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Judicial review of climate plans. A growing consensus

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(A) INTRODUCTION

Climate litigation is an expression that often conveys the picture of concerned citizens challenging their governments' policies regarding the climate crisis. However, in reality, climate litigation covers a much more complex set of legal actions, interests, plaintiffs and defendants. And this has been so since it started, in the 1990s in the United States.[1] Since then and until the second decade of the 2000s, climate litigation was mainly concentrated in the US, while outside of the American continent it could be found mainly in Australia.[2] The diversity of claims include both anti and pro-climate litigation, with complaints initiated by citizens, NGOs, the public administration (from all levels of government) and corporations against those same actors, although the majority of claims concern the public administration (from all levels of government) and private corporations. Indeed, legal challenges have involved permitting and licensing of Greenhouse Gas (GHG) emitting activities and infrastructures, the regulation of those activities and products (or lack thereof), the damages caused by climate change, or even greenwashing, among many other matters.

Today, climate litigation has become one of the hot topics of both international and environmental law, especially due to its increasing rate of success in challenging governments' policies and plans regarding climate change. However, it was not always so and, indeed, most of the history of climate litigation, especially in that specific manifestation, is a history of failure, at least until 2015. That year, the District Court of the Hague delivered its judgment in the Urgenda case and everything changed[3].

Until then, courts had been extremely deferential to the climate plans of the Administration. In the United States, for instance, "the courts acknowledge[d] the importance of the climate change issue and the need for attention to it. But they have proven reluctant to second-guess agency decisionmakers".[4] The doctrine of the separation

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1 D. Markell and J.B. Ruhl, 'An Empirical Assessment of Climate Change In The Courts: A New Jurisprudence Or Business As Usual?', 64 *Florida Law Review*. 15-86 (2012).

2 According to the Climate Change Litigation Databases of the Sabin Centre for Climate Change, there had been 530 complaints filed in the US up to 2014 (included), whereas in the resto of the world there had been 144, of which 81 had been filed in Astralia. https://climatecasechart.com

3 *Urgenda Foundation et al. v. The State of the Netherlands (Ministry of Infrastructure and the Environment), The Hague District Court, Judgment, C/09/456689 HA ZA 13-1396, 24 June 2015.*

4 *Supra in n.1 at p. 45.*

of powers has long accompanied the courts of many jurisdictions which consistently considered, until 2015, that it was not for judges to assess the legality of their governments' climate policies. A clear example of that can be found in a 2008 decision by the Federal Court in Toronto which dismissed the complaint brought by Friends of the Earth regarding the State's non-compliance with the Kyoto Protocol Implementation Act. The Canadian court dismissed the claim because it considered that it was a non-justiciable issue that belonged to the legislative sphere, adding that even if it were justiciable the court would not be able to craft a meaningful remedy as any mandatory order would be "devoid of meaningful content and the nature of any response to it so legally intangible that the exercise would be meaningless in practical terms."[5] Nevertheless, the Court left an open door when it considered that "[w]hile the failure of the Minister to prepare a Climate Change Plan may well be justiciable, an evaluation of its content is not".[6]

However, something changed in 2015, with the District Court of the Hague decision in the Urgenda case, and, since then, there has been an increasing number of judges and tribunals around the globe who have come to consider that, from a legal point of view, the margin of discretion of the executive or the legislature when it comes to climate change issues is necessarily constrained by the need to protect essential legally protected rights, and thus a minimum duty of care is required from the authorities.

The Dutch courts, be it at the lower (District Court) or Higher (Supreme Court) level already set the tone for many cases to come in other countries: Courts are not to tell the Administration what precise measures ought to be taken, but in the face of dangerous and irreversible climate change they can definitely establish a threshold within which the State is to exercise its leeway, defining the policies and measures it considers most apt. In the words of The Hague's District Court:

> this discretionary power is not unlimited. (…) the question remains what is fitting and effective in the given circumstances. The starting point must be that in its decision-making process the State carefully considers the various interests. (…) Therefore, the court arrives at the opinion that from the viewpoint of efficient measures available the State has limited options: mitigation is vital for preventing dangerous climate change.[7]

The Supreme Court of the Netherlands put it very clearly:

> the Dutch constitutional system of decision-making on the reduction of greenhouse gas emissions is a power of the government and parliament. They have a large degree of discretion to make the political considerations that are necessary in this regard. It is up to the courts to decide whether, in availing themselves of this discretion, the government and parliament have remained within the limits of the law by which they are bound. (…) The limits referred to in above include those for the State arising from the ECHR.[8]

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5 *Friends of the Earth v. Canada*, 2008 FC1183, [2009]3 F.C.R. 201, §47. It is nevertheless interesting to note that the Court hel that The claimant's subsequent appeals were dismissed by the Federal Court of Appeals, in 2009, and the Supreme Court, in 2010.

6 *Ibid. at §34.*

7 Supra in n.3, at §§4.62-4.75.

8 *The State of the Netherlands v. Urgenda Foundation, The Supreme Court of the Netherlands, Case number 19/00135, 20 December 2019 [ECLI:NL:HR:2019:2007], §§8.3.2-8.33.*

In this paper, we will endeavour to analyse how courts around the world have identified this minimum threshold and, especially, what it entails for the margin of discretion of the State when devising its climate plans. And we will do it by distinguishing what aspect of those plans is being reviewed as well as the reasons that make those plans reviewable by the judiciary. Concerning the former, we can distinguish mainly between claims and decisions that question the targets set in domestic climate plans, on the one side, and claims and decision that address the policies defined in those plans to reach the aforementioned targets. As regards the latter, the main distinction can be drawn between those decisions that question the authorities' climate plans based on procedural reasons and those who focus instead on substantive ones.

Last, it should be borne in mind that although we will generally refer to different cases to illustrate the different legal grounds of the legal review, climate litigation is characterised by its complexity, both from a factual and legal perspective,[9] and several of these grounds can be often found in the same case.

(B) THE OBJECT OF THE REVIEW

We have already mentioned that climate litigation is a rich and diverse category that includes instances of litigation that range from a corporation challenging a particular legal provision directed at reducing polluting activities to an NGO arguing that the administration should actually adopt such provisions, individuals suing polluting corporations for damages, public authorities demanding companies to pay for adaptation and loss an damage, corporations challenging the allocation of emissions permits by the authorities, NGOs filing lawsuits against companies for greenwashing or even an administration suing another administration from the same country for not doing enough or for doing too much on global warming, usually arguing about the distribution of competences among the different levels of government. And the typology of cases keeps growing as the climate crisis worsens and the energy transition develops, for instance giving raise to conflicts between different public interests, like human rights and climate action, in what has already been called "just transition ligitation".[10]

In this article we will focus on litigation challenging climate plans adopted by public authorities, understood in a broad way as the planning documents and regulations that set the main targets, actions and priorities regarding climate action. And this for two main reasons. On the one hand, such cases have experienced an explosion in the last ten years, particularly as a consequence of the success of the Urgenda case. Moreover, such an explosion has been accompanied and even fuelled by an increasing number of decisions in which the Courts of several countries have joined their Dutch colleagues in finding that governments' plans on climate are, indeed, reviewable. On the other hand, we focus on this kind of cases because they concern the documents with legal value that

9 de Vilchez Moragues, P., *Climate in Court. Defining State Obligations on Global Warming Through Domestic Climate Litigation (Edward Elgar, Cheltenham, 2022); de Vilchez Moragues, P., 'Climate litigation, taking stock of an increasingly complex trend of legal actions', E-Publica 9 (3) (2022), pp. 186-190.*

10 Savaresi, A., Setzer, J., Bookman, S. *et al., Conceptualizing just transition litigation, Nature Sustainability* 7, 1379–1384 (2024). https://doi.org/10.1038/s41893-024-01439-y.

define the goals, milestones, strategy and measures that are to be taken and reached by a given country, therefore strongly conditioning the performance and expected results of that country in the fight against global warming. As a matter of fact, such plans may include additional elements that are increasingly considered relevant to adequately conduct the energy transition, such as justice and equity or the necessary intertwining of climate action with other sectors of government and the economy.

When challenging climate plans before the courts, there are two main elements that usually constitute the core of the legal challenge. First, there are several cases in which the plaintiffs focus on the targets set by the State. By climate targets we generally refer to the GHG emissions reductions that a given State ought to achieve by a given year as compared to a previous, baseline, year. This is usually defined as a percentage of emissions that is below that baseline year. For instance, in the Netherlands, the plaintiff Urgenda Foundation requested the Court to order the State to set an emissions' reduction goal of 25% to 40% below the GHG emissions levels of 1990.

Secondly, there are other instances in which the claimants challenge, instead of or in addition to the emissions reduction targets, the actual policies and measures devised by the State to achieve those targets or at least to respond to the climate emergency.

The legal grounds that would justify the legal review of those targets and measures as well as the specific object of the requested review will be examined in the following section.

(C) THE LEGAL BASIS OF THE REVIEW

When examining the wide diversity of legal challenges brought before the courts against climate plans, we can identify a seemingly diverse set of grounds underpinning those challenges, which can be broadly organized in two main groups: climate plans are being challenged for substantive as well as for procedural reasons. By substantive, we refer to the content of the plans, while by procedural we point to the way those plans have been laid out and adopted. In this section, we will dive into those broad groups and analyse how they have manifested in different climate cases around the world.

1. Substantive reasons for the legal challenge of climate plans

There might be different reasons to challenge a climate plan from a substantive perspective and, as we will see, these can be illustrated by recent climate cases and decisions.

(a) The plans are non-existent

The first instance of challenges to climate plans involve those that challenge precisely the absence of such plans and demand their adoption by the authorities. If climate change is a complex phenomenon that demands incremental action across sectors while there is a clear indication by science of the need to reach net zero emissions in the next thirty years, it is clear that planning is indispensable to an ordered and successful transition that leaves no one behind.

One example of this kind of litigation can be found in the case *Salamanca Mancera v. Minambiente*, also known as *Future Generations v. Colombia*. The plaintiffs, a group of children and youth, filed a constitutional protection claim ("acción de tutela") in which they affirmed that the actions and inactions of the State paved the way to the destruction of the Amazon, thus fuelling climate change and therefore endangering their lives and future, as well as violating their constitutional right to a healthy environment. After a first dismissal by a lower court, the Supreme Court of Colombia found in favour of the plaintiffs and ordered the national, regional and local authorities to establish, in a four to five months' timeframe, strategic plans, with the participation of the Claimants and all relevant actors, to halt deforestation and bring the deforestation rate of the Colombian Amazon to 0%.[11]

Another instance of a challenge of a lack of planning can be found in *Navahine v. Hawai'i*. In that case, a group of youth, counseled by the organisations Earthjustice and Our Children's Trust, complained that the absence of a Transport plan in Hawai'i negatively affected their right to a clean and healthful environment and violated the public trust doctrine, since the transportation sector is a net contributor to the GHG emissions of Hawai'i, an archipielago that is particulary vulnerable to climate change. During the proceedings before the Court, the plaintiffs and the defendants reached a settlement agreement in which the latter recognised the constitutional right to a healthy and clean environment of the plaintiffs, that this right was threatened by climate change, and that the State of Hawai'i has a public trust obligation to protect the environment for present and future generations and therefore agreed to reduce GHG emissions of the transportation sector, both intra and inter-island (including sea and air-bound) and to develop and implement a plan directed at such an aim, which will include both transformative changes of the transportation system as well as specific emissions' reduction targets for 2030, 2035 and 2040, until net zero is achieved at 2045 at the latest.[12] As per the settlement agreement, the Court will retain continuing jurisdiction to enforce the Parties' obligations until the end of 2045.

(b) The plans are not adequate to tackle climate change

A second reason why a plan may be challenged lies in its inadequacy to prevent, reduce or respond to the threats posed by global warming. The most notorious example of such a case is *Urgenda v. the Netherlands*, in which a Dutch foundation claimed before the courts that the emissions reduction target set by The Netherlands for the year 2020 was not consistent with the level of emissions that science deemed necessary to have a fair chance to limit global warming to a safe level. The State of The Netherlands had set a target of 17% (in the context of the 20% reduction set at the EU level), and Urgenda alleged that the IPCC had established that to limit global warming to a safe level it was necessary that the emission of GHG into the atmosphere be reduced between 25% and 40% by 2020. The Court, after examining all the evidence concluded that, indeed, the target set by the

[11] *Salamanca Mancera et al. v. Presidencia de la República de Colombia et al.*, Corte Suprema de Justicia de Colombia, N° 110012203 000 2018 00319 01, 5 April 2018.

[12] *Navahine F. et al. v. Hawai'i Department of Transportation et al., Circuit Court of the First Circuit, CIVIL NO. 1CCV-22-0000631 (Environmental Court), 20 June 2024.*

Netherlands was impermissibly below the minimum threshold of 25% and ordered the State to conform to such a level. The separation of powers and the margin of discretion of the Government did not prevent the Court from ordering a certain reduction effort but limited its capacity to go beyond the minimum level identified by science.[13]

The inadequacy of the climate goals was also at the core of *Neubauer v. Germany*, a case brought by a group of youth before the German Constitutional Court. The plaintiffs argued that the 55% reduction of GHG emissions in Germany by 2030 was not in accordance with the country's commitments at the international level (i.e. the Paris Agreement) to hold global temperatures well below 2°C and therefore violated their rights to life as a consequence of deteriorating climate change. The Constitutional Court, while recognising that "[t]he question of whether sufficient measures have been taken to fulfil duties of protection arising from fundamental rights can only be reviewed by the Federal Constitutional Court to a limited extent", it nevertheless declared that the existence of a margin of appreciation of the legislator "does not mean that the question as to the effectiveness of state protective measures is beyond the scope of review by the Federal Constitutional Court where a duty of protection does exist. The Federal Constitutional Court will find a violation of a duty of protection if no precautionary measures whatsoever have been taken, or if the adopted provisions and measures prove to be manifestly unsuitable or completely inadequate for achieving the required protection goal, or if the provisions and measures fall significantly short of the protection goal.[14]

In relation to the matter under review, the Court found that although the uncertainties surrounding the calculation of the carbon budget made it impossible to consider that a potential breach of that budget following the official emissions reduction of 55% by 2030 could be considered unconstitutional, the dimension of the dangers involved and especially the fact that most of the burden in GHG emissions reduction should be borne by the generation living from 2030 onwards could be considered unconstitutional.[15] The Constitutional Court affirmed that the duty to protect life included in the Constitution also covers the risks derived from climate change and the constitutional obligation to protect nature, as a foundation of life, for future generations also extended to the climate system. According to the Court, the main consequence that derives from that interpretation is that the safeguarding of fundamental rights prohibited the State from disproportionately burdening future generations with the actions and efforts needed to keep global warming at a safe level (1.5°C), and therefore, the target of reducing GHG emissions by 55% by 2030 as compared to 1990 levels was inadmissibly low.[16]

A third instance of this kind of challenge can be found in Spain. In 2021, Greenpeace Spain, Ecologistas en Acción and Intermón-Oxfam filed a claim before the Supreme Court alleging that the emissions reduction target of 23% by 2030 set in the National Integrated Plan on Energy and Climate (PNIEC) 2021-2030 was largely insufficient regarding the international commitments to which Spain was part (mainly, the Paris Agreement) as well as the findings of the Intergovernmental Pannel on Climate Change (IPCC), which

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13 *Urgenda Foundation et al. v. The State of the Netherlands (Ministry of Infrastructure and the Environment), The Hague District Court, Judgment, C/09/456689 HA ZA 13-1396, 24 June 2015, §§4.84-4.86.*

14 *Neubauer et al. v. Germany, BVerfG, Order of the First Senate of24 March 2021 – I BvR 2656/18, §152.*

15 *Ibid*., at §142.

16 *Ibid*. at §§206, 229, 231, 236-248.

required, according to the plaintiffs, that the GHG reductions attain at least 55% by 2030 as per 1990 levels. However, the Supreme Court of Spain diverged from its colleagues from The Netherlands and Germany and concluded, forfeiting any human rights consideration or assessment, that since the Paris Agreement awarded a considerable leeway to States when defining their National Determined Contributions (NDCs), "without imposing on them any qualitative or quantitative content regarding the measures to be adopted", and since the 23% target does not violate the effort sharing decision of the European Union, the Court was not allowed to intervene without violating the principle of the separation of powers, since the decision could not be considered arbitrary in any way.[17]

Before turning to next section, it is wort highlighting that what is considered safe may evolve over time, both regarding the temperature threshold within which warming should be limited as well as the GHG concentration in the atmosphere that would correspond to such a level of warming and the reductions in GHG emissions needed to respect that level of GHG concentration, which is often conceptually formulated as the "carbon budget". And this can even happen during the judicial proceedings of a given case. For instance, whereas in the Urgenda case the "safe" temperature target underlying the claim of the plaintiffs was 2ºC, as supported by the majority of scientific reports of the time, which pointed out at a significant increase in climate-derived threats from a global temperature beyond that threshold, both the Court of Appeals[18] and the Supreme Court highlighted that the scientific consensus had moved towards a lower threshold of security since the start of the proceedings, that now pointed to the need to make all possible efforts to limit global warming to 1.5ºC.[19] A view that was included in the Paris Agreement.

(c) The plans are not adequate to achieve the targets set by the State

Beyond setting the specific targets to be achieved at a certain date regarding GHG emissions or other key elements of the Administration's response to the climate crisis , States need to define strategies to actually attain those targets. The mismatch between the two has also been the object of climate litigation in recent years.

An illustrative case of this approach is provided by *KlimaSeniorinnen v. Switzerland*, especially in the proceedings before the European Court of Human Rights (ECtHR). In a long judicial iter, that brought them before three domestic courts and, ultimately, at Strasbourg, a group of elderly women challenged the climate plans of the Swiss state. Altough the complaint has many aspects, which include, among others, the definition of the targets themselves, similarly as to the cases presented in the previous section, there is one aspect of especial interest here that regards the adequacy of the domestic climate strategies to achieve those targets.

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17 *Greenpeace et al. v. Spain*, Tribunal Supremo, Sala de lo Contencioso-Administrativo, Sección Quinta, Sentencia núm. 1079/2023, 24 July 2023, pp. 70-74.

18 *The State of the Netherlands v. Urgenda Foundation, The Hague Court of Appeal, Case number C/09/456689/ HA ZA 13-1396, 09 October 2018 [ECLI:NL:GHDHA:2018:2610], §50, §73.*

19 *The State of the Netherlands v. Urgenda Foundation, The Supreme Court of the Netherlands, Case number 19/00135, 20 December 2019 [ECLI:NL:HR:2019:2007], §§7.2.8-7.2.9.*

Despite the claim being rejected by all internal courts, including the Federal Supreme Court,[20] the European Court of Human Rights positively considered many of the claimants' assertions and petitions. In particular, the Court recalled that while the Swiss State had adopted a net zero target by 2050, the plans and regulations defined at the domestic level would not allow to achieve that target. This conclusion derived both from existing legislation (CO_2 Act), that was deemed insufficient even by an assessment of the Swiss Federal Council, regarding the 2020 targets, as well as from the absence of a carbon budget that would allow to identify exactly the amount of GHG that could be emitted per sector to achieve the 2050 target.[21]

Another example of a policy that is challenged for not being aligned with the overall targets set by the State can be found in *Commune de Grande-Synthe v. France*. In this case, a French municipality (Grande-Synthe) filed a claim before the *Conseil d'État* against the (tacit) refusal of the French Government to correct what the municipality deemed an insufficient trajectory of emissions reduction if the nationally determined decarbonisation goals were to be respected. The Government alleged that it was already reducing the country's emissions, which were lower than other countries. However, after examining both the French and European legislation, as well as the international legal framework on climate change, and the scientific data produced by French institutions, the Council found that, indeed, although France was reducing its GHG emissions it was doing so at a lower pace than required to achieve the legally set decarbonisation target for 2030 ("sur la base des seules mesures déjà en vigueur, les objectifs de diminution des émissions de gaz à effet de serre fixés pour 2030 ne pourraient pas être atteints")22. As a consequence, the Conseil d'État annulled the Government's refusal and ordered the Prime Minister to

> take all appropriate measures to curb the curve of greenhouse gas emissions produced on national territory in order to ensure its compatibility with the greenhouse gas emission reduction targets set out in Article L. 100-4 of the Energy Code and in Annex I of Regulation (EU) 2018/842 of 30 May 2018 before 31 March 2022.[23]

(d) The targets have not been achieved

Domestic authorities may have set specific targets regarding climate change and even adopted strategies to achieve them, but may nonetheless have failed to do so. Thus, a fourth reason that may compel claimants to bring a complaint against domestic climate plans before the courts is the non-achievement of the targets set by the domestic authorities themselves.

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[20] *Verein KlimaSeniorinnen Schweiz et al. v. Federal Department of the Environment, Transport, Energy and Communications (DETEC), Federal Supreme Court [of Switzerland], Public Law Division I, Judgment 1C_37/2019 of 5 May 2020, Appeal against the judgment of the Federal Administrative Court, Section 1, of 27 November 2018 (A-2992/2017).*

[21] *Verein Klimaseniorinnen Schweiz and Others v. Switzerland, European Court of Human Rights, Grand Chamber, Application no. 53600/20, judgment of 9 April 2024, §§558, 565, 573.*

[22] "Based on existing measures alone, the 2030 greenhouse gas emission reduction targets will not be met." *Commune de Grande-Synthe v. France, Conseil d'État, n. 427301, Decision of 1 July 2021, §6.*

[23] *Ibid., Article 2.*

France offers again an example of this type of claim. In 2021, the Administrative Court of Paris issued two decisions in the cases filed by Notre Affaire à Tous, Oxfam France, Greenpeace France and the Fondation pour la Nature et l'Homme. Basically, those NGOs claimed that the French government was responsible of causing a "préjudice écologique" ("ecological damage") as a consequence of its insufficient climate action. One important element in their pleading involved the fact that France was actually not complying with the pluriannual carbon budgets it had itself set into law. Recognising the ecological damage deriving from climate change, the Court concluded that the State had in fact not respected the carbon budget for the period 2015-2018 and therefore ordered the Government to take all necessary measures ("toutes les mésures utiles") in order to repair the ecological damage and to prevent the aggravation of that damage at a level that is proportionate to the observed excess in emissions.[24]

It is particularly remarkable that the Administrative Court considers that the breach of the pluriannual target included in the carbon budget is legally relevant in itself, independent of the likelihood of achieving emissions targets set at a later stage, since the excess in emissions that has already happened has indeed contributed to exacerbate global warming and the ecological damage and will continue to do so for a long time, given the long life nature of several GHG.[25]

Another instance of this type or argument can be found in *KlimaSeniorinnen v. Switzerland*. As aforementioned, the ECtHR found in that case that the Swiss Government had not developed a framework that would allow Switzerland to comply with their emissions reduction targets for 2030 and 2050, and that led the Court to find a violation of Article 8 of the European Convention on Human Rights (ECHR), the right to private and family life. The court found that Article 8 encompasses the right to effective protection by the State from the serious adverse effects of climate change,26 which obliges the State to "devise, develop and implement the relevant legislative and administrative framework" to adequately respond to climate change, and it interestingly found that the non-respect of the domestic targets by the Swiss authorities indicated the "insufficiency of authorities' past action to take the necessary measures to address climate change", therefore reinforcing the plaintiffs' claims.27

(e) The plans have not been complied with

Besides non-compliance with specific targets, a last trigger of the legal review of climate plans regards whether those plans have been followed and acted upon. Here, we can turn to the Supreme Court of Brazil, which in 2022 issued a relevant decision in *PSB v. Brazil* regarding the so called "Climate Fund". This fund had been created by law in 2009 and, according to the Court, is "the main federal instrument aimed at funding the fight against climate change and the fulfilment of greenhouse gas emission reduction

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24 *Notre Affaire à Tous et al. v. France, Tribunal Administratif de Paris, N°s 1904967, 1904968, 1904972, 1904976/4-1, 14 October 2021.*

25 *Notre Affaire à Tous et al. v. France, Tribunal Administratif de Paris, N°s 1904967, 1904968, 1904972, 1904976/4-1, 3 February 2021, p. 34.*

26 Supra n. 20, in §544.

27 Ibid. at §559.

targets".[28] Then President Jair Bolsonaro and his government were not allocating the resources needed for the Fund to operate and the Supreme Court undisputably found that, in the midst of a climate emergency that endangered constitutionally protected human rights,

> the aversion to the subject repeatedly expressed by the Federal Government, the history of dismantling collegiate bodies that are part of the Public Administration and the failure to allocate resources for environmental protection also corroborate the need for this Federal Supreme Court to comply with the applicants' request for a determination that the Executive has the duty and not the free choice to operate the Climate Fund and allocate its resources for its purposes.[29]

It is worth recalling that the Supreme Court of Brazil construed this limited margin of discretion of the State in climate issues also based on the understanding that the Paris Agreement and other international environmental treaties are to be considered "a species of the human rights treaties genre" which gives them supra-legal status. From this, the Court unambiguously concludes that "there is no legally valid option to simply omit to combat climate change".[30]

2. Procedural reasons for the legal challenge of climate plans

When we analyse the reasons behind the increasing number of claims filed against climate plans, we can find, beside the substantive elements raised above, several claims which question different procedural aspects related to the plans. Those claims touch upon either the way the plans have been adopted, the superficiality or lack of detail of such plans, or, last, the difficulties faced by the plaintiffs to challenge those plans before a court. Which, in short, refers to the three main procedural environmental rights enshrined in both domestic and international law (like the Aarhus Convention of 1998 or the Escazú Agreement adopted twenty years later)[31]: public participation in decision-making, access to information and access to justice in environmental matters.

(a) Challenging the adoption process of climate plans

Neubauer v. Germany is a good example of that type of claims which consider that the *iter* followed to develop and adopt the domestic plans intended to tackle the climate

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[28] *PSB et al. v. Brazil* (Fundo Clima), Supremo Tribunal Federal [S.T.F.] [Supreme Federal Tribunal], Arguiçao de Descumprimento de Preceito Fundamental [ADPF] 708, Relator: Min. Roberto Barroso, 04.07.2022, 194, D.J.e, 28 September 2022, §19

[29] *Ibid.* §27.

[30] *Ibid.* §17.

[31] Aarhus Convention on Access to Information and Public Participation in Decision-making and Access to Justice in Environmental Matter, 25 June 1998, 2161 UNTS 447 ('Aarhus Convention'); Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Adopted in Escazú on 4 March 2018, entry into force 22 April 2021 ('Escazú Agreement'). On the Escazú Agreement and its relevance for climate litigation, see Medici, G., Ricarte, T., 'The Escazú Agreement Contribution to Environmental Justice in Latin America: An Exploratory Empirical Inquiry through the Lens of Climate Litigation', *Journal of Human Rights Practice*, Volume 16, Issue 1, February 2024, Pages 160–181, https://doi.org/10.1093/jhuman/huad029.

emergency were not adequate. In its decision of 2021, the German Constitutional Court recognised the distinct dangers posed by climate change, not the least the serious threats upon fundamental rights, but it also highlighted the challenges derived from the measures needed to prevent the earth from reaching dangerous temperature levels as well as to prevent the damage probably deriving from those temperatures. That is, the mitigation and adaptation measures needed to both reduce our GHG emissions to net zero by the half of the century and to protect the population, human and natural systems from the heat levels that are already locked in the climate system. Those measures, although necessary, clear and available, are not easy to take by governments, since they involve deep and rapid systemic transitions without precedent in terms of scale. In the words of the IPCC, "limiting warming to 1.5°C is possible within the laws of chemistry and physics but would require unprecedented transitions in all aspects of society".[32]

According to the German Constitutional Court, if sufficient measures were not adopted before 2030, "the constitutional obligation to take climate action (…) would require [after that year] the acceptance of considerable restrictions on freedom, which would hardly be deemed reasonable from today's perspective".[33] Given the relevance of the matter, the Court found that the intervention of the legislature was crucial and the devising of the plans could not be left alone to the executive power. Moreover, this intervention needs to be a qualitative one, not merely an approval of the Executive's prior decisions, and this because

> the special importance of the interests protected under Art. 20a GG and their tensions with any conflicting interests must be reconciled in a democratically accountable manner, and legislation provides the appropriate framework to do this ([...]). The legislative process gives the required legitimacy to the necessary balancing of interests. The parliamentary process with its inherently public function and the essentially public nature of the deliberations ensures through its transparency and the involvement of parliamentary opposition that decisions are also discussed in the broader public, thereby creating the conditions by which the legislative process is made accountable to the citizenry.[34]

In the aforementioned case of *Greenpeace et al. v. Spain,* claimants also contested the participation process regarding the drawing up of the Integrated National Plan of Energy and Climate. In particular, the claimants alleged that although they took an active part during the participation process and the strategic environmental assessment conducted prior to the adoption of the plan, their proposals and allegations were neither included nor considered in the Plan, and they received no response whatsoever as to the reasons for them being discarded.[35]

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32 IPCC, 2018: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. et al. (eds.)].

33 *Supra* in 14, at §246.

34 *Ibid*., §213.

35 Greenpeace España et al., *Recurso Contencioso-Administrativo Contra El Plan Nacional Integrado de Energía y Clima 2021-2030*, 28 May 2021, pp. 10-12.

(b) Challenging the lack of detail

Information is a key element to enable a meaningful participation process, and some climate cases have dealt with this kind of shortcoming. A relevant example of that kind of legal flaw can be found in *Friends of the Irish Environment v. Ireland,* in which an environmental NGO challenged the validity of the Irish National Climate Plan adopted in 2017. This Plan had been adopted following the Climate Action and Low Carbon Development Act 2015, which establishes on Article 4 the obligation to adopt such a plan not later than 18 months after the passing of the Act and every five years from then on. According to Friends of the Irish Environment (FIE), the Plan was legally flawed for two main reasons. On the one side, it included an increase in GHG emissions in the early years of its adoption, which would then progressively fall until reaching net zero by 2050. FIE argued that climate change was a serious threat the size of which depended not only on reaching net zero emissions at a given time but also, and especially, on the amount of GHG that would have been emitted until then. In short, it is not a question of volume of emissions at a given time, but rather of concentration of those emissions over time. Since the Plan included an increase in those emissions, the claimants contended that the plan infringed upon their fundamental rights. On the other side, FIE considered that the Plan also violated the provisions of the Climate Action Act. In particular, the claimants considered that the National Climate Plan did not respect section 4.2 of the Act, which establishes, among other things, that the Plan shall specify the manner in which the objectives will be achieved as well as the policy measures needed to reduce GHG emissions in a manner that is consistent with those objectives.

In 2020, the Supreme Court of Ireland concluded, as regards the first claim, that FIE did not have standing regarding the alleged violation of fundamental rights, since it did not actually enjoy those personal rights (e.g. the right to life).[36] However, on the second claim the Court found in favour of the plaintiffs. Following a detailed assessment of the 2015 Climate Change Act and the content of the 2017 Climate Plan, the Supreme Court found that the latter lacked enough level of detail so as to satisfy the requirements of the former and this circumstance not only fell short of what was legally required by the act itself but also deprived the public of the information needed to form a constructive opinion of the Plan. In the words of the Court,

> [w]hat the public thinks of any plan and what the public might do about it if they do not like a plan is a matter for the public to consider. But the 2015 Act requires that the public have sufficient information from the Plan to enable them to reach such conclusions as they wish. On that basis, it seems to me that the level of specificity required of a compliant plan is that it is sufficient to allow a reasonable and interested member of the public to know how the government of the day intends to meet the NTO so as, in turn, to allow such members of the public as may be interested to act in whatever way, political or otherwise, that they consider appropriate in the light of that policy.[37]

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[36] *Friends of the Irish Environment v. the Government of Ireland, Supreme Court, Appeal No: 205/19, Judgment of 31 July 2020. §§7.2, 7.4, 7.18-7.22.*

[37] *Ibid*. §6.38.

And, according to the Court,

> the Plan falls a long way short of the sort of specificity which the statute requires. I do not consider that the reasonable and interested observer would know, in any sufficient detail, how it really is intended, under current government policy, to achieve the NTO by 2050 on the basis of the information contained in the Plan.[38]

It is also relevant to recall here that the Supreme Court rejected the Government's assertion that, reviewing the Plan, the Court would be impermissibly dealing with questions of policy, since the issues under review had been turned into law "by virtue of the enactment of the 2015 Act".[39]

(c) Access to justice

The last of the procedural reasons behind some of the recent climate cases involves the lack of appropriate access of claimants to the justice system in order to challenge climate related plans and policies. A very recent example is provided by *KlimaSeniorinnen v. Switzerland*, particularly the ECtHR's judgment of April 2024. As we have highlighted above, the plaintiffs had challenged various aspects of the Swiss climate strategy, which was deemed insufficient to reach the targets set forth by the Swiss authorities, let alone to limit global warming to a safe level. In addition to those different substantive reasons, the claimants also argued that they had been denied access to a court and therefore relied both on Article 6 and Article 13 of the ECHR in their claim before the ECtHR.

Similarly to other substantive arguments, the Court also made a clear stance in favour of procedural rights. Thus, the Court stresses that complex decision making must involve serious investigation and studies and the public "must have access to the conclusions of the relevant studies".[40] Similarly, the ECtHR further recalls that the "individuals concerned must have an opportunity to protect their interests in the environmental decision-making process, which implies that they must be able to participate effectively in relevant proceedings and to have their relevant arguments examined".[41] But it is to the third dimension of procedural rights that we turn our attention here, and the Court is consistent with the prior findings.

The Court recalls that the claimants addressed their concerns first to the Swiss administrative bodies and only following a rejection from those authorities to substantively engage with their claims they turned to the courts. Both the Federal Administrative Court and the Federal Supreme Court rejected the plaintiffs' claims without delving on their merits, and this, given the substantive danger associated with climate change constituted an impermissible violation of their right to access the courts, as set forth in Article 6.1 of the ECHR.

As the Court recalls, "the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by

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38 *Ibid*. §6.46.
39 *Ibid*. at §9.1.
40 *Supra* in 21, at §539 (c) and (d).
41 *Ibid*. at §539 (e)

a court. This flows from the fact that the right of access to a court must be "practical and effective", not theoretical or illusory".[42] The rejection of the plaintiffs' claims by the domestic courts without assessing their merits is therefore considered by the Court to affect the rights of those plaintiffs and therefore allows them to file a complaint before the ECtHR without being considered an impermissible *actio popularis*.[43] Moreover, since the claims were filed both by several elderly women as well as by an organization (KlimaSeniorinnen) counting thousands of elderly women, including the ones bringing the claim, the fact that the domestic courts avoided the assessment of the standing capacity of the organization itself is considered by the ECtHR an additional prove of Switzerland's violation of Article 6.1:

> The Court further notes that the domestic courts did not address the issue of the standing of the applicant association, an issue which warranted a separate assessment irrespective of the domestic courts' position as regards the individual applicants' complaints. The domestic courts did not engage seriously or at all with the action brought by the applicant association.[44]

Last, but certainly not least, it seems particularly to the point to close this section with a final reference to the ECtHR's decision in *KlimaSeniorinnen*. Because, after having examined all the particular circumstances surrounding the lack of access to justice in this particular case, the Court made a more general pronouncement on the role of the judiciary regarding climate disputes, and held it "essential to emphasise the key role which domestic courts have played and will play in climate-change litigation", stressing that "it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed".[45]

(D) A PEEK INTO THE (NEAR) FUTURE

Given the relentless and dangerous increase in GHG emissions, only temporarily halted during the peak of the Covid crisis in 2020,[46] as well as the steady increase in climate related phenomena causing damages around the world,[47] it is to be expected that climate complaints will continue to be filed before courts of justice around the

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42 *Ibid*. at §629.
43 *Ibid*. at §§630-634.
44 *Ibid*. at §636.
45 *Ibid. at §639.*
46 There was a reduction in GHG emissions of around 7% in 2020, but this was but a blink. Emissions in 2023 broke the record of emissions of 2022, and they are poised to establish a new record in 2024. *Global Carbon Project: Coronavirus causes 'record fall' in fossil-fuel emissions in 2020*, CarbonBrief, 11 December 2020 (https://www.carbonbrief.org/global-carbon-project-coronavirus-causes-record-fall-in-fossil-fuel-emissions-in-2020/), last accessed on 18 December 2024; *Greenhouse gas concentrations surge again to new record in 2023*, World Meterological Organization, 28 October 2024 (https://public.wmo.int/news/media-centre/greenhouse-gas-concentrations-surge-again-new-record-2023), last accessed on 18 December 2024; *Fossil fuel CO2 emissions increase again in 2024*, Global Carbon Project, 13 November 2024 (https://globalcarbonbudget.org/fossil-fuel-co2-emissions-increase-again-in-2024/), last accessed on 18 December 2024.
47 *Climate change made Hurricane Helene and other 2024 disasters more damaging, scientists find, Yale Climate Connections, 9 October 2024* (https://yaleclimateconnections.org/2024/10/climate-change-made-hurricane-helene-and-other-2024-disasters-more-damaging-scientists-find/), last accessed 18 December 2024.

world. In this section we will sketch the specificities of some of the new approaches to climate plans-related litigation, which may help to introduce novel visions on the matter and, therefore, bring some additional complexity to an already rich phenomenon. In particular, we will first focus on the introduction of equity when devising climate plans in order to strike a fairer balance of the interests involved, in what is usually called "just transition"; secondly, we will refer to the probable increase in adaptation cases, involving the need to introduce preventative approaches and measures in climate plans regarding expected or probable climate-related threats; and, last, we will also briefly refer to climate litigation before a court that has so far remained quite hermetic to the recent surge in judicial review decisions regarding climate plans: the Court of Justice of the European Union.

(1) Just transition

As governments develop and implement plans and policies to tackle climate change it is becoming increasingly clear that those plans and policies are not neutral, and they generate benefits and burdens that are distributed among society. This distribution is sometimes particularly detrimental to some sectors of society while others ripe its benefits, therefore generating equity concerns. Just transition litigation is a novel concept that encompasses the claims brought before courts to specifically challenge that unequal burden.

However, just as energy transition plans can produce unexpected unequal results and harm the rights and interests of some sectors of society, just transition litigation might result in the paralysis or at least slow down an already insufficient energy transition that is indispensable to tackle climate change, the consequences of which will, in turn, be extremely harmful and unequal. Therefore, while such cases are still incipient, there are already some voices, like Savaresi and Setzer, advocating for a detailed monitoring and assessment of just transition litigation in order to better understand their motivations, diverse justice claims involved and results.[48] Such an analysis, the authors contend, would in addition provide a better understanding of how to integrate the interests and concerns of sectors of society that are usually misrepresented in the decision-making process, therefore better legitimising those processes and their outcomes, ensuring a more just transition and helping to overcome at least part of the opposition that those measures and policies might create.

Savaresi and Setzer identify three main dimensions of justice that are related to the energy transition and which can appear either alone or simultaneously in a given context: distributive justice (who benefits and who is burdened by the plan), procedural justice (how decisions are taken and plans made), and recognition justice (how the interests of marginalised communities or sectors of society are included in those plans).

Ultimately, the key question that needs to be addressed is "how can we rapidly and urgently decarbonize while maintaining distributive, procedural and recognition justice?".[49]

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[48] Savaresi, A., Setzer, J., Bookman, S. et al. 'Conceptualizing just transition litigation'. *Nature Sustainability* 7, 1379–1384 (2024), https://doi.org/10.1038/s41893-024-01439-y.

[49] *Ibid.*

(2) Adaptation

There have traditionally been two sorts of responses to climate change: mitigation and adaptation. While the former tries to slow, stop or reduce the concentration of GHG in the atmosphere, in order to prevent global temperatures from rising to dangerous levels, the latter focuses instead on the measures that need to be taken to protect us from the impacts of climate change that are already happening or will most probably happen given the current or foreseeable concentration of GHG. One seeks to prevent dangerous climate change, the other seeks to prevent the impacts of that climate change.

Most lawsuits challenging climate plans have so far related to mitigation. This is easy to understand: the dangers of global warming multiply as the temperature increases, causing more devastation and damage; the costs of addressing climate change become higher as the temperature rises; the possibility of actually limiting global warming to a safer level diminishes as temperatures go up; and last, but not least, while we can deploy measures to adapt to some climate change impacts, the more the temperature increases, the harder it is to protect the population from both sudden and slow onsetting events. To put it bluntly, there's no adapting to a certain level of warming.

Nevertheless, extreme events are already occurring and causing harm around the globe. Moreover, even if we were to stop warming at 1.5°C, there are a cascade of impacts that would derive from such an increase in temperature.[50] And it is necessary to adopt measures that would prevent those impacts from harming the population. Governments have been slow in deploying appropriate mitigation policies, but they have been even slower in drafting adequate adaptation plans.[51] Therefore, it is to be expected that, alongside mitigation-related climate litigation we will see an increase in adaptation cases.

Already in 2015, in Pakistan, a lawsuit was filed by Ashgar Leghari, challenging the lack of implementation of the country's climate strategy, regarding adaptation and resilience to the warming climate. The High Court of Lahore found in favour of the applicant and convened a commission of representatives of different ministries tasked with overseeing the actual implementation of the plan. The commission worked for three years, under the supervision of the judge, until the Court was satisfied that a significant part of the plan had been implemented, and then the Court created a Standing Committee to act as a link between itself and the executive and to assist the Government in the further implementation of the plan.

More recently, there have been some interesting cases regarding adaptation. For instance, the ECtHR recalled in *KlimaSeniorinnen v. Switzerland* that "effective protection of the rights of individuals from serious adverse effects on their life, health, well-being and quality of life requires that the above-noted mitigation measures be supplemented

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50 *Supra* in 32.

51 Since 2014, the United Nations Environment Programme (UNEP) annually publishes the "Adaptation Gap Report". The first sentence of the 2024 Report reads: "As climate impacts intensify, adaptation action continues to fall behind needs." United Nations Environment Programme (2024). *Adaptation Gap Report 2024: Come hell and high water – As fires and floods hit the poor hardest, it is time for the world to step up adaptation actions*. Nairobi. https://doi.org/10.59117/20.500.11822/46497.

by adaptation measures aimed at alleviating the most severe or imminent consequences of climate change."[52]

In 2023, Friends of the Earth brought a legal claim against the United Kingdom's third National Adaptation Programme (NAP3) that somehow bridges different points analysed in this paper: procedural rights, adaptation and just transition. The NGO, together with a disability rights activist and a campaigner trying to save his house, challenge NAP3 for a set of reasons: first, they consider that the plan is not specific enough, and instead of defining clear objectives only states broad goals; secondly, there is allegedly no information on the risks; thirdly, the plan does not consider its unequal impacts; and, last, there is a violation of several fundamental rights, like the right to life or to private and family life, as set in the ECHR.[53] The High Court of England and Wales delivered its judgment in October 2024, and although it dismissed the plaintiffs' claims, it nevertheless delivered a relevant statement on the relevance of adaptation, especially in regard to the aforementioned decision of the ECtHR in *KlimaSeniorinnen.* The Court stated that the European Court

> appears to indicate that the positive obligation imposed by Articles 2 and 8 extends to adopting and effectively implementing "adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection".[54]

Nevertheless, the Hight Court also considered that the lack of a specific goal on adaptation established at the international level, similar to the targets set in the Paris Agreement, necessarily conferred a larger margin of discretion to the authorities regarding adaptation. In the Court's own words,

> (a) the narrow margin of appreciation in relation to the mitigation aims was justified by reference to the internationally agreed objective of carbon neutrality by 2050 and the impact of one State's default on other States;
>
> (b) neither of these features applies in the field of adaptation; and
>
> (c) accordingly, in the field of adaptation, States are to be accorded a wide margin of appreciation in setting the relevant objectives and a wider margin still in setting out the proposals and policies for meeting them (by analogy with the margin accorded to the State in setting the means for achieving the mitigation objectives).[55]

All this notwithstanding, the position of courts is likely to evolve as the climate crisis looms on, just as it has evolved regarding mitigation cases. According to the last report on the global trends of climate litigation by Setzer and Higham, 64 climate adaptation cases have been filed since 2015, eight of them in 2023.[56] It certainly isn't the most

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52 *Supra* in 21, at §552.

53 *R (Friends of the Earth Ltd et al.) v Secretary of State for Environment, Rood & Rural Affairs, complaint, 17 October 2023.*

54 R(Friends of the Earth Ltd et al.) v Secretary of State for Environment, Rood & Rural Affairs, High Court of Justice, King's Bench Division, Administrative Court, [2024] EWHC 2707 (Admin), judgment 25 October 2024, at §102.

55 *Ibid*. at §105.

56 Setzer, J., and Higham, C., (2024), *Global Trends in Climate Change Litigation: 2024 Snapshot*. London: Grantham Research Institute on Climate Change and the Environment, London School of Economics

numerous group of cases, but as the impacts of the current level of warming increase and become more apparent and destructive, it certainly is to be expected that more victims and NGOs will turn to courts to protect and upheld the right of those affected, or potentially affected, by the lack of adequate adaptation plans and measures.

(3) Court of Justice of the European Union

One last area that may be worth exploring in the near future regards lawsuits challenging climate plans at the EU level. This has been an area with, so far, extremely limited results and scope, with most cases regarding the emissions trading system (ETS) of the European Union and the allowances of GHG emissions allocated to a certain country or company.[57] The most notorious climate case that has not to do with the ETS is probably *Ferrão Carvalho*, in which families from several EU and non-EU countries filed in 2018 a claim before the Court of Justice of the European Union (CJEU) regarding the then 40% GHG emissions reduction target for 2030 (which has since then been augmented to 55%)[58]. The CJEU basically dismissed the claim for lack of standing of the plaintiffs, arguing that they were not particularly and individually affected by the legislative measures under challenge, beyond the fact of being potentially affected by climate change.[59]

Although this interpretation of standing constitutes a considerable legal hurdle for other climate related complaints, there have recently been some cases that try to challenge climate plans in the EU framework. We will refer here to two of them which have not yet been decided at the time of writing this lines.

The first one is a claim brought by Climate Action Network (CAN) Europe and Global Legal Action Network (GLAN) against the EU Commission regarding the 2030 GHG emissions reduction targets.[60] This may be reminiscent of *Ferrão Carvalho*, and the plaintiffs develop their case in a different way so as to avoid stumbling upon the same obstacles. Thus, CAN Europe and GLAN do not directly challenge the target itself, but rather the so-called annual emissions allocations (AEAs) made by the Commission to the member states within the framework of the overarching climate targets. The plaintiffs argue that the EU Commission failed to assess different elements during the definition process of the AEAs and therefore they should be remade. Among those elements that were not assessed, they refer to the global emissions reductions required to hold

and Political Science, pp, 4 and 34.

57 There are at least 38 such cases, out of a total of 71 climate cases at the EU level, according to the database of the Sabin Centre for Climate Change Law (https://climatecasechart.com), last accessed on 20 December 2024.

58 Regulation (EU) 2021/119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law').

59 *Armando Carvalho and Others v European Parliament and Council of the European Union, Case C 565/19 P ECLI:EU:C:2021.* For an assessment of the challenges involving climate litigation before the CJEU see, inter alia, Campins Erritja, M., 'La difícil construcción de una política climática de la Unión Europea a través de la jurisprudencia del Tribunal de Justicia de la UE', in Peñalver i Cabré, A., *Litigación Climática. El Papel de la Ciudadanía y los Jueces*, Universitat de Barcelona, 2024, pp. 239-258.

60 *Global Legal Action Network and CAN-Europe v EU Commission*, General Court of the EU, 27/08/2024.

the global mean temperature to 1.5°C; what constitutes a fair share of the emissions reductions; what domestic reductions are feasible at the EU level; or the impact of climate change upon fundamental rights, as recognised in the Charter of Fundamental Rights of the European Union. It must be noted that the plaintiffs do not directly challenge the AEAs before the Court, but rather the refusal of the EU Commission of their request for internal review of those AEAs.[61] The hearings before the General Court of the EU are expected to take place in 2025 and a final decision in 2026.

A second claim or, rather, a second series of claims have been brought simultaneously by different environmental organisations before the EU Commission against the National Climate and Energy Plans (NCEPs) of their respective countries, namely France, Germany, Ireland, Italy, and Sweden. The plaintiffs claim, among other things, that the NCEPs of those country are inadequate to achieve the climate targets set by the EU for 2030, lack proper public participation and are unequitable. The plaintiffs expect the EU Commission to launch a formal infringement procedure that may ultimately lead to a review of the plans.

(E) CONCLUSION

Climate litigation is a manyfold phenomenon, diverse in its actors as well as in its claims and legal arguments. In this article we have tried to present a clear picture of a specific modality of climate litigation: that brought by individuals and nongovernmental organisations against the climate plans of a given country or region. The case law shows that an increasing number of courts in different jurisdictions are finding that the authorities have acted unlawfully regarding climate plans, either because no such plans exist, or because they are inadequate to deal with the climate crisis or maybe even because they are not complied with. Ultimately, what arises from many of those cases is that most jurisdictions no longer consider climate change as a no-go area. On the contrary, courts are becoming increasingly aware of the importance of devising and implementing adequate climate plans in order to respond to climate change and, ultimately, to uphold the law. Since the climate crisis is far from being resolved and recourse to the courts of justice is likely to, at least, continue in the coming years, we have also presented, in the last section of the article, some possible avenues for the next generation of climate lawsuits against climate plans, dealing with adaptation, the fairness of the energy transition and the possible emergence of less mobilised courts in the recent history of climate litigation, like the CJEU.

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