



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

### Questionnaire EUFJE annual conference 24-25 October 2022 - Climate law and litigation

Climate change litigation (or 'Climate litigation') is on the rise, both within the jurisdictions of EU member state countries and around the world. Climate litigation is a complex phenomenon that has been brought on many grounds, and courts play an important role in how the law can respond to climate change.

The purpose of this survey is to understand what developments are occurring in climate litigation at the EU Member State/European level, and how national courts are responding to these cases.

#### I. Qualitative questions

[In this series of videos filmed for COP26](#), seven judges reflected on how the courts have addressed climate change, from both local and global perspectives.

We would appreciate if you could answer the following **questions**, providing your views on the overall opportunities and challenges regarding climate litigation in your country.

1. How has judicial decision-making on climate change issues evolved in your country over the last decade?

**In Greece there is a strong reaction against the use of energy from renewable sources. The Hellenic Council of State issued dozens of decisions related to annulment requests against approvals of environmental conditions for the construction and operation of wind turbines in various places of Greece. The Court rejected most of these annulment requests, citing Directive 2009/28/EC and the need for promotion of the use of energy from renewable sources in order to face the climate change.**

2. Before which type of courts is this type of litigation brought and by which type of plaintiffs?

**Before the Hellenic Council of State.**

**According to Greek legislation, (article 14, par. 8 of Presidential Decree 18/89 "Codification of provisions of law for the Council of State"), a special section of the Council of State, the 5th Section, is competent to judge, in the first and last instance, environmental disputes, arising from administrative acts (individual or regulatory) or omissions. These disputes are introduced before the Council through the legal mean of "writ of annulment" (annulment disputes-recours pour excès de pouvoir) with which the Council judges only the legal aspects of the case and not the facts.**

**The Council's decision, by which the relevant writ of annulment is granted or rejected is not appealed through a legal remedy (irrevocable decision).**

3. What are the opportunities to this type of litigation in your country?

**It is very easy to apply for annulment against acts approving environmental conditions relating to the operation of renewable energy sources.**

4. What are the challenges to this type of litigation in your country?

**The balance between the need to promote renewable sources and the protection of the natural environment, landscape and birdlife.**

5. What is the average length of proceedings (including on appeal and cassation)?

**The average length of proceedings is three years.**

6. Which type of remedies are being ordered by the courts? What are the arguments for not ordering such remedies?

**The above mentioned kind of litigation doesn't include remedies.**

**Adequate remedial measures are provided for in compensation actions against the State in the event of environmental damage.**

7. Do the courts have powers to ensure and follow-up the enforcement of judgements in climate cases? Are there specific difficulties in this regard?

**In April 2001, Article 95, paragraph 5, of the Constitution was amended in order to highlight and reinforce the administration's obligation to comply with all judicial decisions. This provision now requires that the administration shall comply with judgments of courts of all jurisdictions and that the competent agents' liability as well as the measures necessary for ensuring the public administration's compliance with judicial decisions shall be specified by law. On 14 November 2002 a new Law 3068/2002 entered into force, which provides a special procedure to ensure the execution of domestic judicial decisions. These provisions concern also climate cases. There are no specific difficulties in this regard.**

8. What are the most useful norms, legal principles or practices available to judges to ensure effective climate action by governments and businesses?

**a) According to existing legal provisions, (article 47 of presidential decree 18/1989), application for annulment is generally admissible if a legal interest of the petitioner (natural or legal person) is affected. Legal interest is the condition for natural or legal persons to be granted legal standing in administrative judicial proceedings and its notion (material or moral benefit from the annulment of the administrative act or omission being appealed) is wider than the notion of a right. Legal interest has been interpreted by the Council of State to be broader in environmental disputes than in other matters. Legal interest is also recognized by jurisprudence, for non-governmental organizations that have not acquired legal entity, provided that, these are recognized by public order as owners of rights and obligations in a defined circle of relations or activities, upon which, the environmental issue, comprising the object of the act being appealed, falls.**

**b) The judicial control of acts or omissions by administration with regards to environmental protection has to do with their formal and substantive legitimacy. Reasons for annulment are: (i) lack of competence of the administrative organ that issued the appealed act, (ii) breach of an essential formality of the procedure for issuing the administrative act, (iii) violation of law and (iv) abuse of authority. However the Council of State, by checking the reasoning of the contested acts and**

the misconception about facts, in the light of the principle of sustainable development, also exercises control over the substance of the disputes.

## II. Case identification and data collection

**The above mentioned cases make only a passing reference to climate change.**

There are two connected databases tracking climate litigation across the world:

- [Climate Change Laws of the World](#) maintained by the Grantham Research Institute at the London School of Economics - covers national-level climate legislation and policies globally, and climate litigation outside the US; and
- [Climate Change Litigation](#), maintained by the Sabin Center at Columbia University - contains climate litigation in the US and outside the US.

In this survey, we would appreciate if you could *please identify climate litigation cases from your country that might be currently missing from these databases.*

To fall within the scope of the databases, cases must satisfy two key criteria:

- (i) Cases must generally be brought before judicial bodies (though in some exemplary instances matters brought before administrative or investigatory bodies are also included)
- (ii) 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.

If there are any cases missing, please provide information following this general format:

*XX (Side A) v. YY (Side B)*

[Case number](#) (if available)

[Names of the plaintiffs and defendants](#), including the type (governments, corporations and/or individuals)

[Filing Date](#)

[Status](#) (whether the case is pending or decided)

[Jurisdiction](#) (court or tribunal before which the case was filed)

[Principal Laws](#) (the primary laws invoked in the case)

[Summary](#) (relevant dates, parties, court; the legal reasoning from plaintiffs, defendants, or for court decisions; what is specifically being asked for; what the remedies are; whether the decision is being appealed; whether the decision has been implemented)