

Climate litigation in Europe

*A summary report for the European Union Forum of
Judges for the Environment*

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EU FORUM OF JUDGES FOR THE ENVIRONMENT
UE FORUM DES JUGES POUR L'ENVIRONNEMENT

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Introduction

This report provides a synthesis of information on the current state of development of climate change litigation in Europe (the European Union and European countries outside the EU). It was written for the European Forum of Judges for the Environment (EUFJE) Annual Conference, which took place in October 2022.

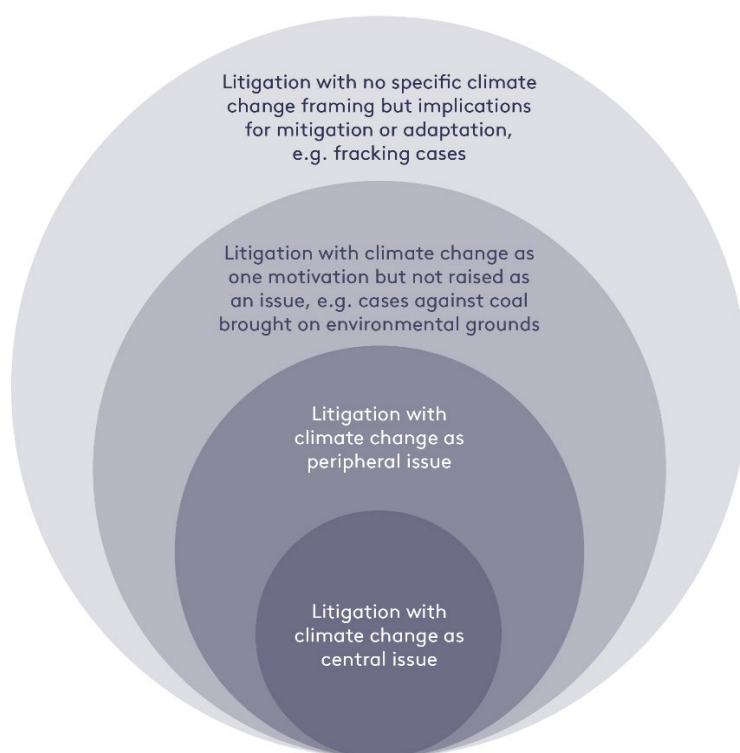
The report draws on three key sources of information: (i) the **national reports** provided by EUFJE members summarising developments in their domestic jurisdictions; (ii) the annual *Global Trends in Climate Litigation* reports published by the Grantham Research Institute on Climate Change and the Environment at the London School of Economics and Political Science; and (iii) the **global climate change litigation databases** maintained by the Sabin Center for Climate Change Law at Columbia University with support from the Grantham Research Institute and others. Further information on these data sources can be found in Box 1.

Defining climate change litigation

In any study of climate change litigation, one of the first and most difficult tasks is to define what climate change litigation means (see Setzer and Vanhala, 2019). Given that climate change now impacts almost every aspect of society, and that so many economic and social activities contribute to climate change, how do we define which cases are specifically *climate* cases?

In the academic literature, one of the best schematics for understanding the possible borders of the body of climate change litigation is by Peel and Osofsky (2020). They divide the field into four categories which are represented as a set of concentric circles, beginning with cases in which climate change is *the* central issue and expanding outwards to include cases which may have significant impacts for the climate but contain no explicit climate change framing or reference to climate change (see **Figure 1**).

Figure 1. Defining climate litigation – four categories



Source: Reproduced from Peel and Osofsky (2020), with permission.

Scholarly attention has tended to focus on the first category; the ‘high-profile’ climate litigation cases. However, as Bouwer has pointed out, this is really only the “tip of the climate litigation iceberg”, and too narrow a focus on these cases risks obscuring crucial ways in which litigation of all kinds may influence climate policy responses (Bouwer, 2018).

A further difficulty in defining climate change litigation is determining what counts as ‘litigation’, with some scholars referring exclusively to litigation filed before courts and others including proceedings before other types of quasi-judicial decision-making bodies (e.g. proceedings opened before OECD national contact points and national human rights bodies).

The importance of developing a shared understanding of the types of cases we are referring to when we use the term ‘climate change litigation’ is evident from the national reports on climate change litigation submitted by EUFJE members. While some discussed high-profile climate cases, such as the famous cases of *Urgenda Foundation v. State of the Netherlands* in the Netherlands or *Client Earth v. Belgian National Bank* in Belgium, many reports also provided information on cases involving air pollution (e.g. Poland), peat mining and forest felling (e.g. Estonia), and waste disposal (e.g. Spain). While such cases are undoubtedly highly relevant to climate change, the fact that they do not explicitly mention climate change means that they would carry a narrower definition within the domain of climate change litigation. The academic literature would tend to classify them as ‘environmental’ cases, rather than ‘climate change’ cases as such.

Similarly, this report focuses on cases that fit the relatively narrow definition of climate change litigation used in the global climate litigation databases (e.g. Climate Change Laws of the World [CCLW]). For inclusion in the databases, climate change law, policy or science must be a material issue of law or fact in the case. Cases that make only a passing reference to climate change but do not address climate-relevant laws, policies or actions in a meaningful way are not included. The focus is on cases before judicial bodies, although exemplary cases before administrative or investigatory bodies are also included. We adopt this definition here in the interests of clarity. However, we accept that this choice means that many ‘environmental’ cases that are highly relevant for climate change will be excluded from the discussion.

Climate litigation across the world and in Europe

The United States started as “the epicentre of the climate change litigation phenomenon” (Peel and Osofsky, 2015: 17) and, for many years, US cases were considered “a prototype, a source of inspiration, an opportunity to analyse benefits and limitations of courts” (ibid.). The numbers reflect this dominance: the US is home to three-quarters of the world’s recorded climate litigation cases. In Australia, the country with the second largest number of cases, most climate change litigation has historically pursued a statutory pathway (Peel et al., 2020). In recent years the country has seen a growth in novel and world-first cases, such as litigation concerning climate-related risk disclosure and directors’ duties against both corporations and the federal government (see e.g. *McVeigh v. Retail Employees Superannuation Trust*, and *O’Donnell v. Commonwealth*) as well as a landmark judgment (since overturned on appeal) recognising a novel common law duty of care owed to children in the context of climate change (see e.g. *Sharma and others v. Minister for the Environment* and *Pabai Pabai & Guy Paul Kabai v. Commonwealth*, which were argued on similar grounds).

In recent years climate litigation has also emerged in many other countries and the most high-profile and innovative cases and decisions can currently be found in other parts of the world, particularly in Europe. As Lavrysen (2021) noted, many – but not all – European domestic courts and the courts of the European Union have seen a gradual development of climate litigation dealing with specific aspects of climate legislation, but some European cases have also enjoyed international renown. Courts in several European countries have issued important rulings against states and companies in favour of climate protection. The Italian, Belgian and German national reports cited the decisions in *Urgenda Foundation v. State of the Netherlands*, *Commune de Grande-Synthe v. France* and *Neubauer et al. v. Germany*, which all made the headlines far beyond Europe, and similar cases seeking ambition or implementation of whole-of-government responses to climate change against national and subnational governments followed in Asia, Africa and the Americas (Setzer and Higham, 2022). The decision by the district court in The Hague in *Milieudefensie et al. v. Royal Dutch Shell plc* (still under appeal) determined for the first time that a company must cut its global carbon emissions. These significant developments in the fields of human rights and government and corporate responsibility in Europe are inspiring litigants and influencing courts around the world.

“Climate change litigation throughout the different jurisdictions provides an opportunity to oblige legislatures, public bodies and private stakeholders to implement effective climate protection measures.”

(German national report: p. 6)

The rich field of climate litigation increasingly requires lawyers and judges to become aware of the climate change consequences of the choices they make. The terms ‘climate-conscious lawyering’ and ‘climate-conscious courts’ are being used to describe the skills that are needed from lawyers as they give legal advice to clients and from judges as they decide on cases (see Preston, 2021; Carnwath, 2022; IBA Climate Crisis Statement, 2020). This means that in their work lawyers and judges need to go beyond the conventional and jurisdictionally bounded sources of law to “adopt an interpretation of legal rules that promotes or better implements climate change goals, provided that doing so is consonant with and required by the principles of genuine interpretation” (Preston, 2021: 56). As climate cases continue to be filed, courts and judges will need to determine the legality of present action – and inaction – by governments and enterprises on issues of climate change.

Structure of the report

Part I provides key figures and statistics regarding the overall body of climate change litigation identified in Europe to date, including an analysis of the actors involved in the litigation, an overview of ways to understand the diverse range of documented cases, and a brief discussion of the outcomes of the litigation.

Part II includes a qualitative discussion of key developments in European climate change litigation at the domestic level, based primarily on information provided in national reports and supplemented by references to the academic literature. It also includes a discussion of trends in litigation before the regional courts in Europe, including the courts of the European Union and the European Court of Human Rights (while these cases are rarely mentioned in the national reports – which focus on domestic developments – they are crucial to understanding the development of climate litigation in the region). This part of the report then discusses potential future trends in European climate litigation.¹

¹ Litigation before international bodies involving European countries is not discussed in the report, although such litigation is increasingly common and arguments from these fora may have a significant influence on the development of litigation in national and regional courts in the future.

Box 1. Methodology

Sources of information

i) National reports

The 'national reports' consist of EUFJE members' responses to a survey on the current state of climate litigation in their domestic jurisdictions. The survey was developed by the EUFJE in partnership with the Grantham Research Institute on Climate Change and the Environment and includes questions on the evolution of climate change litigation in domestic jurisdictions, the opportunities and barriers for those seeking to bring climate change litigation, and the most relevant legal principles. It also asks respondents to identify climate change cases, supplementing existing efforts to record these. All national reports will be made available on the [EUFJE website](#).

ii) *Global Trends in Climate Litigation* reports

The *Global Trends in Climate Litigation* reports published by the Grantham Research Institute review key global developments in climate change litigation and are published annually. The latest report covered the period from May 2021 to May 2022. The series can be found on the [Grantham Research Institute website](#).

iii) Climate litigation databases

This report also uses data from the **Climate Change Laws of the World (CCLW) database**, an open-access, searchable database created and maintained by the Grantham Research Institute. The database is a joint initiative with the Sabin Center for Climate Change Law at Columbia Law School and it uses cases, data and summaries identified and prepared by Sabin Center staff and their partners, and included in the Center's Global Climate Litigation database. A separate climate litigation database for the United States is maintained by the Sabin Center in collaboration with the law firm Arnold & Porter Kaye Scholer. More detail can be found in the **Methodology** section of the CCLW website and on the '**About**' page of the Sabin Center's climate case database.

Case numbers

The overall case numbers referred to in this report are based on a combination of cases from the litigation databases and cases drawn from our analysis of the national reports. Altogether, we received 21 national reports from 20 countries based in geographical Europe.² We also received one report from an EUFJE observer member based in the United States. Almost 90 individual cases filed before courts in European countries were mentioned in the national reports, 28 of which were already included in the CCLW database.³ From the reports, and with some supplementary desk-based research where needed, we identified 23 cases that fall within the scope of our definition of climate litigation that were not included in the databases.⁴ These cases were combined with the 261 European cases in the databases to give a full dataset of 284 climate change cases in Europe.⁵ Cases were then classified according to the methodology used for the *Global Trends in Climate Litigation* report series (see Setzer and Higham, 2021).

² Two different reports were submitted from Italy.

³ This does not include case numbers from the national report from the United States (Vermont). However, we recommend that readers review that report for a synthesis of the latest developments of climate change litigation in the US, a key jurisdiction in the development of the field.

⁴ It is possible this figure is an underestimation of the cases that fall within the scope of climate litigation because for some cases we were unable to confirm the nature of proceedings due to the unavailability of case documents.

⁵ For the purposes of this report, we consider cases to be filed in Europe if they are filed in the domestic courts of a European country, before the courts of the European Union, before the European Court of Human Rights, or before an OECD National Contact Point based in a European country.

Part I: Overall trends in European climate litigation

This section of the report discusses the overall trends in climate litigation in Europe, drawing on data from the global climate change litigation databases maintained by the Sabin Center with support from the Grantham Research Institute, and from the national reports provided for this project by members of the European Union Forum of Judges for the Environment (EUFJE) (see **Box 1** above for more information). We provide some key statistics on climate litigation in Europe, drawing on previous work by the Grantham Research Institute to identify major trends in global climate litigation. Where useful, European trends are compared with trends outside Europe.

The figures: climate litigation in Europe over time

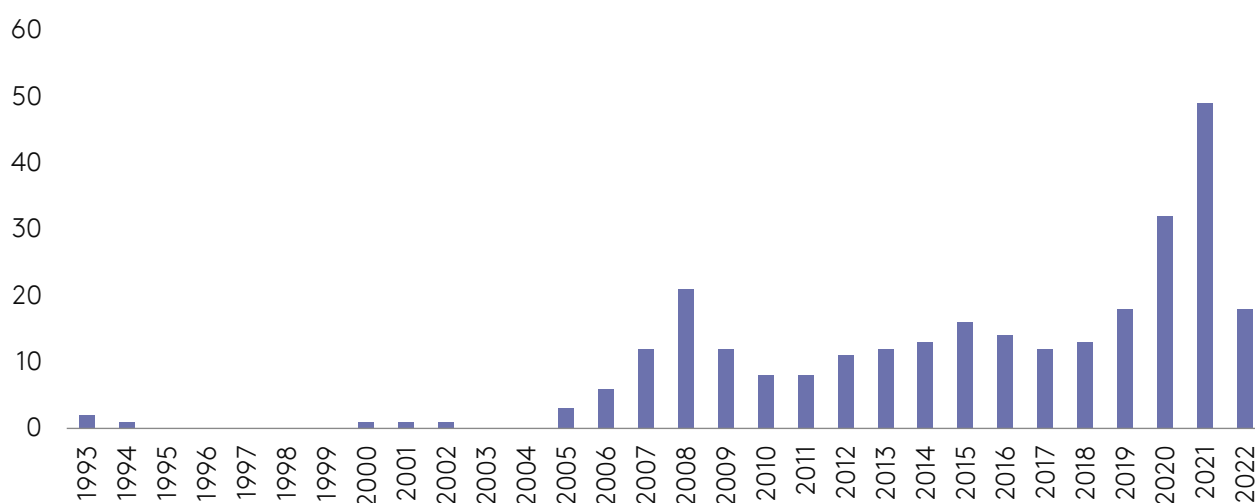
Case numbers are increasing rapidly

The earliest recorded cases of climate change litigation in Europe date back to the early 1990s, when a small handful of cases concerning the application of planning law to the development of renewable energy projects were heard before courts in the United Kingdom. Since then, the number of documented cases has risen, with the current total of 285 cases identified across the region (see **Figure 2**).

The mid-2000s saw a boom in European climate litigation as well as in European climate policy and legislation. The introduction of the first iteration of the European Union Emissions Trading System (EU ETS) in 2005 had a significant impact on the activities of private parties. Litigation also spiked in 2008 as the EU ETS moved into its second phase, with disputes surrounding the interpretation of Directive 2003/87/EC (the EU ETS Directive) and the relative competencies of the European Commission and Member States in the regulation of greenhouse gases (see Bogojević 2010; see also discussion in **Part II**).

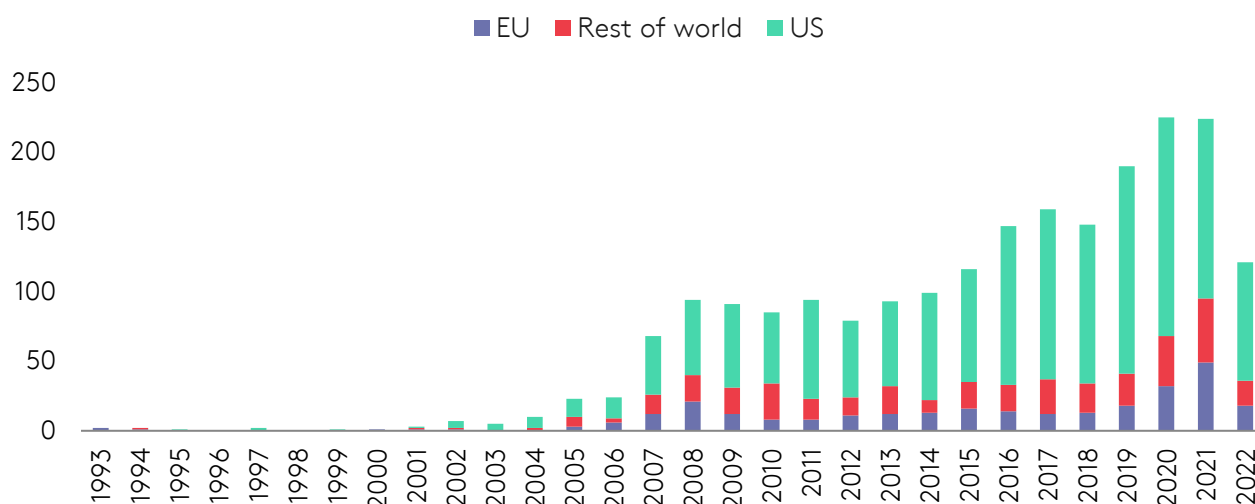
Since around 2015, European climate litigation has followed the global trend, with courts from all over Europe seeing an increasing number and diversity of climate cases filed before them (see **Figure 3** and further discussion of global litigation trends in Setzer and Higham, 2022).

Figure 2. No. of cases filed in European jurisdictions, 1993 to 2022*



Note: *Numbers run to 30 September 2022. Source: CCLW and Sabin databases.

Figure 3. No. of cases filed around the world, 1993 to 2022*



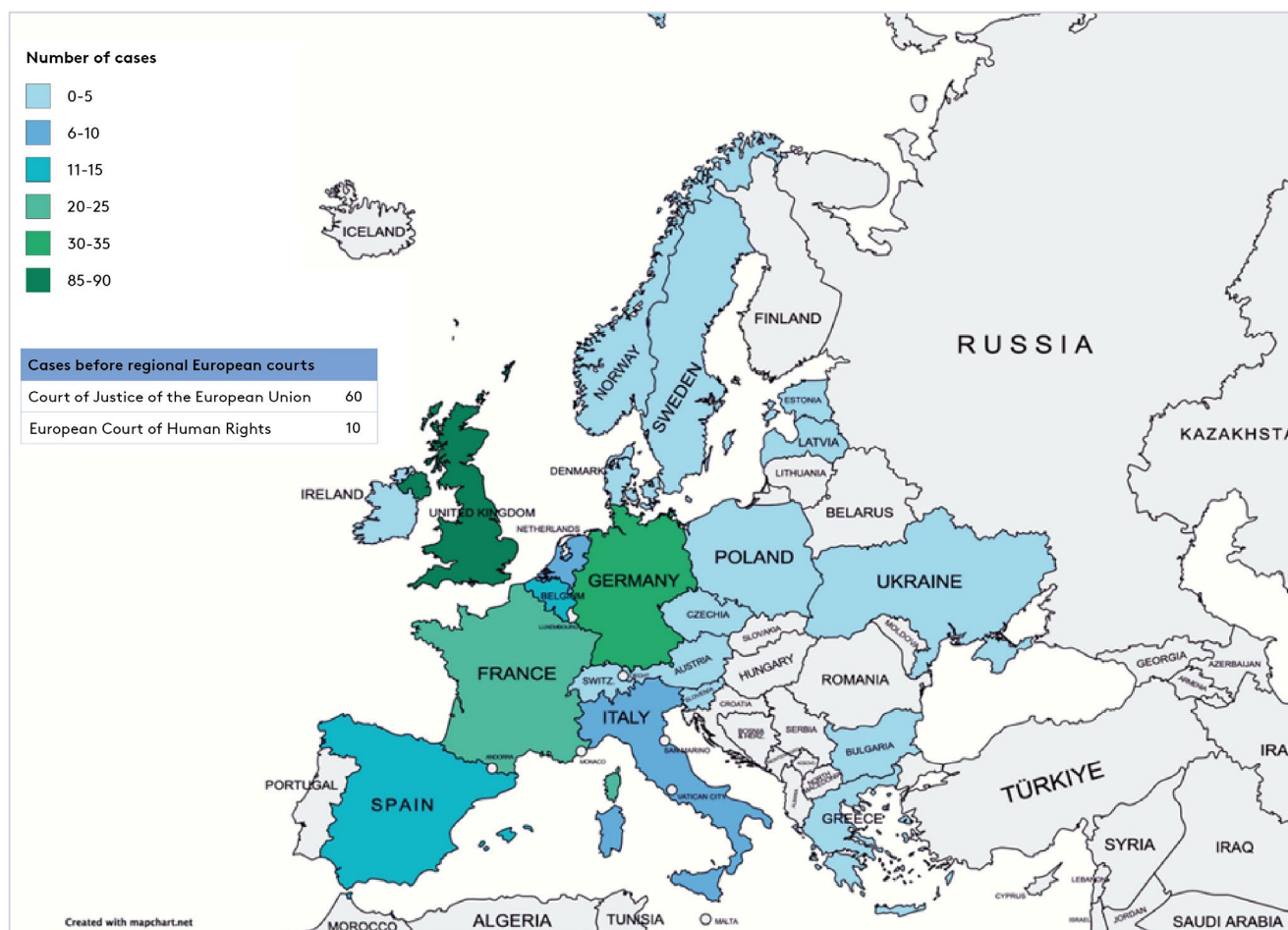
Notes: *Numbers run to 30 September 2022. Although there has been rapid growth in climate litigation in Europe over the last two decades, the vast majority of climate cases documented globally have been filed before federal and state courts in the United States. Cases from the United States are therefore presented separately for ease of comparison. Source: CCLW and Sabin databases.

Climate cases have now been filed in around half of all European countries

Over the past three decades, climate cases have been documented in 20 countries in Europe (see **Figure 4**). This means that cases have been filed in close to half of all countries on the European continent.⁶ More than 60 cases have now been filed before the Courts of the European Union and at least 10 cases are pending before the European Court of Human Rights (ECtHR). Case numbers are far from evenly distributed; the United Kingdom, France, Germany and Spain are the jurisdictions with the most cases and collectively account for more than half of the total number of cases. However, the broader trend in litigation suggests that most jurisdictions on the European continent are likely to see climate cases filed in the coming decades.

⁶ The exact borders of geographical Europe remain disputed but most assessments put the total number of countries in the continent between 40 and 50. See: <https://unstats.un.org/unsd/methodology/m49/>.

Figure 4. Map of cases filed in European jurisdictions, 1993 to 2022*



Note: *Numbers run to 30 September 2022. Source: CCLW and Sabin databases.

Claimants, defendants and courts

Most climate cases are filed against governments – but those against corporate actors are on the rise

Globally, more than 70% of all climate cases have been filed against governments (Setzer and Higham, 2022). This trend is also seen in the European context, where around 75% of cases have been filed against a wide variety of government actors, including both national and subnational governments and other public institutions such as export credit agencies and central banks.

Although much of the academic literature on climate change litigation is concerned with litigation against private parties, these cases still represent a much smaller proportion of the overall number of climate cases filed in Europe (16%). However, litigation targeted at private actors in Europe is certainly on the rise: at least 40% of such cases have been filed since 2020.

Individuals and civil society groups are the most represented plaintiffs in Europe

Almost 50% of climate cases in Europe have been filed by individuals or civil society organisations, or by both acting together. These stakeholders tend to be responsible for the majority of 'strategic' climate change litigation, but it is worth noting that these are far from the only actors involved in litigation on climate issues. Governments at different levels have brought around 15% of cases, and more than 30% of cases have been brought by corporate actors. These have mainly involved disputes over how climate policy introduced at the national or EU level has been applied to the circumstances of the parties involved. As climate change becomes an increasingly pressing

concern, and as national governments continue to introduce new and more stringent climate policies, it is likely that litigation will continue to be filed by both these groups. However, significant variation between European countries in the costs of litigation appears to be one reason why this phenomenon is not evenly distributed between countries. National reports for Estonia, Norway, Bulgaria, Germany and Spain all mention the fact that legal costs involved in the life cycle of a lawsuit may constitute a barrier to climate litigation being brought in these jurisdictions.

National reports confirm that climate cases can be brought before different types of courts

One of the common features of the national reports is an emphasis on the wide range of possibilities for legal action concerning climate change issues. Administrative courts were most frequently referenced as most likely to see climate action and were in some cases the only types of court considered by respondents (e.g. Estonia and Finland). But it is clear that climate litigation is not being confined to these types of courts: around half of the national reports submitted include acknowledgements from judges that climate cases may be heard before many different types of regional and national courts in their jurisdiction, with civil courts among the most frequently mentioned. Several national reports even explore the possibility of cases being filed before criminal courts (e.g. Bulgaria and Portugal). This suggests that a broad understanding of climate change may be required by judges across the whole spectrum of legal expertise and at all levels of the judiciary.

Box 2. Length of proceedings has implications for climate litigation

One of the factors that may affect which types of courts are well placed to address climate cases is the average length of proceedings. National reports confirm that the timing and length of proceedings vary significantly according to jurisdiction and the type of court before which a case is heard. Of the 21 national reports received, 13 included numeric estimates on the length of proceedings. On average, proceedings lasted almost three years, but in some jurisdictions, such as Serbia, it was estimated that a climate case can take more than six years on average to conclude. Given the urgency of climate action (IPCC, 2022), the lengthy nature of legal proceedings may impact the ways in which the courts can provide an effective avenue to mandate action on climate change.

As the window for action on climate change narrows, the length of proceedings may become a more important consideration for strategic claimants and may lead to a shift towards case types that can be rapidly adjudicated, as well as 'forum shopping', where litigants try to get their case heard in courts with faster procedures (or where a favourable judgment is more likely), and the use of non-adjudicative mechanisms such as soft law complaints.

The diversity of European climate cases

The overall body of climate cases is highly diverse. Previously undocumented cases described in national reports range from a contract dispute over a proposed hydroelectric plant in Latvia between the project developers and the Latvian government, to a challenge over the legality of cancelling emissions allocations under the EU ETS in Bulgaria. A similar breadth of case type can also be found in the global climate litigation databases (Setzer and Higham, 2022).

Scholars have proposed several ways of classifying and grouping types of climate litigation cases to better understand the diverse legal and factual issues that arise. Such classifications have often been based on a combination of key elements of the case strategy and the primary legal basis for the case (Markell and Ruhl, 2012; UNEP, 2021; Sindico and Moïse Mbengue, 2021; Setzer and Higham, 2021; Golnaraghi et al., 2021). In this report, we provide two frameworks for understanding the subject matter of climate cases. The first is a framework for understanding the evolution of cases over time, from a narrower set of cases grounded primarily in administrative

law to a more diverse group of cases involving arguments based in many areas of law, including human rights, contracts, tort, and corporate law. The second provides a typology of strategies adopted in strategic climate litigation cases, focusing on the period since the Paris Agreement was adopted. The following sections of the report are best understood as a summary of past analyses conducted at the global level, applied here with a Europe-focused lens.

The three waves of climate change litigation

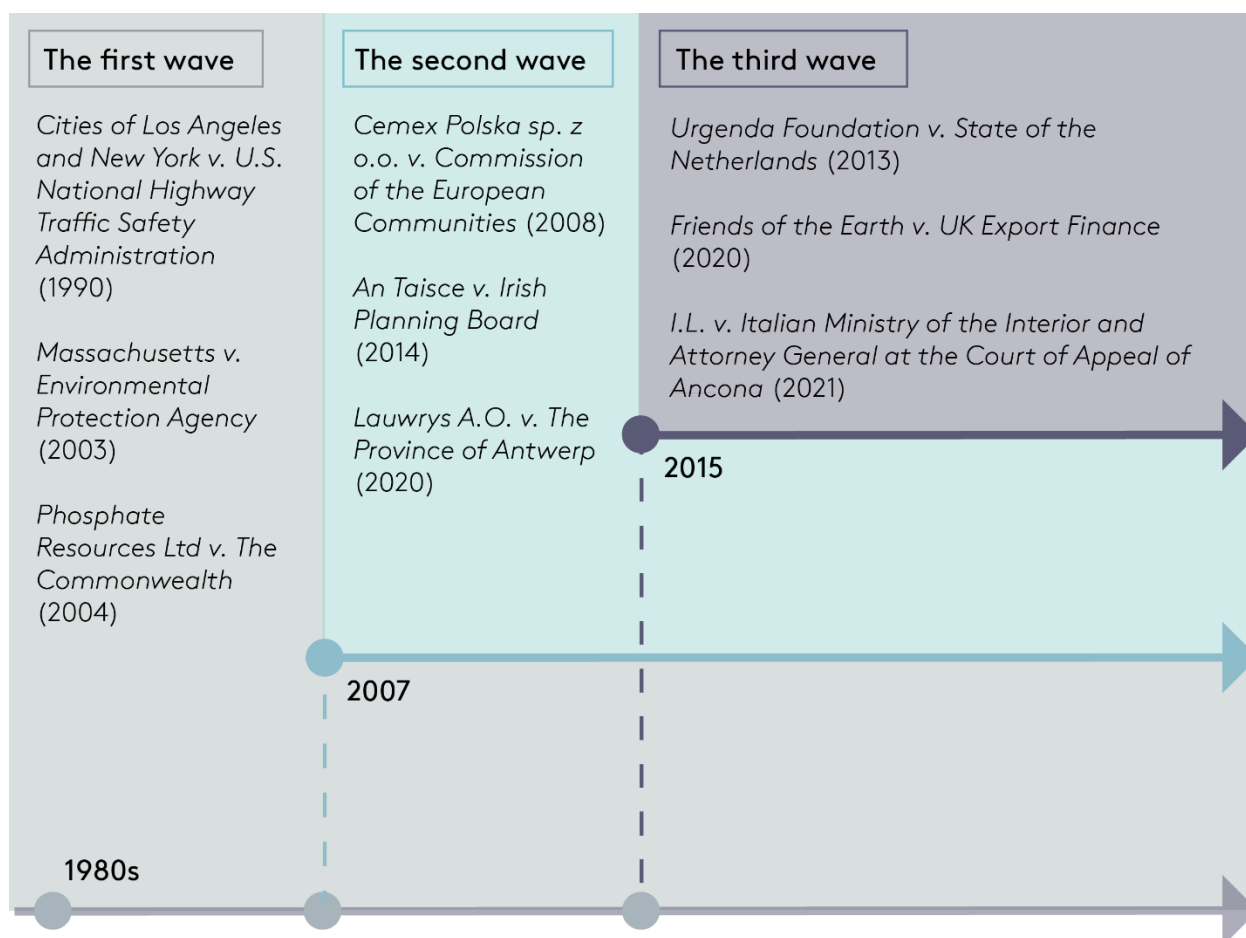
Scholars and commentators seeking to understand the global body of climate change litigation have often tried to do so by understanding its evolution over time. Scholars often refer to this evolution using the metaphor of ‘three waves’ of litigation (see **Figure 5** and Peel and Osofsky, 2020; Golnaraghi et al., 2021; Ganguly et al., 2018).

The first wave of climate litigation is often understood to have taken place between the mid-1980s and the mid-2000s. As noted above, this involved a relatively small number of cases filed against governments, primarily in the United States and Australia. These early challenges largely consisted of administrative challenges to the process by which individual policy decisions had been taken and the fact that, for the most part, greenhouse gas emissions and their implications for climate change had not been considered.

The early- to mid-2000s saw an increase in public awareness of climate change and its consequences, as well as the introduction of significant policy and regulation aimed at curbing greenhouse gas emissions, particularly following the entry into force of the Kyoto Protocol in 2005. There followed a second wave of climate litigation that was more varied than the first. Administrative law challenges to policies and projects continued to be filed, particularly by environmental groups. There was also a surge in litigation raising questions about the implementation of climate change legislation, reflected in the cases regarding the EU ETS Directive, discussed further in **Part II**. One of the most distinctive features of this period is the growing use of litigation as an effort to ‘fill in the gaps’ where civil society groups deemed legislation to be lacking (Golnaraghi, et al. 2021). This period also saw the first climate change cases against corporate actors filed in the United States (examples include *Kivalina v. ExxonMobil* and *Connecticut v. American Electric Power*; see further Ganguly et al. 2018).

The third wave of climate litigation is generally understood to have started around 2015, the year in which the Paris Agreement was signed. This period saw a further surge in strategic climate change litigation, with litigants continuing to adopt new strategies and legal arguments being used to compensate for inaction by both governments and companies. One of the key distinguishing features of this wave of litigation is the use of human rights and constitutional law arguments, often referred to as the ‘rights turn’ in climate litigation (Peel and Osofsky, 2017). This rights turn is generally understood to have started with the landmark cases of *Leghari v. Pakistan*, *Urgenda Foundation v. State of the Netherlands* and *Juliana v. United States*, all of which sought to connect the dangers posed by climate change with the legal duties of governments to prevent such dangers. Additional features include the spread of litigation to new jurisdictions and the increasing diversity of institutions targeted by the litigation.

Figure 5. Three overlapping waves in the evolution of climate change litigation



Note: This figure shows how new types of cases and arguments have been overlaid onto existing arguments as climate change litigation has expanded.⁷ Source: Authors.

Applying the wave analogy to domestic contexts

The wave analogy can help us to understand the way in which cases globally have progressed over time, particularly if we acknowledge that subsequent waves do not displace previous ones, but rather bring new case types into the mix. The analogy can also be helpful to understand how litigation may progress in national jurisdictions. As shown in the next section, administrative law challenges to government decision-making remain among the most common types of climate cases, even in jurisdictions with relatively few climate cases. Many of these cases share commonalities with first wave climate cases.

However, it is important to note that the progression of climate litigation is non-linear. Some jurisdictions may exclusively see cases filed with third wave characteristics without ever seeing a typical first wave-style case. This is especially likely given the rich transnational exchange between lawyers, judges and scholars in this area of law. It is also demonstrated in the national reports: the German national report, for example, provides a comprehensive summary of recent cases, the vast majority of which include the kind of constitutional and human rights arguments that characterise many second and third wave cases. Indeed, the report uses its own wave analogy to describe domestic litigation.

⁷ Here we list examples of the types of cases filed in each wave. First wave: *Cities of Los Angeles and New York v. U.S. National Highway Traffic Safety Administration* (1990); *Massachusetts v. Environmental Protection Agency* (2003); *Phosphate Resources Ltd v. The Commonwealth* (2004). Second wave: *Cemex Polska sp. Z.o.o. v. Commission of the European Communities* (2008); *An Taisce v. Irish Planning Board* (2014); *Lauwrys A.O. v. The Province of Antwerp* (2020). Third wave: *Urgenda Foundation v. State of the Netherlands* (2013); *Friends of the Earth v. UK Export Finance* (2020); *I.L. v. Italian Ministry of the Interior and Attorney General at the Court of Appeal of Ancona* (2021).

Strategic cases and case strategies in Europe

Another common way of understanding climate litigation cases is to divide litigation into two key types of cases: strategic cases and non-strategic cases. *Strategic litigation* can be understood as cases where the claimants' motives for bringing the case go beyond the concerns of the individual litigant and aim to bring about some broader societal shift. Strategic cases will often be accompanied by broader communications campaigns (Setzer and Byrnes, 2020). Much academic literature on climate litigation is focused on strategic cases as academics and activists seek to understand the effectiveness of such litigation in advancing climate action (Bouwer and Setzer, 2020; Peel and Osofsky, 2020).

"In court, the individual encounters the state much more directly than it is possible at demonstrations or within political debates. Court proceedings can therefore also contribute to plaintiffs and government bodies entering into a dialogue with each other."

(German national report: p. 7)

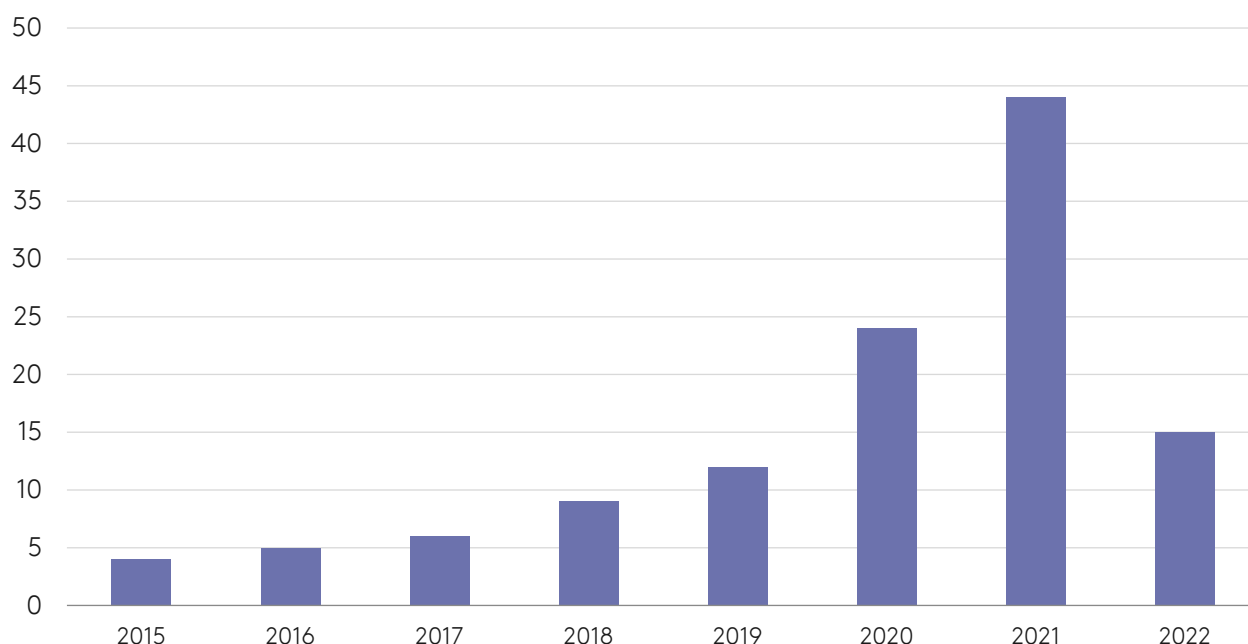
Isolating the group of strategic cases from the larger body of climate cases, it is possible to observe that strategic litigants have three key motivations:

- i. **To advance climate action**, aiming to compel governments or corporations to increase their ambition regarding emissions reductions or to compel the implementation of climate policies and standards in specific decisions. These are often referred to as 'pro-climate', 'pro-regulatory' or 'climate-aligned' cases (Peel and Osofsky, 2015; Markell and Ruhl, 2012; Setzer and Higham, 2022; Silverman-Roati, 2021).
- ii. **To delay or prevent climate action**, sometimes referred to as 'anti-climate', 'anti-regulatory' or 'non-climate aligned' cases.
- iii. **Concern about the unequal distributional impacts of climate change**, and the way in which the benefits and burdens of the transition are shared. These can be understood as 'just transition' cases. In most instances they do not seek to delay or prevent climate action, but they may have this effect in the short term (see further Setzer and Higham, 2022; Savaresi and Setzer, 2022).

Understanding strategic cases is an important focus of both scholars and the transnational movement of climate organisations and lawyers. The data reviewed for this report shows that, as in the rest of the world, strategic climate change litigation in Europe has been on the rise during the third wave period, i.e. since 2015 (see **Figure 6**; see also Setzer and Higham 2022).⁸ This should come as no surprise given the more heated and urgent nature of climate change discussions in recent years.

⁸ Classifying a case as non-strategic or strategic entails a subjective assessment, often made on imperfect or incomplete information, about parties' intentions. For more information on the methodology used for this classification see Setzer and Higham (2021) and Setzer and Higham (2022).

Figure 6. No. of strategic cases in Europe, 2015 to 2022*



Note: *Numbers run to 30 September 2022. Source: CCLW and Sabin databases.

To better understand the range of strategic litigation being brought around the world, we have developed a typology of case strategies (Setzer and Higham, 2022). This classifies cases based on the targets of the litigation, i.e. the types of behaviour that the litigants and their lawyers are seeking to incentivise or compel by bringing the litigation, instead of the legal grounds on which they are brought (which tend to vary significantly from jurisdiction to jurisdiction).

Below, we summarise the key strategies identified from the global corpus of climate litigation to date and apply this typology to the 119 European strategic cases filed after 2015.⁹ It should be noted that an individual case may employ more than one strategy (for further discussion see Setzer and Higham, 2022). Unlike in other parts of the world, none of the documented strategic cases filed before a court in a European country between 2015 and 2022 were 'non-climate aligned'.¹⁰ All cases sought to increase levels of climate action or ambition, apart from one 'just transition' case, *FOCSIV and others v. FCA Italy (Stellantis NV)*, which concerned a complaint made to the Italian OECD National Contact Point regarding alleged human rights violations in the supply chain of a company importing rare earth metals to produce electric batteries. We anticipate that as the pace of the transition to a low-carbon economy accelerates, just transition cases will become increasingly common before domestic European courts and other non-judicial bodies.

Table 1 below sets out the types of strategies employed in these cases and the number of cases employing each strategy.

⁹ We have focused on analysing the case strategies for cases filed in the 'third wave' of litigation from 2015. However, it should be noted that a further 43 strategic cases were filed in Europe before this period.

¹⁰ The database does contain non-climate-aligned cases filed before international bodies, such as cases filed under international investment treaties in response to the introduction of measures to curb fossil fuel expansion in Europe, e.g. a case brought by RWE against the Netherlands relying on the Energy Charter Treaty (see further Fermeglia et al., 2021).

Table 1. Strategies used in climate-aligned cases in Europe¹¹

Strategy type	No. of cases in Europe employing case strategy
<ul style="list-style-type: none"> • Enforcing climate standards: Cases that seek to integrate climate standards, questions or principles into government decision-making with the dual goals of stopping specific harmful policies and projects and making climate concerns more mainstream among policymakers.¹² These are described as ‘hit the target’ cases by Bouwer and Setzer (2020). Cases may challenge new policies developed without careful consideration of climate impacts, or they may challenge decisions to roll back or reduce the level of ambition in existing climate policies. These cases are typically – but not exclusively – focused on mitigation, and many target fossil fuel extraction and fossil fuel energy generation. Increasingly, cases may also focus on agriculture and land use change or transport. 	<p>49</p> <p><i>As in the rest of the world, this is the most frequently used strategy in European climate litigation.</i></p>
<ul style="list-style-type: none"> • Government framework: Cases that challenge the implementation or ambition of climate targets and policies affecting the whole of a country’s economy and society (e.g. <i>Urgenda Foundation v. State of the Netherlands</i>). These cases typically seek to enhance national-level targets and plans, providing a basis for more ambitious policy decisions at every level of government. These are described as ‘systemic litigation’ cases by Setzer and Higham (2021) and as ‘systemic mitigation’ cases by Maxwell et al. (2022). A sub-group of these cases are focused on subnational governments and can be understood as state-wide or region-wide cases. Some cases in this category may also include arguments about specific policies or projects (e.g. <i>R (oao Friends of the Earth et al.) v. Secretary of State for Business Energy and Industrial Strategy</i> “Net Zero Challenge”). 	<p>39</p> <p><i>Around the world, 80 government framework cases have been identified. Nearly half of such cases have been filed in Europe.¹³</i></p>
<ul style="list-style-type: none"> • Corporate framework: Cases that seek to disincentivise companies from continuing with high-emitting activities by requiring changes in corporate governance and decision-making. These cases focus on company-wide policies and strategies (e.g. <i>Milieudefensie et al. v. Royal Dutch Shell plc</i>), and frequently draw on human rights and environmental due diligence standards. These cases have been brought before national courts, but proceedings have also been opened before OECD National Contact Points and national human rights bodies. It is common for these cases to draw heavily on the theories and evidence developed in framework cases against governments, but due to the different responsibilities of governments and companies we view them as a distinct category. 	<p>10</p> <p><i>Almost every corporate framework case filed to date has been filed in Europe, with the exception of one case in Australia and the Philippines Commission on Human Rights Inquiry into the Responsibility of the Carbon Majors.</i></p>

¹¹ Modified version of a table from Setzer and Higham (2022), reproduced with permission.

¹² The standards in question may be drawn from national legislation, international conventions, or soft-law instruments. The cases often involve questions about the application of existing legal standards – such as requirements to consider environmental impacts – to the issue of climate change even when climate change is not explicitly mentioned in the legislation or policy.

¹³ It should also be noted that the national report for Sweden suggests that it is likely that a new government framework case will also be brought there. The case is planned to be filed by Aurora, an NGO representing Swedish youth.

<ul style="list-style-type: none"> • Climate-washing: Cases that aim to hold both governmental and non-state actors legally accountable for actions or products that misleadingly claim to address climate change (Benjamin et al., 2022). These cases challenge inaccurate government or corporate narratives regarding contributions in the transition to a low-carbon future (<i>FossielVrij NL v. KLM</i>; <i>Greenpeace France and Others v. TotalEnergies SE</i>) 	<p>9</p> <p><i>European climate-washing cases focused on net zero commitments and carbon neutrality claims are rising rapidly in 2022.</i></p>
<ul style="list-style-type: none"> • Public finance: Cases that challenge the flow of public money to projects that are not aligned with climate action (e.g. <i>ClientEarth v. Belgian National Bank</i>; <i>Friends of the Earth v. UK Export Finance</i>). Although they overlap significantly with 'enforcing climate standards' cases, we have chosen to analyse these cases separately as their target is more specific: to increase the cost of capital for high-emitting activities to the point that such activities become economically unviable, even if they remain legally permissible. 	<p>4</p> <p><i>To date there are more public finance cases in Europe than in any other part of the world.</i></p>
<ul style="list-style-type: none"> • Failure to adapt: Cases that challenge a government or another entity for failure to take the impacts of climate change into account when developing policies or facilities (Markell and Ruhl, 2012; UNEP, 2021). These cases primarily aim to ensure that physical climate risks are better accounted for in public and private decision-making. There is also a significant strand of cases concerning the failure of corporations and financial institutions to manage and disclose risks from wider efforts to transition to a low carbon economy (see Golnaraghi et al., 2021). Cases using 'failure to adapt' strategies include <i>ClientEarth v. Enea</i> and <i>Ewan McGaughey et al v. Universities Superannuation Scheme Limited</i>. 	<p>3</p> <p><i>So far, cases using this case strategy in Europe have not focused on physical risks to physical infrastructure.</i></p>
<ul style="list-style-type: none"> • Personal responsibility: These cases seek to incentivise the prioritisation of climate issues among public and private decision-makers, by attributing personal responsibility for a failure to adequately manage climate risks (<i>ClientEarth v. Board of Directors of Shell</i>). Cases may include derivative actions filed by shareholders, pension fund beneficiaries (<i>Ewan McGaughey v. Universities Superannuation Scheme Limited</i>), or even criminal proceedings. 	<p>3</p> <p><i>Almost all personal responsibility cases documented to date are found in Europe.</i></p>
<ul style="list-style-type: none"> • Compensation: Cases where damages for climate impacts are sought from defendants based on an alleged contribution to climate change harms (<i>Luciano Lliuya v. RWE</i>; <i>Four Islanders of Pari v. Holcim</i>). These cases seek to disincentivise greenhouse gas pollution both by impacting profit margins – posing an existential challenge to the business models of the Carbon Majors – and by creating reputational damage. Cases may also seek to penalise illegal activities, particularly deforestation, that create emissions or reduce the ability of natural systems, such as forests, to absorb and store (sequester) carbon from the atmosphere. 	<p>2</p> <p><i>To date all compensation cases in Europe have been filed by individuals domiciled outside Europe, unlike in the United States where compensation cases have been filed by cities and states.</i></p>

Understanding outcomes in European climate cases

In addition to understanding the range of legal and factual issues that arise in climate change litigation, and the way in which litigation has been used so far by actors seeking to influence broader social and political debates, it is also critical to understand the influence of litigation on real-world climate outcomes. Earlier this year, the Intergovernmental Panel on Climate Change (IPCC), the UN body for assessing the science related to climate change, recognised the importance of litigation in climate governance in its *Summary for Policymakers* (IPCC, 2022). The summary noted that litigation can influence the “outcome and ambition” of climate governance. In other words, the courts are already playing a critical role in how climate change is being managed.

However, while the law has often successfully been used by those seeking to advance climate policy and to protect citizens from the impacts of climate change, in some cases existing legislation and legal practice may also present barriers to climate action. Such barriers may exist to protect or promote competing societal interests such as democratic decision-making. In others, there may be a strong case for reform of legislation and for legal institutions to ensure that the law is better equipped to deal with climate issues. As mentioned earlier, litigation is also a double-edged sword which may be used by those seeking to delay climate action as well as those seeking to advance it.

“Decisions in cases on fundamental environmental issues will often require a political balancing of interests and broader priorities.”

(Norwegian national report: p. 4)

Most climate cases in Europe have favourable outcomes for climate action

For this report, we analysed the 232 European climate cases where a judgment has been issued to understand whether the direct outcome could be understood to advance or to hinder climate action.¹⁴ Overall, cases in Europe to date have had more direct outcomes that advance climate action, with 113 favourable and 86 unfavourable (see **Figure 7** below).

However, a purely numerical assessment of outcomes is far from the only way to understand how judgments in climate litigation are influencing climate governance. As previous studies have shown, climate litigation can have significant direct and indirect impacts on climate policy in the country in which it is heard. Direct impacts can be understood as measures put in place to comply with specific judgments. Indirect impacts are more difficult to identify but include the influence that cases may exert on national debates and narratives (see further discussion in Higham et al., 2022).

“Even unsuccessful climate disputes can be used in political and legal contexts, whereby the significance of the outcome of each single proceedings are put into perspective. Often it is more important how a court justifies a judgment – even if it dismisses the action.”

(German national report: p. 7)

¹⁴ This classification may be subject to change as proceedings progress through the stages of any available appellate process. In some instances, cases may have been classified based on preliminary decisions on issues such as standing, rather than on the overall merits of the case. See Setzer and Higham (2022) for more detail on the methodology used for this analysis.

Figure 7. Assessment of overall case outcomes, cases filed from 1993 to 2022*



Note: Numbers run to 30 September 2022. Source: CCLW and Sabin databases.

Part II: Common issues and future trends

In this part of the report, we take a closer look at common issues presented by climate litigation across Europe, drawing extensively on the national reports submitted by EUFJE members. We also provide a synthesis of key trends in litigation before regional courts, considering how a recent shift towards litigation before the European Court of Human Rights (ECtHR) may influence domestic litigation. Finally, we provide an outline of potential future trends in climate change litigation in Europe.

“Access to justice should see a greater openness on the part of the courts ... for a universal interest that touches primary human rights such as life and health, and even the health of the planet itself, it seems appropriate to broaden personal and social legitimacy for justice at all levels in matters of climate change.”

(Italian national report: p. 6)

Common issues in domestic litigation

Establishing standing a common challenge for litigants

Many national reports note *standing* – the legal right to initiate a lawsuit – as one of the main challenges to climate litigation in their jurisdiction. As mentioned in **Part I**, almost half of climate cases in Europe are brought by NGOs and individuals. Other plaintiffs include industry, governments, renewable energy companies, industrial federations and trade unions, as highlighted in the Belgian national report. As described below in the analysis of ETS cases before the Court of Justice of the European Union (CJEU), corporations bringing non-climate-aligned cases seeking to challenge the domestic implementation of EU regulations have encountered significant difficulties in establishing standing. However, issues of standing have tended to affect NGOs and individuals most significantly. The Estonian national report articulates the problem as follows: “individuals cannot rely on public interests, and it is not clear whether NGOs can rely on the threats that climate change poses [to] human rights”.

National reports describe varying domestic approaches to standing. For example, the Greek report emphasises that legal interest in administrative proceedings had been interpreted by the Council of State to be broader in environmental disputes than other matters. Similarly, the United Kingdom report describes standing to bring judicial review and statutory review claims before the Planning Court as “broad”. However, national reports from most other jurisdictions describe standing as more narrowly defined or difficult to establish (e.g. Poland, Ukraine and Estonia).

A number of domestic examples on standing are provided in the German report. In the context of proceedings before administrative courts, it states “actions of private individuals will fail to comply with the requirement of legal standing, as neither the Federal Climate Change Act nor climate protection laws in the federal states contain any subjective rights or actionable legal positions”. As a result, plaintiffs in pending proceedings before administrative courts are solely environmental associations, with no individual plaintiffs. The German national report noted that the exclusion of subjective rights and actionable legal positions under the Federal Climate Change Act may be incompatible with Article 9(3) of the Aarhus Convention and the decision of the CJEU in the *Protect* case.¹⁵ The report also outlines that the landmark decision in the *Neubauer, et al. v. Germany* case has implications for standing: it recognises an individual right to protection by the state against irreversible and serious, imminent impairments in the future, as well as a future-oriented defensive protection of basic rights. The German national report anticipates that the number of administrative law climate cases will increase as the courts continue to grapple with the concept of inter-temporal rights.

¹⁵ *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd* (2017), C-664/15.

The right to a healthy environment

A number of national reports commented on the utilisation of the right to a healthy environment in climate litigation before domestic courts. The right to a ‘healthy environment’, or to a ‘safe, clean, healthy and sustainable environment’, is recognised by over 155 countries through constitutions, national laws, case law or ratification of international agreements (Boyd, 2020). The right has both procedural and substantive elements. Procedural elements include matters such as rights of access to environmental information, access to justice and adequate remedies, and public participation in environmental impact assessment processes. Substantive elements are expansively defined to include a safe climate, clean air, healthy biodiversity and ecosystems, safe drinking water, healthy and sustainably-sourced food, and adequate sanitation (ibid.).

Recognition of the right to a healthy environment in international fora has grown in recent years, with the UN Human Rights Council recognising the right to a clean, healthy and sustainable environment in Resolution 48/13 on 8 October 2021. In an important development, the UN General Assembly followed suit and adopted the right in A/RES/76/300 on 28 July 2022. These shifts are significant given that the right to a healthy environment is not contained in the core international human rights instruments. Turning to Europe, there is no explicit recognition of the right under the European Convention on Human Rights (ECHR). This has led to the use of Articles 2 and 8 of the ECHR by litigants at a regional and domestic level, given the connection between these human rights obligations and environmental protection.

“Climate justice portrays the demise not of the economy as such, but of the type of economy we have known so far, and attempts to realise the primacy of the environment in the choices to satisfy people’s needs, with an eye to the future.”

(Italian national report: p. 14)

The expansion of the right to a healthy environment to new jurisdictions is often discussed by legal scholars and practitioners (UNEP, 2019). However, the national reports from Portugal, Norway and Spain emphasise issues with implementation and enforcement of the right in instances where it is already enshrined. The Portuguese report notes that “both plaintiffs and judges are not sufficiently aware and prepared to put in force the fundamental right of health and to a ‘healthy and ecologically balanced human living environment and the duty to defend it’”, which is protected under Article 66 of the Portuguese Constitution. These comments suggest that difficulties with implementation are attributable in part to a lack of sophistication among plaintiffs, and the need for greater specialisation of judges (see further **Box 3**). This is echoed in a report by the UN Special Rapporteur on human rights and the environment on his country visit to Portugal, which notes that while Article 66 is a “visionary” provision, “implementation of the many strong laws and policies” related to the right remains a major challenge (Boyd, 2022).

The Spanish and Norwegian national reports similarly identify issues with the implementation of the right to a healthy environment domestically. The Spanish report notes that few decisions cite the constitutionally enshrined right to a habitable environment. The report notes that the right is qualified in any event, as “the constitutional idea is to give a goal to the legislative body” and that this right has “only appeared as a last resort”. The treatment of the right to a healthy environment as a right of last resort is echoed in the Norwegian report, which provides a detailed description of the domestic proceedings in *Greenpeace Nordic Association v. Ministry of Petroleum and Energy*. This case involved a challenge to ten oil and gas production licences on the basis that they violated the right to a healthy environment protected under Article 112 of the Norwegian Constitution. The Supreme Court held that while the Article could be directly invoked in relation to environmental issues, the licences were not invalid under Article 112. The Norwegian report noted on the court’s findings that there is a “very high” bar for the courts to set aside statute made by Parliament, and will only be met where Parliament has “grossly neglected its duties under Article 112”. Both reports therefore acknowledge limitations of grounding climate litigation in the right to a healthy environment.

Given the wide adoption of the right to a healthy environment across European states, issues with implementation as identified in the national reports will continue to be entwined with the future prospects of climate-aligned litigation relying on this right. These considerations will only increase in significance if pending Article 2 and 8 climate cases before the ECtHR are unsuccessful on the merits (see further discussion below). Such an outcome would likely have a chilling effect on domestic climate cases relying on Convention rights, and may push plaintiffs to utilise constitutionally and nationally legislated provisions for the right to a healthy environment instead. While predicting such a scenario with any level of certainty is difficult, it is clear that the right to a healthy environment will continue to be an important site of contestation and expansion in coming years.

Box 3. Need for specialisation and training

The national reports from Estonia, Spain, Bulgaria, Serbia and Portugal emphasise the need for greater specialisation and training in relation to climate and environmental litigation. This is perhaps unsurprising given that climate litigation is a rapidly evolving, factually complex and unevenly dispersed legal phenomenon. Several of the reports identify different training and specialisation needs. For example, the Estonian report observes that “climate law is new to judges and climate science may be difficult to understand. Judges need good training, but it is hard for them to find [the] initiative and time for that, given that climate cases are still quite rare.” The Serbian report recommends that “judges should have permanent training in environmental law” administered by the Judicial Academy of the Republic of Serbia. The Portuguese report comments that given courts are resource-constrained, “it is essential to create support structures and technical advice in administrative courts. Judges are faced with a shortage [and] lack of experts.” The Bulgarian, Estonian, Albanian and Spanish reports similarly note a lack of sufficiently qualified independent experts, which reduces the quality of litigation and makes decision-making more challenging. Some reports emphasise the need for the development of specialist environmental courts in jurisdictions where they do not already exist. The Spanish report interestingly notes possibilities for climate-relevant enforcement of environmental crimes under Article 339 of the Spanish Penal Code, and identifies a lack of specialisation in climate and environmental law among criminal judges as a barrier to such prosecutions.

There are ongoing efforts and existing publications seeking to enhance judicial capacity for adjudicating climate change. The Asian Development Bank (ADB), for example, has worked with courts across Asia and the Pacific to develop a climate change litigation bench book (see ADB, 2020). The International Union for Conservation of Nature (IUCN)’s World Commission on Environmental Law (WCEL) is currently producing a handbook for judges to assist them in navigating the various complex issues that frequently arise in climate litigation.

While the national reports identify varied needs, it is clear that the complex and emergent character of climate litigation requires greater resourcing to facilitate specialisation and provide training to all actors involved in the court system.

Established principles of international environmental law

Concepts such as the polluter pays principle, the precautionary principle, and the rights of future generations are important to climate action. Question 8 of the survey to EUFJE members on “the most useful norms, legal principles or practices available to judges to ensure effective climate action by governments and businesses” produced a rich and varied set of answers from respondents. As the Italian report notes, this question invited “forward-looking answer[s]” of the type jurists are rarely permitted to express in decision-making contexts. Perhaps unsurprisingly, there was relatively limited convergence between the legal concepts, norms and items of domestic and international legislation identified by respondents. This appears attributable to the

domestic focus of such answers, which invariably emphasises domestic legislation and regulation, specific domestic case law, or novel factual considerations. However, some established legal concepts from domestic and international environmental law do appear across multiple national reports as being important to climate action.

The Polish, Estonian and Romanian reports refer to the importance of the polluter pays principle. The Estonian report notes that the domestic General Part of the Environmental Code Act (2014) set out a number of environmental law principles (including the polluter pays principle) that must be considered in environmental decision-making, and are therefore relevant to climate protection. The Polish report makes similar comments, noting that the polluter pays principle is related to climate protection and was included in the domestic Environmental Protection Law (2001). The report also underlines the role of the CJEU, which has a long history of jurisprudential engagement with the principle, noting “the Court of Justice of the European Union has a significant impact on shaping the jurisprudence of courts in the field of climate change”. Finally, the Romanian report raises the principle when discussing remedies which support “the cost of repairing the damage and remove [sic] the consequences caused by it, restoring the conditions before the damage occurred, according to the polluter pays’ principle”. Given the importance of the principle to the issue of compensation for climate impacts (referred to in the language of the UN Framework Convention on Climate Change [UNFCCC] as ‘loss and damage’), cases which rely on the doctrine such as *Plan B. Earth v. United Kingdom* are only likely to grow in number, both in domestic and international courts.¹⁶

Two other legal concepts are cited in multiple national reports: the rights of future generations and the precautionary principle. As described above, the Polish and Estonian reports list the precautionary principle alongside the polluter pays principle as a key precept of enacted domestic environmental law relevant to climate action. Similarly, the Norwegian and Italian reports discuss the rights of future generations. Having analysed the terms of Article 112 in the context of the *Greenpeace Nordic* case, the Norwegian report’s response to Question 8 states that “it is also stipulated in the article that natural resources shall be managed on the basis of comprehensive long-term considerations which will safeguard this right for future generations as well”. The Italian report similarly notes that the text of the UNFCCC expressly refers to climate change “as a matter of common concern for mankind” that has “planetary scope”. The report highlights that the Convention commits all states to “safeguard the climate system for present and future generations on the basis of equity” in Article 3(1).

“The consideration of the rights of future generations according to the precautionary criterion is another important fact to be assessed in relation to the progression and acceleration of climate change.”

(Italian national report: p. 14)

The observations contained in national reports about the relationship between established principles of (international) environmental law and climate action reflect one of the directions of travel for arguments used in strategic climate-aligned cases. As climate litigation further expands, it will continue to adopt and embed legal concepts from a range of established and novel sources. For example, the Italian national report anticipates the use of ‘rights of nature’ arguments, which are constitutionally enshrined in non-European countries such as Ecuador and are recognised in a range of soft law international instruments.¹⁷ While some jurisdictions will be more favourable to these developments than others, Europe will continue to play a leading role due to the strength and sophistication of its environmental and climate legal regimes.

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¹⁶ Loss and damage is a key topic of discussion at the international level at present, and dominated the agenda at the 27th session of the Conference of the Parties to the UNFCCC (COP27) held in Egypt in November 2022. In the absence of progress at the international level, scholars have speculated about the possibility that litigants will increasingly turn to domestic courts to address this fundamental question (Toussaint, 2020).

¹⁷ For more on the rights of nature and Earth law generally, see Zelle et al. (2020).

Administrative, permitting and constitutional cases

As mentioned in **Part I**, many of the national reports emphasise the centrality of administrative law cases when describing domestic climate litigation. While at least half of the national reports acknowledge that cases involving climate issues may encompass different types of courts hearing a variety of claims, there is a clear emphasis on administrative, permitting and constitutional law cases.

This has several implications. The first is that arguments common in both first and second wave climate cases which rely on administrative and permitting causes of action continue to be widely utilised, and also appear to be best known to judges across European jurisdictions.

A second implication is that nuances within the climate litigation jurisprudence may not currently be evident to EUFJE members or other participants in the court system. The taxonomy of climate litigation strategies set out in **Table 1** describes public finance cases that seek to achieve a broader policy or legal change by challenging the flow of public money to projects that are not aligned with climate action. A leading example is the *Friends of the Earth v. UK Export Finance* case, which involved an administrative law challenge to the UK Export Credit Agency's decision to invest in a liquified natural gas project in Mozambique. While this case was filed on administrative law grounds, it is qualitatively different to more traditional project-based administrative and permitting cases that seek to oppose individual fossil fuel projects. Apprehending these evolutions in case type is important for understanding the nature of contemporary climate litigation, where established areas such as administrative law are being used to bring strategic litigation in novel ways by increasingly sophisticated claimants.

There is also an emphasis on constitutional law cases across the national reports. Many of these cases are government framework cases characteristic of the third wave of climate litigation, which rely on both constitutional and human rights arguments. Examples include the Norwegian report's analysis of the *Greenpeace Nordic* case; the Belgian report's discussion of *VZW Klimaatzaak v. Kingdom of Belgium*; the German report's analysis of the *Neubauer, et al. v. Germany* decision; and the mention of *R [oao Friends of the Earth] v. Secretary of State for Business Energy and Industrial Strategy* in the United Kingdom's report. Two reports (Italy and Belgium) refer to the paradigmatic third wave case *Urgenda Foundation v. State of the Netherlands*, a precedent that was likely incorporated in subsequent government framework cases argued on similar grounds. The emphasis on constitutional and human rights cases also reveals a deepening of the third wave of post-*Urgenda* climate cases, alongside other case types set out in **Table 1**, most of which have been filed since 2020. This deepening encompasses an increase in climate-washing, personal responsibility, failure to adapt, compensation and public finance (e.g. *ClientEarth v. Belgian National Bank*, cited in the Belgian report) cases. Further exploration of future and emerging trends in European climate litigation is set out below.

The role of domestic climate laws and EU legislation

The national reports identify a wide range of domestic and EU legislation considered relevant to climate litigation in Europe, citing over 100 separate domestic and EU laws. Of these, around half fall within the criteria that we use to determine whether a law is climate change-related, and are therefore included in our *Climate Change Laws of the World* database. We define climate change-related laws in broad terms, including legal documents that address policy areas directly relevant to climate change mitigation, adaptation, loss and damage, or disaster risk management. As set out in the Introduction, domestic and EU laws that fall outside of this definition can also be highly relevant to climate change and its connected environmental matters.

EU legislation was referred to in national reports from Spain, Poland, France, Bulgaria, Belgium, Denmark, Finland and Romania. This included Directive 2008/50/EC of the European Parliament on air pollution and the heavily litigated EU ETS Directive, which is discussed in the context of CJEU litigation below. National reports describe the important role played by EU legislation as a source of domestic and regional obligations and litigation. As we identify in our analysis of likely

future trends in climate litigation below, following the passage of the EU Climate Law in 2022, the introduction of the European Green Deal or the 'Fit for 55 package' will likely lead to a growth in domestic and regional litigation as the operation and parameters of the new legislative regime is tested before the courts.

National reports also identify the fundamental relationship between climate litigation and climate legislation, where litigation is brought by strategic claimants to fill in the gaps left by a perceived lack of policy ambition. In this respect, framework climate laws are an important source of climate litigation, with *R [oao Friends of the Earth] v. Secretary of State for Business Energy and Industrial Strategy* – cited in the United Kingdom's national report – being a leading example. In that case, the UK's *Net Zero Strategy* was successfully challenged on the basis that the Secretary of State had breached their obligations under the Climate Change Act 2008.

With the numbers and ambition of both framework climate laws and climate-related legislation likely to increase across the region, litigation connected to their implementation is also likely to increase.

Shifts in litigation before regional courts

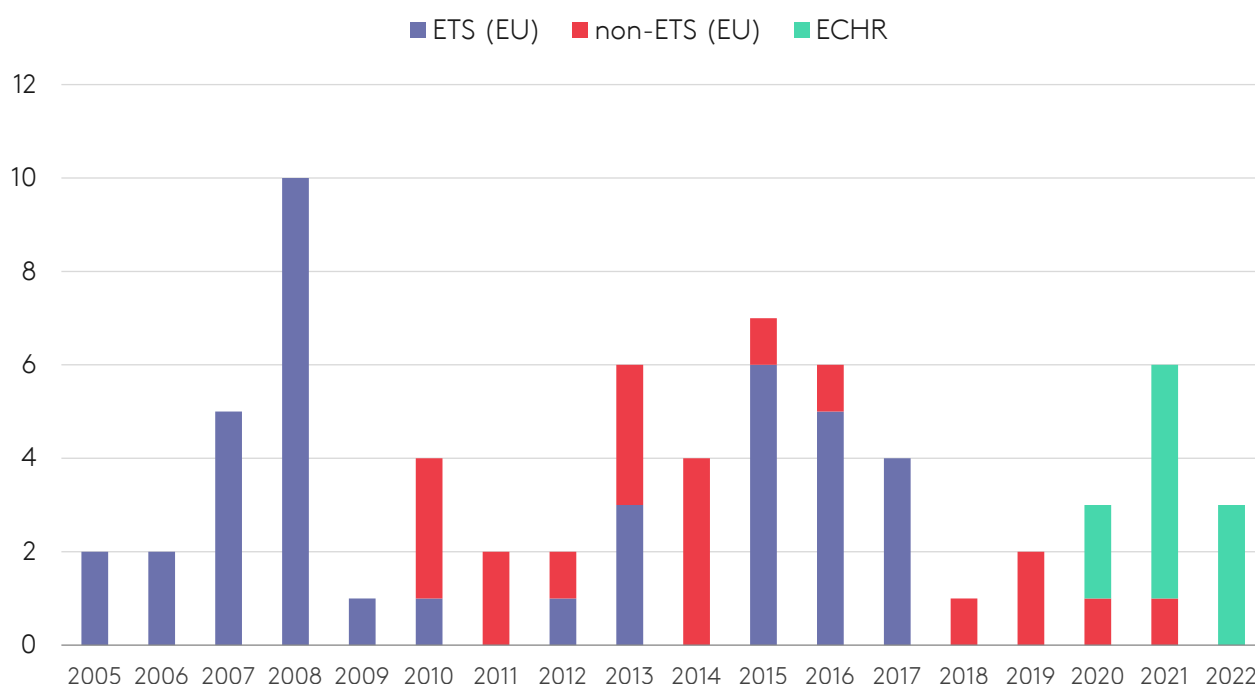
Climate litigation in Europe has emerged as a tool to bring about more ambitious climate policies and actions from both governments and companies (Pouikli, 2021), and some of the European cases and decisions have been influencing litigants and courts around the world (Setzer and Higham, 2022). One of the key reasons behind the international influence of European climate litigation is Europe's well-established regional court system. The domestic integration of European Union law and European human rights law has provided opportunities for climate litigation brought by a range of actors. While the focus of the survey of EUFJE was on domestic developments, national reports from Bulgaria, Poland, Romania and Italy all referred to domestic implementation of EU directives and regulations as a key aspect of climate litigation in those jurisdictions. This section therefore provides an overview of key regional cases before the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) to help the reader better understand the influence of such cases on European climate governance and domestic litigation trends.

"The jurisprudence of both Polish courts and the Court of Justice of the European Union has a significant impact on shaping the jurisprudence of courts in the field of climate change."

(Polish national report: p. 3)

What emerges from the analysis is a picture of two judicial entities being used for different purposes by litigants. The CJEU has a longer history of climate litigation, with a large proportion of cases concerning the EU ETS implemented under Directive 2003/87/EC. This is reflected in a greater historical caseload, with two-thirds of all CJEU cases dating from before the third wave of climate litigation (i.e. before 2015). The ECtHR, by contrast, has experienced a recent surge in popularity, with all its cases being filed since 2020 (see **Figure 8**). Importantly, all the cases brought before the ECtHR have been strategic in nature. This echoes the trend of successful government framework cases before national courts.

Figure 8. No. of cases filed before regional courts, 2005 to 2022*



Note: Numbers run to 30 September 2022. Source: CCLW and Sabin databases.

Cases before the Court of Justice of the European Union (CJEU)

Since 2005, the CJEU and its predecessor courts have heard 60 climate cases. Litigation brought by corporations and governments focusing on the EU ETS accounts for much of the CJEU's climate caseload. Forty-one such cases have been brought since 2005, with the most recent case decided in 2017. The remaining 19 cases decided by the CJEU cover a range of climate case types, reflecting the breadth of European Union law. These cases have largely been non-strategic and led to favourable outcomes for climate action.

Between 2005 and 2015, more than 32 cases were filed regarding the EU ETS Directive

As one of the cornerstones of the EU's regulatory response to climate change, the EU ETS has been heavily litigated by a range of claimants. More than two-thirds of the documented climate cases before the CJEU have focused on this issue since 2005. The CJEU has issued 27 EU ETS decisions favourable to climate action, 6 decisions unfavourable to climate action, and 8 decisions with a 'neutral' outcome. Most of the EU ETS cases are non-strategic in that they do not pursue a broader legal and policy change. A large proportion of cases have been brought in relation to the limits of the Commission's discretion in reviewing and approving National Allocation Plans (NAPs) under the Directive. The claimants in these cases are predominantly corporations and governments.

Corporate claimants, largely from heavy industry and energy production, have had little success in the CJEU, with most decisions being favourable to climate action.¹⁸ Most of the listed cases

¹⁸ See: *INEOS Kahn GmbH v. Bundesrepublik Deutschland* (C58/17) (2017); *ExxonMobil Production Deutschland GmbH v. Bundesrepublik Deutschland* (2017); *INEOS Köln GmbH v. Bundesrepublik Deutschland* (C572/16) (2016); *Lafarge Cement S.A. v. Commission of the European Communities* (2008); *Grupa Ożarów S.A. v. Commission of the European Communities* (2008); *Dyckerhoff Polska sp. Z. o. o. v. Commission of the European Communities* (2008); *Górażdże Cement S.A. v. Commission of the*

were dismissed on the basis that corporate claimants could not sufficiently demonstrate that they were individually affected by the Commission's decisions.

Cases brought by governments have seen some success, resulting in outcomes deemed unfavourable for climate action. In the *Republic of Estonia v. Commission of the European Communities* and *Republic of Poland v. Commission of the European Communities* cases in 2009, the governments contested the Commission's finding that their NAPs should reduce the total annual quantities of emission allowances by 47.8% and 26.7% respectively. The Court of First Instance held that the Commission infringed the principle of sound administration, as their discretion in relation to NAPs is restricted, and it is a matter for each member state to decide the total quantity of allowances it will allocate for any relevant period. By contrast, in a 2006 case favourable to climate action, the Commission succeeded in an action against Italy in *Commission of the European Communities v. Italian Republic* for failing to adopt all laws, regulations and administrative provisions necessary to comply with its obligations under Article 31(1) of the EU ETS Directive. While a similar case was brought and won by the Commission against *Finland* in the same year, active enforcement of the Directive and successor regulations through the CJEU has not remained a common practice.

A relatively small number of strategic cases have been filed before the CJEU

Beyond the EU ETS cases, the CJEU's remaining climate caseload covers a broader range of issues and a varied set of applicants, reflecting the breadth of climate issues across the EU's legislative and regulatory framework. As with the ETS CJEU cases, two-thirds of these cases were filed before 2015. Unsurprisingly, only one case (*Ville de Lyon v. Caisse des dépôts et consignations*) out of the 14 filed before 2015 was seeking a broader change in the EU's legal and policy regime. By contrast, four out of the five cases brought since 2015 have been strategic in nature, reflecting the growing sophistication of applicants seeking to use the CJEU for both climate-aligned and non-climate-aligned litigation strategies.

CJEU case law is generally favourable to climate action

The outcomes of the 19 cases brought before the CJEU that do not concern the ETS Directive have generally been favourable or neutral to climate action, with only three cases leading to unfavourable outcomes. Cases have generally been brought by a mixture of corporations seeking to challenge EU policies, public interest claimants and governments. Selected examples of cases with outcomes favourable to climate action include *Lipidos Santiga v. Commission* (2021); *Industrie de bois de Vielsalm & Cie v. Region Wallone* (2013); *Afton Chemical Ltd. V. Secretary of State for Transport* (2010); and *ClientEarth v. European Investment Bank* (2021). The *Lipidos* case was brought by a vegetable oil producer seeking to challenge Regulation 2019/807 on the basis that it sought to exclude palm oil biofuels from the EU market. The case was unsuccessful, and provides an example of corporations seeking to test the parameters of new climate-related EU regulations before the courts.

A more recent strategic case which resulted in outcomes favourable to climate action was brought by *ClientEarth* against the European Investment Bank (EIB) on the basis that the bank had improperly rejected ClientEarth's petition for an internal review of the bank's decision to finance a biomass power plant. ClientEarth argued that the project overestimated environmental advantages associated with biomass, and underestimated logging and forest fire risks. The General Court ruled in ClientEarth's favour, noting that the EIB's decision should be considered a form of 'environmental' decision-making and therefore conform to the standards set out in the Aarhus Convention, creating an opportunity for future strategic litigation seeking to review

European Communities. (2008); *Cemex Polska sp. Z. o. o. v. Commission of the European Communities* (2008); *Cementownia "Warta" S.A. v. Commission of the European Communities* (2008); *Cementownia "Odra" S.A. v. Commission of the European Communities* (2008); *Buzzi Unicem SpA v. Commission of the European Communities* (2008); *BOT Elektrownia Bechatów S.A. & Others v Commission of the European Communities* (2008); *Drax Power & Others v. Commission of the European Communities* (2007); *Fels-Werke GmbH v. Commission of the European Communities* (2007); *EnBW Energie Baden-Württemberg AG v. Commission of the European Communities* (2007); *U.S. Steel Kosice v. Commission of the European Communities* (T-27/07) (2007).

funding decisions made by the EIB for projects that do not meet climate standards. The case is now under appeal.

However not all CJEU cases can be understood as favourable to climate action. Three key cases illustrate this point: *Ville de Lyon v. Caisse des dépôts et consignations*; *EU Biomass Plaintiffs v. European Union*; and *Armando Ferrão Carvalho and Ors v. Ville de Paris and Ors*. The earliest case was brought in 2010 by the City of Lyon which sought to challenge a local French administrator to release environmental information on the sale of emission allowances. The Court of Justice found that there was no overriding public interest served by the disclosure of such information – a very different decision to the EIB case, which may reflect a change in the understanding of environmental and climate matters in the last decade.

The *EU Biomass* case was brought by plaintiffs from six countries, and sought to challenge the categorisation of forest biomass as a renewable fuel under the revised Renewable Energy Directive (RED II). The plaintiffs alleged that increased logging and wood pellet manufacturing driven by RED II would lead to negative environmental, social and health impacts. The case was dismissed by both the General Court and the Court of Justice on standing grounds. Finally, the *Armando Ferrão Carvalho* case, dubbed 'The People's Climate Case', was brought by plaintiffs from seven countries from both within and outside the EU. The case sought to compel the EU to adopt more stringent emissions reductions and invited the court to declare three EU laws as void: the EU ETS Directive 2003/87/EC; the Effort Sharing Regulation 2018/842; and the LULUCF Regulation 2018/841. The plaintiffs argued that inadequate emissions reductions set out in the EU legislative framework violated higher order laws that protect fundamental rights to health, education, occupation and equal treatment and environmental obligations. As with the *EU Biomass* case, *Armando Ferrão Carvalho* was dismissed by the General Court and on appeal at the Court of Justice on standing grounds, with the court making no findings on the merits.

Climate litigation before the CJEU has become less common over time

The trend of declining litigation before the CJEU is particularly evident in comparison to litigation before the ECtHR. However, it is likely that future litigation before the CJEU may be strategic in nature, continuing the trend observed since 2015. The failure of the *EU Biomass* and *Armando Ferrão Carvalho* cases on grounds of standing in 2021 demonstrates the continued barriers to bringing climate-aligned litigation before the CJEU, which may provide some explanation for the rise of strategic cases before the ECtHR.

Cases before the European Court of Human Rights

In recent years, the European Court of Human Rights (ECtHR) in Strasbourg has emerged as a key forum for climate litigation using constitutional and human rights arguments. Ten cases have been filed since 2020, which mirrors the expansion of human rights-based climate litigation in domestic courts and other international fora.

Climate is a priority

Climate cases appear to be a priority for the ECtHR, with three cases relinquished to the Grand Chamber in the space of two months in 2022: *Duarte Agostinho and Others v. Portugal and 32 Other States* (communicated in December 2020); *Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others* (communicated March 2021); and *Carême v. France* (communicated July 2022).

The three pending cases raise several issues for determination. All three are government framework cases which allege violations of Articles 2 (right to life) and 8 (right to private and family life). The *Agostinho* and *Swiss* cases focus on the alleged insufficiency of domestic climate measures in relation to climate change, but they have fundamentally different admissibility issues (the Portuguese youth began their case directly in Strasbourg while the *Swiss* case started as a domestic, administrative law case). The *Carême* case is argued on similar substantive grounds to the *Agostinho* case, but commenced as a domestic administrative law challenge. However, the case is distinct from the *Swiss* challenge in that the main substantive proceedings were successful

domestically (see *Commune de Grande-Synthe v. France*). In the *Commune de Grande-Synthe* decision, the French Administrative High Court Conseil d'Etat found that while the municipality of Grande-Synthe had an interest in the case, one of the claimants, Damien Carême, did not have personal standing. Mr Carême's appeal to the ECtHR is made on this basis, and therefore raises similar issues relating to victim status as those outlined in the *Swiss* case.

Other pending cases reflect novel factual scenarios and case strategies

In addition to the three pending Grand Chamber cases, seven other cases have been filed with the ECtHR: *Greenpeace Norway v. Government of Norway*; *Müllner v. Austria*; *Uricchio v. Italy*; *de Conto v. Italy*; *Soubeste v. Austria*; *Humane Being v. United Kingdom*; and *Plan B. Earth v. United Kingdom*. Of these, only the *Norwegian* case has been communicated, in December 2021. Unlike the government framework cases before the Grand Chamber, the *Norwegian* case is narrower in scope and focuses more explicitly on contesting the validity of oil and gas exploration licences granted by the Norwegian Government in June 2016, and ultimately upheld by the Supreme Court in December 2020. The case raises the contentious issue of state responsibility for extra-territorial emissions, an issue that will likely also come up as a subsidiary matter in the *Agostinho* case. Although an ECtHR decision could not overturn the Supreme Court's decision and annul the impugned oil exploration licences, should the Court find that Norway did not exercise due diligence to avoid climate harm, it could require the Norwegian State to reconsider its oil and gas policies (see Vigne and Mason, 2022).

Other cases reflect novel factual scenarios and litigation strategies. In the *Müllner* case, an Austrian citizen with a temperature-dependent form of multiple sclerosis alleged that the Austrian Government violated his Convention rights under Articles 2 and 8 by failing to set effective climate measures to reduce emissions and the impacts of climate change. The case alleges that most multiple sclerosis patients will be similarly vulnerable to temperature-related impacts. The *Humane Being* case also particularises discrete threats to human health, alleging that the current practice of factory farming in the UK violates obligations under Articles 2, 3 and 8 to address the risks of the climate crisis, future pandemics and antibiotic resistance. The case is notable for inviting the ECtHR to rule on the specific risk of agricultural methane emissions, which reflects an emerging trend towards litigation concerned with short-lived climate pollutants (SLCPs) such as methane, hydrofluorocarbons and black carbon. The *Soubeste* case brought by five young claimants adopts a novel litigation strategy targeting the Energy Charter Treaty (ECT). The claim seeks to use Articles 2, 3 and 8 grounds to argue that the 12 respondent member states are in violation of their Convention obligations by virtue of their membership of the ECT. The basis for the claim is that the ECT protects investors from regulatory change, and provides fossil fuel companies with the opportunity to pursue outsized remedies through investor-state dispute settlement mechanisms.

The Grand Chamber's decisions will have a significant impact on future climate litigation

Speculation about the Court's response to its caseload is growing, and many questions remain to be answered, particularly regarding the hurdles that these applications will have to overcome to see a judgment on the merits and the degree of redress that the Court can offer (Keller et al., 2022). While environment-related cases are not new to the Court – it has decided around 300 such cases (ECHR, 2022) – it is yet to issue a judgment in a climate case. Since the Convention does not provide for a specific right to a healthy environment, the cases described above have been relying on Articles 2 and 8 to argue that States have certain positive obligations to prevent and protect from harm caused by climate change.

What the Court decides will likely have important implications for other rights-based climate change litigation and the right to a healthy environment. A positive decision for the applicants in any of the Grand Chamber cases is likely to encourage litigants to continue to file ever more human rights-based cases both in Europe and beyond. For example, the UK national report referred to the recent successful framework case *R [ooo Friends of the Earth] v. Secretary of State*

for Business Energy and Industrial Strategy, in which Articles 2 and 8 arguments were rejected due to the absence of “clear and constant” jurisprudence from Strasbourg supporting the claimants’ case. It is possible that similar cases will be decided differently in the future once the court issues its first judgment on the implications of climate change for the enjoyment of rights enshrined in the Convention.

However, it should not be anticipated that a negative decision will discourage the use of rights-based arguments. Should the Grand Chamber dismiss the pending cases on procedural grounds, it is likely litigants will explore creative ways to file new cases to overcome procedural hurdles. On the other hand, a negative decision on the merits is likely to drive litigants towards bringing cases in jurisdictions where the right to a healthy environment is explicitly recognised in domestic constitutions.

Future trends in European climate litigation

As this report has shown, the climate litigation landscape in Europe is complex and continues to evolve, with European courts at the forefront of the third wave of litigation. In previous work, the Grantham Research Institute produced a forecast of future trends in the global landscape of climate litigation, considering the types of legal challenges that may become more prevalent as the climate policy and climate science landscapes continue to evolve (Setzer and Higham, 2022). Here, we consider future trends that may evolve in the European context:

- **New EU legislation is likely to lead to an increase in litigation before regional – and potentially domestic – courts.**

As the surge in litigation following the introduction of the EU ETS suggests, one key driver of new climate cases is the introduction of new climate legislation. Following the approval of the EU Climate Law in 2022, the European Commission is now working on a sweeping package of legislative reforms, commonly referred to as the European Green Deal or the ‘Fit for 55 package’, in reference to the European Climate Law’s objective of reducing emissions by 55% compared to 1990 levels by 2030.¹⁹ This package includes new measures and amendments on a wide ranging set of issues, including updates to existing regulatory mechanisms such as the EU ETS and the Effort Sharing Regulation, as well as proposals regarding energy, transport and land use. Given the breadth of the proposals, it is likely that the new legislation will give rise to both strategic cases, as litigants seek to delay the application of proposals or enhance the ambition with which they are implemented by member states and private parties. It is also likely that the legislation will give rise to non-strategic cases filed by entities concerned exclusively with the application of new rules in a specific set of circumstances.

- **The emphasis on personal responsibility may continue to grow.**

An emphasis on the duties and responsibilities of individual actors to integrate climate considerations into their decision-making is becoming increasingly present. In legal spheres, much of the focus has been on the duties directors have to manage climate risks (Mulholland, 2019). While the framing of this issue and various legal strategy theories are currently under development, the three European actions filed since 2021 suggest that similar cases are likely to proliferate. Most recently, in March 2022, ClientEarth sent a pre-action letter to the Board of Directors of Shell. While these European cases have mostly targeted individuals working in the fossil fuel industry, it is likely that the range of defendants will become more diverse, just as we have seen a greater variety of private sector actors targeted in the broader range of litigation against corporations (Higham and Kerry, 2022). Proposed legislation on the disclosure of non-financial information and on human rights and environmental due diligence may ultimately be

¹⁹ See Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality: <https://climate-laws.org/geographies/european-union/laws/regulation-eu-2021-1119-establishing-the-framework-for-achieving-climate-neutrality-european-climate-law>.

used to reinforce litigants arguments about evolving standards of practice.²⁰ There is also growing discussion in the literature of the responsibility of professionals that may enable climate-damaging activities, such as lawyers and accountants, although no cases have so far been identified (Vaughan, 2022).

- **Litigation connected to extreme weather events is likely to increase.**

As extreme weather events increase in severity and become more common, domestic and regional litigation is likely to increase. This will likely involve a rise in diverse case types against both governmental and private defendants. Cases have already been brought against governments seeking to ensure that the physical risks posed by climate change-induced extreme weather events are accounted for in public decision-making (e.g. *Matteo Feind et al. v. Niedersachsen* and *Nature Conservation Council v. New South Wales Minister for Water, Property and Housing*). Advances in the science of attributing extreme weather events to climate change have increased the viability of private claims seeking compensation for loss and damage suffered as a result of climate change impacts. As in the *Luciano Lliuya v. RWE* and *Four Islanders of Pari v. Holcim* cases, these claims have been brought by claimants in climate-vulnerable countries from around the world against European defendants. As victims of extreme weather events grow in number, there is also an increased likelihood of group litigation, as in the case of the *Bushfire Survivors for Climate Action Incorporated v. Environmental Protection Authority*, where wildfire victims brought civil enforcement proceedings against the NSW Environmental Protection Authority. In the field of business and human rights, the findings of the Philippines Commission on Human Rights regarding the responsibility and obligations of the Carbon Majors is likely to drive further compensation cases, in addition to cases seeking the disclosure of climate and human rights impact assessment results.

- **The number of cases focusing on the role of greenhouse gases other than carbon dioxide is likely to increase.**

Recent studies have determined that reducing carbon dioxide emissions alone will fail to curb climate change and keep global temperature rise below 2°C (McKenna 2022). As such, policies that focus on reducing ‘short-lived climate pollutants’ (such as methane, hydrofluorocarbons and black carbon) in addition to carbon dioxide emissions are urgently required to meet countries’ emissions reductions targets (ibid.). Global initiatives to reduce methane emissions have already been set in motion, including the Global Methane Pledge, a partnership to cut methane emissions by 30% compared with 2020 levels and launched by the US and the European Union in 2021, and the World Bank’s ‘Global Gas Flaring Reduction’ and ‘Zero Routine Flaring by 2030’ initiatives, for which the European Commission has pledged its support (World Bank, 2021). The Commission has also adopted a proposal for regulation (amending Regulation [EU] 2019/942) aimed at reducing methane emissions in the energy sector through leak detections, a ban on flaring and improved reporting of methane emissions, among other measures. While short-lived climate pollutants (black carbon in particular) have in the past been the subject of litigation, it is likely that the renewed attention and sense of urgency to reduce these types of emissions will lead to an increase in legal challenges. The national report from Italy confirms this, describing an appeal to the President of the Republic against the Ministry for Economic Development in contestation of the Mestre-Trieste methane pipeline. The applicants claim that the pipeline contravenes Italy’s commitments to combat climate change and will result in environmental and economic damage to the region’s famous Edi Kante vineyards.

- **Litigation regarding forests and food systems may increase in the coming years.**

Litigation related to forests and food systems is another area of cases that is likely to grow in the future, as awareness of anthropogenic emissions from agriculture and land use grows and the

²⁰ See Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance). See also Commission Proposal for a Directive on corporate sustainability due diligence: https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex_en

interaction between climate change and biodiversity loss becomes more established with developments in climate science (Setzer and Higham, 2022; Sedelikova and Lawrence, 2022). With the publication of the Task Force for Nature-related Financial Disclosures (TNFD) framework, among other biodiversity-related tools for corporate and financial sector actors, standards for best practice are beginning to emerge in this area, and are likely to have the most direct implications for the land use sector (Setzer and Higham, 2022).

Evidence of litigation on forests and food systems is also evident from the national reports. For example, Estonia's report mentions multiple cases where applicants have challenged the authorisation of forest-felling permits issued by the Estonian Environmental Board. While the cases we were able to identify for this report did not appear to materially draw on climate change arguments, it is likely that future cases may make more substantive connections between the impact of forest felling and reducing carbon sinks. This may apply particularly to areas where forests are protected as Natura 2000 sites through the European Union.

A recent case filed before the European Court of Human Rights demonstrates how food systems cases may deploy novel arguments that connect the impact of factory farming practices on deforestation, human health and climate change to government inaction on risk mitigation. In this particular case, *Humane Being v. United Kingdom*, the applicants deploy novel climate arguments that focus on the danger of agricultural methane emissions and highlight that soy feed consumption in UK factory farming is a key driver of deforestation in the Amazon basin.

Conclusion and recommendations

Around the world, climate litigation is being used by diverse actors as a tool to influence the outcome of climate governance debates at all levels of government. The earliest recorded cases of climate change litigation in Europe date back to the early 1990s. The mid-2000s saw a boom in litigation responding to the EU ETS legislation. Then, from around 2015 onwards, European climate litigation followed the global trend, with courts from all over Europe seeing an increasing number and diversity of climate cases filed before them.

There is currently a recorded total of 285 climate cases across 20 countries in Europe, with the United Kingdom, France, Germany and Spain accounting for more than half of the total number of cases. More than 60 cases have now been filed before the Court of Justice of the European Union and 10 cases are pending before the European Court of Human Rights.

In line with the global figures, 75% of European climate cases have been filed against a wide variety of government actors. But climate cases are being filed against an ever-expanding range of actors. In addition to holding governmental and corporate actors accountable, litigants try to maximise their impact by focusing on key levers such as finance and supply chains. This involves litigation against key constituencies such as directors and boards of trustees. Almost half of climate cases in Europe have been filed by individuals and civil society organisations and more than 30% of cases have been brought by corporate actors. Out of the 232 cases where a judgment has so far been issued, around half (113) have had direct outcomes that advance climate action.

The overall body of European climate cases is very diverse. For this report we identify the key strategies of 119 European strategic cases filed after 2015. As in the rest of the world, the most frequently used strategy in European climate litigation involves the enforcement of climate standards. A striking number of European cases (nearly half of the global number) are classified as 'government framework litigation': cases that challenge the implementation or ambition of climate targets and policies affecting the whole of a country's economy and society. Also notable is that almost all the cases classified as 'corporate framework' litigation – that is, cases that seek to disincentivise companies from continuing with high-emitting activities by requiring changes in corporate governance and decision-making – have been filed in Europe.

The national reports submitted for this analysis discuss the main challenges to climate litigation in Europe. The most frequently cited issues are: standing to bring cases; the implementation and enforcement of the right to a healthy environment and other environmental law principles; and the need for greater specialisation and training in relation to climate change and climate litigation. When considering enablers of climate litigation, the national reports mentioned the importance of existing legal concepts, as well as climate laws and EU legislation and the centrality of administrative and constitutional law cases.

In recent years some European courts have positioned themselves at the forefront of the so-called 'third wave' of climate litigation, and their decisions have been influencing litigants and courts around the world. This is particularly likely given the rich transnational exchange between lawyers, judges and scholars in this area of law.

Drawing on this report and its conclusions, judges are encouraged to become familiar with the emerging transnational climate jurisprudence and the latest climate science. Domestic courts can help by:

- **Providing judicial specialisation and training in relation to climate litigation and climate science.** This can include short courses, forums and roundtables organised by national schools of magistrates. More extensive training programmes can include career training, longer courses within judicial schools, and international exchanges and placement programmes. Where appropriate, similar training can be given to clerks or other court officers. Judges who are interested in pursuing postgraduate studies can be provided with

lists of universities where relevant disciplines and supervision is available. National judiciaries could support judges in these efforts, including through funding and allowing research or study leave. Judges with academic affiliations can also supervise Masters and PhD dissertations.

- **Making use of existing materials produced for judges.** Judges can make use of materials produced specially for the judiciary (e.g. the ADB's 2020 series on climate legislation and litigation, and IUCN/WCEL's forthcoming Handbook).
- **Promoting exchange regarding climate litigation at judicial events.** Judicial events that are not focused on environmental and climate law could include panels on climate law as climate change matters are relevant to many areas of law, including criminal law, trade law, tax law and consumer protection law.
- **Connecting with judicial associations from other jurisdictions.** The EUFJE and its members could collaborate on climate law matters with judicial associations from other jurisdictions and regions, such as the Asian Judges Network on the Environment (AJNE) and the Global Judicial Institute on the Environment (GJIE).
- **Publishing case notes and articles.** There is an emergent and vibrant literature on climate litigation, with many articles authored by judges.

References

- Asian Development Bank [ADB] (2020) *Climate Change, Coming to a Court Near You* (vol. 1-4). <http://adb.org/publications/series/climate-change-coming-to-court>
- Bogojević S (2010) *Litigating the NAP: Legal Challenges for the Emissions Trading Scheme of the European Union*. *Carbon & Climate Law Review*, 4(3), 219-277. <https://www.jstor.org/stable/24323987>
- Bouwer K (2020) *Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation*. *Transnational Environmental Law*, 9(2), 347-378. <https://www.cambridge.org/core/journals/transnational-environmental-law/article/lessons-from-a-distorted-metaphor-the-holy-grail-of-climate-litigation/40B0DC6E8F3A54AA2A9B4908DFA7E46F>
- Bouwer K (2018) The Unsexy Future of Climate Change Litigation, *Journal of Environmental Law* 30(3): 483-506. <https://doi.org/10.1093/jel/eqy017>
- Bouwer K and Setzer J (2020) *New trends in Climate Litigation: What works?* British Academy COP26 Briefings Series. www.thebritishacademy.ac.uk/documents/2701/Climate-Litigation-as-Climate-Activism-What-Works.pdf
- Boyd D R, UN Special Rapporteur on human rights and the environment (2022) *Statement at the conclusion of country visit to Portugal*. <https://www.ohchr.org/sites/default/files/documents/issues/fassociation/2022-09-26/20220927-stm-sr-environment-en.docx>
- Boyd D R, UN Special Rapporteur on human rights and the environment (2020) *Right to a healthy environment: good practices*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/355/14/PDF/G1935514.pdf?OpenElement>
- Carnwath R (2022) *Climate-conscious courts: reflections on the role of the judge in addressing climate change*. London: Grantham Research Institute on Climate Change and the Environment. <https://www.lse.ac.uk/granthaminstitute/news/climate-conscious-courts-reflections-on-the-role-of-the-judge-in-addressing-climate-change/>
- European Court of Human Rights (2022) *Environment and the Convention on Human Rights* (Factsheet). https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf
- Fermeglia M, Higham C, Silverman-Roati K et al. (2021) *'Investor-State Dispute Settlement' as a new avenue for climate change litigation*. London: Grantham Research Institute on Climate Change and the Environment. <https://www.lse.ac.uk/granthaminstitute/news/investor-state-dispute-settlement-as-a-new-avenue-for-climate-change-litigation/>
- Ganguly G, Setzer J and Heyvaert V (2018) If at First You Don't Succeed: Suing Corporations for Climate Change. *Oxford Journal of Legal Studies* 38(4): 841-868. <https://doi.org/10.1093/ojls/gqy029>
- Golnaraghi M, Setzer J, Brook N, Lawrence W and Williams L (2021) *Climate Change Litigation – Insights into the evolving global landscape*. Geneva Association. https://www.genevaassociation.org/sites/default/files/research-topics-document-type/pdf_public/climate_litigation_04-07-2021.pdf
- Higham C and Kerry H (2022) *Taking companies to court over climate change: who is being targeted?* London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science. <https://www.lse.ac.uk/granthaminstitute/news/taking-companies-to-court-over-climate-change-who-is-being-targeted/>
- Higham C, Setzer J and Bradeen E (2022) *Challenging government responses to climate change through framework litigation*. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science. <https://www.lse.ac.uk/granthaminstitute/publication/challenging-government-responses-to-climate-change-through-framework-litigation/>
- International Bar Association [IBA] (2020) *Climate Crisis Statement*. <https://www.ibanet.org/LPRU/Climate-Crisis>

- International Union for Conservation of Nature IUCN] and World Commission on Environmental Law [WCEL] (forthcoming) *Judicial Handbook on Climate Litigation*. <https://www.iucn.org/our-union/commissions/group/iucn-wcel-climate-change-law-specialist-group/judicial-handbook-climate>
- Intergovernmental Panel on Climate Change [IPCC] (2022) *Summary for Policymakers. Mitigation of Climate Change Working Group III contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* [eds Skea J, Priyadarshi R S, Reisinger A, Slade R, Pathak M et al.]. Geneva: World Meteorological Organization. https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SPM.pdf
- Keller H, Heri C and Piskóty R (2022) Something ventured, nothing gained? Remedies before the ECtHR and their potential for climate change cases. *Human Rights Law Review* 22(1). <https://academic.oup.com/hrlr/article/22/1/ngab030/6497578>
- Lavrysen, L (2021) *Climate change litigation in Europe*. In World Judicial Conference on Environment, Abstracts. Online (Yunnan, China). <https://biblio.ugent.be/publication/8709648>
- Markell D and Ruhl J B (2012) *An Empirical Assessment of climate change in the courts: A new jurisprudence or business as usual?* *Florida Law Review* 64(15). <https://scholarship.law.ufl.edu/flr/vol64/iss1/2>
- Maxwell L, Mead S and van Berkel D (2021) Standards for Adjudicating the Next Generation of Urgenda-Style Climate Cases. *Journal of Human Rights and the Environment – Special Issue* (Alabrese, Saveresi and Scott eds) 'Climate Change Litigation and Human Rights: Stocktaking and a Look at the Future' https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3955144
- McKenna P (2022) New Study Says World Must Cut Short-Lived Climate Pollutants as Well as Carbon Dioxide to Meet Paris Agreement Goals. Inside Climate News, 23 May. <https://insideclimatenews.org/news/23052022/short-lived-super-climate-pollutants-impact/>
- Mulholland E, Barker S and Williams C A et al. (2019) *Climate Change and Directors' Duties: Closing the Gap Between Legal Obligation and Enforcement Practice*. Richard LeBlanc (ed), *The Handbook of Board Governance* (2nd edn, John Wiley & Sons, Inc., Hoboken, New Jersey, Forthcoming). <https://ssrn.com/abstract=3401795>
- Peel J and Osofsky H M (2020) Climate Change litigation. *Annual review of law and social science* 16(1): 21–38. <https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-022420-122936>
- Peel J and Osofsky H M (2017) A Rights Turn in Climate Change Litigation. *Transnational Environmental Law* 7(01): 1–31, DOI:10.1017/S2047102517000292
- Peel J and Osofsky H M (2015) *Climate change litigation: Regulatory pathways to cleaner energy*. Cambridge, England: Cambridge University Press. <https://www.cambridge.org/core/books/climate-change-litigation/DB1A948D69FE080EBFFB938EE2D58545>
- Peel J, Osofsky H M and Foerster A (2020) "'Next Generation' climate change litigation in Australia", Chapter in *Climate Change Litigation in the Asia Pacific*, ed Jolene Lin and Douglas A Kysar, 175–206. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108777810.009>
- Pouikli K (2021) Editorial: A Short History of the Climate Change Litigation Boom Across Europe. *Journal of the Academy of European Law*: 569–586. <https://link.springer.com/article/10.1007/s12027-022-00700-1>
- Preston B (2021) Climate Conscious Lawyering. *Australian Law Journal* 95 ALJ 51. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3949080
- Savaresi A and Setzer J (2022) Rights-base litigation in the climate emergency: mapping the landscape and new knowledge frontiers. *Journal of Human Rights and the Environment* 13(1): 7–34. <https://doi.org/10.4337/jhre.2022.01.01>
- Sedilekova Z and Lawrence W (2022) *Biodiversity litigation: Environment analysis*. Market Insight, Clyde and Co. <https://www.clydeco.com/en/insights/2022/04/biodiversity-litigation-environment-analysis>
- Setzer J and Byrnes R (2020) *Global trends in climate change litigation: 2020 snapshot*. London: Grantham Research Institute on Climate Change and the Environment. https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2020/07/Global-trends-in-climate-change-litigation_2020-snapshot.pdf

- Setzer J and Higham C (2022) *Global trends in climate change litigation: 2022 Snapshot*. London Grantham Research Institute on Climate Change and the Environment.
<https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2022/>
- Setzer J and Higham C (2021) *Global trends in climate change litigation: 2021 snapshot*. London: Grantham Research Institute on Climate Change and the Environment.
<https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-litigation-2021-snapshot/>
- Setzer J and Vanhala L (2019) Climate change litigation: A review of research on courts and litigants in climate governance. *WIREs* 10(3): 580 <https://doi.org/10.1002/wcc.580>
- Silverman-Roati K (2021) *US Climate Litigation in the Age of Trump: Full Term*. Sabin Center for Climate Change Law, Columbia Law School.
<https://climate.law.columbia.edu/sites/default/files/content/docs/Silverman-Roati%202021-06%20US%20Climate%20Litigation%20Trump%20Admin.pdf>
- Sindico F and Moïse Mbengue M (2021) *Comparative Climate Change Litigation: Beyond the Usual Suspects*. Switzerland: Springer. <https://link.springer.com/book/10.1007/978-3-030-46882-8>
- Toussaint P (2020) Loss and damage and climate litigation: The case for greater interlinkage. *RECIEL* 30(1): 16-33 <https://doi.org/10.1111/reel.12335>
- UNEP (2021) *Global Climate Litigation Report 2020 Status Review*
<https://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review>
- UNEP (2019) *Environmental Rule of Law: First Global Report*.
<https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>
- Vaughan S (2022) Climate Change and the Rule of Law(yers). UCL Climate Change and the Rule of Law Blog, 1 February. <https://www.ucl.ac.uk/law-environment/blog-climate-change-and-rule-law/climate-change-and-rule-lawyers>
- Vigne S and Mason L (2022) All eyes turn to the European Court of Human Rights to assess future rights-based climate litigation. Blog. Universal Rights Group Geneva, October 14. <https://www.universal-rights.org/blog/all-eyes-turn-to-the-european-court-of-human-rights-to-assess-future-of-rights-based-climate-litigation/>
- World Bank (2021) *As part of a new methane reduction strategy, the European Union pledges to support gas flaring reduction (Brief)*. World Bank.
<https://www.worldbank.org/en/programs/gasflaringreduction/brief/as-part-of-a-new-methane-reduction-strategy-the-european-union-pledges-to-support-gas-flaring-reduction>
- Zelle A R, Wilson G, Adam R, Green H F (2020) *Earth Law: Emerging Ecocentric Law – A Guide for Practitioners*. New York, NY: Wolters Kluwer.