



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.

#### **Preface.**

For a better understanding of the climate change situation in Italy, I suggest to read the report 'Climate: risks and future strategies in Italy' at this link <https://www.cmcc.it/article/climate-risks-and-future-strategies-in-italy>

As recalled in a recent article (L. BUTTI *Il contenzioso sul cambiamento climatico in Italia*, RGA online 20 June 2021), Italy has taken the problem of climate change into consideration by planning to reduce its greenhouse gas emissions, increase the use of renewable energies and improve energy efficiency. Thus, 'mitigation measures' (ratification of the Kyoto Protocol, implementation of other international agreements) and 'adaptation measures' (see <https://climate-adapt.eea.europa.eu/countries-regions/countries/italy>) have been adopted.

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

As has been noted (M. CARDUCCI *Il cambiamento climatico nella giurisprudenza italiana in diritticomparati.it*, 8 March 2021) Italy, unlike other European (Holland, Germany, France, Ireland) and non-European states, has no specific case law on climate change.

An administrative dispute is reported, promoted by ENI against the sanction applied by the Antitrust Authority for 'unfounded environmental claims' of the fossil product 'diesel+', concerning the so-called 'Greenwashing' in the commercial communication of

climate-changing companies, and an extraordinary appeal to the President of the Republic against the Ministry of Economic Development, initiated by some citizens concerning a new methane pipeline, which was allegedly authorised and extended ignoring the declarations of climate emergency by the Government and the European Parliament and without prior assessment of climate compatibility and usefulness.

The same Author points to a number of decisions that, although not concerning climate change, are nevertheless considered significant.

The first decision is a ruling by the Constitutional Court (no. 127/1990) in which some principles considered important are formulated: (a) on the subject of gas emissions, the limits set by administrative regulations or authorizations are not in themselves resolving doubts as to their tolerability for human health and environmental healthiness; (b) consequently, that of gas emissions is not a matter of mere compliance with the aforementioned limits, but of effective protection of the right to health and the environment; (c) to be framed through "scientific investigations designed to establish the compatibility of the maximum limit of emissions with their tolerability"; (d) without any ordinary regulation being able to escape this constitutional conformity.

Again, the Constitutional Court with other pronouncements (nos. 124/2010, 286/2019 and 237/2020) has recognized a double principle of constitutional conformity in energy matters: that of "favouring renewable energy sources in order to eliminate dependence on fossil fuels" and the "maximum diffusion of renewable energy".

Other decisions concern the international sources of climate law in the Italian constitutional system (Constitutional Court nos. 124/2010 and 85/2012; Council of State sec. V no. 4768/2012, sec. VI no. 4567/2016, Ad. plen. no. 9/2019, and sec. V no. 677/2020; TAR Campania, Salerno, no. 259/2020)

The Plenary Assembly of the Council of State (no. 9/2019) also highlighted: the duty to pursue the "preeminent interest of the community in the gradual reduction of the component of carbon dioxide present in the atmosphere", to which corresponds the "superior interest" in combating climate change on the part of the State, "to be understood both as a State-person, in relation to international constraints ..., and as a State-community representing the collective interest in improving environmental quality".

The Court of Civil Cassation (Cass. civ. sez. III no. 25143/2020), on the subject of international protection, has pointed to climate change as a known fact that affects human rights, which are made vulnerable by exposure to extreme weather events resulting from it.

In early 2021, other decisions issued by Sec. VI of the Court of Cassation in tax matters attributed the identity of European law to international sources on climate change, due to the EU's adherence to them, thus endowed with the requirement of *primauté* and *effet utile*; they called the 2015 Paris Climate Agreement, containing specific temporal and quantitative outcome obligations (to reduce emissions within the timeframe necessary to achieve climate neutrality and to maintain the temperature between 1.5°C/2°C, based precisely on scientific knowledge) 'the first universal and legally binding agreement on climate change'.

The only specific case is from 2021. In June 2021, the first class action lawsuit against the state was filed in the Civil Court of Rome by a number of associations and individual citizens, seeking more effective action to combat climate change. The lawsuit has received much media coverage.

As stated on the dedicated website (<https://giudiziouniversale.eu/legal-action-2/?lang=en>) the aim of the lawsuit is to sue the State for climate inaction, i.e. for insufficient commitment to promote adequate GHG emission reductions policies, resulting in the violation of numerous fundamental rights recognised by the Italian State.

The legal action is part of the “Giudizio Universale” awareness campaign and is fully in line with other climate cases in various countries around the world.

The website also states: the premise on which “the Last Judgement” is based is that shared scientific findings, precisely because they are uncontroversial, bind States and constitute a standard for verifying their conduct, both internationally and nationally.

The main climate obligations that the Italian State is obliged to observe derive from international, regional and national sources, among which the most important are: International climate agreements (including the 1992 UNFCCC – United Nations Framework Convention on Climate Change and the 2015 Paris Agreement); International and regional human rights sources (including ECHR, European Convention on Human Rights, Art. 2 and 8); Sources of European Union law (including TFEU Art. 191 and EU Regulation No. 2018/1999); The Italian Constitution (including articles 2 and 32); Other national sources (including Civil Code, Articles 2043 and 2051)

The legal action is addressed to the Italian State through a writ of summons filed with the Civil Court of Rome. The plaintiffs are seeking a ruling ordering the State to achieve a drastic reduction in greenhouse gas emissions by 2030, in order to meet the long-term temperature goal of the Paris Agreement (aiming at limiting global warming to 1.5°C).

Through the summons, the plaintiffs are alleging the unlawful conduct of the State, which failed to align its climate policies to the most advanced scientific findings.

The lawsuit is by no means symbolic. It aims to achieve a radical change in the State’s climate policies, through a decisive improvement in GHG reduction ambitions and the guarantee of full protection of human rights, in compliance with the climate obligations that the State is required to observe under the Constitution, international agreements and national legislation.

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

As mentioned above, there is only one specific case in Italy before the Civil Court

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

The civil case before the Court of Rome is a leading case that may pave the way for other similar initiatives. However, the outcome of the trial is uncertain, as it has only just begun

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

As written above, The lawsuit is symbolic. It aims to achieve a radical change in the State's climate policies.

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

The last report of the Council of Europe's Commission for the Efficiency of Justice (CEPEJ) based on 2018 data reiterated how Italy was among the worst European countries in terms of the time taken in civil disputes. The closure of courts due to the pandemic also nullified the slight progress made in 2014-2019. It takes between two and eight years to end a civil case.

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

There are no criminal sanctions on climate change. Instead, the civil court may establish compensation or specific obligations.

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?

There are no previous decisions of national courts

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

There are no previous decisions of national courts

## II. Case identification and data collection

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)

In the first of the mentioned databases there are, with reference to Italy, 8 'litigation cases'. The only case dealt with before a national court with climate change as a specific theme is the one before the Court of Rome mentioned above. This case is mentioned in the database as "A Sud et al. v. Italy".