law School) recorded, as of 5 October 2025, 392 climate disputes (decided and pending) based on the invocation of rights: 201 in the United States (largely framed as constitutional claims*)*, and 191 in other jurisdictions, out of a constantly increasing total of more than 3,000 cases[68]. These figures reflect not only a general quantitative expansion compared with previous years, but also the growing diffusion of rights-based climate litigation, which, as has been observed, has now entered a more "mature and complex" phase, whose impacts are becoming "increasingly visible"[69].

The earlier – and most influential actions of this kind of litigation – essentially aimed at holding public authorities accountable for actions or omissions with regard to climate obligations[70] – developed in the Americas, where judicial activism, the participation of

On this typology of climate litigation, see also R. THISSEN, *La justice au secours de la planète ? Le levier judiciaire au service de la justice climatique*, Les études du CNCD-11.11.11 POINT SUD, septembre 2021, 21, who observes that "*l'action en justice peut également avoir une fonction d'éducation civique, de conscientisation et de mobilisation de l'opinion publique autour du réchauffement. […] Du fait de la mondialisation du phénomène, les argumentations développées dans un pays sont diffusées rapidement et reprises dans des affaires similaires. Cette mondialisation du contentieux climatique est aussi renforcée par le fait que de plus en plus de jugements sont traduits dans différentes langues*".

[67] See, on this point, K. BOUWER, J. SETZER, *Climate Litigation as Climate Activism: What Works?,* London, 2020, 7ff, who identify three categories of climate litigation connected with strategies in climate activism: a "hit the target" action, which can be observed in legally technical challenges to infrastructure projects and to either mitigation or adaptation ambition at the national level; second, litigation used as a "stepping stone", forming part of a broader strategy by social movements or organisations; and, third, "name and shame" cases, framed to emphasize the inconsistency between discourse and action.

[68] The Report of the UNITED NATIONS ENVIRONMENT PROGRAMME, *Climate change in the courtroom: Trends, impacts and emerging lessons,* cit., viii and 5, drawing on data from the Sabin Centre's Climate Change Litigation Databases, reports that "as of 30 June 2025, a cumulative 3,099 climate-related cases have been filed in 55 national jurisdictions and 24 international or regional courts, tribunals, or quasi-judicial bodies. This continues a trend in climate-related cases filed by 2022 (2,180 cases), 2020 (1,550 cases) and 2017 (884 cases)".

[69] See J. SETZER, C. HIGHAM, Global trends in climate change litigation: 2025 snapshot, cit., 8, which also contains references to other targeted databases (including several with a specific geographical focus), created in parallel with the growth of climate litigation. A particularly significant resource is the database specifically dedicated to rights-based climate litigation compiled by The Climate Law Accelerator (CLX), an initiative of the Earth Rights Research and Action (TERRA) Program at New York University School of Law. The database covers proceedings from 2005 and, as of the date of last access (24 October 2025), contains 480 records.

[70] This does not, however, diminish the importance of climate litigation brought against companies and private actors, in which human and fundamental rights are also sometimes invoked. Indeed, rights-based climate cases

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indigenous communities and the evolving interpretation of constitutional norms and international treaties have provided models and inspiration at a global level.

Among the most significant precedents – often considered turning points in understanding the legal conceptualisation of the relationship between climate change and human rights – particular attention should be given to the Inuit Petition[71], submitted in 2005 to the Inter-American Commission on Human Rights by a Canadian activist together with some members of the Inuit community of Canada and Alaska.

The petition alleged the responsibility of the United States for the massive and unregulated emission of greenhouse gases, considered a direct cause of global warming and the consequent transformation of the Arctic ecosystem, with serious impairment of the rights guaranteed under the American Declaration of the Rights and Duties of Man[72], including the right to the benefits of culture, to property, to preservation of health (which "necessarily includes a prohibition on degradation of the environment to the point that human health and well-being are threatened"), to life, to physical protection and security, to the means of subsistence, to residence and movement, and to the inviolability of homes.

Although the Commission rejected the petition on procedural grounds, and avoided ruling on the merits, the initiative had a profound political and cultural impact, introducing the

against corporations are themselves on the rise. The present analysis nevertheless focuses primarily on proceedings brought against public authorities, given their particular relevance in light of the central role that States and public institutions play in defining and implementing climate policies. It is nonetheless worth recalling that in 2021, the Dutch courts delivered a pioneering victory for rights-based climate change litigation, in one of the world's first human rights claims brought against a corporation in relation to climate change. In *Milieudefensie et al. v. Royal Dutch Shell PLC* (Hague District Court, 26 May 2021), 17 NGOs and more than 17,000 individual claimants brought proceedings against Royal Dutch Shell PLC. The claimants sought a declaration that the annual CO_2 emissions of the Shell group constituted an unlawful act for which Shell bore responsibility. They argued that Shell owed a tort-law duty of care under Article 6:162 of the Dutch Civil Code, interpreted in the light of Articles 2 (right to life) and 8 (right to private and family life) ECHR. On July 20, 2022, Shell appealed the decision and in November 2024 the Court of Appeal of The Hague overturned the judgement, refusing to impose a specific emission-reduction target on the company. The Court held that there was is insufficient scientific consensus regarding a specific reduction percentage or pathway that an individual company such as Shell could be required to follow. In February 2025, *Milieudefensie* announced that it would appeal the ruling before the Supreme Court of the Netherlands, seeking the imposition of a concrete rate of emissions reductions.

The increasing attempt to bring multinational corporations before the courts is also explained by the concentration of global emissions among a limited number of private actors: according to the Carbon Major Report 2023 (5 March 2025), 80.3% of global fossil-fuel and cement CO_2 emissions in 2023 were attributable to just 169 companies, with only 36 of them accounting for more than half of total global emissions.

[71] *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States,* 7 December 2005. As J. GORDON notes, *Inter-American Commission on Human Rights to Hold Hearing after Rejecting Inuit Climate Change Petition,* in *Sustainable Development Law & Policy,* vol. 7, (2), 55, "the petitioners hoped that such a ruling would increase public awareness of the detrimental effects of climate change and alert governments and corporations to their potential liability for global warming".

[72] ORGANISATION OF AMERICAN STATES, *American Declaration of the Rights and Duties of Man,* 2 May 1948, 1948.

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concept of climate change "as a human rights issue" into the international debate and inspiring further legal action based on the connection between the environment and human rights.

In the same year, in a completely different context, the Nigerian Court, in *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others*, recognised that Shell's gas-flaring operations in the Niger Delta constituted a violation of the fundamental rights to life and human dignity enshrined in the 1999 Constitution. The Court interpreted these rights expansively so as to include the right to a healthy environment and affirmed the Nigerian State's joint responsibility for failing to prevent such activity, ordering a revision of the existing regulatory framework in accordance with both the Constitution and the African Charter on Human and Peoples' Rights.

A further turning point occurred in Pakistan, with the *Leghari v. Federation of Pakistan* case. The claimant had denounced in 2015 the government's inaction and delays in implementing the 2012 National Climate Change Policy and the related 2014–2030 Framework for Implementation, thereby infringing the fundamental rights guaranteed by the Pakistani Constitution, including the right to life, the right to dignity and, implicitly, the right to a healthy environment. In 2018, the Lahore High Court upheld the claim, recognising climate change as an immediate and concrete threat to fundamental rights and affirming the State's legal obligation to adopt active protective measures.

5. *Rights-based strategic climate litigation: the 'Juliana' model*

The most emblematic example of the new wave of climate litigation, which has attracted extensive international resonance, is *Juliana v. United States,* filed in 2015 before the federal District Court for the District of Oregon by twenty-one young claimants aged between eight and nineteen at the time, with the scientific support of climatologist James Hansen, who intervened as "guardian for future generations".

The legal strategy behind the lawsuit had already been tested for several years in the United States by Our Children's Trust, a non-profit organisation based in Oregon that also operates as a non-profit law firm.

The lawsuit was directed against the United States federal government, the President and various government departments and agencies, on the assumption that the Executive, by permitting for decades the uncontrolled emission of large quantities of CO_2, despite being aware of the serious damage this would cause to the climate system, had violated (in addition to the public trust doctrine) the plaintiffs' constitutional rights to life, liberty and property, equal treatment and the derived right, under the Due Process Clause of the Fifth Amendment,

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to a habitable and "stable climate system", as a necessary condition for the enjoyment of all other fundamental rights[73].

The central argument advanced by the young claimants was that the State, as trustee of national public resources, owes a duty of care towards citizens, and especially to younger generations, to ensure a safe and liveable environment, preserving its integrity for the future. Therefore, they requested the court to declare the violation of their constitutional rights, the constitutional illegitimacy of certain legislative acts, and to order the Government to prepare and implement a National Remedial Plan aimed at significantly reducing CO_2 emissions.

The case proved to be extremely complex, with repeated motions to dismiss filed by the defendants. In January 2020, the Ninth Circuit Court of Appeals, in a split decision, ruled that the plaintiff lacked standing. While acknowledging the urgency and constitutional significance of the climate issue, the Court concluded that it was not within the powers of the judiciary to order the measures requested, as they involved political choices entrusted to the discretion of the legislative and executive branches. Even assuming the existence of a "right to a climate system capable of sustaining human life", it was held to be beyond judicial power "to order, design, supervise, or implement the plaintiffs' requested remedial plan"[74].

Although the case was never examined on its merits and formally concluded in March 2025[75], *Juliana* had a substantial impact, helping to spread the concept of climate change as a human rights issue globally, including in its intergenerational dimension. The case served as a model for a new type of legal action aimed at establishing the responsibility of public authorities for climate inaction and increasing the ambition of government climate commitments, based on legal claims and narratives focused on youth, climate science, climate impacts and rights-based arguments.

Juliana also triggered a wider wave of strategic climate litigation, which initially spread across a number of U.S. States, especially those whose constitutions contain explicit references to environmental protection, with such provision reinterpreted through a "climate-oriented" lens and invoked as constitutional foundation of the claims.

Within this evolving landscape, a particularly significant development is represented by *Held v. Montana*, brought by a group of sixteen youths who initiated in 2020 proceedings against the State of Montana, its Governor and various national agencies, arguing that State policies exacerbated the adverse effects of climate change to which they were already

[73] Complaint for Declaratory and Injunctive Relief, *Juliana v. United States,* 8/12/201, 302–204.

[74] UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, Case: 18-36082, D.C. No. 6:15-cv-01517-AA, 17 January 2020.

[75] The protracted litigation in Juliana v. United States reached its conclusion nearly a decade after its 2015 filing. In 2023, the United States District Court of Oregon permitted the plaintiffs to file an amended complaint intended to cure the standing defects previously identified by the United States Court of Appeals for the Ninth Circuit. However, in 2024 the Ninth Circuit ordered the district court to dismiss the case with prejudice. The plaintiffs' petition for a writ of certiorari was subsequently denied by the Supreme Court of the United States in 2025, thereby exhausting all available avenues of appellate review.

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exposed. The plaintiffs sought both declaratory and injunctive relief, specifically challenging the constitutionality of certain provisions contained in the State Energy Policy Act of 1993[76] and the Montana Environmental Policy Act (MEPA) of 1971. In their view, these provisions infringed the constitutionally guaranteed right to a clean and healthful environment, by facilitating fossil fuel development and by precluding the consideration of greenhouse gas emissions in environmental review processes.

In 2023, the First District Court ruled in favour of the plaintiffs, declaring the contested provisions unconstitutional and enjoining the State from implementing them. The Montana Supreme Court then in 2024 confirmed this decision and affirmed that "the fact that climate change impacts extend beyond Montana's borders, as does selenium pollution and other environmental harms, does not allow the State to disregard its contributions to environmental degradation within Montana"[77], concluding that the constitutional right to a clean and healthful environment[78] – and to an environmental life-support system – necessarily includes a stable climate system "that sustains human lives and liberties" (which the MEPA limitation was found to violate).

Held v. Montana therefore stands as the first judgement on the merits in the United States recognising the claims of young plaintiffs in a climate case based on fundamental rights. The judgement reinforces the global trend towards a "constitutionalisation"[79] of climate

[76] Before the dispute was settled, the State Energy Policy Act of 1993 was amended by the Montana Legislature, which, with HB 170 of 16 March 2023, repealed the "State energy policy goal statements" and the provisions concerning the "energy policy development process", which had given priority to the development of fossil fuels.

[77] Supreme Court of the State of Montana, DA 23-075, 2024 MT 312, 12/18/2024, 44.

[78] Article II, Section 3, of the Montana Constitution guarantees all persons certain inalienable rights, "includ[ing] the right to a clean and healthful environment". Article IX, Section 1, further provides that: (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

In its reasoning, the Montana Supreme Court recalls the arguments of the respondent State that "the Framers could not have intended to include an environment undegraded from the effects of climate change within the right to a clean and healthful environment because they did not specifically discuss climate change or other global issues when adopting the provision". However, the Court rejected this position, holding that the Constitution "does not require the Framers to have specifically envisioned an issue for it to be included in the rights enshrined in the Montana Constitution [...] A Constitution is not a straight-jacket, but a living thing designed to meet the needs of a progressive society and capable of being expanded to embrace more extensive relations". The Court therefore affirmed that the right to a clean and healthful environment is "forward-looking and preventative", encompassing protection for both present and future generations.

[79] On this topic, with specific reference to the U.S. context, D. BROWN, *Montana's Climate Change Lawsuit May See Sequels Across America,* in *State Court Report* (9 July 2024, updated 16 June 2025) refers to a "patchwork approach", citing, for example, the ruling of the Court of Appeals of the State of New Mexico on 3 June 2025,

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protection, whereby climate change is no longer considered merely a technical-environmental issue but as a rights-based constitutional concern. The ruling is significant not only for those U.S. States whose constitution contain similar environmental clauses[80], but also for European systems which, under mounting social and judicial pressure, are increasingly reinterpreting or reinforcing their constitutional provisions through a climate-oriented interpretation.

Equally noteworthy in this regard is *Navahine v. Hawai'i Department of Transportation*, which illustrates the strategic use of climate litigation to compel public authorities to adopt more ambitious and coherent climate policies consistent with emission reduction targets.

In 2022, fourteen young plaintiffs filed suit in the Hawai'i Circuit Court against the Department of Transportation, the Governor and the State of Hawai'i, asserting that the establishment, operation, and maintenance of the State's transportation system breached the public trust doctrine enshrined in the Hawai'i Constitution and violated the constitutionally guaranteed right to a clean and healthful environment, as informed by an evolving body of Hawai'i climate legislation aimed at reducing greenhouse gas emissions[81].

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which, in *Atencio v. State of New Mexico,* dismissed the lawsuit, arguing that the plaintiff's claims raised non-justiciable political questions. The plaintiffs had argued that the State had violated Article XX, Section 21 of the New Mexico Constitution, known as the "pollution control clause", which provides that "the protection of the state's beautiful and healthful environment is hereby declared to be of fundamental importance to the public interest, health, safety and the general welfare. The legislature shall provide for control of pollution and control of despoilment of the air, water and other natural resources of this state, consistent with the use and development of these resources for the maximum benefit of the people".

A further case worth noting is *Lighthiser v. Trump*, a constitutional climate lawsuit filed on 29 May 2025 before the United States District Court for the District of Montana by 22 youth plaintiffs challenging three Trump executive orders expanding fossil-fuel production. The action sought declaratory and injunctive relief, alleging that the executive orders violated the plaintiffs' substantive due process rights to life and liberty and were *ultra vires*, exceeding presidential authority. The federal District Court dismissed the case for lack of jurisdiction, holding that the relief sought was not judicially redressable and affirming that "it is beyond the power of Article III courts to create environmental policy, which is left, for better or worse, to the executive and legislative branches".

[80] With reference to the United States of America, H. RIZZO, *From Petrostate to Precedent: The Impact of Held v. Montana on Future Climate Litigation and the Urgent Need for Federal Climate Action,* in *Ocean and Coastal Law Journal,* vol. 30 (2), 2025, 247 observes that "in future cases brought in States with green amendments […] *Held* not only provides a framework for standing, but is persuasive authority when addressing the merits of such a case".

See also D. C. SMITH, Held v Montana*: the beginning of a climate change lawsuit trend in US state level courts or a one-shot wonder?*, in *Journal of energy & Natural Resources Law*, vol. 41, 4, 2023, 369 ff.; E. C. FERGUSON, *Held v State of Montana: A Constitutional Rights Turn in Climate Change Litigation?*, in *Journal of Environmental Law*, 36, 3, 2024, 453 ff.

[81] See *Complaint for declaratory and injunctive relief, Navahine v. Hawai'i Department of Transportation,* First Circuit, 1CCV-22-0000631, 1 June 2022. The plaintiffs argued that Article XI, section 1 of the Hawai'i Constitution requires the State "for the benefit of present and future generations" to "conserve and protect Hawai'i's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance

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The plaintiffs sought declaratory relief to affirm these constitutional violations and injunctive relief to compel the defendants to cease operating the transportation system in a manner inconsistent with their constitutional obligations and to undertake specific, time-bound measures to align the system with those duties.

On 20 June 2024 – a few days before the scheduled trial was due to begin – the Hawai'i Circuit Court approved a settlement[82] resolving claims and including a "recognition of plaintiffs' rights" and the defendants' obligations under the Hawai'i Constitution, State statutes, and Hawai'i Supreme Court precedent[83].

Already in 2023, *in re Hawai'i Electric Light Co.*, the Hawai'i Supreme Court had recognised that the constitutional right to a clean and healthful environment, "encompasses the right to a life-sustaining climate system", characterising it as an "'affirmative" and "constantly evolving" right[84]. This important formulation has clear roots in *Juliana,* where the right to a life-sustaining climate system had already been invoked as the basis for the State's positive obligations to protect the climate and to safeguard the conditions essential for human life.

Indeed, in 2016, District Judge Ann Aiken, rejecting the federal government's and oil companies' motion to dismiss, declined to accept the defendants' main argument that the case raised a non-justiciable political question. It was for the courts to assess alleged violations of fundamental rights and to provide appropriate remedies. On that occasion, the judge recognised the existence of an unenumerated constitutional right – "the right to a climate system capable of sustaining human life" – drawing on the reasoning previously developed by the federal Supreme Court in the context of same-sex marriage and transposing it into the

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of the self-sufficiency of the State". Article XI, section 1 further declares that "all public natural resources are held in trust by the State for the benefit of the people". According to the plaintiffs, this provision constitutionalizes "the public trust doctrine as a fundamental principle of constitutional law in Hawai'i", which applies also to the "climate system". Furthermore, Article XI, Section 9 of the Hawai'i Constitution establishes that "each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources."

[82] Circuit Court of the First Circuit State of Hawai'i, *Joint Stipulation and Order re: Settlement,* 1CCV-22-0000631, 20-Jun-2024].

[83] In the settlement agreement, the Department of Transportation committed to preparing a comprehensive, concrete and measurable plan to reduce greenhouse gas emissions. Among other commitments, the agreement provides for the creation of a climate change mitigation unit within the Department tasked with implementing the plan, the establishment of an advisory "volunteer youth council", the review of the transport budget process, and the acceleration of the development of electrical infrastructure. Finally, the agreement stipulates that the Court "shall reserve continuing jurisdiction solely to enforce the Parties' obligations under the Agreement until 31 December 2045, or the date upon which the Zero Emissions Target has been achieved, whichever is earlier".

[84] Supreme Court of the State of Hawai'i, *in re Hawai'i Electric Light Co.*, SCOT-22-0000418 13-Mar-2023.

In his concurring opinion, Justice Wilson referred to the *Juliana* case (Wilson, J., *Concurring Opinion*: In re Hawaii Electric Light Company, Inc., No. SCOT-22-0000418, 2023 WL 2472050, 13 March 2023) and emphasizing that the right to a life-sustaining climate system is not only subsumed within the constitutional right to a clean and healthy environment, but is also embedded in the due process right to "life, liberty, [and] property" as well as in the public trust doctrine, given the existential threat that climate change poses to the enjoyment of all rights.

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climate domain. She observed that "the right to a climate system capable of sustaining human life is fundamental to a free and ordered society. Just as marriage is the 'foundation of the family', a stable climate system is quite literally the foundation of society, without which there would be neither civilization nor progress". The right to a stable climate "is a necessary condition for exercising other rights to life, liberty, and property"[85].

Particularly relevant in this regard is the fact that in all of the above-mentioned cases, the claimants were represented by Our Children's Trust. This underscores the strategic role played by the organisation in promoting, through a strategic climate litigation approach, the progressive affirmation of the constitutional dimension of the right to a "life-sustaining climate system".

Our Children's Trust is currently involved in many legal actions both in the United States and abroad, supporting climate litigation essentially modelled on *Juliana*.

These lawsuits typically engage State responsibility for climate policies and make use of participatory mechanisms that mobilise groups often excluded or under-represented in traditional policymaking, notably young people (including those not yet entitled to vote) and future generations. The organisation's influence has also extended to the European context, where it has provided support for numerous legal initiatives, also before the European Court of Human Rights and the Court of Justice of the European Union.

The echo of this legal strategy has reverberated globally in an international landscape that has changed profoundly compared to the past, characterised by the progressive recognition of the inseparable connection between climate change and human rights, explicitly enshrined in the Preamble to the 2015 Paris Agreement, which places the respect and promotion of human rights at the core of the global climate response.

It should be noted, however, that the Paris Agreement and the breach of climate obligation by the State do not always constitute the main subject of the appeals. In the *Juliana* model and in those actions directly inspired by it (particularly in North America and Latin America), constitutional rights typically provide the primary normative foundation, including, where applicable, the right to a healthy environment, interpreted through a "climate-oriented" lens.

This approach has been facilitated by the fact that, over the past two decades, numerous instruments have highlighted the harmful effects of climate change on rights recognised at national, supranational or international level (notably, the right to life, adequate food, access to water, health, housing and self-determination of peoples).

In particular, the right to a healthy environment received a significant boost when it was recognised as a human right by the United Nations General Assembly in its (already cited) resolution of 28 July 2022, which has contributed to its gaining increasing traction among rights-based climate cases[86].

[85] *Juliana v. United States,* 217 F. Supp. 3d 1224, 1250, 10 November 2016, Opinion and Order (Aiken, Judge)

[86] See J. SETZER, C. HIGHAM, *Global trends in climate change litigation: 2025 snapshot,* London, 2025, 24.

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This resolution forms part of a broader trend towards the ever more widespread adoption of "green amendments"[87], a development that has accelerated particularly over the last decade, and has led, as of 2023, to more than 160 countries recognising a right to a healthy environment at a regional, national or subnational level[88]. In total, 80 per cent of UN Member States – 156 out of 193 – recognise this right to either expressly or implicitly, through an expansive interpretation of other constitutional guarantees, such as the rights to life, health or human dignity[89].

By contrast, only a limited number of States have enshrined in their constitutions explicit references to a "climate emergency", confirming that this dimension remains at an incipient or developing stage from a legal perspective[90].

[87] On this topic, see, with reference to the Member States of the United States Federation, for example, M. NEVITT, *Constitutionalising Climate Rights,* in *FIU Law Review,* 19, 4, 2025, 1029 ff. and S. NICHOLS THIAM, J. C. PAGE, *Climate Science and Law for Judges: Overview of Climate Litigation,* Washington, 2023, 14-15, who refer to "Green Amendments" as "Environmental Rights Amendments" and note that such a right to a clean and healthy environment is already recognized in the constitutions of Illinois, Pennsylvania, Montana, Massachusetts, Hawai'i, Rhode Island, and New York and "at least 14 additional States are considering their adoption". On this aspect, see also J. C. DERNBACH, *The Environmental Rights Provisions of U.S. State Constitutions: A Comparative Analysis,* Widener Law Commonwealth Research Paper No. 23-05, 17 April 2023.

[88] SEE UNITED NATIONS ENVIRONMENT PROGRAMME, *Environmental Rule of Law: Tracking Progress and Charting Future Directions,* Nairobi, 2023, 92. For further information, see Report of the 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,* A/HRC/43/53, 30 December 2019 , 4 ff. The Report observes "in a number of States, courts have interpreted other legal provisions–such as the constitutional rights to life or health–as necessarily implying the existence of a right to a healthy environment". The Report recalls also that several regional and international agreements and human rights instruments recognize the right to a healthy environment (including the Aarhus Convention, the Escazú Agreement, the Protocol of San Salvador, African Charter, the ASEAN Human Rights Declaration and the Arab Charter on Human Rights). In addition to reinforcing national protections, these instruments are important in providing environmental safeguards through rights to a healthy environment in countries that do not yet include such rights in their constitutions or domestic legislation.

[89] In this connection, it is worth recalling that the European Parliament has likewise turned its attention to the right to a healthy environment, adopting on 15 January 2020 a resolution on the European Green Deal [2019/2956 (RSP)], in which it affirmed "that all people living in Europe should be granted the fundamental right to a safe, clean, healthy and sustainable environment and to a stable climate, without discrimination, and that this right must be delivered through ambitious policies and must be fully enforceable through the justice system at national and EU level."

[90] Only a limited number of States explicitly address climate change in their constitutions. These include Algeria, Côte d'Ivoire, Cuba, Bolivia, Tunisia, Ecuador, Nepal, Sri Lanka, the Dominican Republic, Venezuela, Vietnam, Thailand and Zambia (countries which, however, are not among the world's major greenhouse gas emitters). On this point, see P. L. PETRILLO, *Il costituzionalismo climatico. Note introduttive*, in *DPCE Online*, 31 May 2023, 239 ff., who describes such clauses in the constitutions of these countries as "constitutional ornaments", insofar as they "serve to embellish the primary text without producing concrete effects on its functioning". See also S. GHANLEIGH, J. SETZER AND A. WELIKALA, *The Complexities of Comparative Climate Constitutionalism*, Edinburgh School of Law Research Paper Series, 6, 2022, 7 ff.; F. GALLARATI, *Tutela costituzionale dell'ambiente e cambiamento climatico: esperienze comparate e prospettive interne*, in *DPCE Online*, 52, 2, 2022, 1095-1101.

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In this context, rights-based climate litigation has made the call for climate-oriented constitutional interpretation increasingly pressing. The convergence of jurisprudential evolution, civil society activism – particularly through actions promoted by the most vulnerable groups – and constitutional frameworks that are progressively more sensitive to environmental protection appears to be fostering a process of constitutionalising climate protection, although this development is still characterised by non-linear progress and differentiated solutions.

It is perhaps in Latin American that this phenomenon has become most visible, given that many constitutional texts in the region contain expansive catalogues of environmental rights and, in some cases, expressly confer legal personality upon "nature" itself[91]. Combined with broad avenues for direct access to constitutional justice in the event of violations of fundamental rights, these factors have created a particularly fertile ground for the constitutionalisation of climate change litigation[92]. Among the most emblematic precedents is *Demanda Generaciones Futuras v. Minambiente*, decided in 2018 by the Supreme Court of Colombia, which recognised the Colombian Amazon as a "subject of rights" (following the earlier precedent of the Constitutional Court concerning the Atrato River). As such, the Court held that the Amazon is entitled to protection and restoration, and ordered the competent public authorities to take urgent measures to halt the ongoing deforestation of the rainforest[93].

From a different perspective, however, it should be noted that there has been a rapid expansion of national and subnational climate laws and regulations, see UNITED NATIONS ENVIRONMENT PROGRAMME, *Environmental Rule of Law: Tracking Progress and Charting Future Directions*, Nairobi, 2023, 31.

With regard to the Member States of the European Union, see SERVIZIO STUDI DEL SENATO ITALIANO, *La tutela dell'ambiente nelle Costituzioni degli Stati membri dell'Unione europea*, *Nota breve n. 140*, October 2019. For a comparative overview of long-term plan for achieving emission reductions and, more generally, of national climate change legislation, see 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,* cit., 9-12.

[91] In the constitutions of some Latin American States, there are directly justiciable provisions devoted to the environment, which is recognised as a primary legal interest, and "nature" (*Pachamama*) itself is vested with subjective rights. This approach, partly inspired by Andean constitutionalism and the philosophy of *Buen Vivir*, is evident, for example, in the Constitutions of Ecuador (Arts. 71–74) and Bolivia (Arts. 33–34). Although still limited to a relatively modest number of countries, the official recognition of nature's legal personhood constitutes a novel and growing trend. *UN HARMONY WITH NATURE - RIGHTS OF NATURE LAW & POLICY* is the official United Nations platform providing mapping and references to legislative and judicial developments recognizing the rights of nature. For an original theoretical account of the relationship between nature and "sentiment" in law, see L. TRUCCO, *Natura e sentimento nel diritto*, Milano, 2024.

[92] On *climate strategic litigation* in Latin American countries, see S. BAGNI, *Alcuni caratteri peculiari del contenzioso climatico in America latina,* in *Diritto pubblico comparato ed europeo,* 4/2024, 997 ff.

[93] This case is only the most well-known example among a rapidly expanding body of similar litigation across Latin America, as illustrated by the "*Climate Litigation Platform for Latin America and the Caribbean*", created in 2022. See J. Auz, *Human rights-based climate litigation: a Latin American cartography*, in *Journal of Human Rights and the Environment*, 13 (1), 2022, 114 ff.; S. BAGNI, *Alcuni caratteri peculiari del contenzioso climatico in America*

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According to the claimants – a group of youths between 7 and 26 years of age – it was precisely the ongoing deforestation and the government's failure to enforce compliance with zero-net forestation in the Colombian Amazon by 2020 that led to the violation of their right to live in a healthy environment ("gozar de un ambiente sano"), as well as their rights to life, health, food and water.

6. *The expansion of the "*Urgenda *doctrine" in Europe*

The inspirational role of the early climate actions promoted by Our Children's Trust in the United States since 2011 was expressly acknowledged by lawyer Roger Cox in his book "Revolution Justified", where he stated that he had drawn on that legal strategy in assisting Dutch citizens and the Urgenda Foundation in the lawsuit brought in 2013 against the Dutch government[94].

As noted above, this strategy is characterised by the intention to limit the discretion of the legislators in defining policies to mitigate anthropogenic climate change. In the European context, too, similar legal actions rely on the combined use of fundamental rights arguments and scientific evidence, but with the primary aim of verifying whether governments are complying with their climate obligations and of establishing the legal consequences of any failure to do so[95].

The landmark *Urgenda Foundation v. State of the Netherlands* judgement represents a pioneering precedent in Europe in which a national court upheld such a right-based

Latina, in *DPCE*, 4, 2024, 997 ff. An interesting case, which is still pending, is *Álvarez et al v. Peru*, a *demanda constitucional de amparo* brought before the Constitutional Chamber of the Superior Court of Justice of Lima against the State for its "failure to adopt concrete and effective measures – through the *Política Nacional del Ambiente y la Política Nacional Forestal y de Fauna Silvestre* – to halt the progressive deforestation of the Peruvian Amazon". The applicants allege that, due to the insufficiency of public policies concerning environmental protection, their fundamental right "*a gozar de un medio ambiente sano*" is being violated, as well as the threat to their fundamental rights to life, to a life plan ("*proyecto de vida"*), to water and to health. At the institutional level, they further claim that the principles of conservation of the Amazon, sustainable use of natural resources, prevention and precaution in environmental matters, the *Estado social de Derecho*, the best interests of the child, and intergenerational solidarity and equity are also being infringed.

[94] See OUR CHILDREN'S TRUST, *The Netherlands, Urgenda* [website last accessed on 27 September 2025].

[95] See, for example, S. BALDIN, *Towards the judicial recognition of the right to live in a stable climate system in the European legal space? Preliminary remarks,* in *DPCE Online*, 2/2020, 1423. In Europe too, strategic litigation is "aimed at influencing public policy and at producing social change demanding climate justice to protect human rights, the adoption of regulations in conformity with international standards, the mitigation of greenhouse gases, adaptation to the impact of climate change, as well as compensation for climate-associated loss and damage". In this respect, the creation in Europe of the "*Climate Litigation Network*", launched by the Dutch Urgenda Foundation "to harness this legal strategy, support other cases against big polluters and strengthen the growing wave of climate litigation" has been particularly significant.

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argumentative framework. For the first time, a domestic court recognised the existence of a positive legal obligation on the part of the State to limit greenhouse gas emissions and identified a minimum quantitative reduction threshold[96].

It should be recalled that the Hague District Court in 2015 ordered the Dutch government to ensure a reduction of at least 25% in greenhouse gas emissions by 2020 compared with 1990 levels, holding that the existing 17% target was insufficient to represent the Netherlands' fair share of efforts to keep global warming well below 2°C above pre-industrial levels. The judgment was upheld by the Court of Appeal in 2018 and by the Dutch Supreme Court in 2019[97]. In parallel, over the course of litigation, the Netherlands adopted a Climate Act in 2019 setting statutory reduction targets of 49% by 2030 and 95% by 2050 (relative to 1990 levels)[98].

Courts at all levels found that the inadequacy of public climate policies constituted a violation of fundamental rights, in particular the right to life and the right to respect for private and family life, protected under Articles 2 and 8 of the ECHR, as well as under domestic constitutional guarantees. The judicial reasoning rested on the existence of a duty of care incumbent on the State – a positive obligation to protect the population from climate risks – rooted in Article 21 of the Dutch Constitution, which provides that "it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment".

The Supreme Court emphasised the role of international law as a parameter for interpreting domestic provisions and rejected the objections based on standing and separation of powers grounds, reaffirming that it is for the judiciary to assess whether the legislature and the executive comply with constitutional and conventional obligations[99].

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[96] On this case, see, among many others, M. F. CAVALCANTI, M, J. TERSTEGGE, *The* Urgenda *case: the Dutch path towards a new climate constitutionalism,* in *DPCE Online*, 43 (2), 2020. For commentaries on the Urgenda case, see *inter alia*, G. VAN DER VEEN, K. J. DE GRAAF, *Climate Change Litigation in the Netherlands: The Urgenda Case and Beyond*, in W. KAHL, M. P. WELLER (eds), *Climate Change Litigation*, Munich, 2021, 363 ff.; C. W. BACKES, G. A. VAN DER VEEN, *Urgenda: The Final Judgment of the Dutch Supreme Court*, in *Journal for European Environmental & Planning Law*, 17, 2020, 307 ss.; F. PASSARINI, *CEDU e cambiamento climatico nella decisione della Corte Suprema dei Paesi Bassi nel caso Urgenda*, in Diritti umani e diritto internazionale, 14(3) 2020, 777 ff.; V. JACOMETTI, *La sentenza Urgenda del 2018: prospettive di sviluppo del contenzioso climatico*, in *Rivista Giuridica dell'Ambiente*, 1, 2019, 121 ff.; A. PISANÒ, *L'impatto dei contenziosi sulla crisi climatica. Il paradosso delle sentenze vuote*, in *Materiali per una storia della cultura giuridica*, 1, 2024, 111-115.

[97] *The State of the Netherlands v. Urgenda,* Supreme Court of the Netherlands, 19/00135, 20 December 2019. See, in this regard, L. MAXWELL, S. MEAD, D. VAN BERKEL, *Standards for Adjudicating the Next Generation of Urgenda-Style Climate Cases,* in *Journal of Human Rights and the Environment,* vol. 13, 1, 2022, 35 ff.

[98] *Urgenda Foundation v. The State of the Netherlands,* District Court of The Hague, C/09/456689/HA ZA 13-1396, 24 June 2015; *The State of the Netherlands* v. *Urgenda Foundation,* Court of Appeal of The Hague, 200.178.245/01, 9 October 2018. See O. SPIJKERS, *The Influence of Climate Litigation on Managing Climate Change Risks: The Pioneering Work of the Netherlands Courts,* in *Utrecht Law Review,* vol. 18, 2, 2022, 127 ff. and the extensive literature referenced therein.

[99] In the section entitled "The Courts and the Political Domain' (see paras. 8.1-8.3.5), the Supreme Court of the Netherlands observed that "the State has asserted that it is not for the courts to undertake the political considerations necessary for a decision on the reduction of greenhouse gas emissions. In the Dutch system of

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The Court relied on the rights guaranteed by the ECHR (Articles 2 and 8) and, given the direct applicability of international norms within the Dutch legal order, applied them directly. According to the Court, "Article 2 ECHR protects the right to life […] this provision includes the positive obligation of a State bound by the Convention to take appropriate steps to safeguard the lives of any person within its jurisdiction."

The Court further held that, although the definition of emission reduction policies lies primarily within the competence of government and parliament, it remains the responsibility of the judiciary to ensure that such choices stay within the limits set by binding law, including obligations arising from the ECHR, which must be applied consistently with the jurisprudence of the Strasbourg Court. This guarantee function – which also applies to the executive branch – was described by the Court as an "essential component of a democratic state governed by the rule of law."

The *Urgenda* case thus marks the beginning, in Europe as well, of the rights turn in climate litigation. Numerous actions have since taken up the "*Urgenda* doctrine"[100], adapting it to different national contexts but retaining the core idea of State responsibility for failing to protect fundamental rights against the risks arising from climate change.

In most European climate cases, whether already decided or still pending, the central legal issue concerns the interpretation of the European Convention on Human Rights, particularly in relation to the positive obligations developed by the ECtHR under Articles 2 and 8. Although not all these actions have achieved the same success as *Urgenda*, they have nonetheless helped to consolidate a rights-centred approach in European climate litigation.

To fully understand this development, it must be recalled that *Urgenda* was made possible by certain structural peculiarities of the Dutch legal system, characterised by adherence to monism, the direct effect accorded to international norms, and the prohibition on

government, decision-making on greenhouse gas emissions belongs to the government and parliament. They have a large degree of discretion to make the political considerations that are necessary in this regard. It is up to the courts to decide whether, in taking their decisions, the government and parliament have remained within the limits of the law by which they are bound. Those limits ensue from the ECHR, among other things. The Dutch Constitution requires the Dutch courts to apply the provisions of this convention, and they must do so in accordance with the ECtHR's interpretation of these provisions. This mandate to the courts to offer legal protection, even against the government, is an essential component of a democratic state under the rule of law".

[100] The "Urgenda doctrine" may be described as the strategy of "bringing an action before the ordinary courts in order to have the State declared liable for insufficient action to safeguard climate stability and, consequently, to obtain an order requiring the State to implement measures capable of removing the causes of the ongoing harm to climate stability" (see R. LOUVIN, *Spazi e opportunità per la giustizia climatica in Italia*, in *Diritto pubblico comparato ed europeo*, 4/2021, 946, referring to the reception of this strategy in the Italian case "Giudizio universale"). A. PISANÒ, *La responsabilità degli Stati nel contrasto al cambiamento climatico tra obbligazione climatica e diritto al clima*, in *Ethics & Politics*, XXIV, 2022, 3, 362, refers to this as the "Urgenda paradigm". On the expansion of the "Urgenda" model across Europe, see G. RIGOBELLO, *La climate change litigation in Europa: riflessioni preliminari per una proposta tassonomica*, Sant'Anna Legal studies, 2022, 21 ff.

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constitutional review of Acts of Parliament. These features have facilitated a "substitutive" use of international law as a benchmark for assessing the lawfulness of public policies, including in environmental matters.

It was precisely because of similar systemic traits that strategic climate litigation seemed to find a fertile ground in Switzerland, where the legal system is highly open to international law and the "immunity clause" (under art. 189 of the Constitution) limits the judicial review of federal legislation.

Nevertheless, at the national level, *Verein KlimaSeniorinnen Schweiz v. Bundesrat* was unsuccessful. The claim, lodged in 2016 by the "Association of Senior Women for Climate Protection", together with four individual applicants, all elderly women residing in Switzerland, alleged violations of the fundamental rights to life and to respect for private life protected by Articles 10 and 13 of the Federal Constitution and by Articles 2 and 8 of the ECHR, as well as the constitutional principles of sustainability and environmental protection (Articles 73 and 74). The applicants argued that State inaction – resulting in insufficiently ambitious climate policies – disproportionately affected elderly women, who are particularly vulnerable to heatwaves and other extreme events. They therefore sought judicial orders requiring the Federal Parliament and authorities to adopt measures ensuring a 25% reduction in emissions by 2020 and a 50% reduction by 2050 (compared with 1990 levels), contesting the inadequacy of the existing targets (20% by 2020 and 30% by 2030) and the weakness of the instruments envisaged.

The Federal Administrative Court dismissed the application in 2018 on the grounds of lack of standing, a conclusion later confirmed by the Federal Supreme Court in 2020. The latter held that the rights invoked had not been infringed in a sufficiently direct or specific manner as compared with the rest of the population, thus ruling out the possibility of bringing an actio popularis in climate matters.

In their reasoning, the Swiss judges emphasised that the applicants' claims were aimed primarily at strengthening climate policy, rather than protecting legally enforceable subjective rights; in such circumstances, the appropriate avenue is not the judicial one, but the political and democratic process, through the participatory instruments provided for by the Constitution, such as the right of petition and the popular initiative for constitutional amendment.

It was precisely the negative outcome of the dispute that led to the subsequent appeal to the European Court of Human Rights, which, in 2024, reached the opposite conclusion, finding that Switzerland had violated Article 8 (right to respect for private and family life) and Article 6 §1 (access to justice) of the Convention.

The judgement in *Verein KlimaSeniorinnen and Others v. Switzerland*[101] was immediately perceived as likely to have a significant impact on domestic case law on environmental and

[101] *Verein KlimaSeniorinnen and others v. Switzerland*, European Court of Human Rights, Grand Chamber, 9 April 2024.

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climate issues[102]. The ECtHR held that a Member State of the Council of Europe which fails to adopt the necessary requirements for climate mitigation creates a "critical lacunae" in protection; such a gap results in inadequate mitigation which not only fails to prevent future harm but may, in fact, aggravate existing climate impacts[103].

According to the Strasbourg Court, this worsening situation constitutes a violation of Article 8 of the ECHR, which must be interpreted "as encompassing a right for individuals to effective protection by State authorities from the serious adverse effects of climate change on their life, health, well-being and quality of life". However, the most significant contribution of *KlimaSeniorinnen* does not lie in the recognition of an autonomous "right to climate" – as has sometimes been suggested[104] – but rather in the affirmation that States are subject to a positive obligation, under the Convention, to protect individuals from the harmful effects of climate change. As the Court stressed, "no article of the Convention is specifically designed to provide general protection of the environment as such", so that the protection afforded by the

[102] See, in particular, the debate "The Transformation of European Climate Litigation" on *Verfassungsblog*, which discusses the ECtHR's climate judgment and its implications for climate protection and climate litigation.

See also, D. RAGONE, *Nuove frontiere della climate litigation. Riflessioni a partire dalla sentenza KlimaSeniorinnen della Corte EDU*, in *AIC, Osservatorio costituzionale*, 5/2024, 208 ss.

On the follow-up to the *Verein KlimaSeniorinnen* judgment of the ECtHR see G. GRASSO, *Cambiamento climatico, separazione dei poteri, processo decisionale democratico: l'Assemblea federale svizzera "stoppa" la Corte europea dei diritti dell'uomo*, in *DPCE Online*, 2 luglio 2024.

For commentary on the cases (*Duarte Agostinho* and *Carême*) that were rejected by the ECtHR on procedural grounds, see A. SAVARESI, L. NORDLANDER, M. WEWERINKE-SINGH, *Climate Change Litigation before the European Court of Human Rights: A New Dawn*, in *The Global Network for Human Rights and the Environment*, 12 April 2024; C. Sartoretti,*La climate change litigation «sbarca» a Strasburgo: brevi riflessioni a margine delle tre recenti sentenze della Corte EDU*, in *DPCE Online*, 2024, n. 2.

[103] See, in this respect, with specific reference to the nature and function of the Carbon Budget, as a decisive component of States' due diligence obligations, M. CARDUCCI, *La sentenza KlimaSeniorinnene il Carbon Budget come presidio materiale di sicurezza, quantitativa e temporale, contro il pericolo e come limite esterno alla discrezionalità del potere*, in *DPCE online*, 2/2024, 1415 ff.

[104] Following *Verein KlimaSeniorinnen*, part of the scholarship has begun to refer to an emergent "right to climate protection" under Articles 2 and 8 ECHR, not as a freestanding new right, but as a derivative fundamental right implied by the State's positive obligations. See, for example M. KALIS, A.-L. PRIEBE, *The Right to Climate Protection and the Essentially Comparable Protection of Fundamental Rights: Applying Solange in European Climate Change Litigation?*, cit.; V. KAHL, *A Human Right to Climate Protection – Necessary Protection or Human Rights Proliferation?*, in *Netherlands Quarterly of Human Rights*, 40(2), 2022, 158 ff.; O. QUIRICO, *A Human Right to a Sustainable Climate?*, in *William & Mary Environmental Law and Policy Review*, 49(2), 2025, 333 ff.; F. DI SARIO, *Climate protection is now a human right – and lawsuits will follow*, in *Politico*, 9 April 2024; A. LATINO, *Il clima è un diritto umano? La storica sentenza della CEDU*, in *ISPI online*, 17 May 2024; E. FRASSINELLI, *Diritti fondamentali e crisi climatica: uno studio comparato tra Corte EDU e Corte Suprema Indiana*, in *federalismi.it*, 24/2025, 163 ss.; A. LUPO, *Verso la positivizzazione di un nuovo diritto umano al clima stabile e sicuro? Prime riflessioni a caldo sulla sentenza della Corte CEDU del 9 aprile 2024*, in *Giustizia Insieme*, 5 giugno 2024.

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ECHR concerns "the existence of a harmful effect on a person and not simply the general deterioration of the environment"[105].

A further key element of the ruling concerns the principle of the separation of powers[106]. The Court observed that the judiciary cannot substitute itself for the legislature or the executive in designing climate policy, but it may nevertheless exercise review compatible with the constitutional order, since the judicial mandate is complementary – and not overlapping – with democratic processes[107]. Accordingly, the Strasbourg Court concluded that, once an allegation is raised of a violation of Convention rights, the issue ceases to be purely political and becomes a legal question requiring the intervention of the Court as guarantor of human rights.

It is important to note that many of the decisions of national courts in which the principle of separation of powers has been invoked to dismiss climate claims – as was the case, for example, in Norway (in *People v. Arctic Oil,* which will be discussed below), in Belgium (*Klimaatzaak,* at first instance), in Spain and Italy (in the "*Giudizio Universale*" and *Greenpeace v. ENI)* – were adopted before the ECHR ruling in *KlimaSeniorinnen*.

A restrictive interpretation of this principle emerged emblematically in the Belgian context, in the case *VZW Klimaatzaak v. Kingdom of Belgium & Others* case (known as *Affaire Climat* or *Klimaatzaak*), which had different outcomes across judicial levels.

The *Klimaatzaak* association, supported by more than 58,000 citizens, brought proceedings in 2014 alleging State and regional inaction, relying on Articles 2 and 8 ECHR and the duty of care under the civil code. In 2021, the Brussels Court of First Instance[108] acknowledged the existence of a serious climate threat to present and future generations and found a violation of those rights, but refused to issue an injunction imposing specific greenhouse gas reduction targets, on the grounds of the separation of powers.

[105] See ECtHR, *KlimaSeniorinnen,* paras. 445-446.

[106] On this aspect, see in particular C. BLATTNER, *Separation of Powers and KlimaSeniorinnen*, in *Verfassungsblog*, 30 April 2024.

[107] See ECtHR, *KlimaSeniorinnen,* para. 412: "the intervention of judges should not replace the action that must be undertaken by the legislative and executive branches of government [...] [but] democracy cannot be reduced to the will of the majority of the electorate and their representatives in disregard of the requirements of the rule of law".

On the relationship between climate obligation and the principle of separation of powers, see, for example, G. GRASSO, A. STEVANATO, *Right of access to the courts, duties of climate solidarity and the principle of separation of powers in the judgment* Verein Klimaseniorinnen Schweiz et autres v. Switzerland, in *Supreme Courts and Health*, 2, 2024, 571 ff.

[108] Brussels Court of First Instance, *ASBL Klimaatzaak v. Kingdom of Belgium & Others,* Jug. No. 167, 17/06/2021.

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The Court of Appeal[109], however, reversed this reasoning in 2023, confirming the responsibility of the State and of the Brussels and Flanders regions, finding a breach of Articles 2 and 8 ECHR, and ordering a 55% reduction in emissions by 2030 compared with 1990 levels[110]. The Court justified the compatibility of the injunction with the separation of powers by clarifying that the judiciary was merely setting a binding result, while leaving to the political authorities the discretion to determine the concrete measures necessary to achieve it. In this way, the Court balanced the need to ensure effective rights protection with due respect for the role of the legislature and the executive[111].

This constitutes the second major instance – after *Urgenda* – in which a national court has imposed a quantified and binding mitigation target (noting, however, that the Flemish government has lodged an appeal in Cassation)[112].

The *Klimaatzaak* ruling belongs to the broader strand of rights-based strategic climate litigation aimed at establishing the civil liability of public authorities for breach of the duty of care in failing to adopt adequate measures to mitigate anthropogenic climate change.

A similar approach has also been adopted in Italy in the case known as "Giudizio Universale[113]", brought in 2021 before the Civil Court of Rome by a broad front of associations and citizens. Expectations for this initiative were considerable, as it was the first rights-based climate case filed in Italy. However, in February 2024, the Court declared the claim inadmissible for "absolute lack of jurisdiction", without addressing the merits[114].

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[109] Brussels Court of Appeal, *ASBL Klimaatzaak,* Jug. 30 November 2023. For a detailed review of aspects of the judgement, see CLIMATE LITIGATION NETWORK, *Successful climate litigation in Belgium:* VZW Klimaatzaak v. Kingdom of Belgium & Others, May 2024.

[110] On this landmark decision, see, for example, the commentary by M. PETEL, N. VANDER PUTTEN, *The Belgian Climate Case: Navigating the Tensions Between Climate Justice and Separation of Powers,* in *Verfassungsblog,* 5/12/2023.

[111] See, in particular, E. SLAUTSKY, *Climate litigation, separation of powers and federalism* à la belge: *a commentary on the Belgian climate case: Cour d'appel de Bruxelles 30 November 2023, Klimaatzaak and others v the Belgian State, Wallonia, Flanders and the Brussels Region,* in *European Constitutional Law Review,* 20(3), 506 ff.

[112] See the updates on the progress of the case on the website of the Klimaatzaak organisation.

[113] *A Sud et al. v. Italy* ("the Last Judgment").

[114] See L. SALTALAMACCHIA, R. CESARI AND M. CARDUCCI, *"Giudizio Universale". Quaderno di sintesi dell'azione legale*, 2021, 3 ff. On the current developments of the case before the Court of Appeal of Rome, see V. CAPUOZZO, *Un nuovo capitolo del caso Giudizio Universale davanti alla Corte d'Appello di Roma: un inquadramento comparato in attesa della decisione*, in *DPCE Online*, 15 September 2025.

With regard to the Italian perspective on climate litigation, see M. CARDUCCI, *Il cambiamento climatico nella giurisprudenza italiana*, in *Diritti Comparati*, 8 March 2021; and R. LUPORINI, The 'Last Judgment': Early Reflections on Upcoming Climate Litigation in Italy", in *Questions of International Law*, 31 January 2021.

On the prospects for climate litigation in Italy, and on the possibility of protecting a human right to a stable and secure climate through civil liability, see S. VINCRE, A. HENKE, *Il contenzioso "climatico": problemi e prospettive*, in *BioLaw Journal*, 2, 2023, 143 ff. On the role of the separation of powers in mediating between scientific evidence and political discretion, see R. MAZZA, *Alcune riflessioni sul contenzioso climatico a partire dal Giudizio*

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The claim, lodged against the Italian State, sought to establish extra-contractual liability (and, in the alternative, custodial liability) under Article 2043 of the Civil Code, arguing that Italy had breached its international, European and domestic obligations to combat climate change. The appellants further relied on Articles 2 and 8 ECHR, and on Articles 9 and 32 of the Italian Constitution (the latter protecting health as a fundamental right, and the former – as amended by Constitutional Law No. 1 of 2022 – expressly protecting the environment, biodiversity and ecosystems "also in the interest of future generations").

The appeal was also strongly anchored in scientific evidence, and the requests included not only the ascertainment of the violation, but also the adoption of concrete and quantified measures to reduce emissions (specifically, a 92% reduction in greenhouse gas emissions by 2030 compared to 1990 levels, as well as the obligation for the Government to adopt an effective communication plan on the risks of climate change and on mitigation and adaptation policies).

Ultimately, therefore, the litigation did not seek damages, but rather a judicial order imposing a specific *obligation* on the State. However, the Civil Court of Rome ruled that decisions relating to the methods and timing of responding to climate change fall within the competence of political bodies, as an expression of their policy-making function, and were therefore beyond the jurisdiction of the ordinary courts.

Referring to the principle of the separation of powers, the judge excluded his own jurisdiction in the matter, stating that any judicial intervention in climate policy choices would constitute an invasion of the sphere reserved for the executive and legislative powers. While affirming its lack of jurisdiction, the Court nevertheless pointed out that claimants could still "resort to the remedies available within the EU legal order to challenge EU acts" and that "deficiency in terms of adequacy, consistency and reasonableness are open to challenge before the administrative courts"[115].

A similar line of reasoning was subsequently reiterated in July 2025 by the Italian Court of Cassation in litigation brought by Greenpeace against ENI, a case belonging to the rapidly expanding category of rights-based climate actions directed at private actors. Although widely portrayed as a symbolic activist victory, a close reading of the judgment reveals a judicial approach still marked by caution, with courts reluctant to cross the boundary traced by the separation of powers and inclined to treat the definition of climate policies as lying within the domain of political discretion rather than judicial review[116].

Universale e dal caso KlimaSeniorinnen: quale dimensione assume il principio di separazione dei poteri?", in Diritti comparati, 3/2024, 251 ff.

[115] F. CERULLI, A Sud and others v. Italy: brief considerations on the first climate dispute in Italy, in *Osservatorio sulle fonti,* 3/2024, 335 ff. The decision of the Court of Rome is currently under appeal before the Court of Appeal of the capital, which is now reviewing the matter. See the "Italian Climate Litigation" Observatory and the extensive bibliography cited therein.

[116] See ITALIAN COURT OF CASSATION, *Greenpeace and Recommon v. Eni and Others,* order of the Joint Divisions 21 July 2025 no. 20381. The associations Greenpeace and Recommon, together with private individuals, brought

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7. *Further trends in strategic climate litigation*

In some European countries, rights-based climate cases have sought to promote a "climate-oriented" reinterpretation of constitutional provisions and of the ECHR, not only in litigation brought against public authorities, but also in proceedings directed at private actors, particularly in the context of actions aimed at annulling authorisations granted for projects or activities with potentially significant environmental and climate impacts.

A paradigmatic example is *Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy*, also known as *People v. Arctic Oil*. The proceedings, initiated in Norway in 2016, concerned the challenge to licenses granted by the Ministry of Petroleum and Energy for the exploration and exploitation of new oil and gas fields in the Barents Sea. According to the appellants – environmental associations and civil society organisations – these licenses violated Article 112 of the Constitution, which recognises every person's right to a healthy environment and guarantees the preservation of natural resources, including in the interests of future generations.

The Oslo District Court dismissed the claim in 2018; the judgement was then upheld by the Court of Appeal and, in 2020, definitively confirmed by the Norwegian Supreme Court. The latter, while recognising the constitutional importance of Article 112, considered that it does not confer an immediately enforceable subjective right. Judicial review of environmental and climate policy choices must therefore be limited to cases of manifest constitutional breach, leaving a broad margin of discretion to the legislature and the executive in the implementation of protective duties.

proceedings before the Court of Rome seeking a declaration of liability of the National Hydrocarbons Agency (ENI) – as well as the Ministry of Economy and Finance and the "Cassa Depositi e Prestiti" – for failing to adopt adequate policies and measures to comply with international climate obligations and, consequently, for the financial and non-financial damage allegedly resulting from the consequences of climate change caused or aggravated by their conduct, in breach of fundamental rights (Articles 2 and 8 ECHR, Articles 2 and 7 of the Charter of Fundamental Rights of the European Union) and civil liability rules (Article 2043 of the Italian Civil Code). In its order, the Court of Cassation held that the ordinary courts have jurisdiction where a non-contractual civil liability action is brought, but that such jurisdiction is excluded when the alleged wrongful conduct is attributable to the State legislator acting through choices that are clearly expressive of political discretion. The Court therefore reiterated that "decisions relating to the methods and timing of managing the phenomenon of anthropogenic climate change – which involve discretionary socio-economic and cost-benefit assessments in the most varied sectors of human society – fall within the sphere of competence of political bodies and are not justiciable" before the ordinary courts. The latter are only responsible for verifying whether the international and constitutional provisions invoked are "suitable for imposing a duty of intervention directly on the defendants, such as to establish their non-contractual liability and therefore justify their condemnation to specific performance or equivalent measures". On this order, see in particular, G. SCARSELLI, *Per una corretta lettura della recente ordinanza della Sezioni unite (Cass. sez. un. 21 luglio 2025 n. 20381) in tema di contenzioso climatico,* in *Judicium,* 29 July 2025; see also A. MOLFETTA, *Eppur [qualcosa] si muove. Considerazioni a prima lettura intorno all'ordinanza sul regolamento di giurisdizione nella vertenza climatica Greenpeace e al. v. Eni e al.,* in *Corti Supreme e salute,* 2025, 3.

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The case is currently pending before the European Court of Human Rights, where the applicants allege a violation of Articles 2 and 8 ECHR on the grounds that authorising new fossil fuel extraction licences during a climate emergency amounts to an unjustifiable interference with the rights to life and to respect for private life. The outcome of the Strasbourg proceedings – situated within the trajectory marked by recent climate judgments – may substantially influence the interpretation of Article 112 of the Norwegian Constitution and more broadly delimit the scope of State discretion in decisions concerning fossil fuel exploitation.

From another perspective, it should be noted that one of the first judicial reactions to *KlimaSeniorinnen* – in which the ECtHR affirmed the existence of positive obligations to protect against climate-related risks under Article 8 and held judicial intervention compatible with the separation of powers – appears to have taken the form of an attempt to restrict its scope. This is the *Anton Foley and Others v. Sweden* case (known as the "Aurora case"), which represents the first strategic rights-based climate litigation brought in Sweden. The claimants, a group of youth activists supported by an environmental organisation, alleged a breach of the State's positive obligations under Articles 2, 8 and 14 ECHR, due to the inadequacy of national mitigation policies.

In particular, the applicants asked the court to order the State to adopt measures ensuring a reduction in greenhouse gas emissions corresponding to its "fair share" of the global contribution necessary to limit global warming, denouncing the absence of a calculation based on the best available scientific knowledge and, consequently, the inadequacy of national climate targets.

In February 2025, the Swedish Supreme Court dismissed the case[117] noting the absence of the subjective conditions of *standing* and, above all, the limits on the justiciability of climate policy choices, according to the separation of powers doctrine enshrined in the national constitution[118].

This ruling reflects a markedly cautious judicial attitude, aimed at preserving legislative and executive discretion, even in the face of claims based on fundamental rights. The *Aurora* case seems to confirm that, despite the fact that Strasbourg case law has affirmed the duty of judicial review of the adequacy of climate policies, the effectiveness of rights-based climate

[117] Swedish Supreme Court, *Anton Foley and others v. Sweden,* 19 February 2025.

L. NORDLANDER, *Constitutional boundaries after Verein KlimaSeniorinnen: Lessons on domestic rights-based climate change litigation from the Swedish Supreme Court's Aurora Judgment*, in *Review of European, Comparative & International Environmental Law*, vol. 34, 2: Waste Law, Jul 2025, 566.

[118] On 14 April 2025, a request was submitted to transfer the claim from the individual applicants to the Aurora association. In its press release, Aurora stated that "if the court concludes that this is not possible, Aurora will sue the State again. One way or another, Aurora is continuing to bring the issue of the Swedish state's legal obligations in the climate crisis to Swedish courts". On this matter, see, for example, L. NORDLANDER, *Sweden's first systemic climate mitigation case and the application of KlimaSeniorinnen: unpacking the Supreme Court's judgment in the Aurora case,* in *Climate Law. A Sabin Centre blog,* 24 April 2025.

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protection still depends on the – not always linear – interaction between the ECHR and domestic courts.

In light of the above, it is clear that judicial adherence to a "climate-oriented" interpretation of constitutional provisions cannot be presumed, especially as environmental clauses are typically conceived to operate within a territorially confined framework. Climate change is inherently global and requires a legal approach that transcends national boundaries. The difficulty therefore lies in translating such constitutional obligation – originally designed to protect national interests – into an effective constraint for addressing a transboundary and global phenomenon such as climate change[119].

Furthermore, the nature and outcomes of the rights-based climate litigation vary depending on the jurisdiction deemed most useful for challenging the State's failure to comply with climate obligations. For example, in France, although the *Charte de l'environnement* has existed since 2005 – incorporated into the Constitution and setting out fundamental principles of environmental protection – actions have been brought before the administrative courts, where litigants can rely on a broader range of legal sources[120].

Among the most significant cases are *Notre Affaire à Tous and Others v. France* (*L'Affaire du Siècle*) and *Commune de Grande-Synthe v. France*. Both cases had a favourable outcome for the applicants and contributed to establishing, in administrative proceedings, the legal responsibility of the French State for failure to fulfil its climate obligation (with an injunction to the Government to take the necessary measures to comply with these obligations). However, rights-based reasoning remained largely secondary, and the approach seen in *Urgenda* did not play a comparably central role.

[119] A significant example is *In re Vienna-Schwechat Airport Expansion*, decided in 2017 by the Federal Administrative Court (judgment of 02.02.2017, VfGH, E 875/2017, E 886/2017), which annulled the authorization issued by the Land authorities for the expansion of Vienna Airport on the grounds that the project would have led to a significant increase in CO_2 emissions, contrary to Austria's mitigation obligations under national and international law. The decision was subsequently challenged before the Austrian Constitutional Court (pursuant to Article 144 of the Federal Constitution, which allows appeals against decision of administrative court for violation of constitutional rights). In its 2017 ruling (*VfGH,* E 875/2017, E 886/2017), the Constitutional Court overturned the first-instance judgement. While acknowledging that the competent authorities are required, under constitutional provisions, to take environmental considerations into account when balancing interests, the Court held that this duty does not imply that environmental concerns take absolute precedence over competing public or private interests. In particular, it criticized the Administrative Court for including, in its assessment of climate impact, not only emissions directly attributable to take-off and landing operations, but also those generated by international flights to and from Vienna Airport, which, according to the judge, could not be regarded as falling within Austria's jurisdictional responsibility and therefore did not fall under constitutional environmental protection.

[120] See, in this regard, M. FEBVRE-ISSALY, *Affaire du siècle, Grande-Synthe: potentiel, formes et limites de l'action du juge administratif pour le climat,* in *Décryptage de la Fabrique Ecologique,* December 2021; C. COURNIL, M. FLEURY, *De «l'Affaire du siècle» au «casse du siècle»?*, in *La Revue des droits de l'homme* [Online], Actualités Droits-Libertés, 7 February 2021.

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In *L'Affaire du Siècle*[121], in particular, brought before the Paris Administrative Court by four non-governmental organisations (*Notre Affaire à Tous*, *Greenpeace France*, *Oxfam France* and *Fondation pour la Nature et l'Homme*, which also organised a large-scale social mobilisation campaign) for « *carence fautive* », the claim invoked the unlawfulness of climate inaction and the « *prejudice écologique* » defined in article 1247 of the civil code as « *une atteinte non négligeable aux éléments ou aux fonctions des écosystèmes ou aux bénéfices collectifs tirés par l'homme de l'environnement* ».

The climate obligation was reconstructed by the judge through a complex layering of legal sources (international and EU law, domestic provisions, including the *Charte de l'environnement*)[122], but the decision was not explicitly based on the ECHR, nor did it affirm that the articles of the Convention (e.g. Art. 2 or Art. 8) constitute the binding legal basis for imposing climate measures.

It should be noted that in *Affaire du Siècle* it was not necessary for the applicants to demonstrate a violation of fundamental rights – such as the right to life and health – because the principal claim concerned non-compliance with national climate legislation, the legitimacy of which was not in dispute.

However, the claim was nevertheless grounded in the invocation of the "*droit de chacun de vivre dans un environnement équilibré et respectueux de la santé*", asking the court to recognise it at least as a "*principe général du droit, portant sur le droit de vivre dans un système climatique soutenable*", derived from the "*exigences de la conscience juridique du temps et [de] celles de l'État de droit*".

It is also noteworthy that *Notre Affaire à Tous* continued to rely on human rights arguments in various *contributions extérieures* submitted to the *Conseil constitutionnel* in the context of *ex ante* constitutional review of climate and environmental bills. Arguing that "*les différents manquements à l'obligation constitutionnelle de vigilance environnementale […] ne*

[121] See M. TORRE-SCHAUB, *Le contentieux climatique: du passé vers l'avenir*, in *Revue française de droit administratif*, 1, 2022 ; L. DEL CORONA, *Brief considerations on climate litigation in light of the recent ruling by the Tribunal Administratif de Paris on the 'Affaire du* Siècle', in *Gruppo di Pisa. La Rivista,* 1, 2021, 327-335.

[122] In *Commune de Grande-Synthe*, the appeal was brought by a coastal municipality in northern France, particularly exposed to the risk of sea-level rise, against the French State for insufficient national climate policies, seeking an order form the *Conseil d'État* requiring the adoption of appropriate legislative and regulatory measures to ensure compliance with France's climate obligations. In its ruling of 1 July 2021, the *Conseil d'État* ordered the government to take all necessary measures to ensure compliance with the greenhouse gas emission reduction trajectory, thereby binding it to an obligation of result. In *L'Affaire du Siècle*, on 3 February 2021, the Paris *Administrative Court* recognized the liability of the French State for failing to meet its emission reduction targets and held it responsible for ecological and moral damages. In a subsequent decision of 14 October 2021, the court further ordered the Government to adopt, by 31 December 2022, the necessary measures to compensate for the overshooting of the first carbon budget and to prevent any further deterioration of the situation. Among many others, see, for example, L. Del Corona, Brief considerations on climate litigation in light of the recent ruling by *the Tribunal Administratif de Paris* on *the Affaire du Siècle*, nella *Rivista del Gruppo di Pisa,* 1/2021, 327 ff.

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permettent pas de garantir le respect du droit fondamental de vivre dans un système climatique soutenable"[123], grounded in the "*droit de vivre dans un environnement équilibré et respectueux de la santé » in the Préambule de la Charte de l'environnement and in the « principe du respect de la dignité humaine*", the organisation urged the *Conseil constitutionnel* to recognise, if not a fully-fledged autonomous right, at least a "*principe à valeur constitutionnelle*"[124] in the field of climate protection.

This strategy reveals an attempt to test the role that constitutional judges can play in addressing the challenges posed by climate change. It raises key questions: what interpretative techniques might the courts develop to anchor the obligation to mitigate climate change within the existing constitutional parameters (the right to life, to health and to a healthy environment)? To what extent will constitutional courts consider themselves entitled to limit political discretion in order to ensure consistency between climate policies and fundamental rights, particularly in the light of Strasbourg case law and its potential future developments (given that further climate disputes are still pending before the ECtHR)[125]?

This issue is probably one of the most relevant in the future of climate litigation in Europe; this importance was confirmed by the conference held in Berlin in 2023, at the initiative of *the Bundesverfassungsgericht,* which brought together the presidents of the constitutional and supreme courts of several Council of Europe member states to discuss the role of European courts in the face of the challenge of climate change, whose entry into the courtrooms is generating profound tensions concerning the principle of the separation of powers and the role of judges in the face of the political discretion of governments and legislators.

Not all judges were inclined to question the margin of discretion of governments in the development and implementation of climate policies, but many expressed their willingness to

[123] See Constitutional Council, *External contribution,* submitted in the context of the a priori constitutional review of the draft law on energy and climate, presented on behalf of Notre Affaire à Tous, No. 2019-791DC, 16.

On environmental and climate defence associations – which have fully understood the strategic force of the "arme du droit" – and, in particular, on the attempt by *Notre Affaire à Tous* to use the "porte étroite" technique of the *contribution extérieure* before the Constitutional Council in order to advance, through "activisme constitutionnel", arguments concerning the insufficient ambition of the legislature in the face of the climate emergency and to take advantage of a new "*espace de médiatisation*" aimed at "sensitising different legal actors and disseminating the discourse of an 'alternative legal order'", see C. COURNIL, *Notre affaire à tous et " l'arme du droit. Le combat d'une ONG pour la justice climatique*", in V. DE BOILLET, A.-C. FAVRE, T. LARGEY, R. MAHAIM (eds.), *Environnement, climat. Principes, droits et justiciabilité*, Munich, 2024, 171 ff.

[124] See CONSEIL CONSTITUTIONNEL, *Contribution extérieure. Dans le cadre du contrôle constitutionnel a priori du projet de loi relatif à l'énergie et au climat. Présentée au nom de Notre Affaire à Tous,* 15/10/2019, 16-17.

[125] See the factsheet published by the European Court of Human Rights in April 2024 on past and pending cases concerning climate change. J. SETZER, C. HIGHAM, *Global trends in climate change litigation: 2025 snapshot*, cit. 20, highlights that there is "a gap in comparative environmental and climate litigation literature [on] the pivotal role apex courts play in shaping global climate governance", and therefore emphasise "the importance of continued scholarly focus and research on this area.

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preserve an active role for constitutional judges, especially when fundamental human rights are at stake[126].

Until now, a (partial) "climate-oriented" interpretation of existing constitutional provisions had already emerged in the Federal Republic of Germany with the landmark decision of the *Bundesverfassungsgericht* on 24 March 2021[127] ("*Neubauer*"), which upheld a constitutional complaint brought in 2020 by a group of young activists challenging the 2019 Federal Climate Act[128], on the grounds that the emission reduction targets set out therein were insufficient and unbalanced. By focusing its reduction efforts mainly on the years after 2030, the legislature had in fact imposed a disproportionate burden on future generations, thereby restricting their fundamental rights in the long term.

In their constitutional complaints, the applicants relied primarily on the constitutional obligations of protection under the Basic Law, namely Article 2(2), first sentence, ("Everyone has the right to life and physical integrity" and Article 14(1) ("The right to property and inheritance shall be guaranteed"). They also invoked their fundamental rights under Article 2(1) in conjunction with Article 14(1) and Article 20a (2The State, with a sense of responsibility towards future generations, shall, within the framework of the constitutional order, protect natural living conditions and animals by legislation and, in accordance with laws and regulations, by the executive and the judiciary"'), read together with Article 1(1) ("Human dignity is inviolable").

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[126] See Press Office of the Italian Constitutional Court, *Press release of 8 May 2023, The role of European courts in the face of the challenge of climate change*. Outside the European context, an interesting case is *Do-Hyun Kim et al. v. South Korea*, decided by the Korean Constitutional Court on 29 August 2024. The case originated from a constitutional complaint filed in 2020 by a group of young activists asserting that Article 8(1) of the Carbon Neutrality Framework Act set a target insufficient to protect their life and safety from climate disasters, as required by internationally agreed standards, such as the Paris Agreement. They argued that the provision infringed upon their fundamental rights by failing to constitute an appropriate and effective minimum measure to safeguard the right to life, the pursuit of happiness, general freedom of action, a healthy and pleasant environment, liberty and equality. The Court held that the State had violated its constitutional obligation to protect these rights in relation to the national GHG reduction target, thereby undermining intergenerational equity and leaving future generations vulnerable to an excessive climate burden. It acknowledged that the constitutional right to a healthy environment encompasses harms and risks associated with climate change and set a substantive standard for State climate action, requiring a "fair share" of global mitigation effort based on science and international standards.

[127] See *Neubauer and Others v. Germany,* Judgment of the Federal Constitutional Court of the Federal Republic of Germany of 23 March 2021, BVerfG, 1 BvR 2656/.18 and others. Many aspects of the decision have been extensively discussed in the literature; see, among others, F. EKARDT, K. HEYL, *The German Constitutional verdict is a landmark in climate litigation*, in *Nature Climate Change*, 2022, 12, 697 ff.; L. J. KOTZÉ, *Neubauer et al versus Germany: Planetary Climate Litigation for the Anthropocene?*, in *German Law Journal* 2021, 22, 1423 ff.; R. BOLDE, M. CARDUCCI, *Libertà "climaticamente" condizionate e governo del tempo nella sentenza del BverfG del 24 marzo 2021*, in *laCostituzione.info*, 3 May 2021; S. SINA, *The German Federal Constitutional Court's Decision on the Climate Change Act*, in *Carbon & Climate Law Review*, vol. 16, 1, 2022, 18 ff. and literature cited therein.

[128] *Bundes-Klimaschutzgesetzes* (KSG), 12 December 2019.

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While *Urgenda* focused primarily on the rights of the current inhabitants of the Netherlands, basing its reasoning on Articles 2 and 8 of the ECHR and identifying climate change as a "real and immediate threat" to life and private life, the *Bundesverfassungsgericht* supplemented this approach with an intergenerational dimension, linking climate protection to Article 20a[129]; this provision, which was introduced in 1994 and amended in 2002 to include animal protection, requires the State to safeguard the "natural foundations of life", thereby assuming responsibility towards future generations.

The Court did not regard this provision as merely programmatic, but as a positive legal obligation, in which the protection of the climate must be considered an integral part of the protection of the "natural foundations of life" and, as such, binding on all public authorities.

Although it did not find an immediate violation of this obligation – considering, based on current scientific knowledge, that the 2030 targets still fell within the legislator's margin of discretion – the Court nevertheless held the climate law unconstitutional insofar as it failed to distribute mitigation burdens fairly and proportionately over time. By deferring reductions to later decades, the law risked excessively constraining future generations' fundamental freedoms by forcing them into abrupt and stringent mitigation measures in a compressed timeframe.

The distinctive feature of the ruling lies in its intertemporal reasoning, which held that the protection of fundamental rights today necessarily includes safeguarding the future ability to exercise them, requiring the preservation of an adequate climate "margin of manoeuvre" ("*intertemporale Freiheitssicherung*"), closely linked to the state's responsibility towards future generations.

The *Bundesverfassungsgericht* also recognised that evolving scientific evidence on anthropogenic global warming may require more ambitious reduction targets in the future under Article 20a of the Basic Law. This approach was rapidly put to the test in January 2022, when a new constitutional challenge – *Steinmetz et al. v. Germany* – was filed to assess whether the post-Neubauer legislative amendments to the climate law are consistent with Article 20a GG in the light of the most recent IPCC findings[130].

[129] Article 20a of the Basic Law for the Federal Republic of Germany [Protection of the natural foundations of life and animals] provides that: "Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order". According to the Federal Constitutional Tribunal Court, "The Basic Law obliges the state to protect life and health against the dangers of climate change. This duty of protection also encompasses the obligation to take climate action and to strive for climate neutrality".

[130] In October 2023, another constitutional complaint was filed before the *Bundesverfassungsgericht* alleging the inadequacy of the Government's climate mitigation trajectory and its inconsistency with the fundamental rights of the applicants (*Steinmetz, et al. v. Germany II*). In July 2024, a further *Verfassungsbeschwerde* was lodged against the recent revision of the federal climate protection Act, likewise contending a violation of the right to intergenerational freedom and the right to life, also in conjunction with Article 8 ECHR.

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The *Steinmetz* case, which is still pending, follows the argumentative structure of *Neubauer*, but with a specific focus on the scientific and legal adequacy of the new post-2021 targets. It argues that Germany is still not on a trajectory consistent with its international commitments or with the intergenerational protection mandated by the Constitution. The case is thus not merely a continuation of the 2020 litigation, but a test of the constitutional court's capacity to give concrete effect to the intertemporal safeguard introduced by *Neubauer*, ensuring that national climate action is continually and dynamically recalibrated in line with scientific progress.

As we have noted so far, the boundary between political discretion and judicial review in climate matters has been drawn differently by the courts, and it will be particularly interesting to monitor in the future the extent to which constitutional judges will be able to assess the legislature's margin of discretion in addressing climate change, how they will weigh competing constitutional interests, and how the contours of the State's climate obligation may be redefined in the light of evolving scientific knowledge.

In this respect, the judgment of the Hungarian Constitutional Court delivered in June 2025 is especially noteworthy. The Court declared unconstitutional the national target of a 40% reduction in greenhouse gas emissions by 2030, finding it incompatible with the constitutional principles of precaution, intergenerational justice and health protection. It accordingly ordered the National Assembly to adopt, by 30 June 2026, a new, more ambitious climate law that is consistent with constitutional parameters[131]. This decision, concerning the national climate protection act, does not merely entail a formal review of legality; rather, it affirms the existence of a genuine constitutional obligation of climate protection, systematically linking the right to health, the right to a healthy environment and the duty to safeguard the common natural heritage (according to art. P(1) of the Basic Law).

The Constitutional Court held that "the National Assembly has committed an unconstitutionality by omission [...] by failing to comprehensively and explicitly regulate, in accordance with the specificities of the Carpathian Basin and Hungary, the means of reducing greenhouse gases that cause climate change beyond traditional emission regulation (mitigation), the means of adapting to the consequences of climate change (adaptation), and the means of increasing resilience to the consequences of climate change (resilience)".

The most significant aspect of the ruling lies in the recognition of the climate as part of the nation's common heritage[132]; by means of an evolutionary interpretation, the Court extends

[131] Constitutional Court of Hungary, judgement no. case II/3536/2021 (on the constitutionality of Article 3(1) of the Climate Protection Act), June 2025. The petition was lodged in 2021 by fifty opposition MPs (one quarter of the National Assembly), arguing that the 40% emission reduction target for 2030 was inadequate and that the law lacked any climate adaptation framework, in breach of the State's constitutional duties.

[132] Article P) of the Fundamental Law of Hungary provides, in its first paragraph, that "natural resources, in particular arable land, forests and water reserves; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, and it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations".

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the constitutional protection already provided for natural resources to this immaterial public good, placing it within the horizon of a "constitutional public trust"[133]. The State's duty is therefore not merely programmatic, but is framed as a fiduciary responsibility towards the community as a whole and, in particular, towards future generations.

The reference to the principles of non-regression, precaution and prevention places the judgment in close conceptual proximity to the earlier ruling of the German Constitutional Tribunal. The Hungarian Court not only prohibits any rollback of existing levels of protection, but also requires the continuous updating of legislation to reflect scientific developments and changing environmental conditions. It is in this perspective that the Court censured the adoption of a target that had already been reached (a 40% reduction by 2030), finding it contrary to intergenerational equity.

Finally, the Court places its reasoning within a multilevel framework, referring to the principle of common but differentiated responsibilities, to obligations deriving from EU law, and to the case law of the European Court of Human Rights. However, on closer examination, these references are reframed within a markedly "national" perspective, in which openness to supranational law coexists with a strong reaffirmation of "national constitutional sovereignty." The result is a complex and potentially ambiguous equilibrium, and the ruling could also be read as a step towards the progressive construction of a "populist constitution"[134], aligned with forms of "environmental populism"[135] or "climate nationalism", in which climate action is recast in national and sovereigntist terms rather than global and cooperative ones.

8. *Towards the recognition of a right to a* life-sustaining climate system?

In light of what has been examined so far, it would be premature to conclude that the rights turn in climate litigation has already consolidated a generalised trend towards the recognition of a fully-fledged "right to climate", as has long been advocated in doctrine.

[133] See, for example, S. LYNESS, *The Constitutional Public Trust in a Warming World*, in *Pace Environmental Law Review,* vol. 41, 1, 2023, 58 ff.

[134] See, for example, F. GÁRDOS-OROSZ, *Confused Constitutionalism in Hungary–New Assessment Criteria for Recognising a Populist Constitutional Court*, in *Hague Journal on the Rule of Law*, vol. 16, 18 July 2024, 225 ff.

[135] L. DE NADAL, *Environmental populism, or how the far right is becoming green*, in *Voxeurop,* 24 February 2022. A study by the environmental think tank Adelphi (S. SCHALLER, A. CARIUS, *Convenient Truths. Mapping climate agendas of right-wing populist parties in Europe*, Berlin, 2019) illustrates how a growing number of populist parties have begun to embrace so-called "green patriotism", which opposes climate and energy transition policies but strongly supporting "environmental conservation". Within this framework, several scholars have referred to claims of "national sovereignty" over climate and environmental policies and the use of climate-related narratives to advance protectionist or nationalist agendas through what has been termed "climate nationalism", meaning "an approach in which climate strategies are closely linked to national economic and industrial security". See A. TERZI, *Green transition: the dawn of "climate nationalism"*, in *Ispi online*, 20 December 2024. See also A. RUSER, A. Machin, *Nationalising the Climate: Is the European Far Right Turning Green?*, in *Green European Journal,* 27 September 2019.

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It seems more realistic to observe that the growing attention to the link between climate change and human or constitutional rights has triggered a conceptual evolution that tends, albeit cautiously, to locate the guarantee of a "stable climate" within the normative sphere of fundamental rights. The right to a healthy environment is progressively being integrated – or reinforced – through a "climate lens", or inferred, by way of interpretation, from those constitutional provisions designed to protect life, health and human dignity.

The so-called "right to climate", which lies at the core of many strategic climate litigation and may indeed be understood as the claim to a safe and stable climate system, still appears to remain a concept under construction[136]. Its development is nourished by the dynamic interaction between courts, scientific knowledge and civil society, and draws substantive impetus from the right to a healthy environment and its normative entanglement with already recognised fundamental rights.

This is not the place to address exhaustively the many theoretical questions that the development of such a right inevitably raises, both as regards its legal characterisation (whether as a fundamental, a social, or an intergenerational right), and concerning its justiciability or its relationship with competing constitutional principles. It may suffice here to note that the time is not yet ripe for the formal consolidation of a juridically autonomous "right to climate", whether as a human right or as a binding general principle of international law. At the regional level, difficulties persist within the Council of Europe even in adopting an additional protocol to the ECHR on environmental matters.

Nevertheless, there is now a discernible convergence regarding the substantive content of what such a right would entail. The evolution of rights-based climate litigation shows that, where no explicit right to climate exists in domestic law, claimants identify its normative foundations either in the right to a healthy environment or in constitutional rights protecting life, health, liberty and property.

The common starting point is the awareness that "the climate, in its ecosystemic function of regulating life", represents the fundamental precondition for all other rights. Stabilisation

[136] On some of these aspects – in particular with regard to the reconstruction of the various dimensions of a "right to climate" and the protection of the "climate interest" – see, for example, E. GUARNA ASSANTI, *Il contenzioso climatico europeo. Profili evolutivi dell'accesso alla giustizia in materia ambientale*, Milano, 2024, 13–26. A. Bordner, J. Barnett, E. Waters, *The human right to climate adaptation*, in *npj Clim. Action*, 2, 43, 2023, prefer to speak of a "right to climate adaptation", arguing that it "can be found in well-established human rights norms, including the right to health, life, food, water, and culture. Every individual holds these rights, is legally entitled to protection against interference with their rights, and is guaranteed an effective remedy if their rights are violated". They further contend that "a peoples' right to adaptation can be found in their collective and immutable right to self-determination". In the same vein M. FIBIEGER BYSKOV, *The Right to Climate Adaptation*, in *Ethical Theory and Moral Practice*, vol. 27, 2024, 477-478, maintains that "individuals and communities who are or will be negatively affected by climate change through no fault of their own should have the right to adaptation", understood as "the right to demand some kind of assistance with, or freedom to, building resilience and adaptative capacity and adapting to climate change. Consequently, it also binds someone to help with or provide this assistance".

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of the climate system thus becomes a necessary condition for safeguarding the essential core of fundamental rights, and is increasingly understood as a claim to non-regression in human development "in the face of the dramatic urgency of the climate emergency"[137].

Within this guarantee of non-regression, the very rationale of the right to a stable and safe climate system is rooted: State inaction does not merely constitute "an objective violation of the climate obligation, but also a violation of various rights, because without stabilisation of the climate system, the essential core of any fundamental right is no longer guaranteed", being "progressively and irreversibly compromised".

Conceived in this way, the right to a "stable and safe climate"[138] is the juridical corollary of the claim held by every human being that the State must take effective measures to overcome the climate emergency and to preserve, over time, the functional and thermodynamic stability of the climate system. Other authors prefer the formula "right to a life-sustaining climate system"[139], which shifts the emphasis from climatic stability itself to its indispensable role in enabling human life and securing the conditions for the exercise of rights. On this reading, the right concerns the maintenance of an atmospheric and ecological equilibrium capable of sustaining the survival and well-being of human society; a violation arises where State action or omission "substantially damages the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystems"[140].

The conceptualisation of this right to a life-sustaining climate system, which is gradually taking shape[141], demonstrates that both the duties of protection incumbent on the State and

[137] See Summons *A Sud and others v. Italian State*, Civil Court of Rome, 2021, 59.

[138] C. KORMANN, *The Right to a Stable Climate is the Constitutional Question of the Twenty-First Century*, in the New Yorker, 15 June 2019.

[139] See M. STOCZKIEWICZ, *The Right to a Life-Sustaining Climate System: Selected Case Law*, in *Chinese Journal of Environmental Law* 7, 2023, 301 who refers to the "right to a stable climate" or "right to a safe climate" as a "derived right". In legal discourse, the right to a life-sustaining climate system is understood in various way: (i) as a constitutional right derived from the right to life, liberty and property, in so far as a viable climate is necessary for their realization; (ii) as a constitutional right encompassed within the right to a clean and healthy environment; or (iii) as a foundational right underlying the enjoyment of all other constitutional rights. It may also be conceptualized as an unenumerated dimension of the right to life.

[140] Judge Aiken, ruling in the *Juliana* case, stated that: "In framing the fundamental right at issue as the right to a climate system capable of sustaining human life, I intend to strike a balance and to provide some protection against the constitutionalisation of all environmental claims. On the one hand, the phrase 'capable of sustaining human life' should not be read to require a plaintiff to allege that governmental action will result in the extinction of humans as a species. On the other hand, acknowledgment of this fundamental right does not transform any minor or even moderate act that contributes to the warming of the planet into a constitutional violation".

[141] S. NOVAK, *The Role of Courts in Remedying Climate Chaos: Transcending Judicial Nihilism and Taking Survival Seriously*, in *The Georgetown Environmental Law Review*, Vol 32, 2020, 774-777 explains that he uses the term "habitable environment" to emphasize that what the *Juliana* plaintiffs seek is not a right to a perfectly pristine environment free from pollution, but merely a habitable one". The author argues that the right to a habitable environment is easily derived as a fundamental right under the Fifth Amendment's Due Process Clause. He refers

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the correlative right itself now derive jointly from fundamental constitutional rights and from the right to a healthy environment. It has been aptly described as an "inter-constitutional right-duty, due to its global and intertemporal impact, rooted in universally recognised scientific knowledge". In this sense, the expression "right to a life-sustaining climate system" may be more appropriate than "right to a stable climate", as it captures not merely climatic balance but "the right to live in a climate system that has not lost its capacity to support life"[142].

As is evident, the conceptual core remains unchanged, continuing to consist of avoiding the regression of conditions that make dignified human life and the very survival of fundamental rights possible. In substantive terms, this translates into the right to maintain the "safe operating space" of human beings within the recognised "planetary boundaries"[143].

This right is not (yet) formally enshrined in national constitutions, but rather emerges through inter-constitutional interpretative techniques that operate transversally in judicial reasoning[144]. In its *KlimaSeniorinnen* judgement, the ECtHR expressly acknowledged that climate change may interfere with Convention rights under Articles 2 and 8 ECHR, while declining to recognise an autonomous right to a healthy environment or to a stable climate within the Convention system, which would require an explicit consensus among Council of Europe member States. Nonetheless, the Court effectively affirmed a right to climate protection[145], by holding that serious State omissions can constitute a violation of Article 8 where they expose individuals to foreseeable and substantial harm caused by climate change.

A similar direction has been pursued by the International Court of Justice, which has recognised that a clean, healthy and sustainable environment is a precondition for the enjoyment of fundamental rights, on account of their interdependence and indivisibility. Although it did not elevate such protection to the status of customary international law, the

to a "right to a habitable environment, capable of sustaining human life", as a baseline guarantee ensuring that the climate system is not pushed beyond tipping points and retains the capacity to sustain life. This right is not merely derivative of other rights, but rather constitutes a necessary precondition for their enjoyment.

[142] See F. SICURO, *The Inter-Constitutional Right-Duty to a Stable Climate. Scientific Evidence and Constitutional Problems at Stake*, in *Rivista Giuridica AmbienteDiritto.it*, 1/2024.

[143] See Summons "A Sud and others v. Italian State", Civil Court of Rome, 2021, 60.

[144] On the 'inter-constitutional interpretative technique' which "may concur to build an earth legal system able to address climate change" and progressively construct a right-duty to a stable and secure climate, see F. SICURO, *The Inter-Constitutional Right-Duty to a Stable Climate*, cit.

[145] On the debate concerning the "existence of a (presumed) fundamental right to climate protection" at EU level, see M. KALIS, A.-L. PRIEBE, *The right to climate protection and the essentially comparable protection of fundamental rights: Applying* Solange *in European climate change litigation?*, in *Review of European, Comparative & International Environmental Law*, vol. 33, 2, 2024, 265 ff. More generally, see V. KAHL, *A human right to climate protection – Necessary protection or human rights proliferation?*, in *Netherlands Quarterly of Human Rights*, 40(2), 158 ff.; M. BOTTO, *Il clima come bene giuridico "autonomo"?*, in *Penale. Diritto e Procedura*, 27 September 2025; O. QUIRICO, *A Human Right to a Sustainable Climate?*, in *William & Mary Environmental Law and Policy Review*, vol. 49, 2, 2025, 333 ff.

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ICJ endorsed it as a structural prerequisite to the protection of human dignity, expressly relying on intergenerational equity as a guiding interpretive principle of States' climate obligations.

Equally significant is the recent Advisory Opinion of the Inter-American Court of Human Rights[146], which–although non-binding–is expected to shape the interpretation of the American Convention, influence the practice of the Inter-American Commission and serve as a normative reference point for national courts. The Court held that climate protection constitutes an essential condition for the effective enjoyment of human rights, marking what some scholars regard as the most decisive step toward the eventual recognition of a "right to climate" as either an autonomous human right or a binding general principle of international law.

The Court first recognised the right to a healthy environment as an autonomous human right falling within Article 26 of the American Convention (in continuity with Article 11 of the San Salvador Protocol), defining it as the "right to enjoy a healthy environment"[147]. This formulation captures both the individual and collective dimensions of the right and reflects its systemic nature, as it relates to a complex set of interdependent elements that make life possible.

According to the Court, the right to a healthy environment has a fundamental value for humanity, as it directly affects the protection of health, personal integrity, and life itself. Its autonomous character also enables the protection of natural elements as legal interests in their own right, even independently of any immediate risk to individuals, thereby laying the groundwork for the subsequent recognition of the legal personality of nature.

Closely connected to this reasoning, the Court further acknowledged an autonomous right to a "healthy climate", distinct from but intrinsically linked to the right to a healthy environment. This right extends to the safeguarding of ecosystems and non-human species, incorporates an intergenerational dimension, and constitutes a necessary condition for the effective enjoyment of other fundamental rights such as the rights to life, health, personal integrity, and access to water and food.

The right to a healthy climate thus also exhibits a collective dimension, insofar as it protects the universal interest of present and future generations – and of nature itself – in the preservation of a balanced climate system as a precondition for the continuity of life on Earth. At the same time, it carries an individual dimension, guaranteeing each human being the possibility of living and developing within a climatic context unaltered by dangerous

[146] Inter-American Court of Human Rights, Advisory Opinion OC-32/25, (29 May 2025), requested by the Republic of Chile and the Republic of Colombia.

[147] See also the Advisory Opinion of the Inter-American Court of Human Rights on Environment and Human Rights (OC-23/17), released in February 2018, in which the Court held that the American Convention on Human Rights gives rise to an autonomous right to a healthy environment. On this point, see C. CAMPBELL-DURUFLÉ, S. ANOPAMA ATAPATTU, *The Inter-American Court's Environment and Human Rights Advisory Opinion: Implications for International Climate Law*, 8, 2018, 321 ff.

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anthropogenic interference, thereby functioning as an essential condition for the exercise of other fundamental rights.

At the level of international law, the Court also elevated climate science to the status of a necessary interpretative standard for determining what constitutes "dangerous anthropogenic interference", thereby recognising the decisive role of scientific knowledge in shaping the content of States' obligations of protection. It further affirmed that some environmental and climate-related obligations may acquire the status of *ius cogens* norms, imposing *erga omnes* duties that cannot be derogated from, even by reciprocal agreement between States. Finally, the Court extended State responsibility to situations in which there exists a causal link between conduct originating within the State's territory and human rights violations occurring beyond its borders, classifying climate harm as a particular form of environmental harm of an intrinsically transboundary character.

Finally, great expectations now surround the forthcoming decision of the African Court on Human and Peoples' Rights, before which civil society groups lodged, in May 2025, the first climate-related petition[148], seeking guidance on the human rights obligations of African States in the context of climate change. Such an opinion – destined to be positioned within the wider and already consolidated rights-turn in climate litigation – may confirm what is by now increasingly accepted: namely, that the climate crisis is not merely a technical or environmental issue, but a direct and systemic threat to the effectiveness of fundamental rights, from which immediate and concrete obligations on the part of States necessarily flow.

The gradual construction of a legal entitlement to a stable and safe climate system is therefore being fuelled by the ongoing interaction between national, regional and international jurisdictions and by their dialogue with science, civil society and non-governmental organisations. This dynamic, multi-level process facilitates the circulation and cross-fertilisation of legal interpretations, contributing to the emergence of a shared legal language in the field of climate protection.

In short, the "rights-turn" has now crystallized into a structural and irreversible feature of climate litigation. Supported also by transnational networks of organisations and associations, a shared legal space – both European and global – is taking shape, within which scientific evidence, legal argumentation and litigation strategies circulate and converge. This development marks the ongoing transition of climate protection from the domain of public policy to that of fundamental rights, foreshadowing the emergence of a new and promising season of "climate constitutionalism".

[148] African Court on Human and Peoples' Rights, Request for advisory opinion, by the Pan African Lawyers Union (PALU), on the obligations of states with respect to the climate change crisis, 2 May 2025.

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Marco Onida

EU climate policy, focus on land-based removals

SUMMARY: Introduction. – 2. The EU and climate action: the legal basis. – 3. Some words on EU Climate policy in substance. – 4. Nature-based solutions to climate change – 5. The Nature Restoration Law.

ABSTRACT: *The article explores the evolution of EU climate policy, grounded in the Treaties and developed through the European Green Deal and the Climate Law, which set binding targets for climate neutrality by 2050 and a 55% emission reduction by 2030. Despite progress in lowering emissions, global impacts remain limited. The analysis stresses that restoring natural ecosystems is essential to achieve climate goals. The new Nature Restoration Regulation (2024) reflects this approach, showing that biodiversity protection and climate mitigation are inseparable pillars of the EU's strategy for sustainable development.*

1. *Introduction*

According to the latest climate action progress report (COM(2024)498 of 31.10.2014) published yearly by the EU Commission, in 2023 greenhouse gas emissions (GHG) in the EU decreased by 8.3% compared to 2022. This is the largest annual cut in several decades, if one excludes the 2020 drop of GHG emissions due to the pandemic-caused lock down, which led to the temporary suspension or decrease of several economic activities.

Overall, in 2023 the total net GHG emissions in the EU were calculated to be 37% below the 1990 level. *Per se* this would already be an encouraging result, but if one considers that during the same period GDP rose by 68%, one can easily draw the conclusion that GHG reduction is not "at the expenses" of GDP. In other words, we managed to, at least partially, decouple GHG emissions and economic growth, showing that the increase of GHG emissions is all but inevitable. This is a very important fact. A more detailed assessment of the progress report, however, shows that much of the progress in reducing GHG emissions is due to the strong increase of renewable energy, in particular wind and solar that partly replaced gas and coal combustion, and also to the milder winter temperatures which led to a decrease in the use of energy needed for heating. This means that, despite the mentioned good news, there is still a long way to go in order to reduce emissions from all other sectors that contribute to GHG, if we are to achieve the goal of keeping global warming below 2 degrees, as by the Paris Agreement.

Further less encouraging news appear when one puts the EU GHG emission reduction results in a global perspective: GHG emissions in the EU represented only 6.1% of global GHG emissions in 2023 (against approximately 15% in 1990). Obviously the more the EU reduces its

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emissions compared to other countries, the less it is able to affect global emissions, unless other Countries follow a similar path, which is - until now - not the case: global emissions in 2023 grew another 1,9% compared to 2022, with China (+ 5.2%) and India (+ 6.1%) scoring opposite results as the EU. The US – under the Trump Administration – also radically reconsidered its engagement in climate action and announced its exit from the binding rules established by the Paris Agreement under the United Nations Framework Convention on Climate Change (UNFCCC). At the same time, Europe is warming twice as fast as the global average. In 2023, 50.000 deaths can be attributed to heat waves and catastrophic events in Europe.

Therefore one may conclude that EU policies reducing GHG are having an effect – at least in some sectors - but, unless similar results are pursued and achieved in other sectors and especially by the rest of the world - the overall effect of EU policies risks not to lead to the desired (by the EU at least) results.

2. *The EU and climate action: the legal basis*

The EU finds its competences to deal with climate change in several provisions of the EU Treaties. Pursuant to Article 3(3) of the Treaty on the European Union (TUE), the Union shall work for the sustainable development of Europe […] aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. Article 4(2) of the Treaty on the Functioning of the EU (TFEU) includes environment among the shared competences between the Union and the Member States. Title XX of the TFEU (Articles 191-193) constitutes the specific legal basis of EU environmental policy. From a legal perspective, climate protection is fully part of the EU policy on the environment: Article 191(1) TFEU lists, among the objectives of EU environmental policy, "promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change". The reference to climate change was inserted by the Lisbon Treaty, in force since 1 December 1999, in order to reinforce the action of the EU in this area, even though the legal competence of the EU on environment existed in the Treaties since 1987 (Single European Act).

Pursuant to Article 191(2) TFEU, EU policy on the environment "shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

As mentioned, legally climate protection if part of environmental policy. But, in spite of this, from a policy perspective, climate is more and more considered a "policy of its own" rather than a branch of environmental policy. Indeed, it is not surprising that climate action has

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gained momentum and space in the political agenda as a relatively new policy sector, due to the emotion and visibility it generates, especially in terms of increase of natural disasters (although, it should be observed, the effects of other environmental issues such as waste, air or water pollution are as well very visible).

This has obviously not always been the case: historically, climate change - when it started being recognized as an issue - was first dealt with, at EU level, as a branch of the policy on air pollution. A Directorate for climate change was first created within DG Environment of the European Commission at the end of the 90ies while a General Directorate for Climate Action was set up in 2010. A similar dynamic occurred in several of the EU Member States, where a Ministry for Climate - separate from the Ministry for the Environment – was set up. It is nevertheless clear that, even with an own legitimacy, climate action is still part of environmental policy (as the EU Treaty says), since fighting climate change is necessary to preserve the quality of the environment, human health and to use natural resources rationally (all objectives of EU environmental policy).

The objective of climate neutrality announced in 2019 within the European Green Deal (COM (2019) 640) and made concrete by the Climate Law (Regulation (EU) 2021/1119) is to be understood within the broader context of environmental policy and of the integration of environmental protection requirements (in this case, specifically related to climate protection) into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development, in line with the "Integration principle" laid down in Article 11 of the TFEU. As a matter of fact, climate action is also very much a horizontal policy that requires to re-orient several other sectorial policies (energy, transport, agriculture, trade just to name some). This is also consistent with Article 191 (1) TFEU which reads "Union policy on the environment shall "contribute" to pursuit of the following objectives" – the focus on "contribute" shows that a much broader range of policies is indispensable to reach the objectives of preserving, protecting and improving the quality of the environment; protecting human health, ensuring a prudent and rational utilisation of natural resources and promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

3. *Some words on EU Climate policy in substance*

In terms of substantive policies, the action of the European Union on climate change has developed very much along with the international agenda, under the umbrella of the United Nation Framework Convention on Climate Change, open to signature in 1992 in Rio and to which the European Union adhered in 1994 (Decision 94/69). In 2002 the EU adhered to the Kyoto Protocol (Decision 2002/358).

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The 4th Environment Action Programme 1987-1992 (COM (86) 485) of the EU mentioned climate change only marginally and in relation to the need for dedicated research. A communication on climate change and its impact was adopted by the Commission in 1989 (COM (89) 656). The 5th Environment Action programme (1993-2000) gave Climate change a much more predominant role, which is consistent with the EU having adhered to the UNFCCC.

Gradually, the EU climate agenda on climate mitigation and adaptation intensified[1] (in 2013 also the first adaptation strategy was issued) and this process reached its peak in 2019, with the adoption of the "European Green Deal", a political and legislative programme strongly influenced by the Fridays for Future movement and the growing protests by the younger generations. Until then, one of the main - and rather successful – instruments of EU climate policy has been the "Emission Trading System"- ETS, by which the overall emissions of the energy and industry sector (lately also the aviation and maritime transport sector) are "capped" by a limit imposed on the economic operators by the legislator, and "emission rights" (that are allocated to the emitting installations and must be surrendered when the installations are operated. One allowance equals 1 ton of CO_2 equivalent) are allocated and can be traded in a specific "stock exchange". In a nutshell, operators who invests to reduce emissions will not need all emission rights that they receive and will be able to sell them; conversely, the more emitting companies have to buy extra certificated in order to continue producing. The ETS covers around 14.000 installations today and has allowed the EU to drastically reduce its emissions, in particular in the energy sector. Allowances are traded at the European Energy Exchange and the revenues flow back to the Member States (mostly re-invested in climate related projects).

4. *The European Green Deal*

The "European Green Deal" (EGD) is a wide-ranging and long-term political agenda to transform the European economy, addressing the challenges of environmental pollution and climate change, while transforming them into opportunities for growth and jobs. The programme was announced in a Communication adopted on 11 December 2019 (COM (2019) 640) and developed in the course of the following years. For the Commission term 2019-2024, the Green Deal ranked first among the six priorities listed in the Political Guidelines presented by the Commission President at the beginning of the term, in 2019. The First Executive Vice-President of the Commission was tasked with the European Green Deal as portfolio.

The objective of the EGD is twofold: to achieve "climate neutrality" by 2050 (i.e. an economy in which carbon dioxide removals exceed the emissions caused by anthropogenic

[1] For details on the content and development of EU climate policy until 2015, see J. DELBEKE and P. VIS, *Climate Policy Explained*, Routledge, 2015; see also L. KRÄMER, *EU Environmental Law*, Hart Publishing, 2024; A. M. MORENO MOLINA, *El Derecho del Cambio Climático*, Tirant, 2023.

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activities), in order to progressively reduce the atmospheric concentration of CO_2 and of other greenhouse gases that cause global warming; and to disentangle economic growth from the use of natural resources. Both objectives are be pursued 'without leaving anyone behind', thus providing adequate financial resources to enable all territories to reach them.

Compared to the priorities of the previous Commission (2014-2019), putting the EGD as first objective represented an element of discontinuity, reflecting an increased political focus on environmental sustainability. These objectives are to be achieved not just through climate and environment-specific measures, but also by ensuring the adaptation or transformation of all other relevant EU actions and policies that have an impact on GHG emissions and the use of natural resources, including reforming the EU budget in relation to financing and incentives potentially contrary to the new objectives.

An essential feature of the EGD is the increased focus on interdependence between the major global crisis: climate change and biodiversity loss, "two sides of the same coin", with potentially dramatic consequences on food production. Two major scientific reports endorsed by the international community in 2019 contributed to raising this awareness: the IPBES Global Assessment on Biodiversity and Ecosystem Report and the IPCC (International Panel on Climate Change) Climate change and land special report. The key issue is, a transition that reduces carbon emissions - for example in the energy sector - makes sense only to the extent that this does not exacerbate the environmental balance in other sectors. In order words, possible trade-offs need to be carefully considered, because nature is a great asset to mitigate climate change and adapt to it.

Of course, climate change and biodiversity loss are global crisis. The EU has a limited power to influence global trends. Although the EU has caused 22 % of global historical emissions and has an ecological footprint that greatly exceeds the carrying capacity of the geographical area over which it extends, currently – as already mentioned – the EU emits about 6% of global GHG. For this reason, besides actions to reduce GHG within the Union, it is essential for the EU to convince other countries to follow the same path. Trade policy is a powerful way to influence other States' emissions. And the Union has also a power related to "leading by example" and export of technology, with the potential to contribute to emission reduction across the world – provided the major economies cooperate.

In more concrete terms, In the GDE, the Commission engaged on two climate-related fronts: on the one hand, to propose a "European Climate Law" to make the commitment to climate neutrality binding; on the other hand, to propose an upward amendment to the 2030 greenhouse gas emission reduction target (which had been set, before the Paris Agreement, at – 40 % compared to the 1990 level), and the subsequent adaptation of the relevant climate and energy legislation already in force, in order to increase its level of ambition to be able to meet the new climate targets. The proposal for a 'European Climate Law' (in the form of a Regulation of the European Parliament and of the Council) was presented on 4 March 2020, followed by a modified proposal on 17 September 2020, with the objective to reduce

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emissions by at least 55 % by 2030, taking also into account soil and forest removals, compared to 1990 levels. The European Council (EUCO) endorsed this proposal in December 2020, showing political convergence on the objectives. It is not current practice that the European Council expresses itself on Commission proposals on the environment, so this shows the "upgrade" of climate in the political agenda. The EUCO takes position on the overall direction and political proprieties of the EU but it is not a co-legislator, a role reserved to the European Parliament and the Council of the European Union. The European Parliament would have been even more ambitious and proposed in October 2020 to increase the reduction target to 60 % - calculated also by excluding the removal contribution of forest soil (which affects the overall balance for about 2-3 %).

Note that reducing net emissions by 55 % by 2030 compared to the 1990 level means a reduction effort for the European Union over 10 years equivalent to that achieved in the previous 30 years. This implies a discontinuity compared to the past, which is the essence of the European Green Deal, together with recognizing the gravity and urgency of the crisis, and the Interdependence of problems. This aspect deserves some more words. As mentioned above, climate targets, seen in the broader context of environmental policy and goals, require avoiding that, by pursuing one objective, other environmental targets could be jeopardized. This is particularly important in the biodiversity area: it is essential to avoid that climate-related measure (even if involuntarily) affect biodiversity for the negative (as it can be the case of energy installations in areas of high natural value). But the good thing is, climate and biodiversity targets can well be mutually supportive: a healthy biodiversity and nature in general contributes to climate mitigation and adaptation.

The Climate Law was adopted on 30th June 2021 and entered in force on 29 July 2021. In parallel, the EU engaged in a process of adapting the existing climate-related legislation to the new ambition set by the EGD. This exercise has been named the "fit for 55" adaptation. For example, the ETS system was amended. A lower overall cap was introduced (decrease by 62% till 2030) compared to 2005 (the previous target was minus 43%). The speed of annual emission reductions passes from 2.2% year to 4,3% year from 2024 to 2027 to 4.4% from 2028. Maritime transport emissions are now included while for aviation the currently free allowances system (that means, companies do not have to pay for the emission rights) is to be phased out by 2026. At the same time, in order to prevent/avoid the delocalisation of EU industrial installations to non-EU Countries which impose less stringent requirements (or no requirements), allowing to reduce production costs, the CBAM – Carbon Border Adjustment Mechanism – was introduced, a custom-tax supposed to level out the price of imported goods and goods produced within the EU. CBAM certificates are auctioned and surrendered by importers, that have to declare the GHG emissions embedded in their imports. The CBAM started in October 2023 under a provisional "testing" regime (importers to report their "imported emissions every 3 months"). The full regime will apply from 2026.

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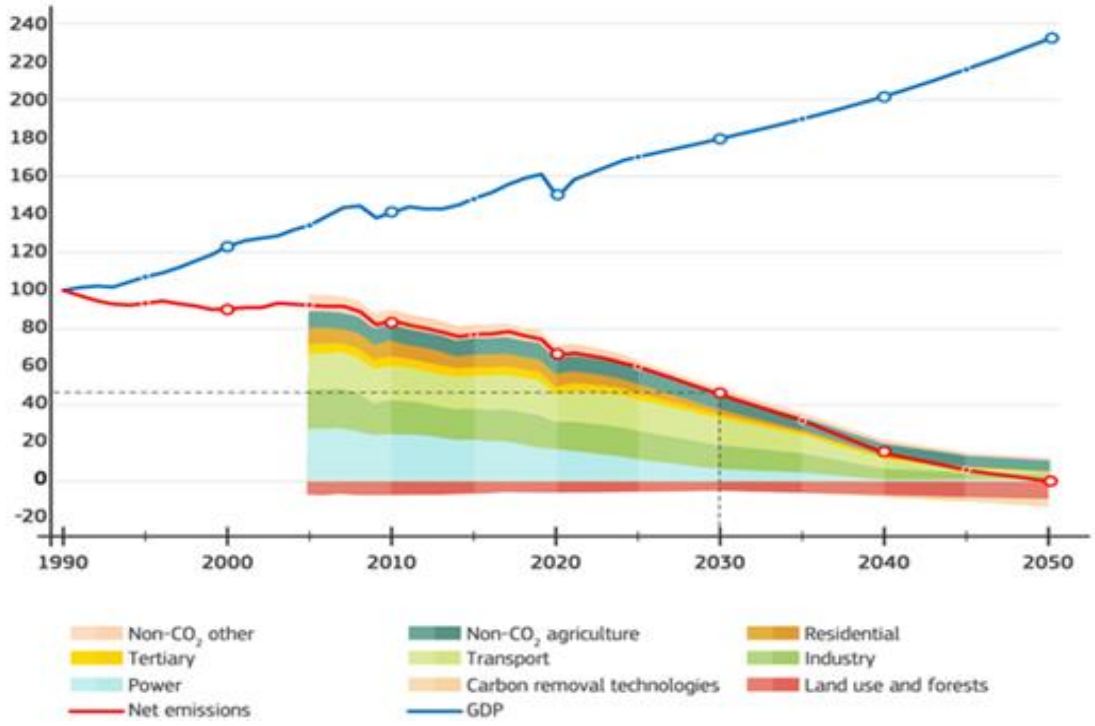
The Climate Law establishes a framework for the irreversible and gradual reduction of anthropogenic greenhouse gas emissions by sources and enhancement of removals by sinks regulated in Union law and sets out a binding objective of climate neutrality in the Union by 2050 ….". The climate neutrality objective is enshrined in Article 2:

1. *Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter.*

2. *The relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of the climate-neutrality objective set out in paragraph 1, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.*

What does this imply in practice? The following graph illustrates well the trends and efforts which are forecasted in the different sectors that emit, and those that remove GHG.

Fig. 1 - Climate-neutrality objective



The path to neutrality takes into account the foreseen reduction of the different sectors. Not all sectors can contribute at the same speed, e.g. transport and agriculture are forecasted to decrease emission more slowly than the power sector, and also not to reach zero. For some

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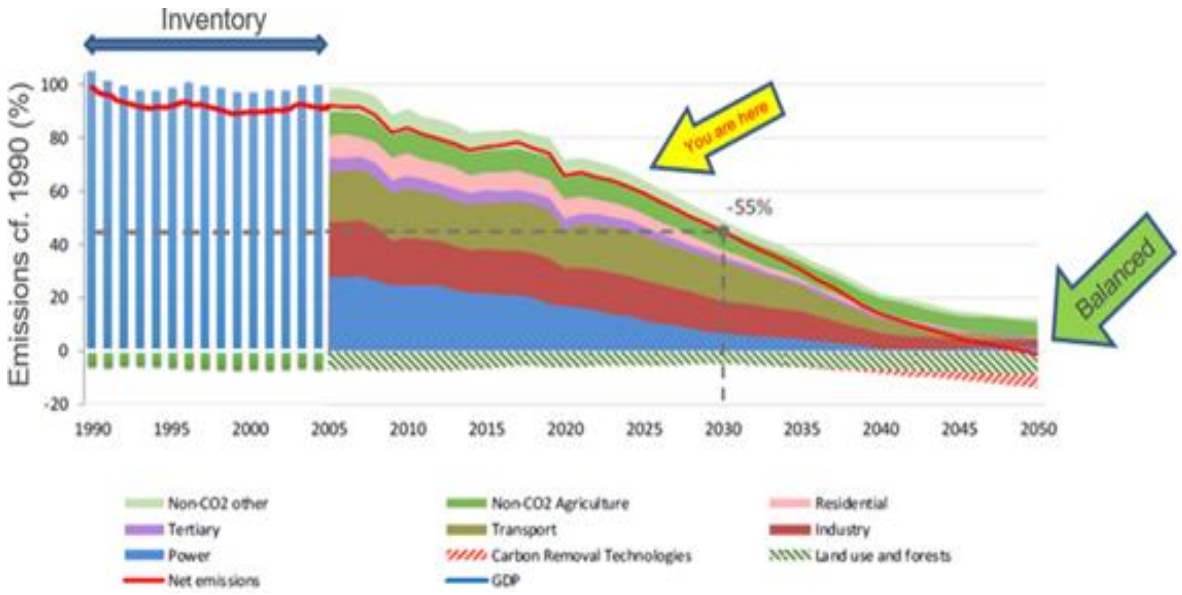
sectors, a certain level of GHG will continue to be emitted. Climate neutrality factors this in, and also takes into account the GHG removal sector, which is called "LULUCF" (Land Use, Land Use Change and Forest).

This can be illustrated more clearly in the following graph, which shows that - in order to achieve climate neutrality - not only will GHG emissions have to be reduced drastically, but the "removal" sectors (in essence, forests and wetland – as regards land-based ecosystems; oceans play also an important role in removing carbon from the atmosphere) need to be "improved" so to offset the GHG emissions which will not be possible to cut.

Fig. 2 - Pathway to climate neutrality



In the following section, we will focus on the part of the graph "below zero", this means the "natural sink" that removes carbon from the atmosphere. Under the "Fit for 55" exercise, the legal requirements for the LULUCF sector have been tightened: a target of minus 310 million tonnes of CO2 equivalent is to be achieved by 2030 (for the EU as a whole), while each Member States has to achieve an individual target.

Despite this increase of the EU legislation ambition, a recent report by the European Environment Agency shows that the EU in not on track to achieve the objectives it set on land-based carbon removal (see the next graph). The "LULUCF sink" has declined significantly in the last decade (around 30% decrease compared to the previous decade). It now allows to remove around 6% of anthropogenic carbon emissions, endangering the overall mitigation targets of

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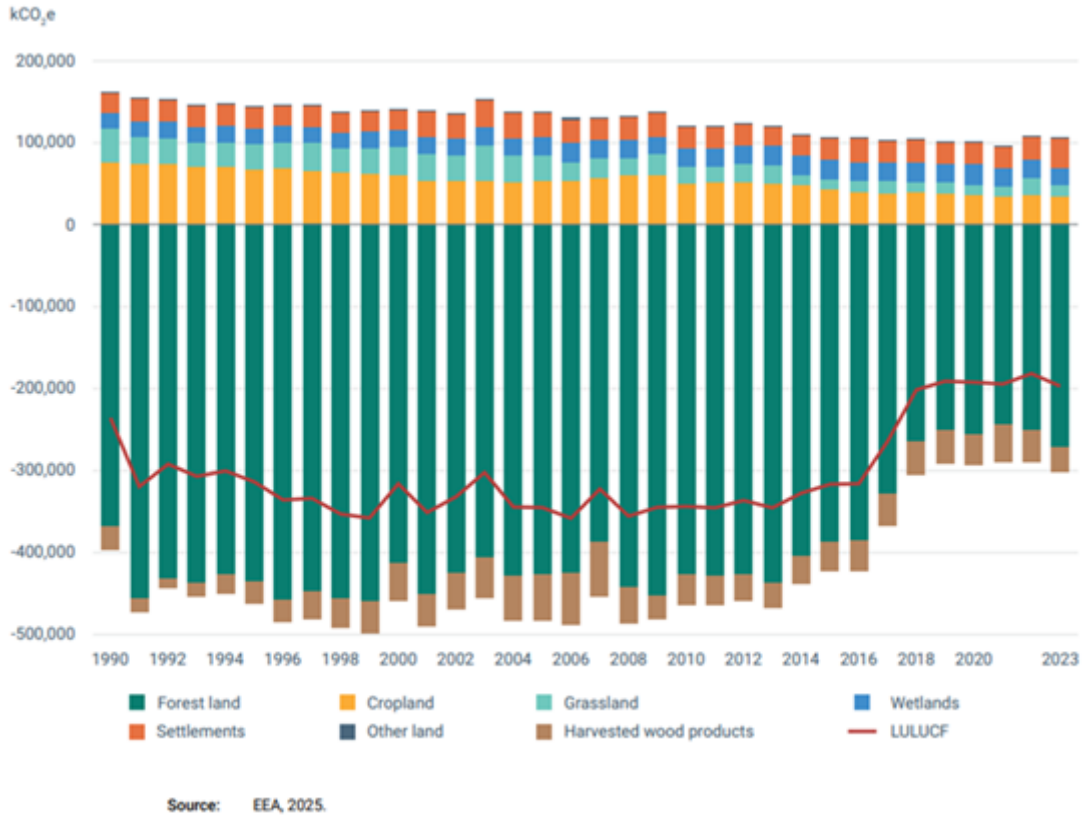
the EU. The decline is due to a combination of factors related to forest land, not least the increase in harvesting and of natural disturbances (forest fires, insects, droughts, storms) which, in turn, are on the rise due to climate change (vicious circle).

Fig. 3 - LULUCF net emissions (+) and removals (-) for the EU-27 (1990-2023) in kilotonnes of carbon dioxide equivalent ($ktCO_2e$)



Source: EEA, 2025.

5. *Nature-based solutions to climate change – The Nature Restoration Law*

The decline of the LULUCF sink has major implications for achieving the climate targets set by the EU, since, as mentioned, it is not possible to bring carbon emissions down to zero, a certain amount of carbon will always need to be removed.

In this context, a essential factor is the health status of ecosystems. Natural ecosystems, in particular forests and wetland have always acted - and can continue to act - as powerful carbon sink, but this function depends on whether such ecosystems are in good condition. A degraded forest turns into a carbon source, where more CO_2 is emitted that what is removed. This is why

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"nature-based solutions" to climate change require that ecosystems are restored for them to deploy or regain all their potential for removing carbon from the atmosphere.

This leads to another keystone of EU environmental policy, which is the objective to improve the quality of the environment, as mentioned in Art. 191(1) first indent of the TFEU (together with the goals of preserving and protecting the environment). It is useful to recall that the legal basis for environmental (including climate) action was conceived also with an eye to the fact that we have gone too far in compromising the quality of the environment and that measures to improve it may be approved by the co-legislator. An exemplary recent case is the Nature Restoration Regulation (hereafter: NRR). More than 80% of natural habitats in the EU are in bad or poor conservation status. Peatlands, grasslands and dunes are worst affected. Wetlands have shrunk by 50% in Western, Central and Eastern Europe since 1970. The new EU Biodiversity Strategy to 2030 (COM (2020) 380), the first policy document adopted after the European Green Deal was announced, referred explicitly to future legislation to restore natural ecosystems. A proposal to meet this objective was indeed adopted by the Commission on 22 June 2022. The legislative process leading to the final adoption of this Law has been all but easy. While the Council reached an agreement relatively quickly, the European Parliament showed a radical split between supporters (the centre-left groups) and opponents (part of the European Peoples party, the largest political group). An amendment to reject the proposal in the vote of the Environment Committee obtained 40 votes in favour and 40 against (and was therefore rejected). The Plenary vote also supported the proposal, although with some significant changes. Once the final "trilogues" negotiations between the Council, the Parliament and the Commission where conducted, the Parliament approved the final deal in February 2024, but a majority in the Council was no longer present due to some shifts of positions (in the Council a favourable majority of 15 out of 27 Member States is necessary but the favourable States must also account for at least 65% of EU population). This caused some further delays but the deadlock was resolved in June 2024, when the Austrian Minister for climate voted in favour (against the position of the Austrian Chancellor – Austria had abstained until then - this led to the breaking the Christian-Democrats-Greens coalition that was in power and to the call for new elections). The NRR builds on the existing Nature protection legislation (the wild birds and habitats Directives), but goes beyond them, by requiring that Member States take adequate measures to restore all of ecosystems in need of restoration by 2050. "Restoration" is defined as the process of actively or passively assisting the recovery of an ecosystem in order to improve its structure and functions, with the aim of conserving or enhancing biodiversity and ecosystem resilience, through improving an area of a habitat type to good condition, re-establishing favourable reference area, and improving a habitat of a species to sufficient quality and quantity, and meeting the targets and fulfilling the obligations regarding urban ecosystems, rivers, pollinators agricultural ecosystems and forest ecosystems, including reaching satisfactory levels for the indicators regarding these latter ecosystems (Article 3(3)). In a nutshell, the NRR sets, as objective at EU level, that restoration measures

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are taken on at least 20% of Europe's land and at least 20% of sea areas by 2030, and in all ecosystems in need of restoration by 2050. The restoration measures will take the form of restoration plans to be presented by the Members before 1 September 2026 and implemented by 2032. A minimum content of the restoration plan is provided for in the Regulation (Art. 14). The Member States must review and revise the plan, and include supplementary measures, by 30 June 2032, and subsequently by 30 June 2042. At least once "every ten years thereafter", each Member State shall review its national restoration plan and, if necessary, revise it and include supplementary measures. They will also have to take measures that allow to achieve the overall restoration targets by 2050. It is important to underline that the NRR is "effort-based", not "result based", but it is based on the assumption that if the Members States adopt adequate measures, the targeted ecosystems will be restored as a result of the efforts. Member States will also have to comply with specific monitoring obligations to ensure to be on track towards their objectives. As mentioned, specific restoration targets have been set in the regulation for seven types of ecosystems: terrestrial, coastal and freshwater ecosystems, marine ecosystems, river connectivity and functional floodplains, pollinator populations, agricultural ecosystems, forest ecosystems and urban ecosystems.

The NRR is - rightly – considered a landmark piece of EU legislation in the field of biodiversity. But it must not be forgotten that its objective is as much biodiversity restoration as it is climate mitigation and adaptation, given the crucial role that healthy natural ecosystems play for removing carbon from the atmosphere and protecting settlements from the consequences of climate change (adaptation). The NRR is not the only piece of legislation aimed at protecting ecosystems and with a clear relevance for climate change. At least two other legislative instruments, one already adopted but not yet in force (the 2023 EU Deforestation Regulation – EUDR) and the other on the final stage of adoption by the co-legislator (the Soil Monitoring Law) must be also mentioned here. In 2023, the European Commission also published a number of non-binding guidelines aimed at enhancing biodiversity in European forests, implementing the objectives set in the EU Forest Strategy for 2030 (COM (2021) 572), another brick of the EGD, which was adopted in 2021. In conclusion, it is important to highlight that the fight against climate change - and the adaptation to its consequences – requires a complex set of measures for target setting, monitoring and affecting the behaviour of the economic operators and consumers across a wide spectrum of sectors: energy, buildings, industrial production, transport, agriculture, etc. But an essential complement of any mitigation policy is the use of natural ecosystems as carbon sinks and stocks. This implies that efforts are made to maintain and restore such ecosystem. Nature and biodiversity protection is *per se* an essential objective for the various ecosystem services that nature provides (not least, the strong connection with our wellbeing). But when one looks at the role that ecosystems play for carbon removal and adaptation to climate change one cannot but conclude that nature protection is the other side of the coin of climate policy. Any climate policy has to take this fully into consideration.

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Climate litigation in domestic administrative courts: the *Greenpeace v. Spain* case

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ABSTRACT: *This essay analyzes "strategic" climate litigation in Europe—cases brought by individuals or NGOs to challenge governments' climate policies or inaction. It argues that, in most European countries, such disputes fall under administrative courts, designed to review legality rather than make policy, which creates major structural barriers. Key obstacles include restrictive standing rules, limits on which acts or omissions can be challenged, the non-justiciability of high-level policy decisions, the narrow concept of "administrative inactivity," and the limited powers of judges, who may annul unlawful measures but cannot rewrite climate plans or impose stronger emission targets.*

These challenges are illustrated by two 2023 cases brought by Greenpeace before the Spanish Supreme Court against the government's climate plans, both dismissed. The essay concludes that administrative courts are ill-equipped to drive transformative climate action, which must ultimately come from political, not judicial, decision-making.

1. *Introduction: climate litigation and its different forms. Scope of this contribution*

The phenomenon of climate litigation is rapidly spreading around the world. It takes place in a multitude of countries and before different international and national jurisdictions. This trend is so widespread that the UN has paid a close attention to it[1],and there are several

[1] In 2017, the United Nations Environment Programme (UNEP) published a documented study of the phenomenon: *The status of climate change litigation, a global review*, 2017. Updated editions of this study have subsequently been published.

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academic institutions trying to keep pace with its evolution, providing the relevant records and information thereof [2].

Climate litigation encompasses various types of claims, procedural scenarios and legal proceedings, filed by different actors in many courts, seeking diverse outcomes and goals. In this contribution we refer to the so-called "strategic" climate litigation. By that wording we refer to domestic, public-law litigation between individuals (or NGOs) and national or sub-state governmental or legislative bodies, in which citizens, acting alone or through civic or non-governmental associations (generally of an environmentalist nature), litigate in domestic courts against the decisions, rules, plans, laws or strategies adopted by the different domestic public administrations, the Government or the Parliament in the fight against climate change (or against the failure to adopt such decisions and plans).

Our goal is to present how these climate legal actions are handled by regular administrative courts, identifying the main obstacles and difficulties that these lawsuits might encounter when they are filed in some European administrative jurisdictions, due to their specific features.

2. *Climate litigation and administrative courts*

In many cases, the climate disputes that we are analysing here must be brought in the domestic administrative similar courts, given the special status of the defendant (the Public Administration, the Government, etc.). In fact, in many European countries, the judicial review of the decisions, strategies, plans and regulations approved by the Public Administration and by the Government is entrusted to a 'special' or 'specialised' jurisdiction, which is autonomous and different from the civil and criminal courts ('ordinary' jurisdictions). Under the Law, the latter courts do not have, in general, the competence to control the Public Administration.

As is well known, this judicial model originated in France, where these courts (*jurisdiction administrative*) started to operate at the beginning of the 19th century[3]. Subsequently, this judicial architecture was replicated in several western European nations.[4]

Administrative jurisdictional tracks have a series of common characteristics, among which the following stand out: (a) they are governed by specific procedural rules, different from those that control "regular" or ordinary courts (civil, commercial courts); (b) the Public

[2] The Sabin Center for Climate Change Law at Columbia University has for years maintained an interesting electronic database of what it understands by climate litigation.

[3] In France, the cradle of the 'continental' model of judicial control of administrative action, the administrative courts, whose apex is the *Conseil d'Etat*, constitute an independent jurisdiction of their own, known as *juridiction administrative*, while the rest of the courts (civil, commercial, etc.) constitute the *juridiction judiciaire*, a term that should be translated literally as 'judicial jurisdiction'. On the French system of judicial control of the Executive, see: P. GÉRARD, *La juridiction administrative*. 2nd. Ed., La Documentation Française, 2023.

[4] For instance: in Spain, Portugal, Italy, Belgium, The Netherlands and Greece.

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Administration (and the Government itself) enjoy some procedural privileges; (c) legislation tries to find a balance between the protection of the private interests and the defence of the public or general interest; (d) those courts cannot hear complaints against statutes or Acts of Parliament, as this competence is reserved to the constitutional court[5].

In most European, "*civil law*" countries there are different jurisdictional tracks, which adjudicate claims and legal actions according to the subject-matter at stake, or the actors involved. Administrative courts form the only jurisdiction that, in principle can control the State or governmental agencies when they act in the domain of public law, as public authorities or *potentior personnae*[6]. Therefore, they are the only ones that can control the "legality" of governmental regulations, plans and policies on any subject, including energy and climate change. In such circumstances, selecting the right jurisdictional track that is competent to adjudicate a climate action is a key factor, and it can have a fatal impact not only on the success of the action, but on its very admissibility (as the *Giudizio Universale* litigation -in Italy- has showed)[7].

The special features of the administrative jurisdiction explain the fact that the proceedings before these judicial bodies possess structural characteristics that differentiate them from litigating in other jurisdictions and courts. Moreover, these special features may pose a specific difficulty for climate action to succeed, and national legislation on administrative justice may, in principle, constitute an obstacle to the formulation of claims such as the ones we have identified above (*strategic* litigation). In this contribution we will focus on some of these peculiarities and on their potential impact on climate litigation, using as an example the Spanish model of administrative justice, which fits in the European-continental tradition of *Droit Administratif,* although it has its own peculiarities[8]

[5] It should be noted that in the Netherlands, one of the countries where the model here presented is in force, there is no constitutional court.

[6] Notable exceptions to this principle have happened in the domain of climate litigation. Thus, the famous and seminal *Urgenda* case was brought before a Dutch commercial court, and not an administrative one. In 2015, the District Court allowed Urgenda's claim, in the sense that the State was ordered to reduce emissions by the end of 2020 by at least -25% compared to 1990 (The Hague District Court ruling of 24 June 2015, *Urgenda Foundation v. State of the Netherlands*, ECLI:NL:RBDHA:2015:7145). In 2018, the Court of Appeal confirmed the District Court's judgment, and subsequently the Supreme Court rejected the cassation appeal filed by the State (Judgement of the Supreme Court of the Netherlands (Civil Division) of 20 December 2019), *The State of the Netherlands vs Stichting Urgenda*). Similarly, other climate claims have been brought in civil courts, on the basis of the domestic Civil Code (in Belgium: the *Klimaatzaak* case; in Italy: the *Giudizio Universale* litigation, see below). Yet these exceptions are unlikely to crystallise in Spain, for substantive and procedural reasons and because of the eminently 'administrative' nature of these disputes.

[7] See: Judgement of the 2nd civil court of Rome of 26 February 2024, in the civil action nº 39415, *A Sud Ecologia e Cooperazione OdV vs. Presidenza del Consiglio dei ministri.*

[8] Contrary to France and other countries, in Spain administrative courts are fully judicial bodies, belonging to the Judicial Power. In that kingdom there is certainly a *Conseil d'Etat* (Consejo de Estado) but it has no jurisdictional powers whatsoever. It has only advisory functions. The apex of the administrative jurisdiction is the

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Thus, our inquiry will make references to Act nº 29/1998, of 13 July 1998 (hereinafter, "Administrative Jurisdiction Act", or "AJA"), which regulates the administrative jurisdiction (*jurisdicción contencioso-administrativa*) in Spain[9]. Attention will be given, when necessary, to other European jurisdictions. For reasons of limitation of space, the different features that may cause problems for climate litigation (from standing to the remedies that may be sought) will be presented in a concise manner.

3. *Usual procedural obstacles encountered by climate change legal actions in the administrative courts*

3.1. *Standing to sue*

Many of the European administrative jurisdictions here discussed require that the plaintiff be directly affected in his own rights by the administrative action that he challenges, where the word "right" is to be construed in the technical sense of the meaning (for instance: right to life, to property, to free speech, etc). Consequently, mere "expectations", "wishes" or "interests" in the conduct of public affairs (i.e.: the interest to see a given climate policy adopted by the Government) are not enough to bring an action.

Still in the same line, plaintiffs are supposed to litigate in the defense of their own, personal "rights", and not for the rights of other persons. Thus, it is possible that associations and groups acting in court as advocates of the climate be confronted with some national rules, principles or procedural traditions whereby one may indeed act in defence of his own rights, but not in defence of the rights of third parties or elements of Nature. For instance, one cannot act on behalf of "the Planet Earth", "the environment", "the global climate", etc, and cannot even act on behalf of "the future generations" (people who are not even born yet and who could not confer a power of attorney on the plaintiff). In all these cases, the court will likely dismiss the action as inadmissible, for lack of *locus standi.*

For instance, in its landmark ruling in the *Neubauer* case the German federal constitutional court accepted the claims filed by individuals, but dismissed the NGO claims, and considered

Supreme Court, administrative chamber (*Sala de lo Contencioso-Administrativo del Tribunal Supremo*), usually referred in short as "the third chamber" (*la Sala Tercera*). See, footnote Nº 52.

[9] To our knowledge, there are very few books in English describing the Spanish system of administrative justice. The reader who speaks the tongue of Cervantes may want to read the following essential bibliography: J. GONZÁLEZ PÉREZ: *Comentarios a la ley de la jurisdicción contencioso-administrativa (Ley 29/1998, de 13 de julio).* 5th edition, Ed. Civitas, 2008; E. BARRACHINA JUAN ET AL., *Práctica del proceso contencioso-administrativo*. Ed. Civitas, 2002; E. ARNALDO ALCUBILLA & R. FERNÁNDEZ VALVERDE, *Jurisdicción contencioso-adOministrativa (comentarios a la Ley 29/1998, de 13 de julio, reguladora de la jurisdicción contencioso-administrativa).* 3rd. Ed., La Ley, 2007; J. M. AYALA MUÑOZ ET AL., *Comentarios a la Ley de la jurisdicción contencioso-administrativa de 1998.* 4th Ed., Aranzadi-Thomson, 2010.

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that these organisations did not have standing to file their legal claim and could not act as "lawyers of Nature"[10].

Although this has been a structural feature in most "classical" European administrative jurisdictions, a radical change has taken place in recent times in those countries that are member States of the EU[11], or who have ratified the Aarhus Convention[12], an international treaty (especially, art. 9) that has triggered a profound change in the matter of access to justice in environmental matters.

As a result of these developments, in most European countries (especially under the influence of the Aarhus Convention) associations and NGOs are currently recognised a large capacity to act in the administrative courts, seeking the protection of the environment in connection with governmental plans, policies, decisions and regulations. However, this has not been an easy way, and the European Court of Justice has issued a set of important interpretative rulings that have enlarged in practice the litigation capacity of these associations[13]. Consequently, in some countries it is still possible to find restrictive regulations of the administrative justice that may hamper the capacity of NGOs and citizens groups to bring a climate action, although those limitations must be interpreted narrowly, and in the light of the European Union´s *acquis* and the Arhus Convention.

If this (preliminary) procedural obstacle may have a significant impact on the admissibility of climate action in the administrative courts, the problem increases when it comes to litigating before the Constitutional Court. This court is especially important in climate change issues, since many national norms, plans and strategies to combat climate change are approved by means of Acts of Parliament (statutes) or by mean of rules adopted by the Government having the force of a statute[14]. Thus, that court is the only one that can control the constitutionality of those legal rules.

The fact is, that in many jurisdictions (such as Spain), individuals, associations and NGOs are unable to bring direct actions of this type before the Constitutional Court, given that they do not have standing to file an appeal of unconstitutionality, nor can they file an appeal for

[10] Ruling of the First Chamber of the German federal Constitutional Court of 24 March 2021 in the case of *Neubauer et al. vs the Federal Government*. 1 BvR 2656/18 - 1 BvR 78/20 - 1 BvR 96/20 - 1 BvR 288/20 (see, especially, par. 136 of the ruling).

[11] By means of the transposition and the judicial implementation of some pieces of EU environmental law, there has been a substantive enlargement of the standing to bring actions in environmental matters, especially in favor of the e-NGOs.

[12] Aarhus Convention on access to information, participation in decision-making and access to justice in environmental matters, UN-ECE, 1988.

[13] See, for instance, the judgments of the ECJ of 15 October 2009, *Djurgården* (asunto C-263/08) or that of 12 May, 2011, *Trianel* (asunto C-115/09). They both concern restrictive procedural regulations of administrative justice in some EU member States (respectively, Sweden and Germany).

[14] Moreover, in some countries major infrastructure projects are approved by Acts of Parliament (having a concrete and single-purpose scope).

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constitutional protection of the environment (*recurso de amparo*), since the right to the environment (art. 45, Spanish Constitution) is not considered to be a genuine "fundamental" or "human" right, but just a policy-making guidance *(principio rector de la política económica y social*) addressed to the Government and to the Public Administration.

3.2. *What can be challenged in the administrative courts: the target of the claim*

Although administrative courts are certainly competent to control the "legality" (just the legality) of the decisions and rules adopted by the Government and by administrative agencies (see point 3.6, below), they cannot control all the broad range of governmental activity, understood *lato sensu.*

In this vein, we should refer to what the Spanish legislation calls "*actuación administrativa impugnable".* To put it in plain words, this refers to "what is subject to legal challenge in the administrative courts". It is worth remembering that the administrative jurisdictions do work as 'reviewing' bodies, i.e. they act 'a posteriori', controlling something that the Public Administration (or the Government) has already "done". This means: something that has legal relevance towards individuals, that has cristallysed in a concrete form and that has already been accomplished in the legal world.

Thus, administrative courts cannot review draft, preliminary or unfinished decisions, internal reports and the like. And they cannot control, either, the "informal" activity of administrative agencies, such as negotiations, press releases, policy statements from high governmental officials, communication campaigns, or the factual delivery of a given public service.

The delimitation of what can be challenged in the administrative jurisdiction is regulated in a precise and formal manner by the controlling statutes (as interpreted by the courts). So, if a plaintiff brings a legal action against a form of governmental activity that does not fall within the statutory remit of "administrative activity that can be challenged", the appeal will be simply dismissed as inadmissible[15]. This may lead to formalism in the judicial control of governmental action.

In Spain, for instance, art. 25 of the 1998 AJA clearly identifies up to four (but only those) types of 'administrative action that may be challenged' or are justiciable. Namely:

(a) governmental rules having a general scope, and having a lower rank than statutes (i.e. regulations). For example, a royal decree of the central Government, a regulation of a regional executive, or a local regulation (*ordenanza municipal*).

(b) Individual decisions (adjudications) adopted by administrative agencies or the Government (for instance, a licence, a fine or an expropriation).

(c) The inactivity of the Public Administration (in the terms set out below).

[15] In this vein, see, art. 51.1c) of the AJA.

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(d) "Material activity" (*actividad material*) of the Public Administration (i.e. not genuine 'administrative acts') when it incurs in the so-called 'illegal *de facto* situation" (*vía de hecho*), a scenario that plays no role in climate disputes.[16]

This strict delimitation of what can be lawfully challenged in the administrative courts is often overlooked or underestimated when the role of the administrative jurisdiction in the field of climate litigation is analysed.

As a consequence of this and other constitutional and legal provisions, in Spain NGOs, individuals and citizens groups cannot bring a climate action in the administrative courts against a statute (e.g. against the Climate Change Act), or against a plan approved by an Act of Parliament. The reason is quite simple: such an Act of Parliament is not a sort of 'challengeable administrative activity", so it cannot be challenged before the administrative courts. One could think that it could be challenged in the Constitutional Court, but here there is a notorious *cul-de-sac*: statutes cannot be challenged before that court because citizens and NGOs do not have standing to file a constitutional challenge in those cases, as noted *supra.*

In the same line, a "plan" or "strategy" on climate change mitigation adopted by the Government cannot be challenged in administrative courts either, if the plaintiff does not persuade the court that this document is a true or genuine "administrative regulation" in the technical sense of the word (or has the legal nature thereof). This controversy aroused in 2023 when the NGO "Greenpeace" challenged in the Supreme Court (administrative chamber) the National Plan on Energy and Climate of Spain (see below, point 4).

3.3. *The scope of judicial review (I): Political questions, policy discretion and the administrative courts*

Not only do procedural rules restrict formally the realm of governmental action that can be challenged in the administrative courts. Besides, many national legislations recognise that the Executive branch has a certain area of exemption from judicial review when it adopts certain decisions or policies: in principle, they constitute 'administrative activity that can be challenged' but they are not justiciable due to internal constitutional features, such as those derived from the principle of separation of powers. We refer here to 'acts of Government' or similar concepts (*actes du Gouvernment,* in France; *political question doctrine*, in the UK and USA), in which the Government (understood as "the Cabinet", or "the council of ministries") acts as the macro-conductor of society, taking decisions at the highest strategic level[17].

[16] For instance, an administrative agency occupies your land, without any formal decision supporting this activity.

[17] The Spanish Constitution of 1978 grants the central Government the constitutional function of 'directing the domestic and foreign policies, the civil and military Public Administration and the defence of the State...' (art. 97).

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Thus, it is possible that, in certain jurisdictions, administrative-governmental actions or decisions such as those adopted in the field of climate change (the adoption of a 'national climate strategy', for example) might be exempted from judicial control, because the Law (or the constitution) understands that the decisions of this type should be immune from the control of the courts, in order to respect the national conception of the principle of separation of powers, and that the administrative courts should refrain from controlling them. In this way, for example, it may be that the passivity, reluctance or slowness of a country to sign the Paris Agreement, or to ratify it, cannot be appealed in the courts, since domestic constitutional law may consider that the conduct of international relations is a function attributed exclusively to the Executive branch, in which the judiciary should not interfere.

In Spain there has been an interesting evolution in this matter. Under the 1956 Act on Administrative Justice (now abrogated), the theory of the 'acts of government' (under the denomination of 'acto político del Gobierno') was openly recognised. The current legislation still recognises this area of judicial exemption, but in a much stricter manner (art. 2.1 of the AJA of 1998). Moreover, this statutory provision must anyway be interpreted restrictively, and in any case the Law allows for the judicial control of the "regulated" elements of the decision (for instance, the respect of the organ´s competence, administrative procedure, etc.).

According to the case-law of Spain´s Constitutional Court (see the ruling 196/1990, of 29 November 1990), the interpretative rule to be observed here is clear, to know whether we are really dealing with one of these 'acts of the Government' or not: the Government must act as the top political body of the nation, and not as an agency taking decisions that have a merely 'administrative' or "bureaucratic" nature. Thus, when the Council of Ministers awards a million-euro contract to build a road, or when it imposes an administrative sanction on a firm, those decisions will not be considered as an 'act of government'. In the field of climate change Law, a Government resolution may likely be a "true" political question if decides: (a) not to sign the Paris Agreement; (b) whether or not to ratify that treaty Agreement; (c) whether or not to participate in the meetings of the parties or their subordinate bodies; (d) to denounce or withdraw from the treaty, etc. Consequently, these decisions will not be justiciable.

As can be seen, there are many decisions (or lack thereof) that can be taken by the Government in the fight against climate change, which will be 'legally' exempted from judicial review by the administrative courts.

A related (but technically different) issue is the discretion that administrative agencies (or the Government) enjoy in many areas, if the Law provides for that. In Spanish administrative law (and in other legal systems) the governmental agencies may adopt two basic types of adjudications: on the one hand, "discretionary" decisions, where the agency enjoys a room of liberty to choose among many possible solutions, and each one is legal or correct. On the other hand, "nondiscretionary", "determined" or "mandatory" decisions (in Spanish, *actos reglados*) where the statute or legal norm can only derive in one single possible solution that is legal, and where the agency is totally bound by the wording of the law. In the case of discretionary

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decisions, the administrative judge cannot control the merits of such adjudications. He cannot rectify or modify them either, although he can eventually quash them if he finds a serious violation of the regulated aspects of the measure (for instance, the right procedure was not followed; the agency body that adopted the decision was not the competent one; etc.).

That is, the judge can control the "external" legality of the discretionary decision (its formal requirements), but not the core of the decision itself. The legal basis for this feature is the key art. 71.1 of the AJA (often forgotten or underestimated in 'climate actions') according to which an administrative court can annul a regulation (or a plan having the legal nature of a regulation), but it cannot rectify or amend this regulation in the sense requested by the plaintiff' (for instance: a reduction of -25% of GHG instead of -18%, as provided for by the challenged plan). Nor can he determine the content of a discretionary adjudication under appeal (i.e. to modify it). This procedural feature had a dramatic impact in the final outcome of the climate actions filed by "Greenpeace" against the Spanish government in 2023 (see below, point 4).

3.4. *The scope of judicial review (II): the inactivity or passivity of the Public Administration*

Still in the domain of the administrative action that can be challenged in the administrative courts, we should address a key aspect having a strong connection with most climate lawsuits. We refer to the 'inactivity' or 'passivity' of the Government or the administrative agencies, that is, the lack of action.

Under the procedural legislation of one country, it is possible that the simple 'passivity - inaction' alleged by the plaintiffs does not fall within the technical meaning of what is 'challengeable administrative activity' subject to judicial review. In fact, the construct of 'inactivity of the Public Administration" (or of the Government) has a technical meaning that may be far removed from what regular people understands as 'passivity' or lack of action of administrative agencies (for instance: a polluted river that is not cleaned, an endangered species that is not protected, an illegal landfill that is not closed, horrible graffiti that are not removed from our streets, etc.). For this reason, the possibility of litigating against the inaction of the public authorities, when they have not adopted the rules, plans or strategies needed to protect the environment, may be reduced or non-existent.

More precisely, it is all the more relevant to analyse the possible success of the legal actions that are directed against the 'inaction' or 'passivity' of the Government or the Public Administration in adopting the necessary rules, plans, measures, plans and programs to reduce GHG emissions. This is a central element in so many climate lawsuits: for instance, in the first lawsuit brought by "Greenpeace" in Spain the plaintiff claimed against the 'climate inaction' of the Government (see below, point 4.1).

As mentioned above, the administrative courts constitute a reviewing jurisdiction and they implement an 'a posteriori' control of bureaucracy. They control what the Public

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Administration has *already done*, therefore its intervention in the case of 'non-action' can be problematic. For example, in Spain the concept of "inactivity of the Public Administration" (*inactividad administrativa*) is certainly a part of the 'administrative action that can be challenged' under the AJA (art. 25.2), but it has traditionally been regulated with a very formal profile, and has been limited to very specific and restricted cases[18]. In this sense, art. 29 of the AJA regulates two well-defined and different types of 'administrative inactivity' and neither of them fits, in principle, into the usual petitions that are advanced in some "strategic" climate actions.

The first scenario foreseen by art. 29 of the AJA takes place when 'the Public Administration, by virtue of a general provision that does not require implementing decisions or by virtue of an administrative adjudication, a contract or an agreement, is obliged to provide a specific benefit, deliverable or performance ("una prestación concreta") in favour of one or more specific persons. In that case, those who are entitled to the said "benefit" may claim from the agency the fulfilment of that obligation. If the agency disregards such claim, the concerned citizens may bring a legal action, and the court will eventually order the agency to grant the claimed benefit to the plaintiff[19].

The second scenario occurs when an administrative agency adopts a formal decision in favor of an individual, the decision becomes final but the agency does not execute it. In this case, 'those affected (by the agency´s passivity) may request the agency to deliver what it promised", and if this is not done within one month of such a request, the applicants may bring a legal action.[20]

Under those provisions, the fact that the Government or an administrative agency does not adopt a plan or a regulation is not *per se* a type of 'inactivity' that is subject to a legal challenge in the administrative courts, at least not in the technical meaning of this construct. This procedural feature may trigger not only the rejection of the legal action filed by the plaintiff (art. 69.c LJCA), but even its inadmissibility, for targeting a form of "governmental action" that is not justiciable.

This classical feature of the Spanish administrative jurisdiction appears today to be softened or modulated by two powerful levers: (a) European Union law; (b) the case-law of the administrative courts itself (especially the Supreme Court), which in some cases have established the possibility of controlling the *regulatory* inactivity of the Government or the Public Administration. As regards the first question, the judicial review of the inactivity of the

[18] On the inactivity of administrative agencies in Spain, see: M. GÓMEZ PUENTE, *La Inactividad de la Administración*. 4th edition, Aranzadi Publs, 2011.

[19] For instance, a firm has signed a contract with an administrative agency, and has performed the service contracted, but the agency does not pay him the agreed price.

[20] For example, a student of medicine has been awarded a scholarship by the rector of his university, but the grant has not yet been paid after a reasonable time. The student has an administrative adjudication that declares a right in favour of him, but which remains non-implemented. In this case, the court may order the university rector to pay the fellowship to the student, within a precise deadline.

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Executive branch that consists in the non-adoption of a regulatory provision or a plan, when these have a direct and evident connection with EU law, has acquired new perspectives. Here, some European rules and, above all, the case-law of the ECJ come into play here. These "EU factors" may lead (through the principle of "*interprétation conforme*") to an adaptation, or even a revolutionary change of domestic procedural rules[21]. Indeed, the case-law of the Court of Luxembourg is clear: it imposes on the national court the obligation to 'set aside' any domestic rule or legal provision contrary to EU law (or recognises on that court such a power, if it is prevented from doing so by domestic procedural law). It has also recognised the national courts the power to require the respondent public authority to adopt the acts or measures (including those of a regulatory nature) that are required by EU law, even if, in principle, those courts are not empowered to do so under domestic law, as the ECJ stated in its seminal judgment *Client Earth*[22].

The second 'lever' referred to above is the case law of the Spanish Supreme Court. Indeed, its administrative chamber has already established that it can review the situation in which the Government or an agency has not approved a regulation or a plan that they are obliged to adopt by a clear and precise legal framework[23]. In principle, as we have already noted, this understanding does not fit in the literal wording of art. 29 of the AJA, it is a judge-made doctrine. This case-law can play an important role in the context of climate litigation; a prime example thereof are the judgments delivered by the Supreme Court that resolved the lawsuits filed by several NGOs against the Spanish Government (see below, point 4).[24] Another example of these development can be seen in the litigation that has been activated in recent years in Catalonia, in relation to the obligation of the regional government and agencies to approve air quality plans for those areas having a particularly polluted atmosphere.[25]

[21] Let us remember, for instance, the ECJ judgements in the 'Factortame' saga, issued at the beginning of the nineties.

[22] See, Judgement of the ECJ of 19 November 2014, *Client Earth v. Secretary of State for the Environment* (case C-404/13). As a result of this ruling, on 29 April 2015 the UK Supreme Court handed down its judgment in *Client Earth v. Secretary of State for the Environment*. In a completely novel way, it ordered the UK Government to draw up an action plan against nitrogen dioxide air pollution for the London area, mandatory under Directive 2008/50. This is the first time that the Supreme Court has ruled in this way, issuing a 'mandatory order' to the Government.

[23] See, among others, the rulings of the Supreme Court of 5 April 2018 (appeal Nº. 4267/2016), 20 March 2019 (appeal Nº 691/2017) and 8 March 2023 (appeal Nº 431/2021).

[24] See the Supreme Court ruling in *Greenpeace vs. Spain (I)* (legal basis Nº .4. B) where it declared the positive obligation of the Government to aprove the National Plan on Energy and Climate, as ordered by the EU "governance" regulation of 2018.

[25] By its judgment of 12 December 2022, the Administrative Chamber of the High Court of Justice of Catalonia ordered the competent regional and local authorities to draw up, to approve and to publish 'as soon as possible' the air quality improvement plans for twelve of the fourteen zones into which the territory is divided, for the purposes of assessing the quality of the ambient air. These plans are mandated by the EU framework directive on the quality of ambient air.

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3.5. *The controversial legal nature of the national plans on climate change*

Many countries have approved a number of different "plans", "strategies"[26], "programs" and the like in the field of climate change mitigation and adaptation[27]. Those plans may be approved at "central", national level, or by sub-State entities such as regions, *Länder, Kantons*, *Regions,* etc. In the EU member States, the most important plan on climate change required by EU Law is the Integrated National Energy and Climate Plan (hereinafter, "NECP"), which every Member State is obliged to approve and to submit to the European Commission[28].

From the viewpoint of climate litigation, the key question is to ascertain whether those documents can be challenged in courts, and more precisely -since they are approved by governmental bodies- whether they can be challenged in the administrative courts. At first sight, any lawyer would be tempted to answer this question in the affirmative, but this reply should be nuanced when it comes to the judicial review of administrative action. Indeed, the analysis of the "regulatory" inactivity of the Government or the administrative agencies has a strong connection with the question of the legal nature of those programmatic documents.

Challenging such 'plans' or 'strategies' can be particularly problematic if, under domestic law, those documents do not have a formal binding legal nature, or if they are regarded as purely internal programs or just public policy documents having no "normative" substance. In other words, if they are neither "regulations" nor "adjudications", they will be placed outside the scope of what constitutes 'challengeable administrative action', and therefore it will not be possible to put them under judicial scrutiny.

This enquiry is especially intriguing in the case of the central figure of all energy-climate programming the EU Member States, which is the NEPC. It is therefore essential to determine whether this plan is justiciable, that is, whether it falls within the scope of 'challengeable administrative action'. Indeed, if it is not a regulation, we cannot speak of 'regulatory inactivity'. This dilemma is even harder to solve, since EU Law does not determine which is the legal nature of such plans. Therefore, one could argue that the reply to this question depends exclusively of domestic law and legal traditions. The recent climate litigation in the Spanish Supreme Court is a good example of the relevance of this inquiry for the success or failure of a legal action targeting those plans (see, below, point 4.2).

3.6. *The pleas formulated by the plaintiff*

Administrative courts review the rules and the decisions adopted by the Government and by administrative agencies. As stated above, in Spain the administrative courts may control

[26] See, the Spanish Decarbonisation Strategy (2020).

[27] See, the Spanish National Plan for Adaptation to Climate Change (2021).

[28] This plan is regulated by the "Governance" EU regulation (Regulation 2018/1999, of the European Parliament and of the Council, of 11 december 2018, on the governance of the Energy Union and climate action).

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also some forms of administrative inactivity, plus the administrative action that does not have any legal support or coverage (*vía de hecho*). But the main question is: what type of control is that?

The review carried out by the administrative courts is exclusively a control of legality. Opportunity, expediency or convenience are not standards for judicial review. This means, for the purpose of this contribution, that administrative courts can only quash or annul governmental decisions, plans or regulations in the field of climate change if they are openly "illegal", that is, if they are not in conformity with a given legal rule or written norm, be it international, European or national. This is the only plea (in the French legal tradition, "moyen d´annulation") that can be formulated. And here lies one of the most important weaknesses of "strategic" climate litigation: the lack of clear mitigation obligations embodied in binding legal rules, whose violation could be invoked in courts.

Let us start with the international legal standards applicable in this domain. The key legal rule here is the Paris Agreement of 2015. Its provisions are quite loose, ambiguous and unprecise. The truth is that it will be difficult to convince a court that a rule, plan or policy adopted by a nation openly violates the Paris Agreement, due among other things to the loose wording and the lack of direct applicability of that international convention, which is a real 'toothless tiger'[29].

We are not saying, of course, that the Paris agreement is a non-binding instrument. We just point out that it will be very difficult for a domestic administrative court to conclude that a given national plan on climate change is "illegal" because it clearly violates a concrete provision of the Paris Agreement. This international treaty only imposes on the Parties the duty to approve "nationally determined contributions" (NDC) in order to reach the overall objectives of climate mitigation. Those contributions should be "ambitious"[30]. So, if Spain approves a NDC by which it expects to reduce its GHG emissions by (let us say) -25% by 2030 (instead of -30%, as claimed by the plaintiffs), it will be very difficult to convince the court that this provision is "illegal" because it clearly violates the Paris Agreement for not being "ambitious enough".

More concrete normative elements may be found in EU Law[31] (provided that the country at stake is a member State to that organisation). But the governmental action being challenged might have been approved by the member State precisely for the implementation and fulfilment of the objectives and commitments adopted by the European Union. It is also possible that the challenged plan or strategy has been approved by the European Commission. Thus, if Spain (for instance) introduces in its national plan the reduction targets imposed on it

[29] This remark was correctly made by the Spanish Supreme court in its judgement in *Greenpeace v. Spain I* (ruling of July 18, 2023). See, in particular, legal reason Nº 6.

[30] The level of *ambition* of the "nationally determined contribution" that every Party must prepare and apply is a good example of loose and open-ended concept, which renders it practically non-justiciable.

[31] Examples: "Governance regulation", "effort-sharing" regulation, directive on renewables, etc.

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by EU secondary law (for instance, the "effort-sharing" regulation)[32], how could a plaintiff convince a judge that the challenged plan is "illegal", because it is "insufficient" according to him?. It is difficult to accept seriously a claim of *illegality* of the plan in such cases.

Finally, another basis for deriving an appraisal of "illegality" of a national plan may be the national Constitution, or a domestic statute. Let us discuss briefly these normative elements.

Violation of the Constitution: in a climate litigation, another line of argument for the plaintiff would be to invoke a violation of the domestic constitution, that would render "illegal" the challenged plan or strategy (or "unconstitutional" if it consists of a piece of legislation). However, most constitutions are silent on the precise issue of climate change, or they enshrine loose provisions in the domain of environmental protection. Thus, the usual situation is a lack of sufficiently clear and enforceable constitutional norms or principles that could be imposed on the legislator.[33]

Still in this domain, a violation of any human right recognised in the constitution could be an interesting and valuable argument to claim for the "illegality" of a national plan or rule. Although a growing number of countries have enshrined in their constitutions the "human" or "fundamental" right to the environment (in its different formats and levels of protection), in other nations the protection of the environment is not recognised by the constitution as a human right, or is not even mentioned in the magna carta[34]. Finally, in other countries (such as Spain) the protection of the environment is just a guiding principle for public policy-making[35], a concept that is not sufficiently vigorous to be used as a test of the 'ambition' of environmental standards or plans adopted by legislators or by the Government.

It is also uncommon to see constitutionally recognised the right to live in an adequate or unchanged climate. However, other collateral human rights (such as the right to life or the right to health, or the right to private personal and family life) can of course be affected by climate change, and its violation is frequently invoked. In this vein, the recent ECHR judgement in the famous *Klimaseniorinnen v. Schweiz* case[36] may open the door to a growing number of allegations of violations of human rights in climate change litigation[37].

[32] Regulation 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement.

[33] The *Neubauer* ruling (see, footnote 10, supra) is a notable exception to this state of facts, and constitutes an interesting example of the use of a constitutional principle to invalidate a legal rule or plan: the German constitutional court derived a substantial part of its holdings on the constitutional principle of the protection of future generations (art. 20a of the German Basic Law).

[34] The Constitution of Iceland, for example, does not make any reference whatsoever to the environment, or to the right to enjoy a clean environment.

[35] See: Spanish Constitution, art. 45.

[36] Judgement of the ECHR (Grand Chamber) of 24 April 2024, in the case of *Verein Klimaseniorinnen Schweiz and others v. Switzerland* (Application no. 53600/20).

[37] However, and with all respects for the Strasbourg court, in that litigation we don´t see the direct causal link between the climate change policies implemented by the several Swiss authorities and the damages alleged by the plaintiffs, and consequently, the human rights violation.

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Maybe due to the weakness of the "clear constitutional rule" argument, principles that are still *in nuce* (not fully recognised yet) or that have at most been enshrined in international declarations, soft law documents or even scholarly publications (such as the so-called 'non-regression' principle), are frequently invoked in these lawsuits in order to support the alleged illegality of the plans, regulations or programs.

Finally, a last argument for the plaintiff is that the challenged plan violates a statute (provided that the plan is considered to be a "regulation", which is placed below statutes in the *normative pyramid*, under the principle of hierarchy). In this situation, one possible line of argument for the 'illegality' of the plan could be that it violates a parliamentary law, such as the climate change laws that many European countries have passed[38], in which case the probability of success will be higher (for example, if the NECP sets less ambitious targets than those established in that Act. However, it is very unlikely that the Government would approve a Plan (regulation) that clearly violates the national Climate Act, such a gross mistake is infrequent and it would have been likely detected during the decision-making process.

3.7. *The remedies*

Many European administrative jurisdictions follow the French model, inspired by formalism, the requirement of a prior 'administrative' action and the limitation of the number and types of claims. Moreover, the control of those courts is a control of the 'legality' of governmental activity based on the invocation of precise means (*excès de pouvoir, ultra vires, etc.*), when the legal action seeks the annulment of an administrative decision or a governmental regulation (*recours en annulation*).

Thus, climate change legal actions may encounter another major procedural obstacle in the legal configuration of the claims that can be formulated in these lawsuits (what the plaintiff asks for). This is especially so in those administrative jurisdictions, such as the Spanish one, which only allow the formulation of a closed set of claims, formally delineated and strictly connected with the actual type of 'administrative activity' that is challenged in each case.

Therefore, the type of *petitions* that the plaintiff may ask for is strictly linked with the type of governmental/administrative activity that is challenged. In the case of Spain, there are four types of remedies that a plaintiff can bring before the administrative courts, depending of the form of governmental action targeted by the lawsuit (arts. 31 and 32, AJA):

(1) Challenge of administrative decisions (*actos administrativos*) or governmental regulations (*disposiciones generales*). This is traditionally known as an 'action for annulment'. In this case, the plaintiff may advance two different remedies. On the one hand, he may ask the court to declare that "the adjudication or the regulation is not in accordance with the law' and, consequently, to annul it. In addition, where appropriate the plaintiff may also ask the

[38] Spain approved the Act 7/2021, of May 20, on climate change and energy transition.

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recognition of an individualised legal situation and the adoption of all appropriate measures for the full restoration of his personal situation (traditionally known as 'full jurisdiction' legal actions)[39].

(2) Legal actions addressed against the inactivity of an administrative agency: the plaintiff may ask the court 'to order the agency to fulfil its obligations in the specific terms in which they are established' (see point 3. 4, above).

(3) If the lawsuit targets a material action constituting a *de facto* violation of the law: the plaintiff can request that the situation be declared unlawful; that the agency be ordered to cease; and that, if necessary, other measures be adopted.

In the most usual "strategic" climate disputes to date, claims of a broad material scope are often formulated by the plaintiffs: for example, they want that the State be required to adopt more 'ambitious' or "aggressive" measures in the fight against climate change than those that have already been adopted, i.e., measures that result in greater reductions in GHG emissions than those provided for by the plans or measures being challenged in court. In the opinion of the plaintiffs, the measures already adopted are not adequate, so they quantify themselves what the 'correct' reductions are, urging the judge to accept their plea.

However, this type of 'imaginative' claims must confront a structural element of classic administrative jurisdictions: judges can, it is true, annul administrative decisions or regulations when they are declared "illegal", but they lack the power to replace the Executive. This is why, in some climate disputes, the judgement declares that the State had failed to fulfil its obligations or duties and has condemned it to act, but has been careful not to impose a specific action, objective or result, as required by the principle of the separation of powers[40].

Similarly, two procedural claims that are incompatible with each other cannot be brought simultaneously, even in a subsidiary manner. Thus, the Spanish Supreme Court ruling of 24 July 2023 in the *Greenpeace v. Spain II* litigation (see below) declared that the NGOs were seeking two contradictory remedies: (a) on the one hand, the annulment of the NECP on the grounds of serious procedural defects, and (b) on the other hand, that the Government be ordered to modify 'upwards' the emission reduction targets, establishing more stringent and ambitious targets than those contemplated in the plan (in their opinion, Spain should assume a reduction in GHG emissions of at least -55% in 2030 compared to 1990, and 'net zero' emissions in 2040). Both claims cannot be exercised simultaneously when a regulation is challenged, especially the second one (see, below, point 4).

[39] For instance, if a government employee is fired from the Civil Service by a decision of the Secretary of State, the plaintiff may seek; (a) the annulment of the challenged decision; plus (b) to be readmitted to the Civil Service, effective from the very date when he was fired; plus (c) to be paid the salaries that he did not get during the trial; plus (d) that the sanction be deleted on his professional record; plus (e) moral damages caused by the reputational damage caused to him; plus (f) eventually, the publication of a notice on his case, etc.

[40] See, in this vein, the judgement of the First Instance French-speaking court of Brussels of 17 June 2021, *VZW Klimaatzaak vs. Kingdom of Belgium*, case Nº 2015/4585.

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As noted *supra* (point 3.6) in a climate litigation for annulment such as those discussed here, the plaintiffs must demonstrate that the political-administrative action being challenged is illegal, since the remedy sought is that the judge declares unlawful the contested act, plan or regulation - and therefore annul it. For example, if a legal action is brought against a national plan such as the aforementioned NECP, it is not sufficient to claim that it is 'insufficient' or that it seems to be 'unambitious' to the plaintiffs. Concepts such as 'insufficient' or 'unambitious' may have much journalistic or media impact, but they do not move on the same wavelength as the concepts and analytical parameters used by the administrative judge. He is confronted with a binary dilemma: "legal" or "illegal", no intermediate holdings are possible.

The claim that a climate change plan, regulation or strategy approved by governmental body should be declared unlawful (and annulled) because the plaintiff believes that they are not sufficiently 'aggressive' or effective will be technically inadequate from the legal point of view, since the plaintiff has the burden of proof that they are 'unlawful', i.e., not in accordance with the law. It should not be forgotten that in number of countries (among them, Spain) administrative decisions, plans and rules are presumed to be lawful, and the burden of proving their unlawfulness rests with the plaintiff. However, proving the illegality or non-conformity with the law of a measure, plan or provision adopted by the Government-Administration compact in this field may prove to be complicated, as we have discussed at point 3.6, above.

On the other hand, the line of argument that a national climate plan or program lacks reasonableness or motivation is also often doomed to failure: the plans and measures adopted in this field are usually supported by public participation processes and by a large number of studies and reports generated by the national and international scientific infrastructure, which is of considerable size. Consequently, the plaintiff may find it difficult to destroy this well-founded presumption of 'rightness' of the governmental measure or plan[41].

3.8. *The powers of the administrative judge*

If the legal action was considered admissible by the court, the final ruling or judgement is the judicial resolution that eventually puts an end to the legal proceedings, adjudicating the claims and counterclaims of the parties. In the administrative jurisdiction, the judgement must be strictly consistent with the claims advanced by the parties. As the Spanish AJA declares, the judgement must resolve the dispute "within the limits of the claims formulated by the parties and the grounds of the challenge" (art. 33.1). Otherwise, the judgement would be flawed and could be appealed in a higher court, on the grounds of inconsistency (*incongruencia procesal*).

Spanish administrative courts can make a rather limited set of declarations in their judgements. Apart from the question of who should pay the costs of the proceedings) the

[41] To succeed in court, it is not sufficient for the plaintiff to base his claim on his own scientific assessment or opinion, or to rely on evidence generated in his own organisation, or on the mere deposition of a pair of (party) experts.

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judgement can only do three possible things: (a) to uphold the legal action; (b) to reject it, (c) in specific cases, it can also dismiss the action as inadmissible (art. 68-1 of the AJA). The court is fully bound by these alternatives.

Thus, the judgment must (will) uphold the legal action 'when the regulation, the adjudication or the governmental action is in breach of the law" (art. 70.2 AJA) [42]. Conversely, the court must (will) reject the action 'when the contested regulatory provision, the governmental action or decision is in accordance with the law' (art. 70.1 LJCA). If the legal action is rejected, the legality of the plan, act or measure under appeal will be confirmed (as it happened with the Spanish national plan in the *Greenpeace v. Spain* litigation).

Let us now consider what happens if the judgement upholds the legal action. The scope and reach of the judgement will depend on the kind of administrative action that was challenged, and the claim formulated by the plaintiff. If, in a climate dispute, the legal action was brought against an individual administrative decision and the plaintiff only formulated the claim that the adjudication was not in conformity with the Law, then the court may annul all or part of it. However, the court cannot 'determine the discretionary content of the annulled decision' (art. 71.2, AJA)[43]. This is an important barrier to the success of some climate claims, as it is commonly accepted that the determinations and the policies adopted in this field by the Government and administrative agencies involve a wide political discretion.

Nevertheless, if the plaintiff in a climate action also formulated a claim for the recognition of an individualised legal situation (on the basis of arts. 31.2 and 71.1.b of the AJA) this would be also, in our opinion, a claim doomed to fail, since in order to be successful the plaintiff must act as the holder of his own or personal 'legal situation' a requisite that climate actions lack, by definition: it is characteristic of climate lawsuits that the actors do not act in order to have a "personal" situation recognised to themselves, but they act on behalf of the Society as a whole.

In other words, through an annulment action against an administrative decision (adjudication), the plaintiff can only seek the recognition of a situation that is attributable or traceable to him, i.e., that lays in his juridical sphere[44]. Therefore, it is not possible to request

[42] "Breach of the Law" includes also the "misuse of powers" (*détournement de pouvoir*, in the French tradition)

[43] For instance, the Government appoints Mr. John Doe as ambassador of Spain in Washington, something that is -under the controlling statute- a discretionary decision of the Cabinet. A plaintiff challenges that decision in the administrative courts, because there was not enough *quorum* when the Cabinet took that decision (procedural flaw of the decision). The court may well quash that decision on those grounds, but it cannot annul it on the ground that Mr. John Doe is not a suitable Spanish ambassador, or the right one (the content of the decision).

[44] The plaintiff may request the restitution of *his* property (ex.: an unlawful expropriation), *his* liberty (ex.: illegal imprisonment), *his* professional career in the Civil Service (ex.: a sanction), etc. In this vein, art. 71.1.b of the AJA states that if the plaintiff sought the recognition and restoration of an individualised legal situation, the judgment 'shall recognise that legal situation and shall adopt any measures necessary for the full restoration of that situation' (see, footnote Nº 39, supra).

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the 'reestablishment' of a legal situation whose holders are the mankind, 'the planet Earth', or even worse, the 'future generations', since these are cohorts of people who have not yet been born and who have not even been able to authorize the plaintiff to act on their behalf.

Let us consider now the procedural scenario in which the plaintiff filed a legal action against a governmental regulation or a plan having the legal nature of a regulation (for instance, against the NEPC approved by the Government). In this case, the powers of the judge may be more limited. In classical administrative jurisdictions the judges can, it is true, annul administrative regulations (if they violate a statute, for instance) but they cannot modify their wording. In other words, the administrative judge cannot be asked to draw up himself the plan, measure or strategy requested by the plaintiff, or to increase by his own authority the GHG reduction target enshrined in the challenged plan or regulation. The separation of powers if the justification for this limitation.

This procedural feature may hamper the success of legal actions where the plaintiffs urge the State to approve more 'ambitious' or aggressive measures in the fight against climate change, and specifically further reductions in GHG emissions than those foreseen by the rules, plans or decisions challenged in court.

In Spain, for instance, art. 71.2 of the AJA is of great importance for our discussion. It provides that, if a legal action is upheld, an administrative Court can annul the full plan or regulation (or a certain provision thereof) for being "illegal", that is, if it violates a "norm of higher rank", for instance a statute. However, the court cannot 'amend', modify or rewrite how the annulled regulation (or the annulled provisions thereof) should be worded.

This feature (limited powers of the judge) is probably one of the hardest hurdles in the hard way of climate change legal actions in the administrative courts. At least in Spain, no administrative court has the power to modify (to raise) the GHG reduction targets laid down in the challenged plan, nor can it order the Government to do so. In other words, the administrative "praetor" cannot order the State to substitute the plan or strategy requested by the plaintiff for the plan that has been declared illegal.

This technicality should make us reflect on the effects that a hypothetical ruling upholding an annulment action could have in such cases. Let us imagine that an NGO brings an action against the Spanish NECP, and that it only seeks to have the plan declared illegal and therefore annulled. The legal action is upheld. In that case, the consequences would be terrible for the fight against climate change in that kingdom, given that the annulment of the plan is a more radical figure than its simple derogation. This is because the repeal of a regulation by a later one ("lex posterior" principle) in no way questions the many times that it was applied by the administrative agency, and it takes effect from the entry into force of the new regulation that repeals the previous one.

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However, the judgment that upholds an annulment action against a regulation on the ground that it is illegal has "ex tunc" effects: that is, the flaw of the regulation is one of radical nullity, and not of mere annullability. It is a "vice" that cannot be convalidated or cured. This understanding is crucial to understand the practical repercussions that a legal action triggered against a governmental regulation (or a plan having that legal nature) might trigger. If the judgement upholds the legal action, the regulation or plan will not be quashed *pro futuro*; it will be quashed since the date in which the regulation entered into force, and the regulation *in toto* (or some of its provisions) will be eliminated from the legal system, as it had never existed. It will be considered that the plan was never adopted, that it never deployed legal effects[45].

It is clear that such a judgment would constitute a true legal 'tsunami' in the scenario of climate change, since the ruling:

(a) would leave the fight against climate change in that country without any programmatic basis, and this would be so from the very adoption or publication of the national plan (*ex tunc* effects), and not merely from the date when the judgment was passed (*ex nunc* effects);

(b) Spain would not have any national plan at all (it never had it, in reality). This would be in in flagrant breach of the EU "Governance" Regulation and the rest of the Union's rules (something that would expose Spain to an infringement procedure by the European Commission).

(c) All GHG emission reduction trajectories and renewable energy penetration targets adopted by Spain would lapse *de jure*, meaning that the competent authorities would have to start 'from scratch'[46].

(d) Spain should prepare a new national plan, subject to a long and cumbersome procedure involving (at least) a strategic environmental assessment, public information, inter-administrative consultations, etc. This could take several years, during which time Spain would have no plan at all.

3.9. *The reach of the judgment*

The judgments that administrative courts may issue have a precise objective and subjective reach, which are usually regulated by the controlling procedural statute. In the case of Spain, if the judgement declares the inadmissibility or the rejection of the legal action, the 1998 AJA provides that the ruling will only concern the parties (art. 72.1, AJA). This means that, in the case of a "climate" lawsuit, the judgment will only produce effects for the plaintiff and for the

[45] However, and for reasons of legal certainty, the administrative decisions that were adjudicated by the agency on the basis of a regulation that is subsequently annulled by a court, remain untouched (art. 73 AJA). Only administrative sanctions (in some cases) may be exempted from this hard rule.

[46] Of course, the GHG reduction targets that were likely embodied in an Act of Parliament (in the case of Spain, the Climate Change and Energy Transition Act of 2021) will remain untouched by the administrative court ruling

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defendant (the Government, an administrative agency). The legality of the administrative decision, plan or regulation will be confirmed (the plaintiff cannot bring another legal action, at least on the same grounds).

The scenario of a judgment upholding the legal action lodged against an administrative decision, plan or regulation is more complex, as it opens the door to multiple repercussions on third-parties. Thus, the annulment of the decision or regulation will produce effects "on all concerned persons" (art. 72.2, AJA) and not only on the parties. This means that the judgement may deploy adverse or negative effects on persons who did not take part in the legal proceedings and who had been granted an advantage or even true subjective rights by the challenged decision or plan which eventually became annulled[47]. For this reason, and in order to guarantee the right of affected third-parties, the AJA requires that these parties must be summoned or called to the legal proceedings, and they will act as co-defendants (art. 21).

The situation of affected third-parties is more delicate in the case of legal actions targeting a national climate change plan or strategy. If the court eventually rules in favor of the plaintiff, it is evident that this ruling might have dramatic consequences for many economic agents (who expected to obtain benefits from the annulled plan). Since their number is large and they are not individually identified by the plan or regulation, they could not be called to become parties in the legal proceedings. As a consequence, the judgement would deprive them from legitimate interests and expectations[48] or even true rights[49], *inaudita parte* (without having been heard).

On the other hand, the 1998 AJA lays down specific rules which apply to the final judgments that annul administrative regulations[50]: first, and for a better knowledge by the general public, a judgment annulling an administrative regulation must be published in the same official journal in which the annulled regulation was published (arts. 72.2 and 107.2, AJA). Simply stated, this means that this type of rulings have *erga omnes* effects. Consequently, a hypothetical ruling upholding a legal action against the Spanish national plan should be

[47] For instance, a company obtains an environmental permit to build a factory, but subsequently the permit is quashed by an administrative court, which upholds the legal action triggered by an NGO against the permit, on the ground that no EIA was performed.

[48] For instance, a national climate change plan foresees massive governmental investments on renewable energies, especially in a concrete geographical area of the country, something that generates considerable expectations on the side of the concerned industry sector. Corporate movements take place, investment plans are devised, monies are mobilised, but at the end of the day the plan is annulled by an administrative court, upholding the NGO´s claim that the plan was not ambitious enough.

[49] Let us suppose that, as a consequence of a judgement that upheld a legal claim against a climate plan, the Government decides to withdraw a licence/permit that had been just granted to a company to build a major thermal power plan, with the argument that, in order to reach the new mitigation targets imposed by the court, these energy installations should be phased out, and no permit for "new" installations should be granted.

[50] These rules would also apply in the case of a legal action triggered against the NECP, since the said plan has the legal nature of an administrative regulation, according to the Supreme Court.

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published in the State Official Gazette (*Boletín Oficial del Estado*, or simply "BOE") by mandate of art. 72.2 AJA, since the said plan was published there (BOE of 31 March 2021).

4. *The* Greenpeace v. Spain case*: an example of climate administrative litigation and some lessons to learn*

Given the dimensions and characteristics of the phenomenon of climate litigation it came to no surprise that a "strategic" legal action also took place in Spain.

It should be underlined that in this kingdom there are different forensic avenues or jurisdictional tracks (up to five)[51]. Although constitutional, civil or commercial courts have been used for climate change litigation in other parts of the world, in Spain they would not be the right forum for procedural reasons. Firstly, we refer to the possibility for NGOs or individuals to litigate before the Constitutional Court (as it happened in Germany). The procedural straitjacket and the restrictive legal standing of the plaintiffs who may act in the different legal proceedings provided for by the Constitutional Court Act would not allow a "Neubauer-type" litigation to crystallise in Spain. And, as noted supra, the right to the environment cannot be defended by means of the "special constitutional protection" proceedings either (*recurso de amparo*).

On the other hand, it would also be extremely difficult for a legal action against the State or the Public Administration to be declared admissible by a civil or a commercial court (such as it happened in the "Urgenda" or "Klimaatzaak" litigation, since in Spain the distribution of judicial competence among the (five) existing judicial tracks would be clear in a case of "strategic" climate litigation like the referred ones[52].

It was therefore obvious that the only suitable forensic locus for replicating a climate litigation in Spain such as the case mentioned above would be the Administrative jurisdiction. And since the challenged activity would come from the central Government, it was clear that the competent court for this would be the administrative chamber of the Supreme Court (under art. 12 of the AJA). What the plaintiffs identified, correctly.

In reality, the *Greenpeace v. Spain* litigation[53] is not a single lawsuit, but consists of two different and consecutive legal proceedings, each one producing its own final ruling. Anyway,

[51] Each one culminates in a different chamber of the Supreme Court: civil and commercial courts culminate in the First Chamber (Sala Primera); criminal courts culminate in the Second Chamber; administrative courts culminate in the Third Chamber; labor-employment Law courts culminate in the Fourth one, and the Fifth one is the apex of the military courts.

[52] For those procedural reasons, the *Urgenda* litigation seems weird and surprising for a Spanish administrative lawyer.

[53] Although this litigation is usually identified as "Greenpeace v. Spain", it is not technically correct to say so, since the defendant was not the Kingdom of Spain, but the central Government.

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they involved almost the same actors, attacked related issues, and they were linked by the common denominator of climate change. They are herein briefly presented[54].

4.1. *The first lawsuit*

On 14 September 2020, Greenpeace and two other environmental associations[55] filed a legal challenge against the central Government in the Supreme Court (Third Chamber, administrative jurisdiction). This claim fits perfectly into the type of climate litigation being here discussed.

The plaintiffs filed this lawsuit against what they called the "climate inactivity" of the Government, due to the failure of Spain to approve a Long-Term Decarbonisation Strategy and an Integrated National Energy and Climate Plan as demanded by EU Law ("governance regulation"), which would establish GHG reduction targets in line with the commitments made by Spain with the ratification of the Paris Agreement and the scientific recommendations of the IPCC, while guaranteeing the "human rights for present and future generations". The plaintiffs claimed that Spain should set a GHG reduction target not lower than -55%, to be attained by 2030.

The legal action was declared admissible, and was registered under number 265/2020. It was allocated to the 3rd section of the Administrative Chamber of the Supreme Court.

However, during the handling of the case the Government approved two documents: first, the Long-Term Decarbonization Strategy 2050 (November 3, 2020), and then (in March 2021) the long awaited NECP. In light of this, the plaintiffs withdrew the claim in the part related to the decarbonization strategy, but not with respect to the plan. However, in March 2022, the Administrative section of the Supreme Court issued an *ex officio* order by virtue of which the handling of this proceeding was terminated, given that another legal action had been brought by the same plaintiffs against the NECP approved by the Government (which triggered the *Greenpeace v. Spain II* legal action, see below). Therefore, the file was transferred to another "section" of the Administrative Chamber, concretely the 5th Section, for the purpose of being adjudicated jointly with the new challenge filed by the plaintiffs.

The lawsuit was adjudicated by the judgment of the third chamber of the Supreme Court (5th Section) of July 18, 2023 (ruling Nr.: 1038/2023). In this ruling, Mrs. A. Huet, writing for a unanimous Court, rejected entirely the legal challenge triggered by the e-NGOs. To begin with, although the "governmental passivity" denounced by the plaintiffs did not fit exactly within the technical concept of "administrative inactivity" as defined by art. 29 of the AJA (see above,

[54] In view of the novelty and interest of this litigation, Spanish scholars have paid a close attention to it. For a detailed analysis of it, see: B. SEATUÁIN MENDÍA, *El alcance actual de la litigación climática en España a la vista de la reciente jurisprudencia del Tribunal Supremo*, in the collective book B. SEATUÁIN & S. SALINAS (eds.), *Perspectivas jurídicas sobre clima, agua y energía.* Aranzadi Publs., 81-116.

[55] Ecologistas en acción-Coda, and Oxfam Intermón.

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point 3.4), the court confirmed that it enjoys a room for judicial review in the case of "regulatory" inactivity, when the law clearly obliges the Government (or an agency) to approve an administrative regulation[56]. On the other hand, the court declared that the Paris Agreement did not contain a clear obligation or indication on the precise GHG reductions that must be attained by the parties, and this should be coupled with the fact that the Government enjoys a wide policy discretion in deciding the precise content of the plan[57]. Finally, the Court recalled (among other things) that the Spanish procedural law prevented it from establishing how the NECP should be drafted. Therefore, it could not accept the plaintiff's claim (somewhat naïve, as well as technically incorrect) that the court declared "that the Government must approve a NECP providing for GHG emissions reduction targets... in no case less than -55% in 2030".

4.2. *The second lawsuit*

On May 28, 2021, four environmental associations, three of which coincide with the previous proceedings[58], filed another legal challenge in the Administrative Chamber of the Supreme Court, this time against the NECP that had been approved by the Government a couple of months earlier. This time, the plaintiffs alleged that the aforementioned plan was not ambitious enough to comply with international and EU climate change standards and objectives (specifically the temperature targets of the Paris Agreement); that the plan should have enshrined more ambitious reduction targets of GHG emissions ; that no effective public participation took place during the decision-making process; and, finally, that no proper strategic environmental assessment of the plan was carried out.

In essence, the NGOs claimed that Spain should have adopted more ambitious and stringent levels of GHG emissions reductions than those actually envisaged by the NECP: in their opinion, Spain should have assumed a reduction of GHG emissions of at least -55% by 2030 compared to 1990 figures, and "net zero" emissions in 2040, instead of the -23% reduction by 2030, as included in the plan. Extensive references were made by the plaintiffs to rulings issued by foreign courts (*Urgenda* and its aftermath).

The legal challenge was admitted for further consideration in July 2021(legal action Nº.: 162/2021) and it was assigned, too, to the 5th Section of the Administrative chamber of the Supreme Court. Strangely enough, the judge who reported on this judgment (Mr. W. Olea Godoy) was different than the one who adjudicated the first claim.

In April 2022, the Court agreed to require the plaintiff to produce evidence. It admitted the evidence of an expert opinion (commissioned by the plaintiffs), and the documentary

[56] Legal basis Nº 4, letter C, and legal basis Nº 5, letter B.

[57] Legal basis Nº 5, letter C.

[58] In this second lawsuit, the plaintiffs were the following e-NGOs: Greenpeace Spain, Oxfam Intermón, Ecologistas en Acción-CODA and "coordinadora de ONGs para el desarrollo". The latter one is "new" with respect to the first lawsuit.

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evidence. The court, however, rejected witness evidence requested by the plaintiff. The plaintiff appealed the decision of the Court on this precise issue, but the appeal was rejected by Order of June 23, 2022.[59].

The Court eventually issued its ruling on 24 July 2023 (ruling Nº.: 1079/2023). In this ruling, Justice W. Olea, writing (again) for a unanimous court, rejected entirely the legal action in its entirety, too. Consequently, the full legality of the NEPC was confirmed[60]. In our opinion, two main reasons explain this outcome: first, the legal arguments and briefs submitted by the plaintiffs were not very good from the "legal-technical" point of view; second, the procedural features that have been presented *supra* made it very difficult for this legal action to succeed.

The main reasons for rejecting the action may be summarized as follows:

1. The plan was considered to have the legal nature of a regulation under Spanish law.

2. As explained *supra*, an administrative court may well annul a regulation (or a provision thereof) if it is "illegal" (when it violates a statute or an essential procedural requirements), but it cannot re-write the wording of the regulation (art. 71.2, AJA) Therefore, the Court could not say or determine the exact amount of GHG reductions that Spain should attain (as demanded by the plaintiffs, that is - 55%), as this petition fell beyond the reach of the Court´s powers (this aspect of the rulings is further analysed below).The separation of powers principle is the ground for this limitation in the judge´s powers under art. 71.2 of the AJA.

3. The approval of a national plan such as the one challenged by the NGOs involves reconciling contradictory public interests. It has a broad impact on the power of the Government to determine the domestic and foreign policies, as reserved by the Constitution to the Executive Branch (article 97), and affects many relevant legal provisions. Consequently, courts are not the appropriate forum to deciding on these complex issues[61].

4. No relevant procedural failure was committed during the decision-making process of the NECP, and the strategic environmental assessment performed was not perfect, but sufficient (rejecting the argument that the assessment was insufficient or defective, advanced by the plaintiffs).

5. The reduction targets included in the NEPC largely complied with the reduction obligations imposed on Spain by EU Law, while the Paris Agreement (ratified by Spain) did not imposed any precise reduction targets. Therefore, it could not be said that the challenged reduction targets were "illegal". Moreover, the Government enjoys a large remit of discretion in drafting the plan[62].

[59] Interim Order of the third chamber (5th section) of the Supreme Court of 23 June 2022. Legal action Nº 162/2021.

[60] Since no other legal actions were filed against the NEPC within the two-month deadline for doing so, it may be said that the Spanish NEPC cannot be challenged anymore, at least in a direct annulment action.

[61] See, legal basis Nº 7.

[62] See, legal basis Nº 8.

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In our opinion the two rulings here discussed are technically correct and fully respect the legal framework of the administrative jurisdiction in Spain, presented *supra*[63]. They constitute, at the same time, a good example of the limited powers of the court, and of the procedural features that may represent a hurdle for a climate litigation to succeed in the administrative courts.

4.3. *Some relevant aspects of the judgements*

4.3.1. *The legal nature of the national plan*

The two Supreme Court rulings raise interesting questions, which deserve a close attention and should be treated in more detail. Let us start with the legal nature of the challenged NECP. In the two lawsuits brought by the NGOs against the Government, the Supreme Court analysed the legal nature of the challenged NECP and concluded that the national plan was 'regulatory in nature'[64].

We respectfully disagree with this conclusion. In our view, the NECP is not regulatory in nature, or at least not 'in toto'. The national plan adopted by Spain in 2021 (and approved by the European Commission) is 427 pages long (!) and constitutes a complex administrative-governmental planning document containing numerous types of forecasts and multi-annual scenarios. Some might be (for dialectical purposes) of a regulatory nature, but others are simply objectives for future achievement, governmental wishes and purposes. The Spanish plan itself does not claim to be a regulation, a general provision, or even to be 'regulatory in nature'.

For the most part, the Spanish NECP contains projections, scenarios, time-spans, "trajectories" desired or foreseen by the Government over a broad multiannual horizon and in various 'dimensions' (such as decarbonisation, energy efficiency, or energy security). Its pages abound with descriptions of the current situation and its legal framework, something that cannot be considered to have any regulatory 'substance' whatsoever. The plan envisages to adopt or to amend this or that regulation; it expects that a certain "penetration" of renewable energies in the national energy "mix" will be achieved, and so on. It also announces the adoption of measures, it promises to set aside and allocate large financial resources, and a sliding scale of results to be achieved in practice, etc.[65]

[63] After the publication of the rulings, the plaintiffs made extensive (and in our view, disqualifying) statements in the media regretting the holding of the judgments, and even depicted the Court as refusing to protect the population, departing from international case-law, ignoring science, etc.

[64] See*:* Ruling of 18 July 2023 (especially, legal basis Nº 5), and Ruling of 24 July 2023 (legal basis Nº 2).

[65] The NECP plans to mobilize a huge volume of investments, estimated at between €16.5 billion and €35.7 billion, and an additional €241 billion between 2021 and 2030. However, the plan does not identify what precise investments these will be, or on which precise projects they will be spent. A new example of its lack of legal "tooth".

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For example, in the area of the promotion of renewable energies (pages 83 to 110), the national plan foresees and wishes to achieve certain progressive percentages of renewable energy penetration in the national energy mix (in accordance with the obligations arising from the European directives on renewables). To this end the plan foresees promotional measures of different scope, but the immediate or direct legal basis for these measures is not the plan itself, but the legal rules that are 'planned' to be adopted, or those that already exist (the 'support framework' for renewables).

Furthermore, the plan does not define offences and does not provide for sanctions (or any negative legal consequences for anyone) if its expectations are not met. If this is a regulation, then it is a regulation whose violation does not entail consequences for anyone, a note that any genuine regulation should comply with.

Moreover, in our opinion the NECP fails to meet two basic requirements for a document to be considered a regulation or a regulatory provision (under Spanish administrative law). First: it does not innovate the legal system with a set of mandates intended to remain in force indefinitely. In reality, the NECP is nothing more than a Government programme that covers a given period, and that will vanish into thin air once the date of 31 December 2030 will be reached. "Expiration dates" are not features that apply to legal norms, at least in Spain (setting aside the emergency regulations).

Second: the plan is not a norm that can be 'applied' an infinite number of times to an indeterminate number of potential addressees or affected parties. In reality, the plan not impose specific obligations or limitations on a specific group of "affected" persons, like every regulation is supposed to do. In reality, there are no identified or identifiable addressees or 'passive subjects' who are subject to the "imperative" mandates of the plan. For example, in the area of renewable energies, the plan expects to achieve a percentage of penetration of these energies, but it does not identify what installation of which company will be erected in which piece of land, to host which specific renewable installation. This part of the plan is mainly is a governmental target, a wish or expectation.

The crucial consideration is that, in Spain, governmental "plans", "strategies" and the like are not regulated in a uniform or homogeneous way. There is no general law saying that a plan "is" always a regulation or has the nature of a regulation. The solution, then, must be ascertained on the basis of the sectoral legislation, on a case-by-case basis. In this vein, only in the field urban development the case-law of the Supreme Court has declared that spatial plans have the "legal nature" of a regulation. But this finding cannot be extrapolated to any plan, program or strategy approved in other fields (and there are dozens of governmental plans in numerous sectoral policies: environment, security and street crime, agriculture, housing, etc).

If there is one aspect of the plan that cannot have a "regulatory nature", that is the precise percentage of reduction in GHG emissions which the plaintiff wanted to see modified upwards. In our view, this is not a "normative" objective, but merely the cumulative result of the

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hundreds of measures envisaged by the NECP. Indeed, the Government cannot achieve such a result directly, by its own sheer will. Indeed, the emissions that are supposed to be reduced in a 10-year time span are produced by millions of sources, the vast majority of which come from the private sector and citizens at large. The Government 'wants', "endeavors", would like to achieve such a reduction (and is committed to it). However, the attainment of these objectives does not depend entirely on its direct and immediate action, but on the concatenation of an extensive and complex network of effects and causes, some of which are beyond its reach.[66]

On the other hand, the Supreme Court understood that the 'regulatory' nature of the NECP would derive from the EU 'Governance' Regulation (2018/1999). Respectfully, we don´t share this view either. In fact, neither this regulation nor Directive 2018/2001 (on renewable energies) specify the legal nature of these plans, which must be approved by the Member States. Therefore, in each country those plans will have the legal nature that they should have according to their legal-constitutional tradition (principle of institutional autonomy). Thus, in some Member States those plans may have a statutory nature, if they are approved by Parliament; in others they may have a regulatory nature (if they comply with domestic legal doctrines or legislation), and in others they may stand in the legal mist of an imprecise nature, as is the case in Spain.

Finally, we find it difficult to admit an appeal against other plans approved within the scope of climate programming, such as the Spanish Decarbonisation Strategy or the National Plan for Adaptation to Climate Change, which are much more evanescent documents than the NECP.

Be that as it may, in the two lawsuits brought by the NGOs against the Government, the Supreme Court concluded that the challenged NECP was 'regulatory in nature'[67]. This preliminary conclusion allowed the court to declare that the plan was justiciable. However, although it could annul the Plan entirely (or a given provision thereof), it could not modify its wording, and therefore could not "raise" the targets of GHG emissions provided for in the Plan (see, above, point…)

4.3.2. *The strict correlation between the challenged administrative action and the remedies sought*

As mentioned at point 3.8, supra, the limited powers of the judge may constitute a hurdle for the success of climate actions in the administrative courts. In the *Greenpeace v. Spain* litigation, the Supreme Court could not grant what the plaintiffs requested (an amendment of

[66] Like the emissions caused by volcanoes (such the one in La Palma island in 2011), or those generated by uncontrolled forest fires, or by the cars of the millions of tourists that visit Spain every year, in voluble numbers, etc. In reality, this is a crucial aspect in the field of climate change, and puts into question whether it make logical sense (or even if it is realistic) to oblige a country to attain a certain GHG reduction target, or condemning it because it failed to reach it.

[67] See*:* Ruling of 18 July 2023 (especially, legal reason Nº 5), and Ruling of 24 July 2023 (Legal reason Nº 2).

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the national plan), given that, when a plaintiff brings a legal action against an administrative inactivity, the content of the judgement cannot be other than that provided for in arts. 32.1 and 71(c) of the AJA (see point 3.4, supra).[68]

Thus, in a legal challenge of governmental inactivity, the court may order the administrative agency to perform the specific activity or to deliver the concrete benefit or grant whose materialisation was requested by the plaintiff. It may also order the agency to effectively execute its decisions addressed to individuals (these decisions normally declare rights in favor of the plaintiff) [69]. However, the drafting, approval and application of a plan-regulation (as the plaintiff claims) is not *prima facie* a case of "execution" of a prior and final administrative decision, nor the performance of a 'specific service' that the agency is obliged to provide (the only two scenarios foreseen by art. 29 of the AJA) . Notwithstanding the clear wording of the AJA, the Supreme Court ruling of 18 July 2023 (*Greenpeace v. Spain I*) did not confine itself by these formal technicalities, and instead recognised a wide room for judicial intervention in the case of the so-called 'regulatory inactivity' (see, *supra*, point 3.4). This is an interesting construction based on a "progressive" interpretation of the law, which also has the 'problem' of not fitting entirely with the literal wording of the AJA. From this situation one could derive the debate whether that key statute would need to be amended, in order to include this interesting judge-made doctrine in its wording.

5. *Conclusions*

The procedural aspects of climate litigation in the administrative courts that we have outlined in this contribution (and illustrated with the *Greenpeace v. Spain* litigation) lead directly to the following conclusions:

First: the likely success of the 'climate actions' here discussed do face numerous procedural obstacles and hurdles, stemming from the specificity of the administrative jurisdictions and the uniqueness of the 'respondent': a *potentior persona* exercising normative-regulatory powers in a framework of political discretion. Not to mention the enforceability of a likely judgment siding for the plaintiff.

Second: The two judgments handed down by the Spanish Supreme Court in the 'Greenpeace and others' case in 2023 were quite forceful and clear in dismissing all of the plaintiffs' claims, and in our opinion they did it rightly. As a result, it is clear that "strategic"

[68] According to art. 32.1, the plaintiff may claim that the Government or administrative agency be 'ordered to fulfil its obligations in the specific terms in which they are established'. According to art. 71(c), if the measure sought by the plaintiff was that the agency should actually perform or execute a certain benefit or commitment, the judgment may set a time limit for the Government to comply with the judgment.

[69] See, footnotes 19 and 20, *supra.* See, also, point 3.4, *supra.*

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climate litigation has little chance to succeed in Spain, at least as long as the current legal framework persists.

Third: in light of all this, these climate disputes seem to be a kind of judicial 'mission impossible', if not a forensic utopia. This reinforces the idea that these lawsuits raise issues of genuine policy choices and not strictly 'legal' matters, where a court might implement a binary analysis ("legal" or "illegal").

Fourth: the administrative courts are not the appropriate institutional forum to formulate (or to substantially modify) something that is so cross-cutting and all-encompassing as the whole energy and climate policy of one country, and which has ramifications and impacts that affect virtually every aspect of Society. Judges cannot themselves approve the complex plans and strategies that may attain 'ambitious' targets of emissions reductions ; nor can they approve restrictive regulations or plans that, in order to reduce carbon emissions, may adversely affect broad branches of economic activity[70].

Fifth: the classical administrative jurisdiction was established in the 19th century for more concrete and 'juridical' purposes: annulling an illegal regulation, quashing an administrative decision that clearly violates a legal rules, etc. We cannot demand from administrative courts a more complex job (subtle and policy-choice oriented), for which they were not incepted and for which judges have not been trained.

Sixth: whether we like it or not, administrative courts are the judicial track that we have here and now, so we might have to give up the idea that judges can save the planet. We cannot lay on the shoulders of the *praetor* the heavy responsibility for adopting a set of complex national economic-energy policy decisions. In reality, those policy choices do require a wide process of political debate, broad social dialogue and participation, and a careful assessment of their costs, benefits and burdens for the entire society.

In the fight against climate change, the political process, and not the judicial process, should deliver the right decisions, plans, policies and rules. Environmental-climate 'activism' is fine, but in our view it should not be exercised in courts and before jurists (the judges) who have been trained for other tasks. Rather, it should be channeled through institutional action, through participation in decision-making, informed engagement and active involvement of citizens in politics and in the corresponding electoral processes.

[70] Indeed, a judicial ruling upholding such a legal action would in practice affect adversely many people and firms, which would not have been heard during the judicial proceedings (see, supra, point 3.9). By the way, this is a "side-effect" of climate litigation that is little explored and is usually disregarded by scholars when they discuss "strategic" climate litigation.

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Lara Trucco

Verein KlimaSeniorinnen Schweiz v. Switzerland: A Case-Based Learning Guide

ABSTRACT: *This article examines the Grand Chamber judgment Verein KlimaSeniorinnen Schweiz v. Switzerland as a turning point in the European Court of Human Rights' treatment of the climate crisis under the ECHR.*

The Court adopts an evolutive interpretation of Articles 2 and 8, recognizing that climate change directly affects fundamental rights. It expands victim status to associations representing vulnerable groups, redefines causation in terms of risk aggravation, and finds violations of Articles 8 and 6 §1 for inadequate climate action and denial of access to justice. By relying on IPCC evidence and articulating positive obligations of mitigation and adaptation, the Court narrows States' margin of appreciation and establishes a model of constitutional due diligence, reinforcing the role of human rights adjudication in European climate governance.

1. *Introduction*

The application brought before the European Court of Human Rights (ECtHR) was lodged by the Swiss-law association Verein KlimaSeniorinnen Schweiz, together with four of its members, women who also acted as individual applicants.

Although the global social context has changed profoundly since the time the application was introduced-and it is not easy to assess whether collective sensitivity to the issue has remained constant-the Court's judgment in this case marked a significant turning point. As we will see, the Court adopts an evolutive interpretation of the European Convention on Human Rights (ECHR), extending both the notion of victim status and the scope of the positive obligations incumbent upon States in countering the harmful effects of climate change.

On this basis, as will be further examined, it explicitly affirmed for the first time that the climate crisis can have a direct impact on the protection of fundamental rights, recognizing that the rights to health and to private life are among those threatened by climate change and

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that, consequently, the Contracting States are obliged to adopt appropriate measures to ensure their effective protection.

It should be noted at the outset that the reasoning underpinning *Verein KlimaSeniorinnen Schweiz v. Switzerland* rests upon solid and widely shared premises. Knowledge about climate change has now reached such a degree of consolidation as to constitute evidence even in judicial fora. International literature-particularly the 2023 report of the Intergovernmental Panel on Climate Change (IPCC)-has established the anthropogenic origin of global warming, the increasing frequency and intensity of extreme weather events, and the related risks to human health. Specifically, it has been scientifically demonstrated that heatwaves disproportionately affect the elderly population and, to an even greater extent, women beyond a certain age: a clearly identifiable and vulnerable group.

This evidence has strengthened the link between inadequate climate policy and the infringement of Convention-protected rights, marking the transition from abstract risks to concrete and current impacts[1].

2. *The international political and legal context*

From what has just been observed it emerges that politically and legally, the Strasbourg Court did not act in a normative vacuum.

Since the 1990s, the United Nations Framework Convention on Climate Change (UNFCCC) has acknowledged the link between human activities, rising greenhouse gas concentrations, and risks to ecosystems and populations.

This recognition was developed by the Kyoto Protocol, adopted on 11 December 1997 in Kyoto, Japan, during the Third Conference of the Parties (COP 3) to the United Nations Framework Convention on Climate Change (UNFCCC) and entered into force on 16 February 2005; and, above all, by the legally binding 2015 Paris Agreement, which commits States to keep the rise in global temperature "well below" 2°C above pre-industrial levels while pursuing efforts to limit it to 1.5°C. The Preamble expressly connects climate action with human rights, health, intergenerational equity, and the protection of vulnerable groups.

On 19-20 April 2012, at the High-Level Conference held in Brighton on the initiative of the United Kingdom's Chairmanship of the Committee of Ministers of the Council of Europe ("the

[1] For these aspects, see, in particular, D.R. BOYD, *The Environmental Rights Revolution. A Global Study of Constitutions, Human Rights, and the Environment*, Vancouver, 2011; M. MASLIN, *Climate Change. A very Short Introduction*, Oxford, 2014; J. PEEL, H.M. OSOFSKY, *Climate Change Litigation*, Cambridge, 2015; L. LAVRYSEN, *Human Rights in a Positive State*, Cambridge, 2016; P. ANDRÉ, A. GOSSERIES, *La Justice Climatique*, Paris, 2024; L. TRUCCO, *Natura e sentimento nel diritto*, Milano, 2024; M. WEWERINKE-SINGH, S. MEAD (ed. by), *Climate Litigation*, Cambridge, 2025; A. MARICONDA, *Separation of Powers and Climate Litigation: International Law as a Guide Between Judicial Activism and Legislative Prerogatives*, Athena 5.1/2025, 142 ss.

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Conference"), the participants declared, *inter alia*, that: "The States Parties to the Convention for the Protection of Human Rights and Fundamental Freedoms ('the Convention') reaffirm their deep and abiding commitment to the Convention and to the fulfilment of their obligations under it to secure to everyone within their jurisdiction the rights and freedoms defined therein". Therefore, in 2022, the United Nations General Assembly recognised the right to a clean, healthy and sustainable environment, consolidating a coherent, multilevel political and legal framework.

The 2021 Glasgow Climate Pact expressed "alarm and utmost concern" regarding human-induced warming, while COP27 and COP28 reiterated the urgency of accelerating mitigation (§§ 3-4, 17-22).

The Reykjavík Declaration of the Council of Europe (2023) acknowledged the "triple planetary crisis"-climate change, pollution and biodiversity loss as central to the effective enjoyment of fundamental rights, foreshadowing further conventional developments.

Within the universal human-rights system, the Human Rights Committee (HRC), interpreter of the International Covenant on Civil and Political Rights (ICCPR), has derived climate obligations from the right to life (Article 6) and the right to private and family life (Article 17). In General Comment No 36 (2019), the Committee linked protection of life to addressing social conditions that threaten its enjoyment "with dignity," expressly including environmental degradation and climate change.

Other UN treaty bodies have shaped a minimum core of climate obligations: CEDAW General Recommendation No 37 (2018) integrates gender into disaster risk reduction and adaptation; CRC General Comment No 26 (2023) identifies children as a particularly exposed group; CESCR General Comment No 14 and General Comments Nos 25-26 call for substantial, verifiable mitigation and adaptation aligned with the Paris Agreement and grounded in precaution.

In parallel, the Office of the High Commissioner for Human Rights (OHCHR) has documented the disproportionate impact of climate harms on vulnerable groups-especially older women-and, in a 2019 joint statement, urged the phasing down of fossil fuels, the promotion of renewables, and stronger regulation of private actors along global value chains.

On the plane of international adjudication, the International Tribunal for the Law of the Sea (ITLOS) and the International Court of Justice (ICJ) have been seized for advisory opinions on, respectively, States' duties under Part XII UNCLOS regarding GHG marine pollution and general obligations to protect the climate system from anthropogenic emissions. Although not binding stricto sensu well, these initiatives may consolidate standards of due diligence, causation and ambition, contributing to the progressive clarification of international climate law.

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3. *To Follow: the European context*

Also within the Council of Europe, there has been a gradual convergence towards the recognition of a right to a healthy environment.

The Parliamentary Assembly advanced an ambitious agenda urging additional protocols to the ECHR and to the European Social Charter, while the Committee of Ministers adopted a more cautious, non-binding approach (CM/Rec(2022)20). The Commissioner for Human Rights has highlighted the "living" nature of the Convention and the need for preventive, inclusive, intergenerational protection.

Within the European Union, climate protection has become integral to its constitutional architecture:

Article 3(3) TEU and Articles 11 and 191 TFEU require environmental integration across policies (precaution, prevention, rectification at source, polluter-pays), supplemented by Article 37 of the Charter and review under Article 263 TFEU.

Despite restrictive standing from "*Greenpeace to Carvalho*" (2021), the CJEU has strengthened effective protection via national courts and preliminary references, and in "*Deutsche Umwelthilfe*" (2022) recognised NGO standing to challenge administrative decisions inconsistent with EU environmental law.

The European Climate Law completes the framework, framing climate change as an "existential threat".

At the national case-law has also contributed: Netherlands, "Urgenda" (Supreme Court, 2019) imposed at least a 25% reduction by 2020 grounded in Articles 2 and 8 ECHR; Germany, "Neubauer" (BVerfG, 2021) constitutionalised intergenerational justice; Norway's Supreme Court (2020) rejected challenges to Arctic oil licences; UK courts have entertained adequacy challenges to climate policy without imposing binding targets; France, "Grande-Synthe" (CE, 2020/2021) recognised standing and compelled justification; Belgium, "Klimaatzaak" (Brussels CA, 2023) ordered at least 55% reductions by 2030.

In Italy, litigation is nascent: the "Giudizio Universale" (Rome Civil Court, 2023 order) acknowledged the gravity of the climate crisis but treated it as a political-legislative question, indicating administrative review of the PNIEC. The 2022 constitutional reform amending Articles 9 and 41 elevated protection of the environment, biodiversity and ecosystems "also in the interest of future generations" to a constitutional principle, reinforcing future-oriented legality and proportionality review.

This multilevel dialogue has yielded principles transcending the national level: positive substantive and procedural obligations; forward-looking, science-based risk assessment; potential non-refoulement where conditions are incompatible with a dignified life; horizontal integration of rights (gender sensitivity, inclusion, participation, transparency, and private actors' responsibility); and coherence with the Paris Agreement as a yardstick of the "highest possible ambition" for NDCs. From this follows a duty of substantive, measurable and

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justiciable climate due diligence, with direct effects on public policy regulation and judicial review.

4. *The political and legal framework of the Swiss Confederation*

The proceedings were initiated by *Verein KlimaSeniorinnen Schweiz* and four members acting individually, who argued that Swiss climate policies were insufficient to protect their fundamental rights.

The applicants-elderly women scientifically recognised as highly exposed to heatwaves-complained that rising summer temperatures tangibly affected daily life, aggravated pre-existing conditions and intensified social isolation. They further argued that the failure to adopt adequate emission-reduction measures violated the rights of vulnerable persons, attributing responsibility to Switzerland for inertia and insufficient prevention[2].

Swiss climate policy, they contended, evolved in a fragmented and uneven manner: although targets were set, they were not consistently met; various regulatory tools were amended or rejected by referendum, producing discontinuity.

Legally, the Swiss Federation has a legislative framework in matter reinforced by major international instruments.

Internationally, Switzerland is party to the UNFCCC (1992), Kyoto Protocol (1997) and Paris Agreement (2015), participates regularly in COPs (Glasgow 2021; Sharm el-Sheikh 2022; Dubai 2023), and has ratified the Aarhus Convention (1998).

Domestically, the 1999 Federal Constitution enshrines: Article 10 (right to life and to physical and mental integrity); Article 13 (private and family life); Articles 29 and 29a (fair trial and access to justice); Article 73 (sustainable development); and Article 74 (environmental protection and precaution). Legislation includes the Environmental Protection Act 1983 (USG), the CO_2 Act 2011, and most recently the Federal Act on Climate Protection Goals, Innovation and Strengthening Energy Security (the "Climate Act" 2022, approved by referendum 2023) aiming at climate neutrality by 2050 and sectoral benchmarks, including capture and storage of residual emissions.

The ECtHR assessed this framework's effectiveness, coherence and compliance with positive obligations and international commitments, finding gaps in continuity, the absence of a quantified national carbon budget, missed targets and delays in concrete implementation undermining effective and timely protection against climate-change effects.

[2] An analysis of the ECtHR's reasoning on the inadequacy of Swiss climate policies and the link between heatwaves and the fundamental rights of elderly women can be found in S. ŽATKOVÁ, P. PAĽUCHOVÁ, *ECtHR: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20, 9 April 2024): Insufficient Measures to Combat Climate Change Resulting in Violation of Human Rights*, in *Bratislava Law Review*, 2024.

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5. *The parties' submissions before the European Court of Human Rights*

Having exhausted domestic remedies, on 26 November 2020 the association and four members applied to the ECtHR, alleging violations of Articles 2, 6, 8 and 13 ECHR.

Initially assigned to a Chamber, the case was relinquished to the Grand Chamber on 26 April 2022 pursuant to Article 30 ECHR. Applicants argued Swiss policy was inadequate and that insufficient mitigation endangered life, health and living conditions (Arts 2 and 8).

They claimed victim status under Article 34, asserting direct, personal impact aggravated by age and sex, supported by medical records evidencing deterioration during heatwaves.

They stressed that, despite participation in the UNFCCC and ratification of the Paris Agreement, Switzerland had not set binding, sufficiently ambitious 2030/2050 targets nor achieved prior goals, remaining anchored to 2°C rather than the 1.5°C "highest possible ambition" required by Paris.

On a fair-share basis, they argued Switzerland should reduce domestic emissions by over 60% by 2030 (1990 baseline) and increase international finance; current responses fall short of positive obligations under Articles 2 and 8. Under Article 2, they invoked the State's duty to adopt a legislative and administrative framework to protect life from serious known risks, even absent immediate threat, pointing to precaution and evidence correlating extreme weather with mortality; uncertainty could not excuse inaction[3].

As to causation, they argued global character does not negate individual State responsibility; partial contribution can ground a violation; the "drop in the ocean" argument is incompatible with mutual-trust logic underpinning climate cooperation.

As to Article 8, they argued that threats to health, dignity and quality of life trigger positive obligations and that ageing with dignity is compromised by rising temperatures; risks are foreseeable and preventable in light of Switzerland's commitments; measures taken were unreasonable/insufficient (unambitious targets, repeated non-compliance, lack of binding milestones, weakening of expert structures). Technical reports estimated Switzerland's fair share of the global carbon budget would be exhausted between 2030 and 2033, necessitating neutrality by 2040, aligned with the European Climate Law (Reg EU 2021/1119) and UNGA Resolution 76/300.

The Government emphasised the global and collective nature of climate change, the Convention's unsuitability to high-discretion policy review, and conformity of Swiss law with international obligations. It acknowledged the crisis and tangible Swiss impacts, but noted marginal national emissions (~0.1% global), the need for concerted international action plus individual effort, and the primacy of subsidiarity and separation of powers in Swiss democracy.

[3] On the State's duty to protect the population from the impacts of global warming, in comment on the *Verein KlimaSeniorinnen Schweiz* case, see A. HÖSLI, M. REHMANN, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: The European Court of Human Rights' Answer to Climate Change*, in *Climate Law*, 2024, 263 ss.

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It warned against transforming the ECtHR into a supreme environmental tribunal; disputed the association's standing as an "*actio popularis*" and contested the individuals' standing for lack of concrete causal nexus and imminent risk. On the merits, it invoked a wide margin of appreciation given complexity, uncertainty, costs and competing interests; highlighted the 2050 neutrality goal; characterised shortfalls (e.g., 2020) as marginal and structurally driven; downplayed the binding force of precaution and intergenerational solidarity; and denied an autonomous right to a healthy environment via evolutive interpretation.

6. *The Strasbourg Court between international law and the Convention*

The Court prefaced its analysis with general observations on climate litigation, recognising climate change as an urgent, complex challenge caused by anthropogenic GHG accumulation with serious consequences for the environment, communities and individual well-being, raising issues of intergenerational equity requiring heightened protection for vulnerable groups. While the Convention contains no general environmental-protection clause, environmental issues may directly affect Convention rights, particularly Article 8.

The decisive factor is not degradation *per se* but its concrete, significant effects on individuals. References to a "right to live in a healthy and safe environment" do not create an autonomous environmental right; rather, they reflect the essential role of ecological considerations in balancing interests-an approach aligned with consolidation of a human right to a clean, healthy and sustainable environment (UNGA Res 76/300; CoE CM/Rec(2022)20).

The Court recalled interpretative principles for treaties (Vienna Convention logic), as applied in "*Magyar Helsinki Bizottság v. Hungary*" and "*Slovenia v. Croatia*".

Some intervening Governments cautioned against evolutive, harmonious interpretation in light of emerging environmental principles for fear of creating autonomous "climate rights."

The Court reiterated that it ensures compliance with the ECHR only and is not bound by other regimes' interpretations, yet must read the Convention in harmony with relevant international rules and evolving facts. It cannot ignore scientific evidence and international consensus on climate impacts; the Paris Agreement provides relevant interpretative context for defining positive obligations. Simultaneously, subsidiarity and States' margin of appreciation remain central; Article 19 confines the Court to ensuring compliance, not substituting democratic policy-making.

Nevertheless, when policies directly affect Convention rights, judicial review is justified. Discretion must be exercised within proportionality and legality constraints to prevent arbitrariness or inaction; the Court's role is complementary to domestic democracy.

Climate change-deemed a "common concern of humankind"-cannot be excluded "*in limine*" from Convention scrutiny. Given the collective, transboundary nature of climate change, access to justice and separation-of-powers issues arise (who may invoke the

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Convention?); climate differs from traditional localised environmental harms because of multiple actors, extended causality, global consequences and interdependence with key sectors; it is polycentric and intergenerational, requiring coordinated action consistent with common but differentiated responsibilities.

Accordingly, the Court rejected the mechanical transposition of earlier environmental case-law, opting for a sophisticated approach anchored in core Convention principles while attentive to UNFCCC/Paris frameworks. In conclusion, the Court affirmed that anthropogenic climate change poses a real, present and future threat to human-rights enjoyment; States are aware and possess means to act; inaction or inadequate measures may violate the Convention.

7. *The admissibility of "climate applications": defining "victim" status*

Recognising the distinctive structure of climate disputes, the Court first addressed "victim" status and then causation.

The joint application by a climate-protection association and elderly women directly affected was decisive for standing. The association-predominantly women over seventy-pursues climate protection for its members and the public via awareness, education and strategic litigation; four members also applied individually with statements and medical certificates evidencing fainting, hospitalisation and aggravated cardio-respiratory conditions, together with significant daily-life limitations during extreme heat.

Victim status and standing must balance against indiscriminate access on one side and overly restrictive filters on the other. The Court delineated an access criterion ensuring Article 34 does not become a vehicle for "*actio popularis*", while not excluding those genuinely exposed to serious, foreseeable risks from State inaction.

Admissibility criteria were refined to reflect diffuse, progressive and often indirect harms. Article 34 excludes abstract review; applicants must be directly or indirectly affected by State acts/omissions. "Victim" is autonomous and evolutive, embracing potential victims where a concrete, substantiated risk of future violation exists. As to legal persons, while they cannot invoke inherently individual rights in their own name, they may in particular circumstances act on behalf of individuals where obstacles, vulnerability or systemic risk make direct access unrealistic-consistent with the Aarhus Convention and Strasbourg case-law on participation and environmental protection.

The Court distinguished victim status from representation: associations do not claim the rights to life or private life for themselves but may act to secure effectiveness of Convention guarantees for those foreseeably exposed to serious climate risks, without proving each member meets individual victim thresholds.

Accordingly, the association's application was admissible, but the individual applicants failed to show exposure meeting the requisite gravity threshold for victim status; their

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complaints were inadmissible "*ratione personae*" under Article 35(3). This architecture navigates the line between the ban on popular actions and the imperative of effective access to justice for vulnerable groups facing systemic threats from climate change.

8. *The "causation"*

The Court identified causation as a distinctive challenge of climate litigation. Unlike conventional environmental disputes traceable to localised sources, climate change stems from cumulative global emissions by multiple public and private actors[4].

The Court centred its assessment on a sufficiently close link between State conduct and alleged harm, tying admissibility to high exposure and a concrete need for protection made urgent by absent or inadequate public prevention/mitigation.

The contextual inquiry considers applicants' vulnerabilities, local conditions, nature and gravity of impacts on life/health/well-being, probability and duration of harm, and temporal proximity. Four dimensions of causation were distinguished:

(i) the scientifically established relationship between GHG emissions and observable climatic phenomena;

(ii) the link between such phenomena and human-rights risks now and in the near future (a normative extension of Convention protection to harms/risks from environmental deterioration);

(iii) the ability to attribute individual/group harm or risk to conduct/omissions imputable to national authorities; and

(iv) attribution of responsibility to the respondent State for its direct/indirect contribution to global emissions, consistent with international law and Convention duties.

This approach adapts Convention interpretive tools to a diffuse, complex, temporally extended phenomenon and tempers rigid causation in Article 8 analysis.

Two premises follow.

First, Article 8 may be engaged by concrete, substantiated risks even absent realised harm, provided a sufficiently close connection to health, quality of life or personal well-being exists.

Second, many environmental/climate disputes concern omissions or inadequacies in fulfilling positive obligations; State duties are duties to act by adopting reasonable, suitable and effective measures against activities dangerous to the environment and human health. Given the cumulative, global nature of emissions, the causal relation between national conduct and harm is attenuated and indirect.

[4] On the causal link between state climate policies, extreme weather events (heatwaves), and the health risks faced by the applicants, and on how the ECtHR lowered the evidentiary threshold regarding climate causation in the case under examination, see V. STOYANOVA, "*Klimaseniorinnen and the Question(s) of Causation*," in *Verfassungsblog*, 2024, 1 ss.

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The Court reframed causation's function: what matters is not preventing a single harmful event but avoiding risk aggravation. The essence of positive obligations lies in reducing foreseeable overall risk to life, health and well-being. Inaction or manifestly inadequate policy constitutes avoidable omissive responsibility, incompatible with the Convention's protective function. Causation thus operates as a normative link between State omission and exposure to an avoidable, serious risk, rather than "*conditio sine qua non*".

Accordingly, positive obligations are activated upon surpassing a significant risk threshold, with gravity and causal intensity shaping the scope of measures required. The concrete measure of obligations reflects a structured balance among gravity/foreseeability, margin of discretion, and procedural safeguards (transparency, participation, judicial oversight). The obligation engages only where a "real and substantial" risk exists sufficiently connected to negligent or omissive State conduct such that Convention protection would otherwise be inadequate[5].

9. *To Follow: the "evidentiary question"*

In light of the foregoing, the centrality of evidence in climate litigation clearly emerges, not least because of the fluid and constantly evolving nature of the scientific and normative data that characterises it. In recent years, the epistemic and legal framework within which such litigation unfolds has undergone a profound transformation.

Advances in scientific knowledge, growing social and political awareness, and the progressive consolidation of legal standards on environmental protection have produced a qualitative shift in the perception of climate risk.[2] It is now undisputed, at both the scientific and institutional levels, that environmental degradation and global warming generate serious and potentially irreversible consequences for the enjoyment of fundamental human rights.

This awareness is reflected in domestic legislation, international instruments, and judicial decisions-domestic and international-that converge in recognising the need for timely, proportionate, and verifiable mitigation and adaptation measures.

In its evidentiary approach, the European Court of Human Rights acknowledges the subsidiary and complementary value of domestic decisions, in line with the principle of subsidiarity permeating the entire Convention system. While showing deference to assessments made by domestic authorities, the Court is not bound by them: where it considers that the reasons given are incompatible with the principles of the Convention, or that a fair balance has not been struck between the interests at stake, it retains the power to depart from national conclusions and to undertake its own autonomous evaluation of facts and evidence.

[5] See A. MARICONDA, *Separation of Powers and Climate Litigation: International Law as a Guide Between Judicial Activism and Legislative Prerogatives*, Athena 5.1/2025, 142 ss.

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Methodologically, the Court applies the familiar "beyond reasonable doubt" standard. It nonetheless permits a flexible application of that standard where the respondent State enjoys privileged access to relevant information, particularly of a technical or scientific nature. In such circumstances, a strict application of the principle affirmanti incumbit probatio would place an excessive burden on applicants.

The Court therefore allows recourse to presumptions of fact, reasonable inferences, and coherent bodies of indicia that are clear, precise, and concordant, enabling reconstruction of the evidentiary picture even in the absence of direct data. In the environmental field, Strasbourg case-law has clarified that mere breach of domestic technical or administrative rules does not automatically entail a violation of the Convention.

Nevertheless, compliance with-or departure from-domestic law is a significant factor in the overall assessment, since a situation contrary to domestic law may indicate the inadequacy of State measures as regards positive obligations under the Convention.

In some circumstances, the Court also takes account of international environmental rules and standards, employing them as interpretative parameters in determining whether individual rights have in fact been impaired.

A distinctive feature of climate litigation lies moreover in the complexity and interdisciplinary nature of scientific evidence. Conscious of this complexity, the Court accords particular weight to the reports of the Intergovernmental Panel on Climate Change (IPCC), treating them as highly authoritative evidentiary sources by reason of their rigorous methodology, the transparency of their review processes, and the robustness of their conclusions.

These reports provide a shared and widely accepted scientific basis indispensable for assessing the anthropogenic impact of climate change, the probability and gravity of associated risks, and the range of available mitigation and adaptation strategies.

The Court also avails itself of assessments produced by other international expert bodies, which help to enrich empirical and legal understanding of the phenomenon. In this respect, the IPCC reports constitute an indispensable point of reference: produced through transparent and participatory procedures, they rigorously document both ongoing negative impacts and those projected for the future, especially under scenarios that foresee exceeding the +1.5°C threshold compared to pre-industrial levels.

The IPCC's conclusions-unchallenged by respondent States or intervening governments in proceedings before the Court-reflect a global scientific consensus and form the empirical basis for States' commitments under the UNFCCC, the Paris Agreement, and other multilateral climate instruments.

Ultimately, the Court recognises that evidentiary assessment in climate litigation cannot be separated from a structural integration between law and science, and that the solidity of the scientific foundations-far from being ancillary-constitutes the very basis for the justiciability of climate risk under the Convention.

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10. *States' obligations and environmental due diligence*

The European Court of Human Rights has progressively developed, in environmental and climate matters, a body of case-law consistent with principles elaborated under Article 2 of the Convention, extending their application to Article 8.

It has clarified that effective protection of private and family life also entails protection against the serious effects of environmental degradation and climate change, recognising a structural link between the safeguarding of individual rights and the preservation of the environment.

Contracting States are therefore subject to positive obligations aimed at ensuring effective protection of individuals' lives and health. Such obligations require the establishment of an adequate legislative and administrative framework, comprising rules, procedures, and instruments capable of preventing and containing environmental risks through authorisation, monitoring, and control mechanisms, as well as through the adoption of concrete mitigation measures.

In the context of the climate crisis, the essence of positive obligations lies in the overall reduction of risks and the prevention of foreseeable harm: although the causal link between State conduct and prejudice is more indirect and diffuse than in traditional pollution cases, States remain bound to adopt all reasonable and proportionate measures to lessen the impact of climate change on the effective enjoyment of Convention rights.

The threshold for activating such obligations is reached when the risk to life, health, or well-being is of such gravity as to threaten the very substance of the rights guaranteed by the Convention.

The Court has reiterated that Convention rights must be "practical and effective," not merely theoretical or illusory.

It follows that States must ensure that protective measures are implemented in practice in a timely, coherent, and effective manner, so as to deliver tangible results in safeguarding human rights against environmental and climate harms.

In assessing compliance with positive obligations, the Court considers the margin of appreciation afforded to States, which varies with the nature of the decisions to be taken.

As a general matter, environmental policy involves a wide margin of appreciation, given the technical, economic, and political complexity of the choices involved.

The Court nonetheless distinguishes two levels of discretion: first, recognition of the need to combat climate change and to set adequate emission-reduction targets-an area in which the Court exercises more rigorous scrutiny, since the existential gravity of the threat and the international consensus on the urgency of climate action substantially narrow States' freedom; and second, the choice of means and operational policies for attaining those targets-where a broad margin remains, provided that the measures adopted do not compromise the substance of protected rights.

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By virtue of subsidiarity, primary responsibility for protecting Convention rights lies with national authorities, yet their action remains subject to the Court's review to ensure that State measures satisfy criteria of reasonableness, proportionality, and due diligence.

Article 8, read in the light of Article 2 and as clarified by settled case-law, also protects against the harmful effects of environmental degradation and climate change on health, well-being, and quality of life. From this follows a positive duty for States to "do their part" to secure effective protection against such risks, through regulatory and policy measures capable of mitigating current and potentially irreversible effects of climate change, in conformity with obligations arising under the UNFCCC and the Paris Agreement and with the scientific evidence provided by the IPCC.

Each State must define a pathway towards climate neutrality appropriate to its national context, calibrated to specific emission sources, economic capacities, and domestic social conditions. Specifically, this requires the adoption of timely and coherent measures for progressive and substantial emission reductions, with verifiable intermediate targets and a binding legal framework ensuring continuity, predictability, and transparency of climate action.

In reviewing State conduct, the Court therefore examines whether the authorities have set out a "realistically achievable" timetable towards climate neutrality, established intermediate targets and coherent sectoral pathways, demonstrated concrete progress, and periodically updated policies in light of the most recent scientific data.

This assessment is holistic rather than mechanical: individual shortcomings do not automatically entail a violation, provided that the overall body of measures ensures protection that is effective rather than illusory.

The Court further underscores that the protection of fundamental rights requires mitigation measures to be complemented by adaptation strategies designed to address the gravest or most imminent consequences of climate change. The effectiveness of such strategies depends on their timely implementation and their anchoring in a national legal framework based on the best available science.

One of the arguments most frequently advanced by respondent States is the limited impact of their own contribution to global emissions and, hence, the irrelevance of their conduct to the overall effectiveness of international action.

This thesis-often presented as the "drop in the ocean" argument-has been systematically rejected by the Court. It has recalled the principle of "common but differentiated responsibilities and respective capabilities," enshrined in the UNFCCC, the Paris Agreement, and the Glasgow Climate Pact, under which each State must contribute to mitigation and adaptation efforts in proportion to its capacities.

It follows that no State may evade its obligations by invoking others' conduct or the global scale of the problem.

The Court has also clarified that, for the purposes of establishing State responsibility, it is not necessary to prove with certainty that a different course of action would have prevented

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the harm: it suffices that the omitted measures had a real prospect of reducing its gravity or probability. This standard finds support in Article 3(3) UNFCCC.

Although the Court does not prescribe specific measures, it verifies that the authorities have acted with due diligence and have reasonably balanced the interests at stake. In this regard, the Court recognises the central role of procedural safeguards as an essential component of effective protection of Convention rights in environmental and climate matters.

States must conduct accurate ex ante assessments, make the results public in a transparent and timely manner-in accordance with the Aarhus Convention-and ensure effective public participation in decision-making, particularly by persons and communities directly affected.

To conclude, the scope of such procedural obligations varies with the nature of the risk and its mitigability, but the Court has reaffirmed that they form an integral part of the State's environmental due-diligence obligation and of the principle of sound ecological administration.

Taken together, substantive and procedural obligations delineate a multi-level model of State responsibility grounded in the effectiveness of rights, international cooperation, and the integration of the rights to private life, to health, and to a healthy environment as an indispensable condition for the full realisation of the human rights guaranteed by the Convention.

11. *Climate change and the right to private and family life*

The European Court of Human Rights has grounded its elaboration on climate change in the combined application of the principles protecting life (Article 2 ECHR) and safeguarding private and family life and the home (Article 8 ECHR), recasting their scope in light of the systemic, diffuse, and transboundary nature of the climate phenomenon.

With respect to Article 2, the Grand Chamber in Nicolae Virgiliu Tănase v Romania clarified that the provision applies even in the absence of a lethal event and irrespective of homicidal intent, provided that two cumulative conditions obtain:

(i) exposure to an activity inherently characterised by a real and immediate risk to life; and

(ii) the occurrence of injuries or dangerous situations that place the right to life effectively at stake.

The absence of actual physical damage does not in itself preclude Convention protection where the activity or State conduct is intrinsically hazardous, as in natural or industrial disasters.

From this follows a general principle: for positive obligations under Article 2 to arise, the right to life must be genuinely "at stake," encompassing not only cases of actual harm but also situations of serious, ascertainable and proximate risk.[4]

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Transposed to climate change, this logic assimilates State inertia or insufficiency in adopting mitigation and adaptation measures to conduct intrinsically dangerous to life, in light of scientific evidence linking anthropogenic warming to increased mortality-particularly among vulnerable groups.

The Court nevertheless reiterates the need to respect the Convention threshold of a "real and immediate risk," assessed in view of the inevitability, irreversibility, and progressively intensifying nature of extreme events.

It follows that, once victim status is established, a serious and demonstrable risk of a significant reduction in life expectancy attributable to climate-change effects is capable of triggering Article 2. Although Article 2 was not directly applied in the present case, it exerted an "orienting" interpretative effect, delineating the horizon of protection in the climate context and reinforcing the integration between the rights to life, to health, and to a healthy environment as premises for the effectiveness of Convention rights.

The crux of the decision rests on Article 8, which the Court interprets broadly and flexibly. Environmental disputes fall within its scope where there is actual interference with private or family life or with the home reaching a minimum level of severity[6].

Generalised environmental degradation is insufficient: there must be a direct and sufficiently close link between the alleged prejudice and the individual's private sphere, assessed holistically in light of intensity, duration, and effects (including non-medical effects) on quality of life.

A serious environmental risk may, in itself, constitute a violation of Article 8, provided that there is a concrete connection with the applicant's private or family life. In climate terms, Article 8 encompasses the right to effective protection against serious adverse effects of climate change on life, health, well-being, and quality of life.

12. *The violation of Articles 2 and 8 of the Convention*

The case of *Verein KlimaSeniorinnen Schweiz offers* an emblematic illustration of the above principles. The applicant association unites more than two thousand women (average age seventy-three) and is committed to promoting effective climate policy in the interests of its members and the community.

Confronted with the impossibility for individual members to obtain effective remedies, the association assumed a representative and substitutive function that the Court considered suitable to ensure effectiveness of Convention protection.

[6] Concerning State climate inaction and the violation of human rights and the positive obligations of climate mitigation and governance imposed on Switzerland, specifically under Article 8 of the European Convention on Human Rights, see A. SAVARESI, *Verein KlimaSeniorinnen Schweiz and Others v Switzerland: Making Climate Litigation History,* RECIEL, 2024, 1 ss.

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In view of its nature, aims, and the lack of effective domestic avenues, the Court recognised the association's standing under Article 8 and rejected the Government's objections to the collective character of the claim.

By contrast, the individual complaints were declared inadmissible: while elderly women are particularly vulnerable to extreme heat, the applicants had not demonstrated sufficiently grave and current individual exposure to establish victim status under Article 34 ECHR.

Some materials were generic and lacked medical support; the complaints were declared inadmissible ratione personae under Article 35 § 3. On evidence, the Court reaffirmed the "beyond reasonable doubt" standard, tempered by flexibility where the State enjoys privileged access to relevant information; its conviction may rest on coherent presumptions and reasonable inferences from reliable scientific and documentary data.

Mere breach of domestic rules does not automatically entail a Convention violation, though it may be relevant; international environmental norms and standards may serve as interpretative benchmarks; and IPCC reports have particular authority as qualified evidence.

Respecting subsidiarity, domestic judicial decisions are relevant, though the Court may depart from them if incompatible with the Convention or if they fail to ensure a fair balance.

Procedurally, the Court recognised continuity by substituting the heir of a deceased applicant and dismissed preliminary objections on scope, competence ratione temporis and ratione loci, and compliance with the six-month limit. Substantively, by sixteen votes to one, the Court found a violation of Article 8, affirming that inadequate climate action by a State may breach the right to respect for private and family life. States must address not only actual harm but also intrinsic and foreseeable risks stemming from inadequate action or regulatory gaps; Articles 2 and 8 together modulate the protection threshold.

The State's margin of appreciation narrows when determining the duty to act and setting emission-reduction targets, but remains broader regarding means, provided measures are timely, coherent, and verifiable.

Within this perimeter, serious shortcomings – including failure to quantify a national carbon budget, failure to achieve reduction targets, post-2020 regulatory discontinuity, and the absence of a coherent framework for 2025–2030 – led to a finding of an Article 8 violation.

13. *The violation of Article 6 of the Convention*

Consistently with the foregoing, the Court held (by majority) that Article 6 § 1 ECHR was applicable to the association's application and absorbed Article 13; it found Article 6 § 1 inapplicable to the individual applicants.

On the merits, unanimously, it found a violation of the right of access to a court. Article 6 does not guarantee abstract legislative review but applies where there is a "genuine and serious dispute" over a right recognised in domestic law, the resolution of which is "directly

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decisive" for its enjoyment; the notion of "civil rights" includes positions relating to life, integrity, health or property when judicially protectable.

Associations may invoke Article 6 when closely connected to members' rights and not amounting to actio popularis; in climate cases, the "directly decisive" criterion must be calibrated to probability, gravity, and potential irreversibility of the harms alleged.

Applying these principles, the programmatic claim for new legislation fell outside Article 6, while the claim concerning implementation of existing duties (including achieving the 20% reduction target by 2020) satisfied applicability; reference to Article 10 of the Swiss Federal Constitution (physical integrity) helped bring the right within Article 6.

Domestic courts had not denied a justiciable right but dismissed for lack of standing-an approach that could not justify failure to examine fundamental rights invoked on a documented scientific basis. Though national courts had not expressly recognised the association's standing, the ECtHR found a direct and sufficient link to members' civil rights, given associations' instrumental role in environmental litigation, and thus a genuine and serious dispute.

For the individual applicants, the link was insufficiently imminent and concrete; Article 6 did not apply. Access to a court must be "practical and effective" and not "theoretical or illusory"; here, the association's claim was rejected at administrative and two judicial levels without any merits review-an exclusion that failed the proportionality test, especially given the application's "hybrid" nature and the lack of adequate engagement with the scientific record and international consensus on urgency. No adequate alternative remedies existed. The Court thus found a violation of Article 6 § 1. As to just satisfaction under Article 41, no damages were awarded but EUR 80,000 was granted for costs and expenses, with default interest at the ECB marginal lending rate + 3 pp; Article 46 obligations remain declaratory, with measures left to the State under Committee of Ministers supervision, consistent with subsidiarity.

14. *Brief concluding synthesis*

The operative part reflects determinations on both procedural and substantive aspects of ECHR climate litigation.

Procedurally, the Court ensured continuity of standing and unanimously rejected preliminary objections on scope, competence ratione temporis and ratione loci, and compliance with the six-month time-limit.

The judgment consolidates the recognition of associations' standing to litigate rights threatened by systemic climate risks-an important turning point in Convention law. Substantively, the decision balances subsidiarity, separation of powers, and effective judicial oversight, situating climate change squarely within human-rights adjudication.

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The analysis rests on consolidated scientific premises attesting to anthropogenic climate change, its present and prospective dangers, and States' awareness of necessary measures.

The Court reaffirms the Convention as a living instrument, to be interpreted in light of present conditions, scientific advances, and evolving international environmental law; rights must be read as interdependent with environmental protection.

Climate policy and human-rights protection form an integrated normative core; effectiveness of Convention protection depends on ambitious, coherent, and verifiable climate policies.

Strasbourg jurisprudence inaugurates a new paradigm: judges engage with science, public policy, and international standards to test whether State measures ensure a sustainable balance between discretion and Convention duties. States Parties must ensure that mitigation strategies become concrete, coherent, and legally binding instruments protecting the population-especially vulnerable groups-against climate risks. Verein KlimaSeniorinnen Schweiz v Switzerland is a foundational precedent enshrining recognition of climate change as a direct factor affecting fundamental rights and assigning strengthened positive responsibilities to States[7].

[7] For an in-depth analysis of the new standard of standing developed in the aftermath of the *Verein KlimaSeniorinnen Schweiz* case, see J. SETZER, C. HIGHAM, *Draft Study on National Climate*, 15 September 2025.

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Fabio Ginocchio

NGOs, climate litigation and new forms of participatory democracy

SUMMARY: 1. NGOs and the power of the courts: a new frontier in the fight against climate change. – 2. The actors of a new form of democratic participation: NGOs and activist lawyers. – 3. NGOs as a tool for implementing constitutional principles. – 3.1. Substantive equality and environment. – 3.2. The principle of concern for future generations. – 3.3. The European integration principle. – 4. Concluding remarks.

ABSTRACT: *This article examines how non-governmental organisations (NGOs) have become key actors in climate litigation and promoters of new forms of participatory democracy. In response to governmental inaction on climate change, NGOs use courts to enforce environmental obligations and give voice to civil society, particularly vulnerable and marginalised groups. Through an interdisciplinary and comparative analysis of major cases such as Urgenda v. Netherlands, Friends of the Irish Environment v. Ireland, and Notre Affaire à Tous v. France, the paper shows how litigation transforms constitutional principles – such as substantive equality, environmental protection, intergenerational justice, and European integration – into concrete state duties. Climate litigation thus emerges as both a legal tool to ensure accountability and an instrument of democratic participation, fostering dialogue between citizens and institutions and promoting more inclusive, equitable, and sustainable governance. NGOs, acting as mediators between local and global levels, redefine the relationship between law, democracy, and environmental justice in the context of the climate crisis.*

1. *NGOs and the power of the courts: a new frontier in the fight against climate change*

Climate litigation has taken center stage in contemporary public law, emerging as one of the most effective legal tools, if not the most effective, for urging the adoption of concrete measures against climate change[1]. In a global context marked by governmental

[1] The growing phenomenon of climate litigation has been systematically analyzed and documented by the United Nations Environment Programme (UNEP) through a series of landmark reports that have progressively mapped its evolution and deepened its theoretical implications. Beginning with the *Global Climate Litigation Report: 2020 Status Review* (UNEP, 2020), followed by the *Global Climate Litigation Report: 2023 Status Review* (UNEP, 2023), and culminating in the most recent *Global Climate Litigation Report: 2025* (UNEP, 2025), these documents collectively represent the most comprehensive empirical and interpretive account of climate litigation at the global level. The 2020 Report established the analytical \foundations of this field, identifying climate litigation as a rapidly expanding branch of environmental and public law. It emphasized how individuals, civil society organizations, and subnational entities have increasingly resorted to judicial mechanisms to hold both

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inertia in the implementation of adequate environmental policies, recourse to judicial mechanisms by non-state actors – particularly non-governmental organizations (NGOs) – has become a crucial means of addressing regulatory deficiencies and fostering more effective forms of state accountability. Through their ability to articulate and advance collective interests while mobilizing broader segments of civil society, NGOs have positioned themselves as central agents in the promotion of such proceedings, thereby contributing to the emergence of a renewed and dynamic paradigm of participatory democracy[2]. In the contemporary global landscape, increasingly defined by the systemic challenges posed by climate change and its complex legal, economic, and social ramifications, the pursuit of effective and sustainable responses has acquired the status of a normative imperative. Within this context, movements, networks, and alliances advocating for climate justice have emerged as central actors in a transnational public sphere, not only shaping the contours of public discourse but also engaging in concrete practices aimed at reinforcing environmental protection and the realization of human rights.

Aware of the structural inertia often characterizing institutional responses, these actors embody new forms of civic participation and democratic engagement, capable of

governments and corporations accountable for their contributions to climate change. UNEP's findings revealed a sharp increase in the number of cases filed globally – from fewer than 900 in 2017 to over 2,000 by 2020 – signaling a clear shift toward judicialization of climate governance. This early report also underscored the dual nature of climate litigation: as a corrective legal instrument aimed at enforcing existing obligations, and as a normative force capable of shaping policy innovation and democratic participation. The *2023 Status Review* marked a further step in conceptual refinement, portraying climate litigation as a transnational process that not only enforces environmental commitments but also reconstructs legal categories themselves. According to UNEP, climate litigation serves as a laboratory of judicial creativity, where courts reinterpret traditional notions of rights, duties, and causation considering the planetary climate crisis. The study also highlighted a diversification of actors and strategies, including youth-led and indigenous claims, shareholder activism, and constitutional petitions grounded in fundamental rights. This expanding typology of cases indicates a shift from reactive litigation – aimed at stopping harmful projects – to proactive litigation, designed to compel systemic transformation in energy and governance frameworks. Published in October 2025, the *Global Climate Litigation Report: 2025 Status Review* draws on data up to 30 June 2025 from the Sabin Center's Climate Change Litigation Databases, documenting 3,099 climate-related cases across 55 national jurisdictions and 24 international or regional courts, tribunals, and quasi-judicial bodies. The report highlights the growing reach of climate litigation beyond national courts to institutions such as the ICJ and IACtHR, while courts increasingly rely on constitutional norms, human rights, and intergenerational duties to transform environmental goals into enforceable obligations.

[2] New forms of participation are emerging that aim to include a wide range of actors, manifesting themselves in two main directions. On the one hand, participatory democracy is based on the idea that, for certain issues, it is not only those directly affected by virtue of specific subjective rights recognised by law who should intervene. On the other hand, it is argued that involvement should not necessarily depend on the existence of a predefined legal title but can also be based on an interest that is not immediately recognised or protectable, such as simply living or working in a particular geographical area. This approach is therefore rooted in a broad principle of inclusion, *tending towards maximum participation* as far as possible. See U. ALLEGRETTI, *La democrazia partecipativa in Italia e in Europa*, in Rivista AIC, 1/2011, 8.

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articulating claims that transcend the traditional boundaries of state-centered constitutionalism. Their initiatives contribute to the redefinition of legal and political accountability within a pluralist and multi-scalar normative order, where non-state actors play an increasingly decisive role.

Non-governmental organizations, local activist groups, international coalitions, and digital networks form an interconnected and heterogeneous constellation that both reflects and animates the emergence of a global constitutional consciousness oriented towards climate justice and the protection of future generations.

Firstly, the main purpose of this paper is to examine how climate litigation, understood not only as a legal tool but also as a vehicle for political participation, contributes to strengthening participatory democracy. Through an analysis of key case law and regulatory dynamics in climate-related legal proceedings, the article aims to demonstrate how non-governmental organizations, climate justice movements and activist lawyers use litigation not only to enforce constitutional and international obligations on environmental protection, but also to expand the space for citizen participation in decision-making processes.

The contribution seeks to illustrate how climate litigation promotes the democratization of governance, in which vulnerable communities and marginalized groups, often excluded from traditional political forums, can find a means of making their voices heard through legal action. The analysis also focuses on how legal action brought by NGOs represents a form of resistance to institutional inertia, pushing governments to adopt climate policies that are more inclusive and consistent with the principles of social justice and intergenerational equity.

A second objective of this study is to explore how climate litigation, in its transnational character, contributes to redefining the relationship between citizens and institutions, promoting a model of multilevel governance that transcends national borders and facilitates international cooperation. This research intends to highlight the effectiveness of climate litigation as a tool for democratization not only at the national level, but also globally, strengthening the accountability of states to the international community and future generations.

Finally, and thirdly, the essay aims to contribute to the academic debate on climate justice by exploring how litigation can become a catalyst for regulatory and institutional change, promoting legislative and policy reforms that integrate the principles of sustainability, equity, and democratic participation. In this sense, the paper attempt to reveal that climate litigation is not only a remedy for state inaction, but also a powerful tool for social and political transformation, capable of reorienting government priorities towards more inclusive and sustainable governance.

The article endeavors to achieve the above objectives through a precise and rigorous methodological approach. Two elements are fundamental in this regard: an

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interdisciplinary and comparative approach. The former is necessary given the complex and multifactorial nature of the subject matter. Climate litigation cannot be analyzed in a monolithic sense, through the lens of a single field of research, but requires drawing on different disciplines, including constitutional law, international law, environmental science, sociology, and political theory. This method allows us to fully grasp the complexity of the phenomenon, examining how NGOs manage to integrate legal, social, economic, and environmental perspectives to promote meaningful change. The holistic approach also enables us to investigate how climate litigation is not limited to the legal sphere but is also a tool for political and social awareness-raising.

The second methodological element – the comparative one – inevitably leads to the examination of emblematic climate litigation cases, in which participatory democracy and climate justice have been invoked to influence political decisions. The contribution explores cases such as *Urgenda Foundation v. Netherlands*[3], *Friends of the Irish Environment CLG v. The Government of Ireland*[4], *Notre Affaire à Tous v. France*[5], *Generaciones Futuras v. MinAmbiente*[6], *ClientEarth v. Poland*[7], *Greenpeace CEE v. Austria*[8], to demonstrate how legal actions brought by NGOs are not limited to calling for the application of legal norms, but contribute to redefining the relationship between citizens, institutions, and decision-making processes.

The intertwining of the two methodological approaches permits us to assess how NGOs and climate justice movements use litigation to build a network of relationships between local and global actors, promoting a multi-level dialogue that enriches participatory democracy. Thanks to the actions of NGOs and climate justice movements, a new frontier of public law is emerging, in which environmental protection and human and fundamental rights are mutually dependent, imposing greater responsibility on states towards present and future generations. The transnational and interdisciplinary nature of climate litigation paves the way for a model of multi-level governance, where international cooperation and collective participation become essential to address global climate challenges in an inclusive and sustainable manner.

[3] Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, 20 December 2019.
[4] Supreme Court of Ireland, *Friends of the Irish Environment v. The Government of Ireland*, 31 July 2020.
[5] Administrative Court of Paris, *Notre Affaire à Tous and Others v. France*, 14 October 2021.
[6] Supreme Court of Justice, *Generaciones Futuras v. Minambiente*, 5 April 2018.
[7] District Court of Poland, *ClientEarth v. Poland*, 8 September 2021.
[8] Constitutional Court of Austria, *Greenpeace et al. v. Austria*, 30 September 2020.

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2. *The actors of a new form of democratic participation: NGOs and activist lawyers*

The movements, networks and alliances that constitute the antecedents of NGO involvement in climate litigation manifest a wide range of organizational forms and strategic orientations. Their initiatives often focus, in the first instance, on cultivating a reflexive and participatory public sphere through awareness-raising, environmental education, and civic mobilization pursue the redefinition of the relationship between citizens, institutions, and the environment[9]. On the other hand, these actors engage in forms of social mobilization that transcend conventional modes of political participation, organizing protests, climate strikes, and acts of direct action intended to catalyze both public deliberation and institutional responsiveness on environmental issues[10]. These actors also foster democratic participation and social inclusion by creating spaces for dialogue and consultation with local communities, minorities, and other marginalized groups. Through the construction of cross-cutting alliances and collaboration with other civil society organizations, they seek to consolidate their collective voice and enhance their capacity to influence decision-making processes at the local, national, and international levels.

Participatory democracy, understood as the capacity of citizens to directly influence decision-making processes through active engagement, finds in NGOs a privileged vehicle for channeling the demands of civil society into the judicial sphere. This dynamic is not confined to direct litigation but also manifests itself in broader forms of social mobilization that both precede and accompany legal action[11]. In this process, social networks play a

[9] Many organizations and collectives prefer to focus on cultural and informational work, for example: online campaigns such as Fridays for Future Digital with educational materials and scientific reports disseminated to citizens; educational programmes in schools or workshops in universities on the climate crisis; artistic and cultural initiatives (exhibitions, festivals, documentaries) that make environmental issues accessible to the public. In this sense, their primary goal is not direct conflict, but the building of widespread social awareness. For an in-depth overview, see D. DUMITRICA, G. SORCE, *From School Strikes to Webinar: Mapping the Forced Digitalisation of Fridays for Future's Activism During the COVID-19 Pandemic,* in *Sage Journals*, 29/2022; O. WAGNER, L. THOLEN, S. ALBERT-SEIFRIED, J. SWAGEMAKERS, *Empowering Students to Create Climate-friendly Schools,* in *Energies,* 17/2024; K. JERGUS, M. SCHMIDT, *Advancing into Spaces of Possibility: How the Fridays for Future Movement Intertwines Future-making Practices with the Creation of Educational Formats,* in *Postdigit Sci Educ*, 6/2024, 211-230.

[10] Here, the logic is one of collective and confrontational pressure, for example: the global climate strikes promoted by the Fridays for Future movement; the symbolic and performative actions of Extinction Rebellion, such as roadblocks and flash mobs; the international climate marches (People's Climate March, 2014 and 2017) that involved millions of people in several countries; forms of non-violent civil disobedience aimed at highlighting the urgency of the problem (e.g. temporary blockades of polluting sites or banks that finance fossil fuels). In this case, the aim is to push institutions and governments into immediate action by creating media visibility and political pressure. See T. LAUX, *What Makes a Global Movement? Analysing the Conditions for Strong Participation in the Climate Strike,* in *Sage Journals*, 60/2021.

[11] Organizations such as NGOs also influence public opinion more intensely than a single individual could, and public opinion plays a fundamental role in ensuring that a specific issue attracts the attention and interest not

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politically and socially significant role, acting as communicative arenas that amplify judicial initiatives, they transform them into collective claims, and facilitate the insertion of climate-related issues into the wider public and political discourse. Within this context, climate justice movements – now globally interconnected – have systematized their claims around three normative pillars grounded in constitutional theory: (i) the recognition of ecological debt as a dimension of intergenerational and distributive justice, (ii) the protection of the territorial and cultural rights of indigenous people as fundamental rights under both national constitutions and international law, and (iii) the imperative of a just ecological transition, requiring democratic societies to expand the scope of sustainability citizenship and participatory inclusion, thereby operationalizing substantive equality, interdependence, and environmental principles stewardship within constitutional governance[12].

Participatory democracy, when applied to environmental governance, presupposes a complex array of technical competencies – encompassing not only scientific expertise but also specialized legal knowledge. In this context, the pivotal role of activist lawyers must be emphasized, whose engagement transcends conventional legal practice to constitute a *bona fide* political initiative[13]. This expression underscores the significant political power of these lawyers, who, through their specialization and organization into transnational networks (known as Transnational Advocacy Networks[14]), exert considerable influence on bottom-up processes for the realization of human and fundamental rights[15].

Their effectiveness derives from their expertise in navigating the complexity of the legal system, their mastery of the technical tools of law and their interpretative and

only of policy makers but also of economic actors themselves. The greater the consensus around an issue – and there is no consensus without prior stimulus – the greater its economic relevance, to the extent that it encourages legislators, businesses, and economic activities to change their behavior. In this regard, see D. FREIBERG, J. ROGERS, G. SERAFEIM, *How ESG Issues Become Financially Material to Corporations and Their Investors,* Working Paper 20-056, Harvard University Press, Harvard, 2020.

[12] See T. JAFRY, *Routledge Handbook of Climate Justice,* Routledge, London, 2018.

[13] For an account of how environmental legal practices have evolved into forms of civic engagement capable of shaping public policy and collective awareness, see S. DIVERTITO, *Toghe verdi. Storie di avvocati e battaglie civili,* Edizioni Ambiente, Milan, 2011.

[14] Transnational Advocacy Networks (TANs) function as relational structures linking lawyers, NGOs, and social movements across borders: these networks contribute to the diffusion of legal strategies, the internationalization of rights claims, and the formation of shared normative frameworks that reinforce bottom-up processes in the field of human rights and environmental protection, see A. MURIDEA, M. POLIZZI, *Human Rights and Transnational Advocacy Network,* in J. Nicoll Victor, A. H. Montgomery, M. Lubell (eds.), *The Oxford Handbook of Political Networks,* Oxford University Press, Oxford, 2018, 715-732.

[15] S. JODOIN, M. WEWERINKE-SINGH, *Legal Mobilization in a Global Context: The Transnational Practices and Diffusion of Rights-Based Climate Litigation*, in Law and Society Review, 59/2025, 17-49.

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argumentative skills[16]. By prompting court intervention and orienting judicial reasoning towards innovative interpretations of existing legal norms, activist lawyers endow judges with a creative and quasi-constitutive function, even within civil law systems, traditionally bound by the principle of legal positivism. Furthermore, the interests of these actors are considered independent of those of the individual parties involved, as the plaintiffs become instruments of a global litigation strategy[17], aimed at securing judgments from national courts capable of producing transnational effects, in the absence of a supranational jurisdiction endowed with corresponding adjudicatory competence[18].

The actors engaged in climate litigation, as outlined above, perform multiple and distinct functions. They not only initiate legal proceedings against states but also position themselves as essential instruments for the implementation and effective enforcement of fundamental principles enshrined in national constitutions and international legal instruments. Principles such as substantive equality, environmental sustainability, the protection of future generations, and the pursuit of European integration acquire concrete juridical expression through the litigation they promote.

In this sense, NGOs, acting as interpreters and guarantors of these constitutional and supranational values, articulate and transmit the increasingly urgent societal demand for adequate and proportionate legal responses to the contemporary climate crisis. By presenting themselves as bearers of interests that transcend the merely individual dimension, these actors emerge as privileged interlocutors of the judiciary, endowed with a degree of legitimacy and representativeness surpassing that of single litigants.

Furthermore, participatory democracy is intrinsically connected to the modalities through which NGOs foster community building and collective action, thereby contributing to the development of a public sphere in which citizens are not passive spectators but conscious agents actively engaged in decision-making processes.

This conception of democracy departs from the parliamentary traditional model, in which citizens delegate their sovereign power to elected representatives, emphasizing instead a more deliberative and inclusive paradigm of participation. In participatory democracy, on the other hand, people take a direct and concrete part in policymaking,

[16] See A. PISANÓ, *Il diritto al clima. Il ruolo dei diritti nei contenziosi climatici europei,* Edizioni Scientifiche Italiane, Milan, 2022, 19-20.

[17] *The courts are called upon to enforce States' obligations. Their purpose is to influence public policy and bring about social change that demands climate justice to protect human rights, the adoption of regulations that comply with international standards, the mitigation of greenhouse gases, adaptation to the impact of climate change, and compensation for climate-related losses and damages*, S. BALDIN, *Towards the Judicial Recognition of the Right to Live in a Stable Climate System in the European Legal Space? Preliminary Remarks,* in *DPCE Online*, 2/2020, 1423.

[18] See also S. BAGNI, *La costruzione di un nuovo "eco-sistema" giuridico attraverso i formanti giudiziale e forense*, in *DPCE Online*, 50/2022, 1028; A. PISANÒ, *Potere avvocatile e processualità dei diritti*, in *Rivista di filosofia del diritto*, 2/2020, 420.

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especially when it comes to complex issues such as climate change and environmental sustainability[19].

The role of NGOs is far from exhausted. They operate as mediating actors between civil society and political institutions, fostering dialogue and inclusive engagement through educational initiatives and awareness-raising processes. These organizations do not confine themselves to the dissemination of information; rather, they actively involve citizens in practical undertakings that deepen their understanding of environmental and social challenges. By organizing field-based activities – such as the conservation of local ecosystems or projects aimed at reducing carbon emissions – NGOs not only contribute to civic education but also transform participants into agents of constitutional and ecological transformation, thereby embodying the participatory dimension of democratic governance[20].

This dimension of NGO activity rests upon a robust interdisciplinary foundation, drawing extensively from psychological and behavioral research. A paradigmatic example is the so-called *value-action gap*[21], a phenomenon typically observed in individual conduct which, when transposed to the domain of sustainability, denotes the disjunction between the intention to act in an environmentally responsible manner and the actual adoption of pro-environmental behaviors. This discrepancy – often attributable to practical constraints or cognitive barriers – may be mitigated through participatory experiences capable of translating abstract awareness into concrete action, thereby fostering the internalization of ecological values as components of a broader culture of responsibility. Numerous studies confirm that practical and experiential learning is more effective in promoting behavioral and cognitive change than simply conveying abstract information, thus creating a more direct link between citizens' stated values and their actual actions[22].

The connection between action and understanding is a crucial aspect of this process. NGOs often face the problem of how to engage the public not only on a conceptual level, but also on an experiential one. In many cases, however, it is practical action that stimulates theoretical understanding, reversing the traditional paradigm that sees knowledge as a

[19] For a comprehensive overview of participatory democracy, see C. PATEMAN, *Participation and Democratic Theory,* Cambridge University Press, Cambridge, 1970; E. BUONO, C. PIZI, *La democrazia climatica tra climate change mitigation e climate change litigation. Spunti comparati per l'elaborazione di strumenti partecipativi,* in *DPCE Online*, 2/2023, 1945 ff.

[20] For further information on the contribution of NGOs to the construction of global governance, see P. WILLETTS, *Non-Governmental Organizations in World Politics: The Construction of Global Governance*, Routledge, London, 2011.

[21] R. FLYNN, P. BELLABY, M. RICCI, *The 'Value-action Gap' in Public Attitudes Towards Sustainable Energy: the Case of Hydrogen Energy,* in *Sage Journals*, 57/2010.

[22] See D. KOLB, *Experiential Learning: Experience as the Source of Learning and Development,* Prentice Hall, Englewood Cliffs, 1984.

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prerequisite for engagement[23]. This idea is also reflected in sociological literature, which has explored how active participation can be a powerful driver of civic and environmental learning[24].

A primary dimension of NGO strategy lies in community building, conceived as the cultivation of social bonds and the consolidation of a shared sense of belonging. Through this process, NGOs promote cooperative dynamics among individuals, fostering the emergence of local networks capable of acting together in pursuit of the common good. Such practices reinforce the notion of collective responsibility and establish the preconditions for active and informed participation in decision-making processes. Indeed, community engagement is closely linked to the perception of political efficacy – that is the subjective awareness of one's capacity to contribute meaningfully to social transformation through collective action – thus embodying a core principle of participatory and deliberative democracy within constitutional frameworks[25]. Empirical studies have shown that citizens who feel part of an active community are more inclined to participate in democratic processes and support political initiatives[26].

Secondly, through their activities, NGOs contribute to the democratization of decision-making processes by creating and sustaining deliberative spaces for dialogue between citizens and institutions. In doing so, they advance a more inclusive and transparent model of governance, in which political decisions are increasingly responsive to the normative claims and participatory inputs emerging from civil society. Both legal and political science scholarship have underscored that civic engagement enhances the legitimacy of public decision-making, strengthening institutional trust and improving the overall quality of democracy by aligning governance practices with the constitutional principles of participation, accountability, and deliberative legitimacy[27]. However, it is essential that this participation is voluntary and not imposed, so that citizens can feel truly involved and motivated to contribute[28].

Thirdly, a distinctive feature of NGO action lies in the adoption of a double narrative strategy. On the one hand, NGOs engage in assertive advocacy directed against major

[23] To investigate the link between action and understanding, see C. GOUGH, S. SHACKLEY, *The Respectable Politics of Climate Change: The Epistemic Communities and NGOs,* in *International Affairs,* Oxford University Press, Oxford, 2001.

[24] See B. R. BARBER, *Strong Democracy: Participatory Politics for a New Age,* University of California Press, Berkeley, 1984.

[25] See N. BOBBIO, *Teoria Generale della Politica,* Einaudi, Turin, 1999.

[26] The reference concerns the investigations contained in R. A. DAHL, *On Democracy,* Yale University Press, Yale, 1998.

[27] See J. HABERMAS, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, MIT Press, Cambridge (U.S.A.), 1996.

[28] See I. LORENZONI, N. F. PIDGEON, *Public Views on Climate Change: European and USA Perspectives*, in *Climatic Change*, 77/2006, 73-95.

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economic actors and governmental authorities, publicly denouncing their responsibilities through blame and shame tactics. This dimension of their activity serves a dual function: it operates as an instrument of social accountability within global governance structures and as a performative expression of the constitutional principle of transparency, aimed at exposing structural asymmetries of power and promoting a culture of public responsibility[29]. On the other hand, when engaging with the broader public, NGOs tend to refrain from overemphasizing individual culpability, opting instead to foreground the positive and empowering contributions that each citizen can make to environmental protection. By mobilizing civic engagement through encouragement rather than moral sanction, it reinforces the participatory dimension of democratic citizenship and reflects with the ethos of shared responsibility and collective agency in addressing environmental challenges[30].

The activities of NGOs, as outlined above, are further reinforced and defined by their multi-scalar mode of operation, encompassing both national and international arenas. In this capacity, they seek to influence global policy while simultaneously promoting localized initiatives, thereby functioning as actors capable of bridging diverse levels of governance and constructing transnational networks of solidarity.

Participatory democracy, in this context, provides a normative and institutional framework through which citizens can engage directly in decision-making processes, extending their agency not only within local jurisdictions but also across global governance structures, thus operationalizing the principle of inclusive and multi-level civic participation[31].

Consequently, it may be inferred that NGOs constitute a pivotal component in the development and consolidation of participatory democracy, facilitating the active commitment of citizens through strategies that integrate practical education, community building, judicial advocacy, and political mediation. By promoting civic participation and linking multiple levels of governance, NGOs contribute not only to the resolution of

[29] Numerous studies and NGO reports have documented, for example, the direct responsibility of fossil fuel multinationals in the production of greenhouse gas emissions, as well as the failure of governments to ensure compliance with international climate obligations. The naming and shaming strategy takes the form of media and legal campaigns, such as *ExxonKnew,* which revealed ExxonMobil's prior knowledge of the effects of climate change, or the legal action brought by the Urgenda Foundation against the Dutch state, where the Supreme Court of the Netherlands recognized the state's obligation to take effective measures to reduce CO_2 emissions. See C. KRAUSS, *New York's investigation of ExxonMobil under the Martin Act,* in *Vermont Journal of Environmental Law,* 3/2017; J. LAMBRECHT, C. ITUARTE-LIMA, *Legal Innovation in National Courts for Planetary Challenges: Urgenda v State of the Netherlands,* in *Sage Journals,* 18/2016.

[30] This can be found in the report by T. CROMPTON, *Common Cause: The Case for Working with our Cultural Values,* WWF-UK, Godalming, 2010.

[31] Significant in this regard is J. SZARKA, *From Climate Advocacy to Public Engagement: An Exploration of the Role of Environmental Non-Governmental Organisations,* in *Environmental Politics*, 1/2013, 12 e ss.

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concrete challenges, such as climate change, but also to the reinforcement of democratic structures themselves, rendering them more inclusive, deliberative, and participatory in accordance with the principles of constitutional legitimacy and civic empowerment.

In this context, the democratic dimension of judicial strategies assumes a central role, not only in addressing specific reparative claims, but also in rendering restorative judgments legally binding and imposing actionable obligations on both public authorities and private sector[32].

Climate litigation is increasingly recognized as an effective instrument for advancing regulatory reform and stimulating legislative action, offering both provisional and structural responses to the persistent inertia of legislative and executive bodies in confronting the climate crisis, while simultaneously reinforcing the principles of accountability, the rule of law, and the protection of collective and future-oriented rights[33].

3. *NGOs as a tool for implementing constitutional principles*

As previously noted, one of the fundamental functions of NGOs within the sphere of climate litigation is the concretization of constitutional principles such as substantive equality, environmental sustainability, the protection of the interests of future generations, and, in the European context, European integration principle as well. These values – frequently enshrined in national constitutions[34] and international treaties[35] – are invoked by NGOs to contest state omissions in the face of the climate crisis and to advocate for the adoption of more ambitious regulatory frameworks aimed at ensuring the effective protection of the environment, the climate system, and the corpus of human and fundamental rights within a constitutional and supranational rule of law paradigm[36]. By bringing actions before national and international courts, NGOs contribute to giving concrete effect to constitutional and international provisions, transforming general principles into enforceable duties for states and thereby consolidating the evolving jurisprudence on climate justice[37]. From a legal perspective, these organizations occupy a

[32] See R. LOUVIN, *Democrazia ambientale e accesso alla giustizia,* in *DPCE Online*, 58/2023.

[33] See also Z. BUSZMAN, *Beyond the Courtroom: The Evolution of Rights-Based Climate Litigation from Urgenda to Held and its Policy Impact*, in *Studia Iuridica*, 102/2024, 56-76; B. J. PRESTON, *Climate Change Litigation (Part 1),* in *Carbon and Climate Law Review,* 5/2011, 28.

[34] See R. BIN, *La Tutela Costituzionale dell'Ambiente*, CEDAM, Bologna, 2003.

[35] See German Institute for Human Rights, *Climate Change and Human Rights: The Contributions of National Human Rights Institutions*, Berlin, 2020.

[36] See J. PEEL, H. M. OSOFSKY, *Climate Change Litigation: Regulatory Pathways to Cleaner Energy,* Cambdridge University Press, Cambridge, 2015.

[37] See. A. PISANÒ, *Il diritto al clima. Il ruolo dei diritti nei contenziosi climatici europei,* Edizioni Scientifiche Italiane, Lecce, 2022.

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pivotal position in safeguarding the effectiveness, efficiency, and efficacy of climate change regulation. According to general legal theory[38], effectiveness denotes the capacity of legal norms to produce their intended outcomes: in this specific case, it refers to the attainment of adequate climate policies and the fulfilment of international obligations undertaken by states. Through litigation, NGOs can transform general regulatory statements into concrete and binding actions for states[39]. In terms of legal effectiveness, their role lies in ensuring that climate norms are duly implemented and complied with by their addressees. The actions brought by these organizations often intend to compel states to adopt specific measures, thereby preventing the obligations contained in climate legislation from remaining merely programmatic and ensuring their tangible realization within legal and policy practice. Finally, in terms of efficiency, they optimize the deployment of their legal and financial resources by promoting strategically oriented actions that frequently result in landmark judicial decisions whose effects transcend national jurisdictions[40]. This strategic approach enhances the systemic impact of litigation, exerting influence not only on domestic regulatory frameworks but also on the development of international practice and jurisprudence in the field of climate governance[41].

In this way, NGOs act as key players in the implementation of climate regulations, transforming general normative principles into instruments of institutional accountability

[38] See N. BOBBIO, *Teoria della norma giuridica*, cit., chap. II; G. TUZET, *Effettività, efficacia, efficienza*, in *Materiali per una storia della cultura giuridica,* 1/2016, 207.

[39] The pioneering case in the European legal landscape, as already mentioned, was Supreme Court of the Netherlands, *Urgenda Foundation v. State of the Netherlands*, 20 December 2019.

[40] See J. SETZER, C. HIGHAM, *Global Trends in Climate Change Litigation: 2023 Snapshot Grantham Research Institute on Climate Change and the Environment*, London, 2023.

[41] See United Nations Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights in the Context of Climate Change*, 2022. Regarding international case law, particular attention should be paid to the advisory opinion of 23 July 2025 on the Obligations of States in respect of Climate Change, in which the International Court of Justice outlined the framework of States' legal obligations on climate change, recognizing the binding nature of these obligations both at the treaty level (UNFCCC, Paris Agreement, UNCLOS and other environmental treaties) and customary and human rights law. In it, the Court reaffirmed the obligation to prevent significant environmental damage, to cooperate actively and to ensure the effective protection of fundamental rights, including the right to a healthy environment, which it qualified as a human right. In terms of consequences, the Court stated that failure to comply with these obligations gives rise to international responsibility on the part of the State, even when emissions only contribute cumulatively to climate change, thus imposing duties of cessation, non-repetition, and reparation (including in the form of compensation). Emphasis was placed on the principles of intergenerational justice, equity, and precaution, which must guide the interpretation and implementation of the rules. Although not binding, the opinion represents a decisive step in the construction of international climate law, strengthening the integration between environmental law, general international law, and human rights, and consolidating the role of international justice as an instrument of global governance of the climate crisis. Specifically, consult International Court of Justice, *Advisory Opinion on Obligations of States in respect of Climate Change*, 23 July 2025 (*Summary)*.

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and thereby enhancing the overall effectiveness and efficiency of the legal system governing climate action.

Next, the application of these principles in various climate disputes will be examined, with reference to judgments and writs of summons brought by NGOs against states

3.1. *Substantive equality and environment*

The activities of NGOs are largely based on the principle of substantive equality. Indeed, it constitutes a cornerstone of contemporary constitutionalism, aimed at securing effective equality among citizens by transcending the merely formal conception. It imposes upon the State not only the obligation to ensure equal treatment but also the positive duty to adopt corrective measures designed to eliminate material inequalities that impede the full development of the person and the effective participation of all in social, economic, and political life[42].

This principle assumes particular significance in the context of climate litigation, as the effects of climate change disproportionately burden the most vulnerable segments of the population, thereby imposing on the State a duty to adopt targeted policies that ensure the equitable distribution of both the benefits and the risks associated with environmental and climate protection, as well as with sustainable development[43]. The principle is frequently invoked as a central ground for appeal in climate litigation, serving to underscore the inequities of existing climate policies and to justify differentiated interventions tailored to the specific needs of most vulnerable communities to the adverse impacts of climate change.

It is precisely from a well-established principle such as substantive equality that the comparatively recent environmentalist principle originates – so much that the two are frequently referred to as necessarily interdependent and inextricably intertwined. The environmentalist principle, which is now a fundamental pillar of contemporary legal systems, recognized both constitutionally and internationally[44], imposes on States the duty

[42] See M. LUCIANI, *I princìpi di eguaglianza e di non discriminazione, una prospettiva di diritto comparato,* EPRS, 2020.

[43] Intergovernmental Panel on Climate Change (IPCC), *Sixth Assessment Report*, 2022.

[44] See Article 9 of the Italian Constitution (as amended by L. Cost. 1/2022), Article 37 of the Spanish Constitution and Article 21 of the Dutch Constitution. For a detailed overview of environmental constitutionalism, see D. AMIRANTE, *Il costituzionalismo ambientale. Atlante giuridico per l'antropocene,* Il Mulino, Bologna, 2022. At the international level, see the United Nations Conference on the Human Environment, Stockholm Declaration on the Human Environment, Stockholm, 5-16 June 1972; United Nations Conference on Environment and Development, Rio Declaration on Environment and Development, Rio de Janeiro, 3-14 June 1992. The principle in question is also interpreted in a supranational sense in S. GRASSI, *La tutela dell'ambiente nelle fonti internazionali, europee ed interne (Environmental protection in international, European and domestic sources),* in *federalismi.it*, 13/2023.

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to protect the environment and, by extension, the climate, ensuring its preservation, enhancement, and sustainability for present and future generations. This principle rests upon the constitutional and legal recognition of the environment as a fundamental legal asset and as an essential precondition for the full realization of fundamental rights and the safeguarding of collective well-being. It is often relied in climate litigation to hold States accountable for the prevention of environmental harm and to compel the adoption of effective measures designed to address and mitigate the impacts of climate change.

By integrating the principles of substantive equality and environmental protection, a coherent legal framework emerges that imposes on States not merely an objective, but also a normative method of implementation. States are required, on the one hand, to pursue the protection of the environment, and, on the other, to adopt an approach grounded in equity, which duly considers the social and economic disparities present within the population in the design and application of environmental and climate policies. States are obliged to design and implement measures in a manner that addresses substantive inequalities, with particular attention to the most vulnerable communities that disproportionately bear the adverse effects of environmental degradation and climate change. In this respect, the principles of environmental protection and substantive equality converge, imposing upon States a dual duty to safeguard the environment while ensuring social justice.

Upon closer examination, these principles, while fundamental in the fight against climate change, remain inherently general. It is therefore both useful and necessary to analyze how they are invoked, interpreted, and operationalized in contemporary climate litigation. For instance, in the context of the writ of summons in *Urgenda Foundation v. Netherlands*[45], the principle of substantive equality was applied to underscore the Dutch State's obligation to guarantee effective and universal environmental protection, considering the differential vulnerabilities of its citizens. From a constitutional perspective, Article 21 of the Dutch Constitution imposes upon the State the duty to ensure the habitability of the territory and the protection of the environment, thereby establishing the State's responsibility to adopt measures aimed at safeguarding collective well-being.[46]. Consequently, the State is obliged to adopt proactive measures against conduct that is detrimental to the environment, even in the absence of specific regulatory provisions. This overarching responsibility entails that environmental protection and climate change mitigation must be pursued in a manner that guarantees equal protection for all citizens. Accordingly, the principle of substantive equality obliges the Dutch State to adopt differentiated measures intended to protect the groups most vulnerable to environmental

[45] Supreme Court of the Netherlands, *Urgenda Foundation v. Netherlands*, 20 December 2019.

[46] "It shall be the task of the authorities to keep the country habitable and to protect and improve the environment", Article 21 of the Dutch Constitution.

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risks, thereby ensuring that climate policies are both effective and inclusive across all segments of the population[47].

Another case worth mentioning is *Friends of the Irish Environment CLG v. The Government of Ireland*[48], in which the Irish Supreme Court, at the request of the NGO Friends of the Irish Environment, recognized – implicitly – a right to a healthy environment, even though the Irish Constitution does not explicitly mention it[49].

The Court ruled that this right can be derived from the fundamental rights already protected by the Constitution, in particular Articles 40.3 and 43[50]. Article 40.3, which safeguards life and personal dignity, has been interpreted as implying environmental protection, since a healthy environment is essential for a dignified life.

Similarly, Article 43, which pertains to property rights, was deemed relevant because the quality of the environment directly affects property. In both cases, broad and highly traditional provisions were interpreted in such a way as to derive rules protecting a specific and relatively new asset such as the environment.

Consequently, the Court has stated that the government bears a constitutional obligation to guarantee an adequate level of environmental protection, underscoring that public policies and legislative measures must conform to this implicitly recognized fundamental right. Within this normative framework, the principle of substantive equality entails that governmental action in the field of climate and environmental protection must be articulated according to criteria of equity, ensuring that socio-economic disparities among citizens are duly considered in the formulation and implementation of such policies.

[47] For in-depth analysis of the case in question, see J. M. VERSCHUUREN, *The State of the Netherlands v Urgenda Foundation: The Hague Court of Appeal Upholds Judgment Requiring the Netherlands to Further Reduce its Greenhouse Gas Emissions*, in *Review of European, Comparative & International Environmental Law*, 28/2019, 94 ff.; L. BURGERS, T. STAAL, *Climate Action as Positive Human Rights Obligation: The Appeals Judgment in Urgenda v The Netherlands*, in J. E. Nijman & W. G. Werner (eds.) *Netherlands Yearbook of International Law 2018: Populism and International Law*, Berlin, 2019, 223 ff.

[48] For further details, see the judgment Supreme Court of Ireland, *Friends of the Irish Environment v. The Government of Ireland,* 31 July 2020.

[49] H. GALLAGHER, *Environmental Constitutionalism in Ireland after* Friends of the Irish Environment, in *Trinity College Law Review online,* 2021.

[50] The relevant sections of the Irish Constitution state: "The State guarantees in its laws the respect and, as far as possible, the defence and enforcement through its laws of the personal rights of citizens. In particular, the State shall, by its laws, protect as far as possible from unjust aggression and, in cases of injustice, vindicate the life, person, good name and property rights of every citizen" and "The State recognises that man, by virtue of his rational nature, has a natural right, prior to positive law, to private ownership of external property. The State therefore guarantees that it will not enact any law that attempts to abolish the right to private property or the general right to transfer, bequeath and inherit property. However, the State recognises that the exercise of the rights mentioned in the previous provisions of this article must be regulated, in civil society, by the principles of social justice. The State may therefore, when the occasion requires, limit by law the exercise of these rights in order to reconcile their exercise with the requirements of the common good", respectively Articles 40.3 and 43 of the Irish Constitution.

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The government is therefore constitutionally required to guarantee that environmental protection is equitably distributed across the population, ensuring that no social group is disproportionately exposed to environmental harm.

This obligation reflects the constitutional principle of non-discrimination, which demands that environmental and climate policies be implemented in a manner consistent with equality before the law and the equal enjoyment of fundamental rights[51].

3.2. *The principle of concern for future generations*

The evolution of constitutional principles does not, however, find its culmination in the interrelation between substantive equality and environmental protection. A further, complementary principle emerges from their conjunction: the principle of intergenerational responsibility. This principle, which has acquired increasing prominence in constitutional interpretation and climate litigation, establishes a duty incumbent upon the State to safeguard the environment in a manner that is both equitable and sustainable over time. It imposes on public authorities the obligation to frame policies not solely in response to the needs of the present generation, but also in anticipation of the rights and legitimate interests of future generations, ensuring their ability to enjoy a healthy and unspoiled environment as a precondition for the full exercise of fundamental rights[52]. Within this framework, substantive equality, when applied to environmental matters, entails that public authorities must integrate considerations of both present and future social and economic disparities into the formulation of environmental policies. Such an approach ensures that all generations – without distinction – enjoy comparable environmental conditions and opportunities. Consequently, the environmental principle and the substantive equality one converge in establishing a constitutional duty to preserve the environment through an intergenerational lens of justice, requiring that state policies guarantee equitable and enduring environmental protection.

Illustrative in this regard are several instances of climate litigation initiated by NGOs that have invoked the principle of intergenerational responsibility in conjunction with the substantive equality one and combined with environmental protection. Through these actions, NGOs have sought to compel states to adopt effective and timely measures to combat climate change. Such cases exemplify how these principles have been

[51] For a commentary on the judgment in question, see O. KELLEHER, *A Critical Appraisal of Friends of the Irish Environment v. Government of Ireland*, in *Review of European, Comparative & International Environmental Law,* 30/2020.

[52] See A. D'ALOIA, *Costituzione e protezione delle generazioni future,* in F. Ciaramelli, F. G. Menga (eds.), *La Responsabilità verso le generazioni future: una sfida al diritto all'etica e alla politica*, Naples, 17/2017.

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operationalized in judicial contexts to reaffirm the State's duty to safeguard the environment for the benefit of both present and future generations.

A first, emblematic dispute took place in Europe, specifically in France, with the case known as *Affaire du Siècle*[53], where the principle of concern for future generations was invoked as an essential legal basis for urging more effective climate action by the French State. The appeal, brought by four NGOs (Notre Affaire à Tous, Greenpeace France, Oxfam France and Foundation Nicolas Hulot), sued the State for failing to fulfil its obligations to reduce greenhouse gas emissions, thereby violating the constitutional rights of present and future generations[54].

The NGOs' claim was grounded, *inter alia*, in the 2004 *Charte de l'Environnement*[55], incorporated into the *bloc de constitutionnalité*[56], which explicitly enshrines the principle of intergenerational responsibility. Article 1 of the Charter recognizes the right of every person to live in a balanced and healthy environment, a right that extends to future generations. Moreover, Article 4 mandates public authorities to pursue sustainable development, so that the necessities of the present may be secured without endangering the prospects of those yet to come[57]. These provisions impose upon the State a concrete and enforceable obligation to adopt effective and timely measures aimed at ensuring environmental protection. In its

[53] *L'Affaire du Siècle* ("The Case of the Century") refers to the landmark lawsuit *Notre Affaire à Tous v. France*. The case earned this title due to its unprecedented scale, scope, and public resonance in France. The name emphasizes both the symbolic significance of the case in raising public awareness about climate responsibility and its groundbreaking nature as one of the first legal actions demanding concrete state action on environmental issues in France. See Administrative Court of Paris, *Notre Affaire à Tous and Others v. France*, 31 October 2021.

[54] For a comprehensive analysis of the French NGO Notre Affaire à Tous and its multifaceted approach to advancing climate justice – encompassing strategic litigation, constitutional advocacy, citizen participation, and public mobilization to influence both legal frameworks and political debate – see C. COURNIL, *Notre affaire à tous et l'" arme du droit". Le combat d'une ONG pour la justice climatique*, in *Environment, climat. Principes, droit et justitiabilité*, 2024, 171-197.

[55] The 2004 *Charte de l'Environnement* is a constitutional text incorporated into the French Constitution, recognizing environmental protection as a fundamental right and establishing principles such as the precautionary principle, the prevention principle, and the duty to participate in environmental decision-making. It aims to guide both public authorities and private actors in balancing development with ecological protection. For an analysis of the challenges and limitations of the *Charte de l'Environnement* in responding to the climate emergency, see C. COURNIL, *Enjeux et limites de la Charte de l'environnement face à l'urgence climatique*, in *Revue française de droit constitutionnel*, 122/2020, 345-368.

[56] The *bloc de constitutionnalité* refers to the set of constitutional norms in French law that are binding on public authorities and serve as the basis for judicial review. It includes not only the 1958 Constitution but also the Preamble of the 1946 Constitution, the Declaration of the Rights of Man and of the Citizen of 1789, the *Charte de l'Environnement* of 2004, and fundamental principles recognized by the laws of the Republic.

[57] The articles in question state, respectively, "Every individual has the right to live in a balanced and healthy environment and Public policies must promote sustainable development, respecting the rights of present and future generations", Articles 1 and 4 of the French Environmental Charter.

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decision of February 2021, the Paris Administrative Court found the French State liable for climate negligence for breaching its constitutional duties under the *Charte de l'Environnement*. The Court held that governmental inaction on climate change infringed upon the right of future generations to live in a healthy and safe environment, thereby violating the State's constitutional obligation to preserve environmental conditions for posterity, as established by Articles 1 and 4 of the Charter. In this respect, the principle of intergenerational responsibility proved decisive in demonstrating that the inadequacy of state measures to counter climate change compromised the fundamental rights of future generations, thus requiring immediate remedial action consistent with the legal duty under the constitution to protect the environment[58].

A second significant precedent emerged in Latin America, specifically in Colombia[59]. In the case *Generaciones Futuras v. MinAmbiente*[60], environmental NGOs invoked the principle of concern for future generations, grounding their claim in the fundamental rights enshrined in Articles 79 and 80 of the Colombian Constitution. These provisions respectively recognize the right of every person to a healthy environment and impose upon the State the duty to plan the sustainable use of natural resources[61]. In its landmark decision, the Supreme Court affirmed that future generations are legitimate holders of fundamental rights, thereby establishing that such recognition entails a constitutional limitation on the freedom of action of present generations, who are required to exercise their rights within the framework of intergenerational responsibility and environmental sustainability[62].

The constitutional foundation for the rights of future generations in Colombia rests on two key principles articulated by the Supreme Court. First, the *ethical duty of species-wide solidarity*[63], which requires the equitable distribution of resources not only within the

[58] A commentary on the ruling can be found in C. COURNIL, A. DE DYLIO, P. MOUGEOLLE, *L'affaire du Siècle: French climate litigation between continuity and legal innovation,* in *Carbon&Climate Law Review,* 14/2020, 40-48.

[59] For a right-based Columbian climate litigation see M. D. CALDERÓN, *Rights-based Climate Litigation in Colombia: An Assessment of Claims, Remedies, and Implementation*, in *Journal of Human Rights Practice*, 16/2024, 273 e ss.

[60] Supreme Court of Justice, *Generaciones Futuras v. Minambiente*, 5 April 2018.

[61] The articles in question state, respectively: *All persons have the right to enjoy a healthy environment. The law shall guarantee community participation in decisions that may affect it. It is the responsibility of the State to protect the diversity and integrity of the environment, conserve areas of special ecological importance, and promote education to achieve these ends* and *The State shall plan the management and exploitation of natural resources to ensure their sustainable development, conservation, restoration, or replacement. Furthermore, it shall prevent and control factors of environmental deterioration, impose legal sanctions and demand compensation for damage caused. Likewise, it shall cooperate with other nations in the protection of ecosystems located in border areas* (translation by the author), Articles 79 and 80 of the Colombian Constitution.

[62] Supreme Court of Justice, *Generaciones Futuras v. Minambiente*, cit., §5.

[63] *Ibid.*

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current generation but also across generations; and second, the recognition of the intrinsic value of nature, of which future generations are an integral part, thereby embedding environmental stewardship within the framework of intergenerational constitutional obligations[64]. The Court has drawn from this dual relationship a genuine legal obligation, which imposes on present generations the duty to care for and protect natural resources and recognizes the right of future generations to enjoy the same environmental conditions as those enjoyed by current generations[65]. Thus, the rights of future generations are conceived as an integral component of a broader constitutional project aimed at expanding the protection of fundamental rights. According to the Court, such protection must not be confined to the interests of contemporaneous individuals but must also encompass other inhabitants of the planet, including animal and plant species, and – importantly – unborn persons, thereby incorporating intergenerational and ecological considerations within the framework of fundamental rights[66].

3.3. *The Europeanist principle*

Finally, within the European Union, a fourth principle assumes relevance in climate litigation: the principle of European integration. This principle – articulated, depending on the constitutional framework, through various but functionally interconnected provisions – affirms the State's obligation to ensure that domestic law conforms with the principles and obligations arising from the European Union legal order. In this perspective, non-governmental organizations have assumed a crucial role as mediating actors in the promotion and enforcement of climate law, operating as instruments for the effective realization of constitutional provisions that give concrete expression to the EU law primacy and its function of integrating EU environmental and climate objectives into the national legal system. In this context, NGOs have demonstrated a unique ability to invoke the principle of integration of European law to challenge national climate policies, pushing

[64] The Court draws these conclusions from the combined provisions of Articles 79 and 80 of the Colombian Constitution. See Supreme Court of Justice, *Generaciones Futuras v. Minambiente*, cit., §5.

[65] *Ibid.*

[66] *Ibid.*, § 5.2. In its ruling, the Court departs from the argument put forward by the appellants, focusing instead on the possibility of establishing the rights of future generations within the Colombian legal system. This reflection is part of a profound and structural critique of the *anthropocentric and selfish* paradigm typical of liberal constitutionalism, which the Court considers inadequate in the face of current environmental challenges. In contrast, the ruling embraces a perspective based on an ecocentric ideology, which focuses on the protection of ecosystems, biodiversity, and future generations. This vision underpins the concept of an *ecological constitution*, which integrates principles of environmental protection and intergenerational solidarity as essential components of the constitutional framework. This evolution reflects a radical rethinking of the relationship between humans and the environment, broadening the horizon of legal protection beyond the exclusive interests of the current generation.

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Member States to honor their international commitments and to align with European standards on environmental conservation. Through strategic legal action, these organizations have transformed European norms into concrete tools for ensuring an adequate and timely response to the climate crisis, highlighting the crucial role of EU law as an instrument of environmental protection and a vehicle for the realization of intergenerational justice. With a perspective that transcends national boundaries, NGOs have rendered the integration of European law principle operational, ensuring that climate policies are not only aligned with the obligations arising from the European legal system but are also responsive to the broader global challenges of contemporary environmental governance.

There exist numerous significant instances of litigation in which NGOs have invoked the integration of European law principle to advance more effective climate action consistent with European and international standards. These cases demonstrate how European Union law and international obligations, when constitutionally embedded, can function as powerful instruments for the environment conservation and the climate justice consolidation within both national and supranational legal frameworks.

A paradigmatic example can be found in Poland. In the ongoing *ClientEarth v. Poland*[67] case, the NGO ClientEarth invoked the integration of EU law into the Polish legal system to support its position. The organization grounded its argument on Poland's international obligations arising under EU law, with reference to the Union's environmental and climate regulatory framework, thereby underscoring the binding nature of these norms within the domestic constitutional context[68]. The NGO claimed that Poland's energy policy, centered on the continued and extensive use of coal, conflicts with the EU's binding targets – particularly established in the 2030 Energy and Climate Package and the European Green Deal – which mandate the reduction of greenhouse gas emissions, the promotion of renewable energy sources, and the protection of the fundamental rights of European citizens[69].

In its statement of claim, ClientEarth underscored that, as a Member State of the European Union, Poland is under a constitutional and supranational obligation to adhere to the emission reduction targets established by European regulatory instruments, thereby ensuring full conformity of national energy policy with the Union's environmental and

[67] District Court of Poland, *ClientEarth v. Poland*, 2021.

[68] Although the pro-European principle is not explicitly mentioned in the Polish Constitution, its application can be traced back to the constitutional articles governing the integration of international and EU law. In particular, Article 9 establishes the obligation to comply with binding international law, Article 90 allows for the transfer of powers to international organisations such as the European Union, and Article 91 establishes the primacy of ratified international treaties over Polish domestic law; see Articles 9, 90, 91 of the Polish Constitution.

[69] European Commission, *Energy and Climate Policy Framework 2030*, 2020.

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climate objectives[70]. The NGO contended that Poland's continued operation and expansion of coal-fired power plants constitutes a breach of its obligations under European Union law. In addition, ClientEarth relied on several key European directives – including Directive 2009/29/EC and Directive 2010/75/EU[71] – to demonstrate that the operation of Polish coal-fired power plants fails to comply with the environmental standards prescribed by the EU regulatory framework. A second significant case arose in Austria. In the *Greenpeace EEC v. Austria*[72], the NGO Greenpeace EEC grounded its judicial action on the integration of European Union law principle into the domestic legal order, contesting the insufficiency of the Austrian State's climate policies. The organization argued that Austria was failing to fulfil its obligations under the Paris Agreement and the European Green Deal, highlighting the State's omission in adopting the measures necessary to meet both international and European emission reduction targets[73]. Although the writ of summons did not explicitly cite the Austrian Constitution provision that establish the country's participation in the European Union and the primacy of EU law, Greenpeace's action nonetheless reflects the practical application of these principles. Articles 23 B-VG and 50 B-VG, which govern the transfer of supranational competences and the international treaties ratification, provide the constitutional basis for the EU law integration into the Austrian legal system[74]. In this context, the case can be interpreted as the implementation of these constitutional provisions, even if

[70] ClientEarth, *Statement of Claim against Poland,* 2023.

[71] The Directive in question amends the EU Emissions Trading System, which aims to reduce greenhouse gas emissions: it sets more ambitious reduction targets, shifting most allowances from free allocation to auctioning, and strengthens the monitoring and verification of emissions; see Directive 2009/29/EC. Directive 2010/75/EU concerns industrial emissions and aims to prevent and reduce pollution through an integrated approach: it sets requirements for the use of best available techniques and requires environmental permits specifying emission limits and control measures; see Directive 2010/75/EU.

[72] Constitutional Court of Austria, *Greenpeace et al. v. Austria*, 30 September 2020.

[73] European Commission, *European Green Deal: Climate and Energy Targets*, 2020.

[74] The articles in question state: "The Republic of Austria participates in the development and implementation of the European Union. The federal legislative and administrative bodies, as well as the Länder, cooperate in fulfilling the obligations arising from membership of the European Union. The Bundesrat [Federal Council] and the Nationalrat [National Council] shall cooperate in formulating Austria's position on European legislative proposals and policies. The Bundesregierung [Federal Government] shall be obliged to inform the Nationalrat and the Bundesrat in good time of all proposals relating to European Union decisions. Legislative and administrative powers may be delegated by Austria to the European Union based on international treaties ratified by the necessary constitutional procedure" and "The conclusion of international treaties that amend or supplement domestic legislation or that involve the creation of supranational institutions requires the approval of the National Council. International treaties that amend or supplement the Federal Constitution or impose constitutional obligations must be approved by the same procedure as that laid down for amending the Constitution itself. The conclusion of international treaties of political significance requires the approval of the Nationalrat. The Nationalrat must be immediately informed by the Bundesregierung of any international treaty that does not require legislative approval", respectively, Articles 23 B-VG and 50 B-VG of the Austrian Constitution.

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they are not formally mentioned. Greenpeace based its argument on binding European regulations, such as the directives on reducing greenhouse gas emissions and the European Union's climate targets, to demonstrate the Austrian state's responsibility for failing to comply with its EU obligations[75].

The reference to international commitments and European law highlights the practical application of the European integration principle, as the NGO argued that EU law should take precedence over the Austrian state's inadequate climate policies.

3. *Concluding remarks*

The analysis undertaken demonstrates that climate litigation has evolved into not merely a central legal instrument for addressing climate change, but also a significant mechanism for the promotion of participatory democracy. Non-governmental organizations, climate justice movements, and activist lawyers have transformed legal proceedings into a powerful means of addressing deficiencies in state policies and expanding the scope of citizen engagement in decision-making processes. NGOs, by virtue of their capacity to represent collective interests and mobilize civil society, have emerged as pivotal actors, advancing a dynamic conception of democracy that integrates the voices of vulnerable communities frequently marginalized within traditional political arenas.

Beyond securing the enforcement of legal obligations at both national and international levels, climate litigation reveals an inherently political dimension, reshaping the relationship between citizens and public institutions. Through strategic litigation, NGOs and climate justice movements not only seek environmental protection, but also foster the democratization of decision-making, imposing heightened accountability on states towards both present and future generations. In this respect, litigation functions not merely as a corrective tool against institutional inertia, but as a catalyst for regulatory and institutional transformation, promoting the adoption of climate policies that are inclusive, equitable, and consistent with principles of social justice and intergenerational equity.

The cases analyzed herein further underscore the central role of NGOs in ensuring the effective implementation of constitutional provisions and international obligations incumbent upon states. Through judicial activism, these organizations operate as instruments of democratic participation, addressing gaps in state action and facilitating compliance with international commitments, particularly in the domains of environmental protection and climate governance.

[75] Directive 2009/29/EC and Directive 2010/75/EU; European Commission, *Climate Action Targets for Member States*, 2020.

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