

Climate Change Litigation in Europe

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Structure of the Lecture

1. Introduction
2. What is Climate Litigation?
3. Climate Litigation in Europe
 - a. Against States
 - b. Against Corporations
4. The Global Picture
5. Judicial Challenges

Introduction

“it is perhaps not surprising, therefore, that some concerned citizens – and we all should be concerned citizens - turn to the courts with the hope of obtaining a swifter and more concrete legal remedy towards ameliorating the consequences of past failings and towards helping us achieve the ‘new stable state’.”

Judge Tim Eicke (ECtHR), “Human Rights and Climate Change: What role for the European Court of Human Rights”, Inaugural Annual Human Rights Lecture, Department of Law, Goldsmiths University, 2 March 2021

Introduction

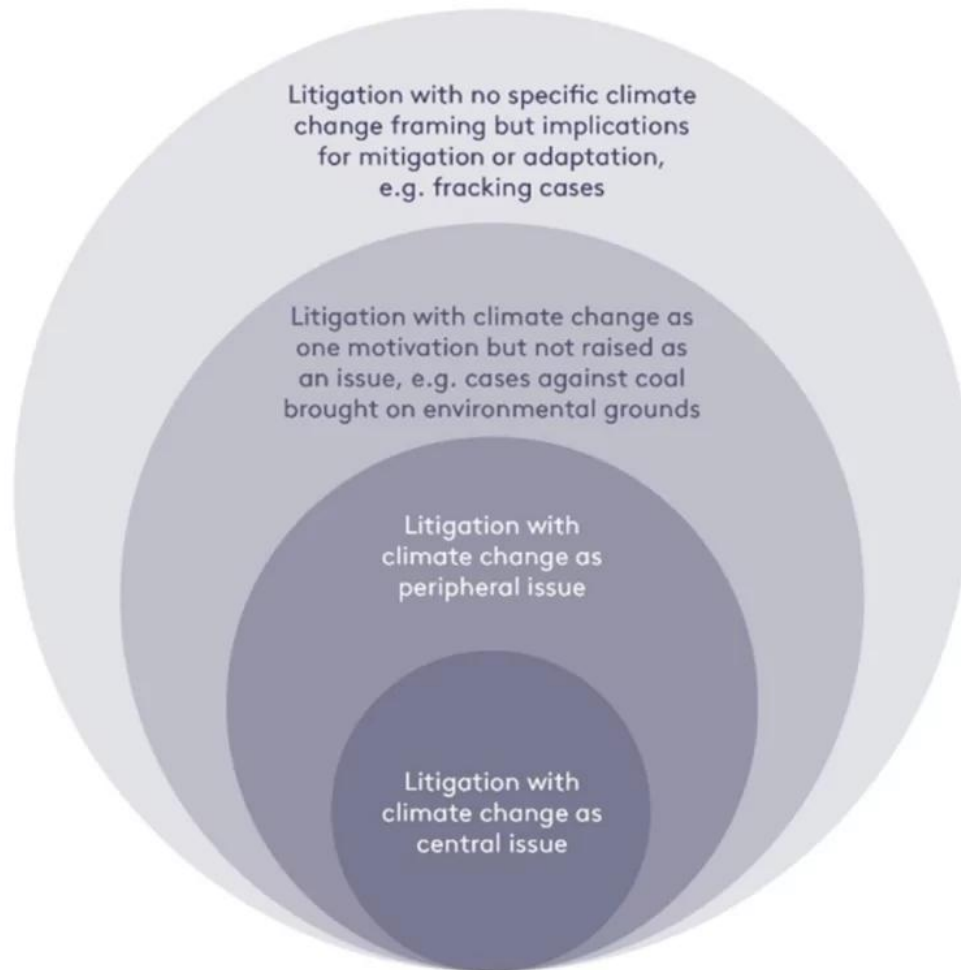
Are courts well equipped to respond to this challenge?

Challenges:

- Causation
- Standing
- Scope of obligations (extraterritoriality)
- Science and the role of experts
- Separation of powers


The intensity of such issues can vary according to the specific type of dispute.

What is Climate Change Litigation?



Peel and Osofsky, *Climate Change Litigation* (2020)

What is Climate Change Litigation?

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The Climate Litigation Database

 Search the full text of cases

What is Climate Change Litigation?

Scholars often speak of **three waves of climate litigation**.

- **The first wave**, in the 1980s, emerged mainly in Australia and the US. These cases typically challenged administrative decisions.
- **The second wave**, after 2007, coincided with rising public awareness and the development of emission-reduction legislation following the Kyoto Protocol.
- **The third wave**, from 2015 onwards, is the wave we are all familiar with today. It is associated with the Paris Agreement, the rise of attribution science—think Richard Heede’s Carbon Majors report—and the global push to hold both governments and private actors accountable. A distinctive feature of this wave is the turn to **human rights and constitutional arguments**. Landmark cases such as *Leghari v Pakistan*, *Urgenda*, and *Juliana v United States* are emblematic of this shift.

What is Climate Change Litigation?

Contents

I. The global landscape of climate cases

II. Climate-aligned strategic cases

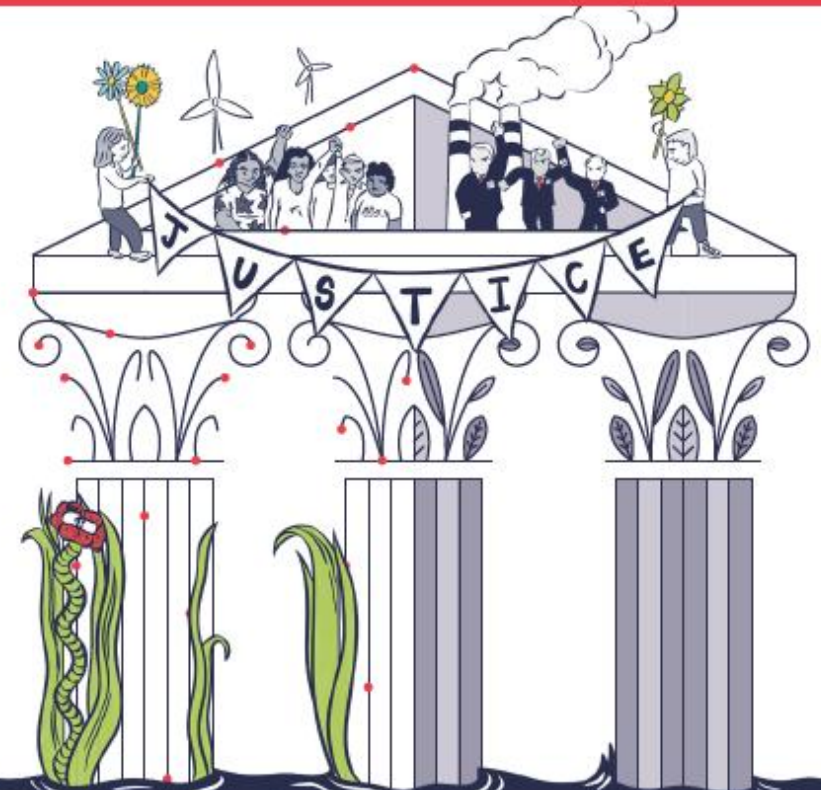
III. Non-climate-aligned strategic cases

IV. Impacts beyond the courtroom



Global trends in climate change litigation: 2025 snapshot

Joana Setzer and
Catherine Higham



Grantham
Research Institute
on Climate Change
and the Environment



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Climate litigation in Europe

- Since the mid-2000s, climate litigation in the EU has expanded rapidly, moving from technical ETS disputes to strategic, rights-based and systemic claims.
- Cases have been filed in around half of all European countries, making Europe a hub for high-profile and innovative climate judgments.
- Courts increasingly face strategic litigation aimed not only at addressing specific harms, but also at driving systemic change.
- These actions - often backed by NGOs and civil society - can shift public and political debate, even when unsuccessful.
- Regulatory uncertainty is rising: EU “Omnibus” revisions have reopened major sustainability laws (CSRD, CSDDD). Proposed amendments risk weakening corporate climate obligations, especially the dilution of CSDDD Article 22 on Paris-aligned transition plans.

Actions against States

Government Framework Cases

Among the most closely watched climate cases in recent years are **government framework** or **systemic** cases.

These actions challenge a government's **overall climate strategy**, either:

- by questioning the **adequacy of emissions-reduction targets** (*“ambition” cases*); or
- by contesting the **implementation of climate framework laws** (*“implementation” cases*).

Key judgments shaping emerging legal standards include:

- ***Urgenda v Netherlands***
- ***Neubauer v Germany***
- ***Klimaatzaak v Belgium***
- ***Klimaseniorinnen v Switzerland***

These cases have influenced courts across Europe, but they also expose persistent **challenges in enforcement and implementation**.

Urgenda Foundation v. State of the Netherlands

➤ Facts (1)

- Urgenda's legal form is that of a foundation under Dutch law. Its object according to its Articles is to stimulate and accelerate transition processes towards a more sustainable society, starting in the Netherlands.
- Urgenda's view is that the State is doing too little to prevent dangerous climate change: Dutch emissions, for which the State as a sovereign power has systemic responsibility, are unlawful, since they violate the due care which is part of the State's duty of care to those whose interests Urgenda represents (Article 6:162(2) DCC), as well as Articles 2 and 8 ECHR.

Urgenda Foundation v. State of the Netherlands

➤ Facts (2)

- Until 2011, the State's policy was aimed at achieving an emissions reduction in 2020 of 30% compared to 1990. According to the State, that was necessary to stay on a credible pathway to keep the 2°C target within reach.
- After 2011, however, the State's reduction target for 2020 was lowered from a 30% to a 20% reduction in an EU context.

Urgenda Foundation v. State of the Netherlands

➤ Timeline

- 2015: the judgment in case C/09/456689/HA ZA 13-1396 rendered by The Hague District Court on 24 June 2015 in favour of Urgenda.
- 2018: the judgment in case 200.178.245/01 rendered by The Hague Court of Appeal on 9 October 2018 in favour of Urgenda.
- 2019: the Supreme Court upheld the Court of Appeal ruling and rejected the State's appeal on 20 December 2019.

Urgenda Foundation v. State of the Netherlands

Urgenda's standing

- It institutes its claim pursuant to Article 3:305a DCC, which enables interest organisations to bring class action suits. It pursues its claim on behalf of the interests of the current residents of the Netherlands who are threatened with dangerous climate change.
- Indeed, it is entirely plausible that the current generation of Dutch nationals, in particular but not limited to the younger individuals in this group, will have to deal with the adverse effects of climate change in their lifetime if global emissions of greenhouse gases are not adequately reduced.
- Since individuals who fall under the State's jurisdiction may rely on Articles 2 and 8 ECHR, which have direct effect in the Netherlands, Urgenda may also do so on behalf of these individuals.

Urgenda Foundation v. State of the Netherlands

Urgenda: Core Substantive Arguments

- Dutch GHG emissions contribute to dangerous climate change.
- The Netherlands' share is excessive, both absolutely and per capita.
- The State bears systemic responsibility for these emissions.
- Breach of:
 - i. Duty of care (Dutch tort law, Section 6:162 DCC)
 - ii. Positive obligations under Articles 2 and 8 ECHR
- IPCC AR4: Annex I States must reduce emissions 25–40% by 2020 to keep 2°C/1.5°C within reach.

Urgenda Foundation v. State of the Netherlands

Supreme Court's Legal Reasoning

- Human rights–based approach grounded in **Articles 2 and 8 ECHR**.
- Scientific evidence + global consensus establish **real and serious risk**.
- States must take **reasonable, appropriate, preventive measures**, even for long-term or not-yet-fully-materialised harms.
- Duty informed by the **precautionary principle + Article 13 ECHR** (effective remedy).

Urgenda Foundation v. State of the Netherlands

Supreme Court: Rejection of Defences

- “Small emitter” argument rejected: each State must “do its part” (“drop in the ocean”).
- Waterbed effect (ETS) + carbon leakage: unsubstantiated.
- Adaptation ≠ mitigation: complementary, not substitutes.
- Separation of powers:
 - i. Courts must ensure State compliance with human rights.
 - ii. Order leaves choice of means to political branches.

Urgenda Foundation v. State of the Netherlands

Significance of Urgenda

- First definitive link between **human rights** and **climate mitigation obligations** at domestic level.
- Courts can interpret **Articles 2 and 8 ECHR** to require more ambitious climate action.
- Creates a **rights-based paradigm** for climate litigation.
- Lays the groundwork for **ECtHR climate jurisprudence** (e.g., *Klimaseniorinnen*).
- Becomes a **global reference point** for climate governance and judicial review.

However, the government was “lucky” to meet the 25% target in 2020, attributing it mostly to the economic downturn forced caused by the Covid-19 pandemic, and it was missed the following year as the world settled back into its usual patterns.

From Urgenda to Strasbourg

- Brought by Verein KlimaSeniorinnen Schweiz (2,000+ women aged 70+) and four individuals.
- Domestic arguments:
 - i. Art. 10, 73, 74 Swiss Constitution
 - ii. Arts. 2 and 8 ECHR
- Claim: Switzerland failed to ensure Paris-aligned targets ($\leq 2^{\circ}\text{C}$, pursuing 1.5°C).
- Rejected twice (2018, 2020); applicants seized ECtHR after exhausting domestic remedies.

Verein KlimaSeniorinnen v. Switzerland

Proceedings Before the ECtHR

Joined with *Carême v France* and *Duarte Agostinho v Portugal & 32 States*.

Those two cases declared **inadmissible**.

KlimaSeniorinnen became the Court's **first landmark climate judgment**.

Key Holdings

Article 8 ECHR includes a **right to State protection** against severe climate impacts.

Positive obligation:

- **Substantial, progressive emission reductions**
- Aimed at **net neutrality within the next three decades**

Switzerland in violation due to **serious policy gaps**, especially:

- No **quantified national carbon budget**
- Insufficient evidence-based planning

Verein KlimaSeniorinnen v. Switzerland

Standing & Victim Status (Major Innovations)

Individuals

Must show:

- **High personal exposure** to climate impacts
- **Urgent need for protection**

NGOs

Court widened “victim” definition to include NGOs meeting criteria:

- Lawfully constituted and domiciled / authorised
- Specific, clearly defined purpose
- Representative of vulnerable groups

Novelty: NGOs may have standing **even if individual members would not qualify.**

Verein KlimaSeniorinnen v. Switzerland

EU Dimension: Access to Justice

CJEU case law also relevant (e.g., **People's Climate Case**).

Plaumann doctrine: applicants must be “*directly and individually concerned*”.

This restrictive approach severely limits access for individuals/NGOs in climate and environmental disputes.

Verein KlimaSeniorinnen v. Switzerland

Significance of the Judgment

Binding formally only on Switzerland, but substantively a **major turning point**.

Establishes core principle:

Failure to meet climate targets + lack of credible plans = potential violation of fundamental rights.

Confirms that climate inaction can engage **Articles 2, 8, 6 and 13 ECHR**.

Implementation now under supervision of the **Committee of Ministers**.

Actions against Corporations

Corporate Climate Litigation: The Landscape

Courts are increasingly addressing the **corporate accountability gap** of TNCs.

Practice remains grounded in **national private law**, but draws heavily on **international standards** (UNGPs, OECD Guidelines, ECHR).

Result: courts **thicken corporate duties of care**, using:

- Soft-law expectations
- Group-wide climate and compliance policies
- Public representations as evidence of control

This evolution **bridges public and private international law**.

Actions against Corporations

Techniques for Corporate Responsibility in Europe

Two recurring pathways:

1. Foreign Direct Liability (FDL)
2. Veil-piercing

What Are “Corporate Climate Cases”?

Not simply *climate cases against companies*: firms can be both **defendants** and **claimants**.

Four key categories:

- Corporate framework cases
- Polluter pays / climate damage cases
- Transition risk cases
- Climate-washing cases

Additional emerging categories: SLAPPs, Just Transition, Green vs Green.

Milieudefensie et al v. Royal Dutch Shell

Facts

Shell is the largest oil and gas company based in Europe and the fifth largest in the world, measured by 2020 revenues. Every year, the company emits 9 times more greenhouse gases than the entire Netherlands put together.

Following the global adoption of the Paris Climate Agreement, Shell had assessed the possibilities of making operational alterations to meet the Climate Agreement's sustainability targets.

Even though the company is not bound by the Paris Climate Agreement, Shell committed to a 20% reduction of its greenhouse gas emissions by 2030 compared to 2016 emission levels, and a 65% reduction by 2050.

Because these reduction targets would fail to meet the goals as set out by the Climate Agreement, NGO Milieudefensie (Friends of the Earth) and six more NGOs including Greenpeace, initiated a lawsuit against the company on 5 April 2019.

Milieudefensie et al v. Royal Dutch Shell

The claim

The plaintiffs argued that not only states, but companies such as Shell, have individual environmental responsibility too:

- Shell has an obligation to prevent dangerous climate change ensuing from Dutch tort law. According to Book 6 Section 162 DCC, ‘an act or omission breaching a rule of unwritten law pertaining to proper social conduct are unlawful’.
- Shell owes them a climate-related duty of care to reduce its greenhouse gas emissions.

The plaintiffs requested a declaratory decision stating that Shell acts unlawfully towards them if the company fails to reduce the aggregated volume of all carbon dioxide emissions associated with its business activities. This reduction, they contended, should amount to 45% compared to 2019 levels by 2030 and 100% by 2050, to be in line with the Paris Climate Agreement.

Milieudefensie et al v. Royal Dutch Shell

Shell First Instance (2021): Procedural Issues

Standing (Art. 3:305a DCC)

- Collective action allowed for current & future Dutch residents.
- Too diffuse: “world population”.
- ActionAid excluded (focus on developing countries). 17,000 individuals redundant.

Applicable Law (Art. 7 Rome II)

“Event giving rise to damage” = RDS corporate policy set at Dutch HQ → Dutch law applies to global emissions.

Milieudefensie et al v. Royal Dutch Shell

Shell First Instance: Merits

Duty of care under **Section 6:162 DCC**, interpreted in light of:

- Articles 2 & 8 ECHR (via Urgenda)
- UNGPs, OECD Guidelines, UN Global Compact, SDGs

Court: companies bear a “**universally endorsed**” **responsibility** to respect human rights, including climate-related threats.

Shell’s strategy: **intangible, non-binding, insufficient**.

The 45% Order (Historic)

- Court orders Shell to reduce **group-wide emissions by 45% by 2030** (vs. 2019).
- **Scope 1–2**: obligation of **result**.
- **Scope 3**: **significant best-efforts** obligation.
- Provisionally enforceable; immediate alignment required.
- Rejects defences: small contribution, level playing field, carbon leakage → *each major actor must “do its part”*.

Milieudefensie et al v. Royal Dutch Shell

Shell Appeal (November 2024): Core Holdings

Standing confirmed, including intergenerational dimension.

Duty of care confirmed, informed by:

- Climate–human rights linkage (Arts. 2 & 8 ECHR)
- UNGA Resolution on right to a healthy environment
- UNGPs & OECD Guidelines
- Paris Agreement & EU climate legislation

Court: **“Protection from dangerous climate change is a human right.”** (§ 7.17).

Milieudefensie et al v. Royal Dutch Shell

Shell Appeal: Remedy

Scope 1–2

No injunction: Shell already reduced by **31% (2016–2023)** + plan for **50% by 2030** → no imminent breach.

Scope 3

45% target = **too generic**, varied across sectors (coal, oil, gas).

Divergent scientific pathway estimates (UNEP, IEA, IPCC).

Effectiveness concern: other suppliers would meet demand → limited real-world impact.

NGO lacked legal interest → **no specific Scope 3 order**.

But the Duty Remains

No exoneration: Shell still has an **independent responsibility to mitigate climate change**.

Court warns: **new oil & gas investments** may breach duty of care → *obiter dictum with major future relevance*.

Principle consolidated: private actors have **enforceable climate duties of care** with **intergenerational reach**.

Polluter Pays Cases

Lliuya v. RWE (Germany)

Peruvian farmer seeks proportional compensation for glacier-melt harms.

Claim dismissed (2025), but **Hamm Court** accepts principle: large emitters *may* be liable for transboundary climate harms.

Judges conduct **on-site visit in Peru** + appoint experts → unique case.

The Global Picture: A New Judicial Consensus

Recent Advisory Opinions from **ICJ**, **ITLOS**, and **IACtHR** offer the clearest articulation so far of **States' legal obligations** in the climate crisis.

Together, they confirm that climate obligations are **legal, substantive, enforceable**, and grounded in **customary international law**.

- *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) (21 May 2024) ITLOS Case No 31.
- *The Climate Emergency and Human Rights*, Advisory Opinion AO-32/25, Inter-American Court of Human Rights Series A No 32 (29 May 2025).
- *ICJ, Obligations of States in respect of Climate Change* (Advisory Opinion) (23 July 2025).

The Global Picture: A New Judicial Consensus

ICJ: Climate Obligations Are Legal Duties

Climate obligations are **not aspirational**: States must prevent **significant transboundary harm**.

Climate change = a “**quintessentially universal risk**” → imposes a **stringent due diligence** standard.

Due diligence = adoption + **effective enforcement** of rules and measures.

The Global Picture: A New Judicial Consensus

ICJ: Substantive and Procedural Duties

Substantive:

- States must take **effective legislative, administrative, financial, and technological measures** to reduce emissions.
- National policies must align with **1.5°C pathways**.
- Due diligence also entails control over private actors.

Procedural:

- Risk assessment
- Environmental impact assessments
- Cooperation + information-sharing
- Public participation & transparency
- Procedural safeguards are intrinsic to **preventive obligations**.

The Global Picture: A New Judicial Consensus

ICJ: No Excuses for Inaction

Lack of quantified treaty allocations ≠ justification.

Climate system = **common concern of humankind** → obligations are *erga omnes*.

States must “**do their utmost**” when setting NDCs; discretion is **not unlimited**.

CBDR-RC calibrates *level of effort*, not existence of duty.

ICJ: Science as a Legal Benchmark

Due diligence requires **scientific responsiveness**: decisions must reflect the **best available science**.

IPCC reports operate as a **legal reference point**.

Ignoring updated science = breach of due diligence.

States must regulate **private actors**, whose emissions form the bulk of national totals.

The Global Picture: A New Judicial Consensus

ITLOS: GHGs as Marine Pollution

ITLOS classifies anthropogenic GHG emissions as “**pollution of the marine environment**” (UNCLOS).

This activates Articles **192** and **194** → duty to **prevent, reduce, and control** marine pollution.

Obligation is **stringent due diligence**, requiring:

- Effective national regulation
- Vigilance
- Supervision of private actors

Capabilities differ, but **obligation applies to all States**.

The Global Picture: A New Judicial Consensus

IACtHR: Climate Change as a Human-Rights Crisis

Climate change threatens the **enjoyment of fundamental rights**.

Duty to preserve the planetary ecosystem has reached **jus cogens**.

Three core duties: **prevent, regulate, cooperate**.

Due diligence is **heightened** in a climate emergency.

Obligations extend **extraterritorially** where harm is foreseeable.

IACtHR: Rights, Vulnerability & Cross-Border Standing

Confirms an **autonomous right to a healthy environment** (ecocentric).

States must consider **specific climate risks** and **vulnerable groups** (reinforced due diligence).

Where a causal link exists, **cross-border standing** must be ensured.

Conclusions

“We are all familiar with the propensity of governments to explain that their past promises cannot be fulfilled because of unforeseen developments or the need to balance competing demands or to pursue more urgent or important objectives. That is the nature of politics. But we are not politicians. The duty of the lawyer is to say, honestly and plainly, what the law is. The lawyer, the court, cannot physically compel people actually to do things in accordance with their legal obligations, but they can and must say what those legal obligations are.”

Professor Vaughan Lowe, ITLOS, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Oral Proceedings, 12 September 2023

Conclusions

Judges play a crucial role in addressing climate change



However, their role as guardians should not absolve policymakers from their responsibilities



Once robust policies are in place, judges should focus on monitoring compliance



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