THE CONCEPT OF "CLIMATE RIGHTS"

ASSESSMENT FRAMEWORK, CLASSIFICATION AND COUNTRY EXAMPLES

Legal Study

Justice and Environment 2024

CONTENTS

Introduction

The concept of “climate rights" emerged as a key concept in the DACE project[1] of Justice and Environment to capture the variety of rights, i.e., existing and nascent types/classes of rights at international, EU and national level with relevance to climate change, defined as follows: “all substantive and procedural rights related to or affected by climate change”. As an operational definition its main purpose is to guide and inform our study of climate rights as vehicles for just and engaging society in which climate justice and protection against the consequences of climate change are high on the agenda of the governments, businesses and of the society as a whole. Being a broad and overarching definition, which cuts across political, social and civil society domains it can be used for engagement of key target groups of the project like climate activists, environmental associations, other interested citizens and local communities, but also bar associations, students, journalists and children and youth who may be particularly important actors for standing up for the rights and interests of the future generations. The term ‘climate rights’ in the project’s interpretation includes rights in a narrow legal sense, such as human or social rights, leaving out exploring the legal mechanisms (e.g., the ombudsman institution) that enable individuals and organisations to protect their rights, to demand climate action or hold governments and businesses accountable.

Even if we are not claiming to have coined a new concept, doctrinally speaking, we could still test its practical application and stir a debate about its implications with national and EU stakeholders. While testing the application of the concept, we aim to raise the awareness of target groups and general public of climate rights (in general terms or about specific rights related to or affected by climate change: e.g. right to life, health, home); to test the readiness of target groups to exercise such climate rights already now, or to explore the existing practice of exercising such rights; as well as to mobilise target groups’ support for introducing a stronger and more comprehensive system of climate rights.

The clean, healthy and functional environment is integral to the enjoyment of human rights, such as the rights to life, health, food and an adequate standard of living[2]. In the same vein, a safe and stable climate guarantees the enjoyment of all human and other climate rights. The opposite is also true - the less safe and stable the climate, the worse the conditions for enjoyment of climate rights. The most recent IPCC report has concluded that the changes in the physical climate system, most notably more intensive extreme events, have adversely

[1] https://justiceandenvironment.org/project/dace/
[2] UNEP (2015) Climate change and human rights report

affected natural and human systems around the world, contributing to a loss and degradation of ecosystems, including tropical coral reefs; reduced water and food security; increased damage to infrastructure; additional mortality and morbidity; human migration and displacement; damaged livelihoods; increased mental health issues; and increased inequality[3].

The international agreements also link climate change and enjoyment of climate rights. The United Nations Framework Convention on Climate Change (UNFCCC) acknowledges in its Preamble "that change in the Earth's climate and its adverse effects are a common concern of humankind." The broad spectrum of rights and holders of rights is emphasised in the Paris Agreement's Preamble, acknowledging that climate change is a common concern of humankind and the Parties should, when taking action, 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, empowerment of women and intergenerational equity.

A connection between climate change and human rights was also established by the Human Rights Council in its *Resolution 41/21 on Human rights and climate change*, adopted by the UN Human Rights Council on 12 July 2019[4], in which it recalled that "the Paris Agreement adopted under the United Nations Framework Convention on Climate Change acknowledges that climate change is a common concern of humankind and 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." It also emphasised that climate change has an adverse effect on the enjoyment of said rights and called upon the states to adopt a comprehensive and inclusive approach to climate change adaptation and mitigation policies, for the full and effective enjoyment of human rights for all.

[3] IPCC, 2022: Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [H.-O. Pörtner, D.C. Roberts, M. Tignor, E.S. Poloczanska, K. Mintenbeck, A. Alegría, M. Craig, S. Langsdorf, S. Löschke, V. Möller, A. Okem, B. Rama (eds.)]. Cambridge University Press. Cambridge University Press, Cambridge, UK and New York, NY, USA, 3056 pp., doi:10.1017/9781009325844, available at https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FullReport.pdf.

[4] https://documents.un.org/doc/undoc/gen/g19/223/65/pdf/g1922365.pdf

The accumulated scientific and policy knowledge have shown the link between climate change and enjoyment of rights as well as how to mitigate and adapt to the climate change and what are the states' obligations in this regard. In his Open letter on priorities for human rights-based climate action at the 27th Conference of the Parties to the UNFCCC, the United Nations High Commissioner for Human Rights urged the states to address the human rights harms caused by climate change and to ensure the centrality of human rights in climate decision-making[5]. A statement on implementing the Geneva Pledge for Human Rights in Climate Action referred to states' obligations under the international human rights law to prevent climate harms by regulating environmental practices, protecting vulnerable communities, holding violators accountable, and ensuring redress where harms are suffered[6].

This whole policy, legal and scientific context provides a solid background for the exploration of the concept of climate rights starting with defining their scope, variety and practical application. In the next chapters we will explore the assessment framework for climate rights (Chapter II), review the main types of climate rights and the trends in climate change litigation in Chapter III, and finally, share country level examples of the national framework of climate rights in Austria, Bulgaria and Spain (Chapter IV).

[5] https://www.ohchr.org/sites/default/files/2022-11/2022-11-02-HC-Open-Letter-to-UNFCCC-COP27.pdf
[6] https://www.ohchr.org/en/statements/2016/09/implementing-geneva-pledge-human-rights-climate-action

Assessment framework for climate rights

When approaching climate rights that offer protection against the impacts of climate change or lead to climate policies and actions, one could assess their typologies from different perspectives. The first lens of such analysis entails seeing “climate rights" within the scope of the right and its relevance to climate change to establish its climate relevance. Here we need to ask ourselves several questions.

What does a certain legal norm or standard actually aim to protect? How does this scope of protection interact with climate change? How are the protected interests affected by climate change, how do they impact climate change policies, actions and behaviour?

With the second lens for assessment, we classify climate rights as individual or collective rights or as substantive or procedural rights. The first dichotomy of rights is important to help us identify the societal effect of the climate-related rights considering their holders/subjects. The second one relates to the function of the rights to defend values or conditions important for the individuals (life, health, property, food, water and sanitation) or to defend the due process or administrative procedures that could enable enjoyment of the substantive rights.

Through the third lens one could look at the climate rights focusing on claiming these rights before international, regional and national courts within climate change litigation. Here we could analyse the legal avenues individuals or the public (incl. through rights exercised collectively by NGOs, active citizens and their organisations) might take to demand climate action from decision-makers, legal entities and individuals through enforcement of the mentioned legal norms. With climate change leaving ever more obvious traces, an increasing number of individuals and organisations resort to enforcing their climate rights in court. This results in an increasing trend of climate change litigation case law as an emerging body of court cases that is set to grow in number and variety of cases. In this respect, the UNEP[7] identifies the climate litigation cases based on two key criteria. First, cases must generally be brought before judicial bodies and, second, climate change law, policy, or science must be a material issue of law or fact in the case[8].

Climate change litigation can also serve as an example of how individuals have used legal provisions whose main purpose might have not been climate protection. Below, we will thus

[7] United Nations Environment Programme (2023). Global Climate Litigation Report: 2023 Status Review. Nairobi, available at https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review.
[8] The criteria are defined by the Sabin Center for Climate Change Law (2022), Climate Change Litigation Databases, available at: https://climatecasechart.com/about/

analyse different legal norms with regards to their protective aim, how that scope of protection interacts with climate change, and how the relevant legal norms can be used to demand climate actions presenting examples from recent climate change case law. It is very instructive to look at the main trends and categories in the expansion of the climate change litigation towards rights-based claims. According to Preston[9], the first and most important category of this trend is the expansion of the right to life, to private life or right to dignity to include a right to a clean and healthy environment capable of sustaining a quality life, or a right of the individual to be protected against adverse climate impacts. The second category is the expansion of due process rights to include a substantive right to a stable climate that is capable of sustaining human life (e.g., US courts in the *Juliana v. United States* case[10]). The third category is expansion of the line of litigation to include government's duty to protect the atmosphere from climate change. We could add the trends in the climate change litigation that include claiming other "climate rights" analysed in this study such as adaptation-related rights, rights of consumers, rights of minority shareholders, etc. Preston suggests that the rights-based climate change litigation has a globalisation effect because claims and arguments made in one jurisdiction are often transposed and adapted to the legal systems of other jurisdictions.

Finally, the climate rights' concept could be understood through two key aspects of its nature[11]: normative and practical. Normative through its ability to capture the normative dimension of climate change (reasons to prevent/mitigate/adapt to climate change), and practical to be able to generate political measures. Brandstedt and Bergman who have suggested this approach to climate rights, add that certain conditions must be satisfied: important human interests should be put at risk or already affected by global climate change; rights-holders and duty-bearers should be identified; this relationship should be codified in a legitimate format; it should be feasible to claim the rights; an 'enforcement mechanism' (not necessarily of legal character) could strengthen compliance. The normative and practical aspects of climate rights are closely interlinked and must be further studied and this project will contribute to this aim.

---

[9] Preston, B. J. (2018). The Evolving Role of Environmental Rights in Climate Change Litigation. Chinese Journal of Environmental Law, 2(2), 131-164, available at https://brill.com/view/journals/cjel/2/2/article-p131_2.xml?ebody=full%20html-copy1

[10] https://climatecasechart.com/case/juliana-v-united-states/ Action by young plaintiffs asserting that the federal government violated their constitutional rights by causing dangerous carbon dioxide concentrations.

[11] Brandstedt & Bergman. Environmental politics. Volume 22. 2013. Climate rights: feasible or not?, available at https://www.tandfonline.com/doi/full/10.1080/09644016.2013.775723#d1e124

REVIEW OF THE MOST RELEVANT CLIMATE RIGHTS

We have listed and analysed below some of the main climate rights, with the understanding that all of the presented classes of rights could be closely interrelated and complement each other. They represent legal and practical points of departure for exploration of particular aspects of climate rights as an overarching concept that should facilitate legislative changes, policy improvements and litigation efforts.

FUNDAMENTAL HUMAN RIGHTS

The constitutional provisions related to environmental protection include five main categories: "government's duty to protect the environment; substantive rights to environmental quality; procedural environmental rights; individual responsibility to protect the environment; and a miscellaneous 'catch-all' category of diverse provisions"[12] and such classification could be extended to the rights related to climate change. There has been a steady trend of increasing numbers of cases relying on fundamental and human rights enshrined in international law and national constitutions to compel climate action[13].

A report by the UN Office of the High Commissioner for Human Rights[14] (OHCHR) lists the rights mostly affected by climate change - the right to life, the right to self-determination, the right to development, the right to food, the right to water and sanitation, the right to health, the right to housing, the right to education, the right to meaningful and informed participation, the rights of those most affected by climate change, the rights of future generations as human rights. Since national constitutional rights vary from legislation to legislation, this chapter will focus on fundamental human rights. e.g., according to case law of the European Court of Human Rights (ECtHR).

---

[12] David R.Boyd. The Status of Constitutional Protection for the Environment in Other Nations. Executive summary. Available at https://davidsuzuki.org/wp-content/uploads/2013/11/status-constitutional-protection-environment-other-nations-SUMMARY.pdf

[13] United Nations Environment Programme (2020). Global Climate Litigation Report: 2020 Status Review, available: https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y

[14] OHCHR. 2015. Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change, at https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf

Before the ECtHR, usually Article 2 (right to life), Article 8 (right to respect for private and family life) of the European Convention on Human Rights (ECHR) and Article 1 of 1st additional protocol to the ECHR (right to property) are invoked in environmental cases. Climate complaints feature claims based on Article 2, 6, 8 and some of them refer to Article 14 (right to non-discrimination).

According to the case law of the ECtHR, states must actively protect the right to life and take "appropriate" measures to protect life as soon as a life-threatening and sufficiently concrete or immediate danger threatens. With regard to protection against environmental hazards, the ECtHR long rejected a reference to Article 2 ECHR, interpreting it rather restrictively as a right of defence and freedom. It was not until 1998, in the case of *Guerra and Others v. Italy,*[15] that the ECtHR dealt with obligations to protect under Article 2 ECHR, but did not reach a decision in this regard, as it initially considered obligations to protect under Article 8 ECHR to have been violated. Finally, in the *L.C.B. v. the United Kingdom*[16] case (regarding the unsuccessful claims by an applicant who was diagnosed with leukaemia as a child that the British state had a duty to provide information regarding her father's exposure to radioactive radiation as a soldier having served at nuclear tests and warn him about any potential risks), the ECtHR derived from Article 2 ECHR an obligation of the state to prevent avoidable risks to life. In the *Öneryildiz v. Turkey*[17] case, in which people had died in a landslide triggered by an explosion in a landfill, the ECtHR also declared that, in principle, there was a state obligation to prevent life-threatening disasters and to prevent behaviour that increased the risk. Whether the positive obligations were fulfilled depends on the source of the threat or whether the risk could have been reduced to a reasonable minimum. The nation states are relatively free in the exact design of the measures - the suitability of the measure for establishing an effective level of protection and the proportionality of the measure with regard to opposing fundamental rights positions are decisive.

Although Article 8 ECHR - like most other Convention rights - is primarily designed as a defensive right, there is now indisputably also a general positive obligation on states to take meaningful and proportionate measures to safeguard the rights guaranteed by Article 8 ECHR. With regard to environmental hazards such as noise, dust or steam emissions as well as in the case of natural flooding, the ECtHR examined a potential violation of Article 8 ECHR early on. For the first time, in 1980, in the *Arrondelle v. the United Kingdom*[18] case, it declared an

[15] No. 14967/89, 19 February 1998.
[16] No. 23413/94, 9 June 1998.
[17] No. 48939/99 [Grand Chamber], 30 November 2004.
[18] No. 7889/77, 13 May 1982.

environmental complaint admissible under Article 8 ECHR. The complainant had complained about road and air traffic noise emanating from Gatwick Airport and the associated motorway access road. While the parties ultimately reached a friendly settlement, the mere fact that the European Commission of Human Rights (as it then was) declared the complaint admissible was a particularly important development.

However, it was not until 1994 that an environmental complaint based on Article 8 ECHR was successful. In the *López Ostra case v. Spain case*[19], the applicant who lived just twelve meters from an industrial plant built with the help of state subsidies was subject to the nuisance caused by the gas fumes, noise and smells from the plant which caused also distress and anxiety as she saw the situation persisting and her daughter's health deteriorating so that she felt compelled to move away from the danger zone. The state authorities, while aware of the issue, failed to prevent repeated violations of the limit values. The ECtHR therefore found a violation of the Convention (i.e., breach of the duty to protect), as the authorities had not fulfilled their obligations to enforce compliance with limit values. The protected interests covered by Article 8 ECHR were initially the home (there had to be a sufficient local proximity between the source of the impairment and the home) and the workplace, but later also physical integrity. In this context, physical and psychological burdens with an illness value were more likely to lead to a violation of the Convention than mere impairments of well-being.

In the context of climate claims, fundamental property rights are usually asserted with the argument that certain property items (mostly real estate) would be restricted in their use due to the impacts of the climate crisis. Since this is not a direct state intervention in private property, it is questionable whether there is a duty on the part of the state to protect private property from environmental impacts. According to Article 1 of the Protocol 1 to the ECHR, there is a duty of general respect for property, protection against deprivation of property and the fundamental right guarantee to regulate the use of property. Since the structure of the freedom of property according to Article 1 of Protocol of the ECHR does not differ from that of other freedoms, it can be assumed that the state also has duties of guarantee in this area. The exact extent of the duties to protect depends on the individual case, although an obligation of the state exists in any case if there is a direct link between the measures that affected persons could reasonably expect and the exercise of their property rights. Thus, for the first time in *Öneryildiz v. Turkey*[20], the ECtHR assumed a positive obligation of the state to act in relation to the right to life and the right to property. State authorities had failed to take safety measures for a landfill site. A

[19] No. 16789/90, 9 September 1994.
[20] No. 48939/99 [Grand Chamber], 30 November 2004.

methane gas explosion eventually occurred at the landfill, resulting in the deaths of the applicant's close relative and the destruction of his house and household items. The ECtHR held that the applicant could legitimately have expected action by the authorities to prevent the methane gas explosion and subsequent death of his relatives and destruction of his property. In *Kolyadenko and Others v. Russia*[21], the ECtHR also found such a connection, as the Russian authorities had failed to take adequate measures against a flood that endangered the lives of some of the applicants and destroyed their homes. The flood in the case was caused by a human-controlled discharge of water from a reservoir. However, it denied a sufficient connection in the *Hadzhiyska v. Bulgaria*[22] case, which also involved damage caused by flooding, but caused by extreme rain. In this regard, the ECtHR held that Article 1 of Protocol 1 does not require the state to take measures to protect private property in all situations and in all areas affected by natural disasters. Unlike the right to life, which requires state authorities to do their utmost to provide disaster relief, the protection of property is not absolute. The state has leeway here in that it may also decide on the use of resources and the prioritisation of measures. In general, the ECtHR examines restrictions on property rights with a lower level of scrutiny when balancing interests, so that in the case of obligations to act derived from the freedom of property, it can be assumed that there is even greater scope for action.

Recent examples of environmental/climate cases before the ECHR include:

Cordella and Others v. Italy[23]

The case concerned an on-going air pollution by a steelworks, operating since 1965 in Taranto (a town with about 200,000 inhabitants), which was identified by domestic authorities as being at "high environmental risk" on account of the emissions from the steelworks. Despite an approved a decontamination plan, and an infringement judgment of the Court of Justice of the European Union that Italy had failed to guarantee compliance with the applicable directives, the toxic emissions persisted. Several dozen persons who live or lived in the more or less immediate vicinity of the steelworks filed their complaint under Article 8 for the lack of action by the State to avert the effects of the factory's toxic emissions on their health. The ECtHR found

[21] Nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, 28 February 2012.
[22] No. 20701/09 (Decision), 15 May 2012.
[23] Nos 54414/13 and 54264/15, 24 January 2019.

that applicants were victims of the air pollution in light of scientific studies (the majority of which were issued by State and Regional entities) had shown the polluting effects of the emissions from the Ilva steelworks in Taranto on the environment and on public health. Those studies had confirmed the existence of a causal link between exposure to emissions of the factory and the development of certain tumours or cardio-circulatory pathologies and increased mortality from cancerous and cardiovascular diseases among persons living in the affected areas. The ECtHR found a violation unanimously since the national authorities had failed to take all the necessary measures to provide effective protection of the applicants' right.

Pavlov and Others v. Russia[24]

In an effort to combat industrial air pollution in Lipetsk, 14 government agencies were taken to court by concerned citizens who alleged that the authorities failed to regulate industrial activity effectively and create "sanitary protection zones" in the area. While the District Court ruled in 2009 that measures had been taken since 2004 to reduce air pollution, the Regional Court upheld the ruling later that year. However, in 2019, a cassation appeal was made by the defendant against the 2009 rulings, which was ultimately rejected by the Supreme Court of the Russian Federation in 2020.

The citizens then brought their complaint to the ECtHR, citing violations of Article 8 of the Convention, which protects the right to respect for private and family life and home. The ECtHR found that the authorities had failed to meet their positive obligation under Article 8 to protect the citizens from the health risks posed by industrial air pollution, as they did not enforce regulations or adopt appropriate measures to prevent or reduce pollution hazards. While measures implemented after 2013 had shown progress in reducing levels of industrial emissions and improving air quality in Lipetsk, the ECtHR found that the pollution had not been sufficiently curbed, and the authorities had failed to strike a fair balance in securing the citizens' right to respect for their private life.

Duarte Agostinho and Others v. Portugal and 32 Others[25] **(Grand Chamber decision)**

Six Portuguese youths lodged a complaint with the European Court of Human Rights on September 2, 2020, accusing 33 countries of violating their human rights due to insufficient action on climate change, seeking an order from the court to require these countries to take more ambitious action in addressing climate change. The applicants invoked Articles 2, 8, and 14 of the European Convention on Human Rights, which safeguard the right to life, the right to

[24] No. 31612/09, 11 October 2022.
[25] No. 39371/20 (Grand Chamber decision], 9 April 2024.

privacy, and the right to not be discriminated against. The complainants argued that the effects of climate change in Portugal, such as forest fires and heatwaves, threaten their right to life and privacy, and as young people, they are particularly vulnerable to the consequences of climate change. The case was brought against the Member States of the EU as well as Norway, Russia, Switzerland, Turkey, Ukraine, and the United Kingdom. According to the applicants, these countries have failed to meet their human rights obligations by not committing to reduce emissions sufficiently to limit the increase in temperature to 1.5 degrees Celsius, as required by the Paris Agreement.

In its decision of 9 April 2024, the Grand Chamber of the ECtHR unanimously ruled the complaint inadmissible for failure to exhaust domestic remedies, noting that the Portuguese Constitution recognised explicitly a right to a healthy and ecologically balanced environment (Article 66) which was directly applicable and enforceable by the domestic courts. The Constitution and the Law on the right to procedural participation provided for a possibility of instituting *actio popularis* actions through which the claimant (without demonstrating a direct interest in the action) could request the adoption by public authorities of certain conduct regarding, inter alia, the protection of the environment and quality of life. Moreover, the Climate Law recognised climate change as an emergency situation and provided to everyone the right to "climate balance" as the right of defence against the impact of climate change as well as the ability to demand that public and private entities comply with the duties and obligations to which they were bound in climate matters. While admittedly no climate-change case had been brought before domestic courts, domestic case-law on environmental issues clearly proved that environmental litigation was possible. It also found that the lack of extraterritorial jurisdiction with regard to the 32 States besides Portugal, noting that extraterritorial jurisdiction as conceived under Article 1 of the ECHR required control over the person himself or herself rather than the person's interests as such. Reliance on such a criterion for establishing the State's extraterritorial jurisdiction would lead to a critical lack of foreseeability of the ECHR's scope of application.

Verein KlimaSeniorinnen and Others v. Switzerland[26]

The applicants were an association under Swiss law established to promote and implement effective climate protection on behalf of its more than 2,000 members, consisting of older women the majority of whom were over the age of 70, together with four women, all members of the association and aged over 80, who complained of health problems that are exacerbated

[26] No. 53600/20 [Grand Chamber], 9 April 2024.

during heatwaves, significantly affecting their lives, living conditions and health. The applicants' requests to a number of authorities, alleging various failures in the area of climate protection and seeking the implementation of measures within the competence of the respective authorities in the field of climate change, as well as a decision on actions to be taken, including measures to meet the 2030 goal set by the Paris Agreement, were dismissed.

In their application to the ECtHR, they claimed that their health is at risk due to heat waves made worse by the climate crisis. They also claimed that Switzerland had failed to introduce suitable legislation and adopt appropriate and sufficient measures to attain the targets for combating climate change, in line with its international commitments. The applicants also complained of lack of an access to a court, which would have allowed them to challenge the Swiss State's failure to take necessary action to tackle the adverse effects of climate change.

In its judgment released on 9 April 2024, the ECtHR found a violation of Article 8, which was found to include, through evolutive interpretation, the right of the individual to effective protection by its state against adverse climate impacts. The standing rights of individuals has been narrowed down, as the ECtHR set the bar extremely high for individual plaintiffs. They have to meet two conjunctive, strict criteria, namely, a) to be subject to "a high intensity of exposure to adverse effects of climate change", where the adverse consequences of the governmental action or inaction is significant, and b) there must be "a pressing need to ensure the applicant's individual protection", due to the absence of any reasonable measures to reduce harm (§487).

In contrast, NGOs can claim standing more easily to bring a complaint before the ECtHR against inadequate domestic climate measures. To have standing, an NGO must be a) lawfully established in the jurisdiction concerned or have standing to act there; b) should have a dedicated purpose in accordance with its statutory objectives in the defence of the human rights against the threats arising from climate change; and (c) must be representative to act on behalf of members who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention."

The ECtHR also narrowed down the scope of States' margin of appreciation, turning it to a two-tier concept, and emphasized that States do not enjoy discretion as to the urgency of taking climate action and, therefore, must set GHG reduction targets, whereas they retain wide discretion as to selecting the means to achieve those targets. Importantly, the ECtHR set very detailed requirements as to how States could comply with their positive obligation to protect citizens against adverse climate impact. In this respect, the ECtHR ruled that States shall set mitigation targets that ensure reaching net zero emissions, in principle, within three decades,

and they shall also set interim targets that are realistically capable of achieving such long-term neutrality target. Emission cuts must start immediately in order not to observe the importance of inter-generational burden-sharing, and the targets must be set in a domestic legal framework, which is followed by adequate interpretation.

Carême v. France (Grand Chamber decision)[27]

The former mayor of Grande-Synthe in France, acting on both his personal capacity and on that of the then mayor, submitted a number of requests with various state bodies, seeking to cancel the government's refusal to take additional measures to meet the Paris Agreement's objective of reducing greenhouse gas (GHG) emissions by 40% by 2030. Following the implicit rejection of his request, he applied to the Council of State, France's Supreme Administrative Court, for the authorities' failure to respond to his requests, again both in his personal capacity and as a mayor on behalf of the municipality. In 2021 the Council of State rejected the applicant's claim as an individual, on the grounds that he did not show any legal interest in the case since his claims were limited to the argument that, as an individual, his home was situated in an area likely to be subject to flooding by 2040. The Council of State also found that compliance with the roadmap set to achieve emission reduction targets of reducing GHG emissions by 40% compared to 1990 levels by 2030 and by 37% compared to 2005 levels did not appear feasible unless new measures were rapidly adopted. It also ordered the government to take additional measures to achieve the goal of reducing GHG emissions by 40% by 2030, and in 2023 ordered additional measures following the failure of the authorities to execute its 2021 judgment. Before the ECtHR, the applicant alleged that France had failed to take sufficient steps to prevent climate change and that this failure entailed a violation of his right to life and the right to respect for his private and family life and his home, relating, in particular, to the risk of climate-change-induced flooding to which the municipality of Grande-Synthe would be exposed in the period 2030-40. The ECtHR declared the application inadmissible. Effectively reiterating its findings in *Verein KlimaSeniorinnen,* the ECtHR agreed with the Council of State in that the risk to the applicant originating in climate change was largely hypothetical and thus his claim amounted to an *actio popularis*, which is not allowed under the ECHR. Moreover, he had no standing to file an application as a mayor, since municipalities are effective "government organisations" and have no standing before the ECtHR. Nevertheless, the ECtHR also took into account that the municipality had been successful in its action before the Council of State.

[27] No. 7189/21 [Grand Chamber decision], 9 April 2004.

SOCIAL RIGHTS AND JUST TRANSITION

"Just transition" is an approach to balance human welfare, jobs and the need for deep decarbonisation[28]. It was developed by trade unions in the 1970s in order to demand that ecological transformation be undertaken in a socially just way. It is founded upon the belief that environmental and social crises are interrelated: both crises are inherent to the expansionist economic system which is based on discounting the value of nature as well as devaluing the work of societal reproduction[29]. While there is a collective understanding that urgent action is needed to address the climate crisis, this objective will require significant economic, industrial and technological transformation. Some changes could impact workers considerably when they navigate the new labour opportunities the transition to less carbon intensive industries bring. While for example on the one hand the transition towards sustainable energy will lead to the creation of jobs in this department, it also affects e.g., the rights of people near land that is needed for the upscaling of renewable energy projects. The transitioning out of fossil fuels on the other hand affects the employment of workers in the mining and fossil fuel industry, who might not have the opportunity to adapt accordingly to the changes in the energy industry (often for lack of education and/or retraining opportunities).

The "just transition" concept has received a high policy recognition in the *Guidelines for a just transition towards environmentally sustainable economies and societies for all*[30] of the International Labour Organization, which calls for the transition to environmentally sustainable economies and societies and policies respecting rights at work. In the same vein, the Paris Agreement in its Preamble acknowledges "the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities." The Resolution 41/21 on Human rights and climate change, adopted by the UN Human Rights Council on 12 July 2019 reminds us to take into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs in accordance with nationally defined development priorities.

At national level, the new climate laws contain provisions on just transition like in the Spanish law on climate change and energy transition in Just transition and employment rights (Arts. 27-

[28] Just Transition Centre, 2017, cited in Kreinin, Halliki, 2020. "Typologies of "Just Transitions": Towards Social-Ecological Transformation," Ecological Economic Papers 35, WU Vienna University of Economics and Business.
[29] Kreinin, Halliki, 2020. "Typologies of "Just Transitions": Towards Social-Ecological Transformation," Ecological Economic Papers 35, WU Vienna University of Economics and Business, available at https://doi.org/10.57938/4034bf15-97fa-490c-ad9d-50a8b35b0736
[30] https://www.ilo.org/publications/guidelines-just-transition-towards-environmentally-sustainable-economies

29), e.g., Article 28: "Just Transition Agreements shall be concluded within the framework of the Just Transition Strategy with the aim of promoting economic activity and its modernisation, as well as the employability of vulnerable workers and groups at risk of exclusion in the transition to a low carbon economy, in particular in cases of closure or conversion of installations."

A recent 2023 report[31] of the Sabin Center for Climate Change Law to the Columbia Law School approaches the "just transition" as a three-fold concept that encompasses the dimensions of a clean environment, decent jobs, and affordable access to essential goods and services for the enjoyment of human rights. The report outlines the cases observed as grounded on different human rights that relate to these categories such as labour rights, environmental rights, indigenous rights, right to a healthy environment and other human rights. Most cases upon "just transition" rights are based on court practice in South America.

Another recent report[32] explores the global trends in just transition and offers an overview of policies and laws that include reference to a just, fair, equitable and inclusive transition approach, even where the precise term 'just transition' may not be used. It contains valuable definitions of diverse types of justice which are relevant to just transition: e.g. procedural justice[33], environmental justice[34], climate justice[35].

In *Ricardo Castillo Arancibia v. Municipality of Monte Patria*[36] (proceedings took place before the Supreme Court of Chile) the plaintiff's working contract was terminated ("not renewed") in December 2021 and he argued that he had been dismissed for political reasons and due to a discriminatory act by the defendant. The municipality on the other hand stated that the termination of the contract was due to a restructuring of the Department of the Environment to address extreme drought and to favour sustainable use of water, which required different

[31] Tigre M.A., et.al, Just Transition Litigation in Latin America: An Initial Categorization of Climate Litigation Cases Amid the Energy Transition (Sabin Center for Climate Change Law, January 2023) Available at: https://scholarship.law.columbia.edu/sabin_climate_change/197/

[32] Chan T, Wang J and Higham C (2024) Mapping justice in national climate action: a global overview of just transition policies. London: Grantham Research Institute on Climate Change and the Environment. London School of Economics and Political Science, available at: https://justtransitionfinance.org/wp-content/uploads/2024/06/Mapping-justice-in-national-climate-action.pdf

[33] Focuses on the agency of those affected by the economic and industrial transitions to have a say in the decisions that will affect them.

[34] Acknowledges existing inequality between communities in terms of exposure to pollution and health hazards associated with environmental damage and the need to address this through fair treatment and meaningful involvement of all stakeholders in environmental action.

[35] Addresses the moral and legal implications of vulnerability to climate change, and unequal historic contributions of different actors to greenhouse gas emissions.

[36] https://climatecasechart.com/non-us-case/ricardo-castillo-arancibia-v-municipality-of-monte-patria/

planning than the plaintiff had done previously. The plaintiff maintained that the climate crisis had been around for 20 years and that his work focused specifically on water resource optimization, weakening the argument of the municipality. After the claim was rejected by the District Court and the Court of Appeals, it is now pending before the Supreme Court of Chile. The proceedings set an example for the question whether climate change's impact on the environmental circumstances can be a legal justification for the termination of an employment contract and whether the public hand can be requested to take adaptation measures such as retraining to soften the blow of the changes in the labour market.

DOMESTIC ENFORCEMENT OF CLIMATE GOALS

Governments at both national and subnational levels express their dedication to reducing the impact of climate change by negotiating and adopting international agreements, laws, rules, and policy declarations. The main international agreement to fight climate change is the United Framework Convention on Climate Change, its Kyoto Protocol and the Paris Agreement. Their obligations have been (more or less) transferred into national law, usually in the form of laws and regulations limiting greenhouse gas emissions in certain economic sectors. However, when they do so, they also expose themselves and their agencies to legal actions that challenge either the commitments themselves or the manner in which they are being implemented (or not). This type of litigation is most frequently called as framework climate litigation, as they relate to the legality of domestic framework climate laws of the respective jurisdictions.[37] While governments are the most frequently sued respondents in such litigation, companies and other organisations have also faced similar lawsuits for not meeting their own climate change objectives and/or lack of real action.

The court case *Thomson v. Minister for Climate Change Issues*[38] involved the plaintiff's request for an order for the Minister for Climate Change Issues to review New Zealand's 2050 greenhouse gas reduction target based on the Climate Change Response Act, which required a review following the publication of an Intergovernmental Panel on Climate Change (IPCC) report, on administrative law grounds. The Court ruled that this order was unnecessary given that the new government had announced it would set a new 2050 target. Second, the plaintiff sought an order declaring that the Minister's Nationally Determined Contribution (NDC) decision was unlawful, on the grounds that the Minister failed to consider: the cost of dealing with the adverse impacts of climate change in a "business as usual" situation; the adverse impacts on citizens living in at risk areas; and the scientific consensus that the combined NDCs of Parties to the Paris Agreement fall short of preventing a dangerous climate system. Third, the plaintiff claimed that the NDC decision lacked a reasonable basis for believing the NDC would strengthen the global climate response and avoid a dangerous climate system. Ruling

[37] See in more details re framework litigation cases: Grantham Institute (Joana Setzer and Catherine Higham): Global trends in climate change litigation: 2023 snapshot report, available at https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf

[38] https://climatecasechart.com/non-us-case/thomson-v-minister-for-climate-change-issues/

on the second and third causes of action, the Court found that the government had followed the international framework and no errors required judicial intervention. The application for judicial review was thereby dismissed.

In *PUSH Sweden, Nature and Youth Sweden and Others v. Government of Sweden*[39], the plaintiffs claimed that Sweden's response to climate change did not align with international commitments. However, the domestic court denied this claim as the plaintiffs were not personally affected by the policies. In *Greenpeace Nordic Association v. Norway Ministry of Petroleum and Energy*[40], the lower and intermediate courts dismissed the plaintiff's claims, but they have been given permission to appeal to the Norwegian Supreme Court. In *Urgenda Foundation v. State of the Netherlands*[41] the Urgenda Foundation, and 900 Dutch citizens sued the Dutch government to demanding stronger climate mitigation measures to prevent global climate change. In *VZW Klimatzaak v. Kingdom of Belgium*[42], Klimatzaak, and 58,000 citizen co-plaintiffs, claimed that Belgian law requires the Belgian government's approach to reducing greenhouse gas emissions should be more ambitious. The court found that by failing to take sufficient climate action to protect the life and privacy of the plaintiffs, the defendants were in breach of their obligations under Articles 2 and 8 of the ECHR. The second-instance court also ordered the competent Belgian public authorities to reduce their GHG emissions of 55% compared to the 1990 level by 2030. In *Friends of the Irish Environment CLG v. Gov't of Ireland*[43], the plaintiffs argued that Ireland's National Mitigation Plan did not comply with the 2015 Act and violated European Convention on Human Rights and Irish Constitutional rights. Although the lower court denied the claim, the Supreme Court of Ireland quashed the plan, stating that it did not meet the specificity requirement by the 2015 Act. In *Mataatua District Maori Council v. New Zealand*[44], the plaintiffs claimed that New Zealand failed to fulfil its obligations to the Maori by not implementing policies to address climate change. The plaintiffs later amended their claim, arguing that New Zealand's Climate Change Response (Zero Carbon) Amendment Act 2019 did not provide sufficient protection against climate change.

[39] https://climatecasechart.com/non-us-case/push-sweden-nature-youth-sweden-et-al-v-government-of-sweden/
[40] https://climatecasechart.com/non-us-case/greenpeace-nordic-assn-and-nature-youth-v-norway-ministry-of-petroleum-and-energy/
[41] https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/
[42] https://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/
[43] https://climatecasechart.com/non-us-case/friends-of-the-irish-environment-v-ireland/
[44] https://climatecasechart.com/non-us-case/mataatua-district-maori-council-v-new-zealand/

CORPORATE SOCIAL RESPONSIBILITY AND LIABILITY

While claims against the public hand/lawmakers remain the most common form of climate change litigation, recent years have seen a rise in claims against privates (corporations). With only about 100 enterprises making up for 70% of the global emissions, it is understandable that plaintiffs want to hold corporations responsible for climate damaging actions. With the most common claims being tort law based (nuisance, negligence, strict liability and civil conspiracy come to mind), claims have also been based on the argument of unjust enrichment and consumer protection law. Shareholders are also becoming increasingly important actors and are bringing legal action against the companies in which they hold shares.

Tort law-based claims

Climate plaintiffs may rely on a range of tort law theories,[45] as the dynamic nature of tort law makes it an apt tool to pose novel duties for emitters damaging the climate system. For instance, in the *Smith v. Fonterra*[46] case, the plaintiff relied on a proposed new tort "involving a duty, cognisable at law, to cease materially contributing to damage to the climate system; dangerous anthropogenic interference with the climate system; and the adverse effects of climate change." When public nuisance is alleged, claimants refer to an act or omission that interferes with the rights of the community or the public. Oftentimes it is argued that mass production as well as the usage and promotion of fossil fuels contributes to global warming and its impacts, such as the destruction of ecosystems and rising sea levels. In negligence claims, claimants state that corporations have duties to care with relation to global warming. It is often argued that companies have failed to adopt and to pursue an adequate climate policy and therefore violate duties to care towards the claimants and society. Other lawsuits aim to hold corporations responsible for defective products and an omission to warn against risk associated with the product's use. In most of these cases fossil fuels are the "product" and the defect is the impact of emissions as well as safety and health risks. Lastly, in civil conspiracy cases,

[45] For an overview of possible tort theories see: Kim Bower: Global Perspectives on Corporate Climate Legal Tactics: UK National Report, British Institute of International and Comparative Law, May 2024, available at: https://www.biicl.org/documents/12240_global_perspectives_on_corporate_climate_legal_tactics_-_uk_national_report_v1.pdf

[46] https://climatecasechart.com/non-us-case/smith-v-fonterra/

claimants have argued that corporations plot with other persons to commit an unlawful act or deprive third parties of their rights. In the past, it was claimed that corporations conspire to suppress the awareness of a connection between greenhouse gas emissions and climate change. A common problem claimants encounter with tort law claims is proving causality. Even though there is now a consensus that emissions are the main cause of climate change, defining a causal relationship between a particular source of emissions and individual climate change effects remains challenging.

Unjust enrichment

The doctrine of unjust enrichment prohibits the unjust enrichment of one person at another's expense. This argument is often brought forward in relation to fossil fuels. The principle of unjust enrichment may allow for claims against polluting entities who have unjustly benefited from their actions at the expense of others[47]. Claimants allege that corporations receive unjust benefits from the production and sale of fossil fuels, knowing that they have adverse effects on the environment, and have benefitted from not carrying the cost of the reductions of these impacts. This enrichment was made at the expense of the claimants' health, safety and property. Oftentimes compensation payments are requested by the claimants for past and future damages.

Consumer protection

With regards to consumer protection, claimants argue that corporations engage in deceptive marketing and promotion of their products, oftentimes distributing misleading marketing materials and making certain products look more environmentally-friendly than they actually are. Claimants also allege the distribution of the companies' own pseudo-scientific theories and the manufacturing of uncertainties around evidence of climate science prevents consumers from recognizing the risks that certain products pose to the climate (this applies especially to fossil fuels). Claimants thus addressed the common practice of greenwashing, a form of advertising where marketing and PR strategies are deceptively used to convince consumers that a company's products and aims are environmentally friendly. In the *FossielVrij NL v. KLM* case[48] environmental organizations filed a class action against KLM claiming that KLM is

[47] Gilboa, Maytal and Kaplan, Yotam and Sarel, Roee, Climate Change as Unjust Enrichment (July 6, 2023). Georgetown Law Journal, Forthcoming, Bar Ilan University Faculty of Law Research Paper No. 4502750, Available at SSRN: https://ssrn.com/abstract=4502750

[48] https://www.clientearth.org/media/cx4po41h/klm-judgment-20-march-2024.pdf

engaging in greenwashing. The first-instance court found that a number of advertisements KLM ran in the past were misleading and therefore unlawful. For instance, KLM made environmental claims based on vague and general statements about environmental benefits and thus KLM has misled consumers.

Shareholder litigation

When shareholders take legal action against the corporations, they hold shares in, typically argue that the lack of knowledge about climate risks prevents them from exercising their rights as shareholders or that the company's misleading use of knowledge has harmed their interests as shareholders. ClientEarth sued Shell's Board of Directors with a derivative claim under the Companies Act. The case was dismissed, which was heavily criticized.[49]

There are cases challenging private parties' inaction on physical risk, as well as cases seeking to hold companies or asset managers liable, alleging that those managers' failures to adapt their investment strategies caused financial harm. In a case targeting corporate investment in fossil fuel infrastructure, *ClientEarth v. Enea*[50], an environmental organisation sued a Polish utility seeking annulment of a resolution consenting to construction of a coal-fired power plant. The plaintiff argued that the investment would harm the economic interests of the company as a result of climate-related financial risks, including rising carbon prices, increased competition from cheaper renewables, and the impact of EU energy reforms on state subsidies for coal power under the capacity market. The decision to build a coal-fired power plant also breached board members' fiduciary duties of due diligence and to act in the best interests of the company and its shareholders given climate-related financial risks. This case is a very good example for another type of climate righta, that of the rights of minority shareholders.

[49] For more details see: Lord Robert Carnwath: ClientEarth v. Shell: What future for derivative claims? (Grantham Foundation, 2024) available at: https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/02/ClientEarth-v-Shell-what-future-for-derivative-claims.pdf

[50] https://climatecasechart.com/non-us-case/clientearth-v-enea/

Claims against financial institutions

Financial institutions are also increasingly targeted with climate litigation to challenge the sustained financing of fossil fuel projects. Two such lawsuits are currently pending before national courts in the *Notre Affaire à Tous Les Amis de la Terre, and Oxfam France v. BNP Paribas*[51] case, which was launched under the French due diligence law, and the *Milieudefensie v. ING bank*[52] *case*, based on claims of violation of legal duty of care under the Dutch Civil Code by the ING Bank due to lacking climate action in relation to climate policies, financing and services, including scope 1, 2 and 3 emissions.

51 https://climatecasechart.com/non-us-case/notre-affaire-a-tous-les-amis-de-la-terre-and-oxfam-france-v-bnp-paribas/

52 https://climatecasechart.com/non-us-case/milieudefensie-v-ing-bank/

RIGHTS TO PROPER CLIMATE ADAPTATION

Such rights could be invoked based on the failure to adapt or on the impacts of adaptation derived from the positive obligation of the States to take the necessary measures to actively safeguard the rights at stake, including rights to life, health, adequate food and housing, all of them possibly impacted negatively by the failure to take necessary adaptation measures.

These rights could be linked also to the wider scope of protection of human rights like they were interpreted by the U.N. Human Rights Committee in the landmark decision in *Daniel Billy and others v. Australia*, holding that Australia is violating its human rights obligations to the indigenous Torres Strait Islanders through climate change inaction. The indigenous group challenged Australia's lack of mitigation and adaptation measures, and the Committee recognized that climate change has been currently impacting the claimants' daily lives. It held further that the lack of Australia's adequate adaptation measures amounts to a violation of their right to family life and right to culture under the International Covenant on Civil and Political Rights (however, the lack of effective mitigation measures was not framed as a violation of such rights).

Some governments and private parties have been undertaking various measures to adapt to the increasingly severe effects of climate change, while others even being aware of those changes and the foreseeable extreme weather events that climate change will bring have not taken actions to adapt or mitigate the risks. Courts are seeing cases challenging each – seeking compensation for adaptation efforts that caused harm or damaged property and seeking injunctive relief for failing to adapt in the face of known climate risks.

Resolution 41/21 on Human rights and climate change, adopted by the UN Human Rights Council on 12 July 2019 addresses the problem with climate adaptation and the burden it poses, particularly on developing countries, "expressing concern that countries lacking the resources to implement their adaptation plans and programmes of action and effective adaptation strategies may suffer from higher exposure to extreme weather events, in both rural and urban areas, particularly in developing countries".

The obligations of the States to undertake adaptation measures are often prescribed by the law as requirements to prepare and implement strategic adaptation documents. For example, Spain has the National Plan for Adaptation to Climate Change in Spain (Article 17 of the Law 7/2021, of May 20, on climate change and energy transition) and Bulgaria has the National Climate Change Adaptation Strategy and Action Plan to 2030 (Article 9 of the Climate Change Mitigation Act (2014, as amended).

Adaptation lawsuits that challenge the adequacy of such adaptation schemes are also filed with domestic courts. For instance, 8 indigenous peoples of Bonaire together with Greenpeace Netherlands initiated such a lawsuit against the Netherlands before Dutch courts in 2024, the case is pending.

Corporate liability for adaptation

Relevant to defending adaptation rights are court cases that address the corporate liability for adaptation to climate change. One landmark case in this regard is *Luciano Lliuya v. RWE AG*[53]. The Peruvian farmer Saúl Luciano Lliuya filed a letter of complaint against RWE, a German energy company over the impact of its activities on climate change. He argued that his home in Huaraz, on the flood path of Palcacocha Lake, was threatened by the imminent collapse of two glaciers as an effect of global warming. If the glaciers collapsed into the lake, this would cause major flooding. The farmer accused RWE as a major emitter of greenhouse gases, which are causing glacial retreat, which also increased the risk of flooding in the area around the lake. The claimant demanded RWE to pay £14,250 in damages for its contribution to global warming. This amounts to 0.47% of the estimated repair cost in case of flooding since research estimates that RWE is responsible for 0.47% of global warming emissions from 1751 to 2010. The compensation would be invested in prevention measurements against flooding in the area.

RWE rejected the plaintiff's letter of complaint maintaining that the claims lack a legal basis and the company is therefore not responsible. As a consequence, Lliuya filed a lawsuit against RWE in a German court. It was, however, dismissed because the judge found that the plaintiff had not established that RWE was legally responsible for protecting Huaraz from flooding. The farmer consequently filed an appeal. The case is an example of seeking redress from a greenhouse gas emitter for harms arising in one country and jurisdiction from warming effects of climate change arising in a different jurisdiction. The case is still pending after a site visit of judges of the Higher Regional Court of Hamm, Germany, court-appointed experts and lawyers for both parties took place in 2022 to the Andean city of Huaraz to examine whether the plaintiff's house is threatened by a possible flood wave from the glacier lake Palcacocha above the city.

[53] https://climatecasechart.com/non-us-case/lliuya-v-rwe-ag/

THE PROCEDURAL RIGHTS AND CLIMATE CHANGE

The importance of procedural rights could not be exaggerated because, in order to claim and enjoy substantive rights, procedural rights provide opportunities to realise them. The procedural dimension of any field of law is essential to realise the substantive one. In terms of legal theory and political theory, entitling people to procedural rights means to enable them to reach the state authorities and institutions. Rights such as the right to information, the right to participation, the right to access judicial procedures are demonstrated by political and legal theory and practice to be essential to guarantee transparency and control of the state's power. Since their scope of application does not depend on a sector or area of law they could be employed in the access to information, decision-making or judicial proceedings also with relevance to climate change.

The existing new and emerging digital technologies provide new avenues for exercising procedural climate rights and for enhancing the democratic climate governance through their abilities to collect and disseminate information. The procedural rights help to accelerate participation in decision-making and to facilitate administrative and judicial remedies regarding climate change. As a result, a transparent, participatory and accountable climate governance could follow the exercise of procedural environmental rights in the age of information.

Procedural rights include access to environmental information, participation in environmental decision-making and access to justice as defined normatively in the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters and respectively in the national laws across the UNECE regions, including all EU Member States which are Parties to the Convention, as well as the European Union. Article 1 of the Convention states its purpose: "In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention." It also recognises the substantive right to an adequate environment and Article 1 of the Convention explicitly aims to protect this right of every person "of present and future generations". Such a right is the fundamental assumption and aim of both environmental and climate justice.

Articles 4 and 5 of the Convention refer to the access to, collection and dissemination of environmental information, Articles 6-8 deal with public participation in decisions on specific activities; concerning plans, programmes, and policies relating to the environment; and public participation during preparation of executive regulations and/or generally applicable legally binding normative instruments, and Article 9 of the Convention concerns access to justice.

The provisions guaranteeing access to information, and publishing and disseminating information could lead to increased transparency, opportunity to control authorities' activities, and improved legitimacy of decisions and actions. In addition, they allow citizens and NGOs to critically analyse acts of the authorities and potentially to act to prevent measures that are considered unjust or unfair.

Public participation could be a powerful procedural right as a tool to impact the decisions of public administration, comment on relevant online consultation platforms and/or participate in the decision-making processes relevant for climate change demanding actions or preventing backsliding on ambitious climate commitments in case the political and economic circumstances change. Public participation in the information era is reducing the costs of participation but could lead to exclusion of certain social groups less advanced in technologies to impact climate policy issues.

Access to justice is another procedural right with potential for defending substantial climate rights before an independent and impartial court and providing remedies for those who suffer from the climate change impacts who could hold governments and businesses accountable. This is also a right which safeguards the other procedural rights of access to information and of participation.

Some of the right guaranteed under the ECHR have procedural aspects as well. The ECtHR has interpreted positive obligations to protect against the risk of environmental damage into Articles 2 and 8 of the ECHR. Article 2 protects the right to life and Article 8 safeguards the right to private and family life, which includes one's right to one's health. The authorities' procedural duties also follow from the freedom of expression and information of Article 10 of the ECHR, as well as the right to a fair trial in Article 6 of the ECHR. It is also worth mentioning that international climate cooperation has promoted procedural rights as key commitments in the fulfilment of climate agreements. For example, Article 12 of the Paris Agreement highlights the need of cooperation among the Parties in taking measures to enhance climate change public awareness, public participation and public access to information, recognizing the importance of these elements for strengthening climate action under the Agreement.

Based on the assumption that Articles 2 and/or 8 of the ECHR apply to the dangerous risks associated with climate change that provide for the positive obligations of the States under these provisions. In accordance with the ECtHR's practice, the positive obligation has both substantive and procedural elements. In the KlimaSeniorinnen judgment, the ECtHR confirmed this approach.

The procedural element of the positive obligation entails that the ECtHR will review the decision-making process to ensure that sufficient emphasis has been placed on the interests of individuals. The requirements made for the decision-making process are preventive by their nature, and have three components:

- the State must conduct the necessary reports and studies "in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals' rights",
- information from such reports and studies must be publicly available so that the citizens are able to assess in advance "the danger to which they are exposed",
- the citizens must be able to attack the validity of any decision, action or omission at any stage of the process.

THE PROCEDURAL RIGHTS IN THE CONTEXT OF ENVIRONMENTAL ASSESSMENT PROCEDURES RELEVANT FOR CLIMATE CHANGE

According to the UNEP Global Climate Litigation Report[54] "courts are considering cases that challenge specific resource-extraction and resource-dependent projects and that challenge environmental permitting and review processes that plaintiffs allege overlook the projects' climate change implications." In this respect, the procedural rights provided in the EIA Directive ensure involvement of the public in protecting the environment, including the climate, from the harmful impacts of certain projects. The EIA assesses the direct and indirect significant impact of a project based on a wide range of environmental factors, including on climate. The EIA Directive provides for ensuring the effective participation of the public concerned in the decision-making procedures (paragraph 6 (b) of Directive 2014/52/EU amending Directive 2011/92/EU[55]) and requires taking into account results of the public participation in the decision to grant a development consent, including the summary of the results of the consultations and how those results have been incorporated (paragraph 10 of Directive 2014/52/EU).

The EIA Directive

The nexus of human rights (e.g., right to life and health) and climate change aspects is also projected in the realm of EIA procedures. Article 3 (1) of the EIA Directive states that "the environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors: population and **human health**; land, soil, water, air and **climate**.

[54] United Nations Environment Programme (2020). Global Climate Litigation Report: 2020 Status Review. Nairobi, at https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y

[55] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (as amended)

In Annex III, among the selection criteria referred to in Article 4(3) (Criteria to determine whether the projects listed in Annex II should be subject to Environmental Impact Assessment), specific references to climate change are listed:

Characteristics of projects

The characteristics of projects must be considered, with particular regard to:

(f) the risk of major accidents and/or disasters which are relevant to the project concerned, including those caused by climate change, in accordance with scientific knowledge;

(g) the risks to human health (for example due to water contamination or air pollution).

In Annex IV Information referred to in Article 5(1) (Information for the Environmental Impact Assessment Report) climate change is mentioned:

4. A description of the factors specified in Article 3(1) likely to be significantly affected by the project: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydro morphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

5. A description of the likely significant effects of the project on the environment resulting from, inter alia:

(f) the impact of the project on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the project to climate change.

The major question in climate lawsuits based on the EIA Directive (or equivalent rules of domestic law) rests on whether and to what extent domestic authorities should consider their impacts of Scope 3 emissions in their assessment of the impacts of fossil fuel projects. The Oslo District Court in its judgment in the case *Greenpeace Nordic and Nature & Youth v. Energy Ministry*[56], which is currently under appeal, held that Scope 3 (exported combustion) emissions of the three oil drilling platforms in the North Sea should be included in the EIA procedures of the development of project. In 2024, UK courts ruled the same in *R (on the application of Finch on behalf of the Weald Action Group v. Surrey County Council*[57] case concerning the impacts

[56] https://climatecasechart.com/non-us-case/the-north-sea-fields-case-greenpeace-nordic-and-nature-youth-v-energy-ministry/

[57] https://climatecasechart.com/non-us-case/r-finch-v-surrey-county-council/

of downstream greenhouse gas emissions resulting from the eventual use of the refined products of extracted crude oil.

In addition, we have to mention court cases dealing with keeping fossil fuels – and carbon sources – in the ground, citing, on the one hand, the long-term, global effects of the fossil fuel projects and on the other, the local impacts on water, soil and air quality as a result of mining and drilling activities. The cases in this category are partially or entirely premised on environmental impact assessment (EIA) and permitting requirements and the plaintiffs challenge project permit procedures and development consent for failing to consider the climate impacts in the assessment procedure[58].

Human rights and climate aspects in the SEA Directive

The Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (the SEA Directive) has the objective to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development, by ensuring that an environmental assessment is carried out of certain plans and programmes which are likely to have significant effects on the environment. The Directive sets out a procedure that must be undertaken when assessing plans or programmes which further set a framework for future development consent of projects listed in Annex I and II to the EIA Directive.

The Directive does not contain specific references to climate change e.g., in assessing the impact of the plans or programmes on climate or of the vulnerability of the plan and program to climate change (as it is in EIA), however, it requires that the SEA report should take into account the information about the likely significant effects of plans and programs on human health and climatic factors.

According to Article 5 (1) of the SEA Directive, an SEA environmental report shall be prepared in which the likely significant effects on the environment of implementing the plan or programme, and reasonable alternatives taking into account the objectives and the

[58] United Nations Environment Programme (2020). Global Climate Litigation Report: 2020 Status Review. Nairobi, at https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y

geographical scope of the plan or programme, are identified, described and evaluated. The information to be given for this purpose is referred to in Annex I.

In Annex I the information to be provided under Article 5(1), subject to Article 5(2) and (3), is the following:

(f) the likely significant effects on the environment, including on issues such as biodiversity, population, human health, fauna, flora, soil, water, air, **climatic factors**, material assets, cultural heritage including architectural and archaeological heritage, landscape and the interrelationship between the above factors;

Annex II lists the criteria for determining the likely significance of effects and among them:

2. Characteristics of the effects and of the area likely to be affected, having regard, in particular, to: the risks to **human health** or the environment (e.g., due to accidents).

In April 2022, the Chilean Supreme Court in the case *Mejillones Tourist Service Association and others v. the Environmental Evaluation Service (SEA) of Antofagasta*[59] ruled that climate change should be considered in the environmental assessment of a thermoelectric power plant. The Supreme Court held that the environmental impact assessment must include climate change impacts in the review process of the project's environmental permit.

[59] https://climatecasechart.com/non-us-case/mejillones-tourist-service-association-and-others-with-the-environmental-evaluation-service-sea-of-antofagasta/

THE EVOLVING ROLE OF CLIMATE RIGHTS IN NATIONAL CONTEXT

Country examples

Austria

HUMAN RIGHTS

The Austrian constitutional law does not contain a right to a healthy environment. The only constitutional provision that explicitly relates to the environment is Article 3 of the Federal Constitutional Law on Sustainability that states that “the Republic of Austria is committed to comprehensive environmental protection. Comprehensive environmental protection is the preservation of the natural environment as the basis of human life against harmful effects. Comprehensive environmental protection consists in particular of measures to keep the air, water and soil clean and to avoid disturbance by noise.” However, according to unanimous opinion, no individual rights can be derived from this provision. The legislator must observe the so-called state objective provision when enacting laws. However, due to the lawmaker’s great leeway in legislation, it is rarely possible to assert a violation of this state objective provision before the Constitutional Court.

Austria, on the other hand, is the only European Union member state in which the ECHR has direct constitutional status and the ECHR is the main national catalogue of fundamental rights since the national constitutional law does not contain many. In Austria, the ECHR is part of the constitution and thus not only applicable, but also takes precedence over all other ordinary law. Individuals can therefore directly invoke the rights of the ECHR. The case law of the ECtHR is therefore of significant importance for the case law of the Constitutional Court and it can be assumed that rights that have already been successfully asserted before the ECtHR as climate rights could also be asserted before the Constitutional Court. An attempt to do so happened with the first Austrian climate litigation case in 2020, which unfortunately failed due to the admissibility requirements. Another case was recently brought before the Constitutional Court based upon the Federal Constitutional Law on the Rights of the Child. The almost ineffective Climate Protection Act of 2011 violates these children's rights. Due to serious shortcomings, it does not lead to a decrease in greenhouse gas emissions and is not able to protect children

from the life-threatening consequences of the climate crisis. Thus, the Climate Protection Act is unconstitutional, the children argue.

Unfortunately, the admissibility requirements of the Constitutional Court are quite restrictive, so even though it is to be assumed that some human rights could be materially instrumentalized as climate rights, it is difficult to obtain a substantive decision as climate claims are often dismissed as inadmissible. This is why no Austrian jurisprudence exists so far on the use of human rights as climate rights. Some scholars thus doubt if article 13 of the ECHR is implemented correctly, since there is - in some cases - no way to invoke human rights in relation to climate change.

AARHUS RIGHTS

Access to information in environmental matters, in the sense of the Aarhus Convention, is ensured with the Environmental Information Act. It enables persons to obtain information on the environment within the meaning of Article 2 paragraph 3 of the Aarhus Convention. If the authority is unable to provide the information, it must issue a negative decision on the application, which can be contested on appeal. Unfortunately, these regulations are not always respected by the authorities, or they default or only release heavily redacted documents.

With regard to access to justice in the sense of the Aarhus Convention, this is unfortunately implemented only sluggishly. Environmental law is a cross-sectional matter and the protection of environmental goods such as forests, water, air, biodiversity, etc. is spread across a large number of federal and state laws. Access to justice, especially for CSOs, is really only implemented in the specific laws when a decision of the CJEU forces the Austrian legislator to do so. Since 2010, proceedings have been ongoing before the ACCC due to the inadequate implementation of the Aarhus Convention.

NATIONAL IMPLEMENTATION OF CLIMATE LAWS

Austria has both signed the Paris Agreement and is - as a member state of the European Union - obligated to implement the European Effort Sharing Regulation. However, the emission limits in the Austrian Climate Protection Act have not been adapted since 2011. While this is a clear violation of international obligations, it is difficult to assert this violation before the national courts. Even if a claim was declared admissible before the Constitutional Court, it is only entitled to repeal existing laws. In the case of omissions, this is obviously exceedingly difficult. Thus, if the lawmaker does not take climate action at all, there is a clear deficit in legal protection for individuals.

Bulgaria

INTRODUCTION

It seems like a justified approach to present the Bulgarian legal framework of climate rights with the disclosure of the substantial and procedural rights according to the current regulations related to climate change, with the possibility of a more precise classification in the future.

Climate change is the subject of legal regulation in Bulgaria in fulfilment of the obligations assumed by international legal acts and EU law. Amendments have been made to existing provisions of the Environmental Protection Act (EPA) and new legislation has been adopted such as the Climate Change Mitigation Act (2014) and the Carbon Dioxide Storage Act (2012). These Acts regulate specific rules such as trading of greenhouse gas emissions or the conditions for the construction of carbon dioxide storage facilities, but they do not have the importance of an overall legal framework and do not provide for specialization by subject in deviation from the already existing environmental rights of citizens.

FUNDAMENTAL RIGHTS ENSHRINED IN THE NATIONAL CONSTITUTION

The right to a healthy and favourable environment is recognized as a fundamental right of citizens according to Article 55 of the Bulgarian Constitution: "Citizens have the right to a healthy and favourable environment in accordance with established standards and regulations. They have a duty to protect the environment." The legal guarantees for the realization of this right are related to the possibility of citizens to demand from the state to ensure compliance with the established norms and standards, including by imposing their implementation by third parties, by means of measures to bear administrative or other types of responsibility in case of non-compliance.

RIGHTS OF THE PUBLIC CONCERNED

The fundamental right to a healthy and favourable environment, as well as rights in national laws, are regulated as subjective rights of citizens (anthropocentric approach). Pursuant to paragraph 1, items 24 and 25 of the Supplementary Provisions of the EPA, the legal standing of the public concerned, including environmental organizations, is recognized in environmental matters, including compliance with regimes for the natural protection of territories, waters or biodiversity, regardless of the existence of direct legal interest of the legal entity.

DOMESTIC ENFORCEMENT OF CLIMATE GOALS

The domestic enforcement of climate goals is conditioned by the common goals, stages and means for the climate change mitigation and adaptation agreed at the EU level. The determination of the specific measures to achieve them remains within the scope of the strategic planning provided for by law – e.g. by the National Climate Change Action Plan, National Adaptation Strategy and Action Plan, Recovery and Resilience Plan (RRP), as well as territorial schemes. A very recent development in this respect should be noted. At the moment, by a Decision of the National Assembly of 12.01.2023 (SG, No. 6/2023), the Council of Ministers is obliged to undertake a review of the RRP in the part of energy decarbonization measures.

PROCEDURAL RIGHTS – CLIMATE CONSIDERATIONS IN EIA, SEA AND OTHER ASSESSMENTS

With the amendment of the EPA in 2022, among the selective criteria of Article 85(4), item 4 was added, with which both the impact on and the vulnerability of the plan or program to climate change are explicitly indicated as a criterion:

"The Minister of the Environment and Waters or the director of the relevant RIEW assesses with a decision the necessity of the environmental assessment for a proposed plan and program or for their amendment according to the procedure determined by the regulation under Article 90, according to the following criteria for determining the significance of their impact:

4. the impact of the plan or program on the climate and the vulnerability of the plan or program to climate change."

Spain

Below you can find a very general analysis of the rights that could be categorised as “climate rights” under Spain's legal order.

Right to a healthy environment – guiding principle for social and economic policy under Article 45 of the Spanish Constitution.

“1. Everyone has the right to enjoy an environment fit for the development of the individual and the duty to preserve it.

2. The public authorities shall ensure the rational use of all natural resources in order to protect and improve the quality of life and to defend and restore the environment, relying on the indispensable collective solidarity.”

Fundamental rights to life, health, housing and water sanitation – recognized under the Spanish Constitution.

Aarhus rights recognized under Spanish Law 27/2006 incorporating the Aarhus Convention obligations – rights on access to environmental information, public participation, and access to justice in environmental matters.

In May 2021 Spain enacted its first law on climate change and energy transition, which contains several provisions relevant for the purpose of the recognition of climate rights. See below some examples:

The climate rights derived from binding climate mitigation targets for 2030 and 2050, and adaptation commitments adopted under Spanish Climate Change Law and developed in its NECP (2021-2030) and the 2030 Spain´s Climate Adaptation Plan. The implementation of the climate law must be done in line with a list of guiding principles relevant for this purpose, including:

a) Sustainable development, b) Decarbonization of the Spanish economy, understood as the achievement of a socio-economic model without greenhouse gas emissions, c) Environmental protection, preservation of biodiversity, and application of the "polluter pays" principle, f) Protection and promotion of public health, g) Universal accessibility, i) Equality between women and men, n) Quality and security of energy supply, l) Non-regression and, h) Protection of vulnerable groups, with special consideration for children, among others.

The Spanish Climate Change Law also includes specific legal provisions linking climate change with the protection of other relevant rights such as:

Public health (Article 23):

Article 23 Consideration of climate change in public health.

1. Public Administrations shall encourage the improvement of knowledge on the effects of climate change on public health and on initiatives aimed at its prevention.

2. Furthermore, within the framework of the National Plan for Adaptation to Climate Change, the specific strategic objectives, associated indicators and adaptation measures aimed at reducing or avoiding the risks to public health associated with climate change, including emerging risks, shall be designed and included.

Food security (Article 22):

Article 22 Consideration of climate change in food security and diet.

1. The Public Administrations shall encourage the improvement of knowledge on the effects of climate change on food security and diet, as well as the design of actions aimed at mitigating and adapting to them.

2. Specific strategic objectives, associated indicators and adaptation measures aimed at mitigating the food security risks associated with climate change, including the appearance of emerging food risks, shall be designed and included in the National Plan for Adaptation to Climate Change.

3. With the aim of increasing resilience, while reducing the carbon footprint and promoting quality food, in the specific administrative clause specifications corresponding to public contracts whose purpose is to provide services requiring the purchase of food, when these contracts are to be entered into by the General State Administration, and by the bodies and entities dependent on or linked to the same, special performance conditions may be established that give priority to fresh or seasonal food, and with a short distribution cycle, provided that this is in accordance with the provisions of Article 202 of Law 9/2017, of 8 November, on Public Sector Contracts, transposing into Spanish law the Directives of the European Parliament and of the Council 2014/23/EU and 2014/24/EU, of 26 February 2014 and with Community law.

Just transition and employment rights (Arts. 27-29):

Article 27. Just Transition Strategy.

1.The Just Transition Strategy constitutes the state-level instrument aimed at optimising opportunities in activity and employment in the transition to an economy low in greenhouse gas emissions and at identifying and adopting measures that guarantee equitable and supportive treatment for workers and territories in this transition. Every five years, the Government will approve, by means of a Council of Ministers Agreement, Just Transition Strategies, at the joint proposal of the Ministers for Ecological Transition and the Demographic Challenge; of Employment and the Social Economy; of Industry, Trade and Tourism; of Agriculture, Fisheries and Food; of Transport, Mobility and the Urban Agenda; and of Science and Innovation, with the participation of the Autonomous Communities and the social agents. (…)

Article 28. Just Transition Agreements.

1. Just Transition Agreements shall be concluded within the framework of the Just Transition Strategy with the aim of promoting economic activity and its modernisation, as well as the employability of vulnerable workers and groups at risk of exclusion in the transition to a low carbon economy, in particular in cases of closure or conversion of installations.

Education and social awareness (Article 35):

Article 35 Climate change education and training.

1. The Spanish education system shall promote the involvement of Spanish society in responses to climate change, reinforcing knowledge about climate change and its implications, training for low-carbon and climate-resilient technical and professional activity and the acquisition of the necessary personal and social responsibility.

2. The Government shall review the treatment of climate change and sustainability in the basic curriculum of the teachings that form part of the Education System in a cross-cutting manner, including the necessary elements to make education for sustainable development a reality. Likewise, the Government, within the scope of its powers, shall promote actions to guarantee adequate teacher training in this area.

Public participation rights on climate action (Article 39):

Article 39 Public participation.

1. The plans, programmes, strategies, instruments and provisions of a general nature adopted in the fight against climate change and the energy transition towards a low-carbon economy shall be carried out under open formulas and accessible channels that guarantee the participation of the social and economic agents concerned and of the public in general, through the channels of communication, information and dissemination, under the terms provided for in

Act 27/2006, of 18 July, regulating the rights of access to information, public participation and access to justice in environmental matters. For the preparation of these, and without prejudice to other formulas for participation and deliberation, the Government will reinforce the already existing participation mechanisms and will guarantee in a structured manner citizen participation in the decision-making process on climate change through the establishment of a Citizen Assembly on Climate Change at the national level and will recommend the establishment of regional assemblies and municipal assemblies. (…)

Access to information rights regarding climate risks from financial institutions, and climate mitigation plans adopted by certain companies and publicly available (Article 32 and Twelfth Final Provision):

Twelfth Final Provision

Carbon footprint and greenhouse gas emission reduction plans of companies.

1. The Government, following agreement by the Government Delegate Commission for Economic Affairs, shall establish, within a period of one year from the entry into force of this Act, the type of companies operating in the national territory that must calculate and publish their carbon footprint, as well as the initial terms from which this obligation shall be enforceable, its periodicity and any other elements necessary for the configuration of the obligation.

2. Likewise, companies which, in accordance with the provisions of the previous section, are obliged to calculate their carbon footprint, must draw up and publish a plan for the reduction of greenhouse gas emissions.

As regards climate litigation, according to the Sabin Center for Climate Change Law[60], the following number of climate change cases were finished in the aforementioned countries at the time of the completion of the study (by 25 September 2024):

Austria	6 cases
Bulgaria	2 cases
Spain	18 cases

[60] https://climatecasechart.com/non-us-climate-change-litigation/

Authors:
Plamen Peev (PhD), BlueLink Foundation
Veronika Marhold, LL.M., Ökobüro
Reviewed by:
Katalin Sulyok (PhD),
Theodoros Alexandridis, LL.M.

Contact information

Association of Justice and Environment
European Network of Environmental Law Organizations
33 Udolni, 602 00 Brno, Czech Republic
e-mail: info@justiceandenvironment.org
web: www.justiceandenvironment.org

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or [name of the granting authority]. Neither the European Union nor the granting authority can be held responsible for them.