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DRAFT STUDY ON NATIONAL CLIMATE LITIGATION

(Agenda item 8)

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CONTEXT AND ACTION EXPECTED:

The CDCJ has initiated this study was initiated in response to Parliamentary Assembly Recommendation 2213 (2021) on "Addressing issues of criminal and civil liability in the context of climate change", which invited the Committee of Ministers to "conduct a study on national climate litigation cases".

At its 115th meeting (24–25 October 2022), the Bureau of the European Committee on Legal Co-operation (CDCJ) considered the scope of such a study. Recognising the distinct legal and evidentiary characteristics of climate change litigation as compared to other forms of environmental litigation, the Bureau emphasised the need for further guidance—particularly on the potential for civil litigation in relation to climate change, as well as domestic legal practices and case law in this area. At that stage, the Bureau noted that existing legal instruments, such as the Lugano Convention, primarily address civil liability for environmental damage in general and do not specifically account for the unique features of climate change-related litigation.

Subsequently, at its 100th plenary meeting (30 May – 1 June 2023), the CDCJ agreed to the Bureau's proposal that, given the complexity of the topic and the relevance of several high-profile climate cases pending before the European Court of Human Rights (the European Court), the study should be completed by the end of 2025, once the judgments in those cases had been delivered. After the judgments of the European Court of Human Rights in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Carême v. France, and Duarte Agostinho and Others v. Portugal and 32 Others have been delivered, the CDCJ at its 102nd plenary meeting on 11–13 June 2024 decided to further pursue the study, to be produce by the end of 2025, and at its 103rd (19-21 November and 3 December 2024) and 104th plenary meetings (16-18 June 2025) examined and agreed on the detailed outline of the draft study on national climate litigation to be conducted by the consultants, Dr Joana Setzer and Ms Catherine Higham (Grantham Research Institute on Climate Change and Environment, London School of Economics).

The CDCJ Bureau is invited to examine the draft study on national climate litigation prepared by the consultants as it appears in document CDCJ(2025)15 prov, and to provide relevant guidance to the consultants to help them in completing their work to be presented to the CDCJ for examination and adoption at its upcoming plenary meeting.

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List of abbreviations

AO — Advisory Opinion
AR5 / AR6 — Fifth / Sixth Assessment Report (IPCC)
CALCDA — Climate Action and Low Carbon Development Act (Ireland)
CDCJ — European Committee on Legal Co-operation (Council of Europe)
CJEU — Court of Justice of the European Union
CoE — Council of Europe
CO_2 — Carbon Dioxide
CSRD — Corporate Sustainability Reporting Directive (EU)
CSDDD — Corporate Sustainability Due Diligence Directive (EU)
ECHR — European Convention on Human Rights
EFTA Court — Court of the European Free Trade Association
EIA — Environmental Impact Assessment
ELD — Environmental Liability Directive (Directive 2004/35/EC)
ESG — Environmental, Social and Governance
EU — European Union
EU ETS — European Union Emissions Trading System
GHG — Greenhouse Gas
GHG Protocol — Greenhouse Gas Protocol (corporate accounting standard)
GRI — Grantham Research Institute on Climate Change and the Environment (LSE)
ICJ — International Court of Justice
ICJ AO — International Court of Justice Advisory Opinion
IPCC — Intergovernmental Panel on Climate Change
LSE — London School of Economics and Political Science
MNE — Multinational Enterprise
NAP / NAP3 — National Adaptation Programme (UK) / Third National Adaptation Programme
NDC — Nationally Determined Contribution
NGO — Non-Governmental Organisation
NOx — Nitrogen Oxides
OECD — Organisation for Economic Co-operation and Development
PG&E — Pacific Gas and Electric Company (US)
RICO — Racketeer Influenced and Corrupt Organizations Act (US)
SB (e.g., SB 222) — Senate Bill (US state legislation)
SLAPP — Strategic Lawsuit Against Public Participation
UNEP — United Nations Environment Programme
UNGPs — UN Guiding Principles on Business and Human Rights

Summary

- **Geography and numbers.** Climate litigation is now a genuinely pan-European phenomenon. Since 2002, domestic climate lawsuits have been recorded in 26 European countries, alongside 12 applications before the European Court of Human Rights and roughly 70 matters before the Court of Justice of the European Union. Cases cluster in a few jurisdictions—United Kingdom (134), Germany (68), France (33) and Switzerland (22)—but activity is spreading south and east; by contrast, 21 Council of Europe member states have no recorded climate cases. Europe also sees a high share of cases reaching *apex courts*, albeit with comparatively low success rates at that level.
- **Climate litigation is proliferating in Europe.** A significant share of cases mentioning climate change are brought by civil society groups and individuals, often to influence wider climate governance. Engaging with their claims helps policymakers anticipate pressure points, reduce costly disputes, and improve legal certainty.
- **The majority of climate cases in Europe are filed against governments. Key implications for policymakers include:**
    - **International due diligence.** Authoritative interpretations of international obligations by courts such as the International Court of Justice suggest that states are required to apply a stringent due diligence standard to climate mitigation, including through engagement with the issue of state support for fossil fuel production and consumption. Although these obligations are not directly enforceable in many domestic proceedings, litigants and courts may nonetheless align interpretations of domestic legal standings with these international obligations.
    - **Regional human rights duties.** At the regional level, the European Court of Human Rights has confirmed that the European Convention on Human Rights requires states to act on climate change to protect the right to life and the right to a private and family life. Building on an existing trend of litigants using human rights arguments in climate cases against states, this judgment is likely to lead to more litigation seeking to ensure states have ambitious and effective regulatory frameworks in place to address climate change.
    - **Compliance litigation.** The strengthening or creation of such frameworks may in turn lead to a further wave of compliance litigation, by which civil society groups seek to hold government actors accountable. While states may wish to avoid such litigation at the national level by acting in accordance with a stringent interpretation of existing obligations, litigation can be a useful tool for both corporations involved in transition industries and civil society to ensure consistency across government decisions and a whole of government approach to climate action.
    - **Damages exposure (early signals).** although relatively rare at this stage of the evolution of climate litigation, states should be aware of the possibility that damages may be sought in litigation when climate mitigation targets have not been achieved. Although no case has yet been successful on this issue, early litigation in France and Romania may be instructive, as will the policy discussions in the wake of these cases.
- **Climate litigation in Europe increasingly targeting corporate actors.** Four strands—and their policy implications—are examined:
    - **Corporate framework & human-rights due diligence.** Claimants argue that companies with globally significant emissions must adopt Paris-aligned strategies across their value chains, drawing on UNGPs/OECD Guidelines; early results include partial wins in the Netherlands and Italy.
    - **Polluter-pays & damages for emissions.** Though only a small fraction of global cases, these suits could carry material liability for European firms. We analyse *Asmania v. Holcim* and *Falys v. Total* in light of *Lliuya v. RWE* (which, despite

dismissal on the facts, established the legal principle that under German law a company could be held liable for emissions). There is potential for the court's in Asmania and Falys to reach a different conclusion on the merits.

- **Polluter-pays & decommissioning.** Campaigns are testing strategies to enforce costly end-of-life obligations in oil and gas, aiming to avoid orphaned assets and curb methane leakage.
- **Failure-to-adapt risk.** While corporate climate litigation may be one route to establishing legal liabilities for companies contributing to climate harms, there may still be challenges in enforcing financial damages or penalties against these companies, particularly because of insolvencies. Legislative models have started to emerge in the US, Pakistan, and the Philippines which may address some of these challenges, however these have been subject to significant political debate and may face their own challenges of enforcement.

- **Enforcement and compensation remain challenging.** Even where liability is established, insolvency, asset shielding, and insurance exclusions/caps can leave victims undercompensated. Emerging statutory models (e.g., climate superfunds) aim to operationalise polluter-pays at scale, but face political and legal headwinds. Options to close the compensation gap include refining the EU Environmental Liability Directive interface to targeting parent-company responsibility and bolstering financial security requirements.

Introduction

Climate change poses an unprecedented challenge of civilizational proportions. The Intergovernmental Panel on Climate Change (IPCC) has established, with high confidence, that anthropogenic greenhouse gas emissions (GHG) are the dominant driver of global warming since the mid-20th century. Human-induced climate change - manifested through increasingly frequent and intense extreme events - has already caused widespread adverse impacts, resulting in losses and damages to both nature and people. Across all regions, the most vulnerable communities and ecosystems are disproportionately affected. The scientific consensus is equally clear that the well-being of present and future generations depends on urgent and immediate action.

Within this context, climate litigation has emerged as a powerful mechanism for advancing accountability in domestic and international legal systems. The first wave of climate cases appeared in the mid-2000s, with early lawsuits taking place in the United States and Australia (Peel & Osofsky, 2015). Since then, the field has expanded rapidly, not only in the number and diversity of cases, but also in the depth of academic analysis and the attention it receives from policymakers, corporations, the financial sector, and the media. The adoption of the Paris Agreement in 2015, along with several landmark judicial decisions in the same year, catalysed a surge of interest in litigation as a means of enforcing climate commitments and shaping policy outcomes (Peel & Osofsky, 2020; Peel et al., 2022; Smith, 2019; Setzer & Vanhala, 2019).

Climate litigation generally refers to legal proceedings before judicial or quasi-judicial bodies that raise substantive questions of climate science, law, or policy (Sabin Center, 2025; UNEP, 2023). While most cases to date have been filed in the United States, Europe has seen a marked rise in litigation, particularly in the post-Paris era (Setzer & Higham, 2025).

This report provides an overview of domestic climate litigation across Europe, focusing on cases brought against both public and private actors. It pays particular attention to lawsuits rooted in the polluter-pays principle and those seeking to establish liability for climate-related damages. Where relevant, it also situates domestic cases within the broader context of influential regional and international proceedings.

Historically, more than 70% of climate cases worldwide have targeted governments (Setzer & Higham, 2024). The largest group of these cases challenge individual government decisions, often relying on environmental legislation that was not specifically designed to tackle climate change.

However, a small but significant group of government cases fall into the category of *framework* or *systemic* cases, high-profile strategic litigation which challenge the adequacy or implementation of overall national climate policy responses. Europe has been a central hub for this form of litigation, which is often grounded in human rights law, with over half of global framework cases filed on the continent (Setzer & Higham, 2024, 2025). Such cases have not only shaped national climate policy landscapes (Averchenkova et al., 2024; Higham et al., 2022) but also laid the doctrinal foundations for corporate climate accountability.

In parallel, lawsuits seeking to attribute liability for climate-related harm - commonly referred to as *polluter-pays* cases - have been filed since the early 2000s (Ganguly et al., 2018). These cases argue that corporate or governmental actors should bear the costs of the damages caused by their contribution to climate change, either through compensation for losses or contributions to adaptation measures (Setzer & Higham, 2025). Although still in their early stages in Europe, these cases reflect a global shift toward holding major emitters financially accountable for climate impacts.

This report also highlights an emerging and less explored category of litigation: *failure-to-adapt* cases. These lawsuits target public or private actors for neglecting to anticipate or respond adequately to foreseeable climate risks. While relatively rare, they have the potential to generate transboundary disputes and substantial financial liabilities, underscoring the need for proactive legal and policy responses.

Finally, this report examines the question of compensation for damages. It examines how courts and policymakers can ensure that successful claims translate into meaningful financial recovery for victims, rather than remaining largely symbolic. This includes analysis of the EU Environmental Liability Directive as a baseline framework, the challenges posed by corporate insolvency and insurance limitations, and emerging statutory solutions - such as climate superfunds or private liability mechanisms -designed to close the compensation gap and operationalise the polluter-pays principle.

Methodology

This report primarily relies on data hosted on the two Climate Litigation Databases of the Sabin Center for Climate Change Law (US and Global) and builds upon data analysis conducted as part of the Grantham Research Institute's *Global Trends in Climate Litigation* reports. The first of the Sabin Centre databases contains climate cases filed before the state and federal courts of the United States, while the second comprises 'global' cases filed in all jurisdictions except in the US, including cases filed before international and regional courts and tribunals.[2] The Sabin Centre databases are a well-respected global resource for tracking climate change cases and provide extensive quantitative and qualitative data on such cases. While these databases are neither comprehensive nor exhaustive, they provide a rich cross-cutting sample of climate cases brought by a range of actors and on various legal bases, across jurisdictions. The definition of climate litigation used in this report – cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law – corresponds to the definition applied by the Sabin Centre itself in determining what cases to include in its databases.

To complement the data gathered from the Sabin Centre databases, further data on domestic climate litigation in Europe was gathered through the distribution of a questionnaire to Council of Europe (CoE) member states[3]. The questionnaire asked member states to report recent domestic case law relating to climate change against the state and against private entities, particularly where the latter may have an impact on public policy or legislation regulating operations by private entities relevant to climate change. Member states were asked to furnish further relevant information, including the key individuals and organisations involved, the legal arguments made by plaintiffs and defendants,

[2] Throughout this report, when citing specific cases that are available in the Sabin Center's databases, we include the name of the case and a hyperlink to the case entry in the database.
[3] The questionnaire was prepared by the Secretariat of the CDCJ, revised by the Bureau, and distributed to member states by the Secretariat.

the results of the case and implications thereof for climate policy or industry practices, if any, and whether cases challenged the compatibility of governmental actions with international climate change commitments.

Seventeen responses were received, namely from Belgium, Denmark, Estonia, France, Georgia, Lithuania, Luxembourg, Montenegro, Portugal, Romania, Serbia, Spain, Sweden, Switzerland, Türkiye, Ukraine, and the United Kingdom. Three of these responses expressly indicated that no known lawsuits relating to climate change have been brought against either states or private entities within the jurisdictions in questions (Lithuania, Luxembourg[4], and Montenegro). It should be noted that state responses listed a selection of cases, and were not exhaustive in nature. More cases tend to be included in the Sabin Centre database than appear in state responses, particularly for states where a large number of climate cases have been documented. State responses therefore provide indicative information on climate lawsuits and highlight cases of particular interest.[5] They also suggest that more targeted efforts to monitor national developments could be beneficial for respondent governments.

This report focuses on climate litigation deemed to be strategic in nature. The term 'strategic climate litigation' refers to lawsuits brought with the broader intention or ambition of influencing public debate or the behaviour of specific actors in relation to climate change. These cases often form part of broader advocacy campaigns, and are therefore of particular relevance to national policymakers. The classification of lawsuits as 'strategic' is based on the identity of the claimants, the identity of the defendants, the aim of the litigation and the case being part of a wider advocacy strategy, complementing actions beyond the courts such as lobbying and protests (Setzer & Higham, 2025).

Although this report focuses on cases that expressly raise material issues of law or fact relating to climate change, this is not to discount the relevance of environmental law and litigation in this context. The relationship between more traditional environmental litigation and climate litigation is recognised in Member State questionnaire responses, with several highlighting key environmental provisions and jurisprudence that may influence and inform climate litigation, notwithstanding the absence of explicit references to climate change causes or impacts. For instance, questionnaire responses pointed to domestic case law on the protection of forests (Ukraine), compliance with air quality and other environmental pollutant limits (Serbia, Türkiye, Ukraine), criminal convictions for environmental damage (Serbia), and the application of procedural and substantive environmental rights to non-governmental organisations (Georgia).

Part 1: Overview of climate litigation in Europe

1. Climate litigation in Europe has intensified over the past decade, reflecting the broader global trend of increasing reliance on courts to drive or challenge climate action (Figure 1.1; Setzer & Higham, 2025). While the total number of new cases identified for each year has gradually declined since 2022, a trend mirrored globally, this does not necessarily indicate a waning of climate litigation. Rather, it may signal the diversification of legal strategies, some of which are not yet captured in current climate litigation databases (Setzer & Higham, 2025).

2. This part of the report provides an overview of climate litigation in Europe, situating it within the global landscape where relevant. Section 1.1 outlines where the majority of climate cases have been filed across European states and regional courts, and where cases remain largely absent. Section 1.2 examines the most common litigation approaches in Europe, including cases integrating climate considerations into project approvals, climate-washing claims, and government framework cases (which will be explored in greater detail in the next part of the report).

[4] The Sabin Center's dataset includes two climate change lawsuits filed in Luxembourg.
[5] Where climate lawsuits that have not yet been recorded in the Sabin Center's databases are identified in state responses, this information will be relayed to the Sabin Center for addition in their databases.

1.1. Geographical distribution of cases

3. Although climate litigation in Europe has historically been concentrated in a few countries, it is now increasingly widespread, reflecting both the maturity of climate arguments in certain legal systems and the growing regional diffusion of climate-related legal arguments (Aristova and Lim, 2024; Rodríguez-Garavito, 2022; Alogna et al, 2024).

4. Historically, most cases have been filed in Western and Northern Europe, with countries such as the United Kingdom, Germany, France, and the Netherlands consistently acting as hubs of climate litigation. These jurisdictions often combine robust administrative and constitutional frameworks, active civil society engagement, and strong traditions of judicial review, creating favourable conditions for climate-related claims. In recent years, Southern and Eastern Europe have also begun to see a rise in climate cases, though activity remains comparatively lower. Cases in countries such as Spain, Italy, Poland, and Greece have typically involved project-specific challenges—often related to renewable energy expansion or fossil fuel infrastructure. The Court of Justice of the European Union (CJEU) has delivered key judgments that test the boundaries of EU climate and energy law, including disputes over emissions trading, renewable energy targets, and environmental impact assessments.

5. At the same time, there are signs that systemic and rights-based cases may increasingly reach courts in these regions, particularly as EU law and the European Convention on Human Rights (ECHR) continue to shape national responses (Peel and Osofsky, 2018; Alogna et al 2024). The relevance of the ECHR has been confirmed following the recent landmark ruling in *KlimaSeniorinnen v. Switzerland* (see also Box 1), which held that European human rights protections impose obligations on member states to take regulatory action to address the need for both climate change mitigation and adaptation. It is not yet clear what role the court will play in future, but strategic litigants will certainly continue to leverage the judgment in cases before national courts and potentially new cases before the European Court in future.

6. Notably, Europe is among the regions with the highest number of climate lawsuits reaching apex courts, such as Constitutional and Supreme Courts. Despite this, the success rates of climate cases before apex courts in Europe are low by comparison with other regions. Many of these unsuccessful cases are rejected prior to a consideration on their merits, meaning they are dismissed on grounds relating to admissibility, justiciability, or other preliminary requirements. In this regard, trends in Europe reflect those in North American climate cases, with a comparatively high incidence before apex courts contrasted by a low success rate (Setzer & Higham, 2025). Nonetheless, where cases before apex courts have been successful, they have been influential, both in terms of shaping domestic policy debates and in inspiring further cases (Averchenkova et al, 2024).

7. As Table 1 shows, domestic climate lawsuits have been recorded in 26 countries in Europe since 2002, with a further 12 cases filed before the European Court and 70 before CJEU. These cases are not evenly distributed across CoE member states: the highest number of cases are seen in the United Kingdom (134), Germany (68), France (33), and Switzerland (22), while no known climate cases have been documented in twenty-one CoE member states.

Table 1. Domestic climate lawsuits in Europe since 2002

State	No. of climate cases in Sabin Centre database	No. of new climate cases in questionnaire response*
Belgium	8	0
Denmark	2	0
Estonia	6	0
France	33	1 (*Ville de Paris,* Paris Administrative Court, Judgment n° 2214357)

Georgia	0	0
Lithuania	0	0
Luxembourg	2	0
Montenegro	0	0
Portugal	2	1 (*Ius Omnibus v. Daimler/Mercedes-Benz*
Romania	6	1 (*Bankwatch Romania v. Ministry of Environment, Water and Forests and Others,* Case no. 4597/2/2021)
Serbia	0	0
Spain	18	0
Sweden	2	1 (*Naturskyddsföreningen and Others v. Preem AB*, Case no. M 11730-18)
Switzerland	22	0
Türkiye	8	3 (Judgment E:2023/1519-K.2024/1248; Canal Istanbul Project; Sinop Nuclear Power Plant)
Ukraine	2	0
United Kingdom	134	4 (*R (Together against Sizewell C) v. Secretary of State for Energy Security and Net Zero* [2023] EWHC 1526 (Admin); *Renewable Heat Association & Anor, Re Application for Judicial Review* [2023] NICA 13; *North Lowther Energy Initiative Ltd v. Scottish Ministers* [2022] ScotCS CSIH; *Solaria Energy UK Ltd v. Department for Business, Energy And Industrial Strategy* [2020] EWCA Civ 1625)

**Note: Based on currently available information not all newly identified cases appear to meet the Sabin Centre definition.*

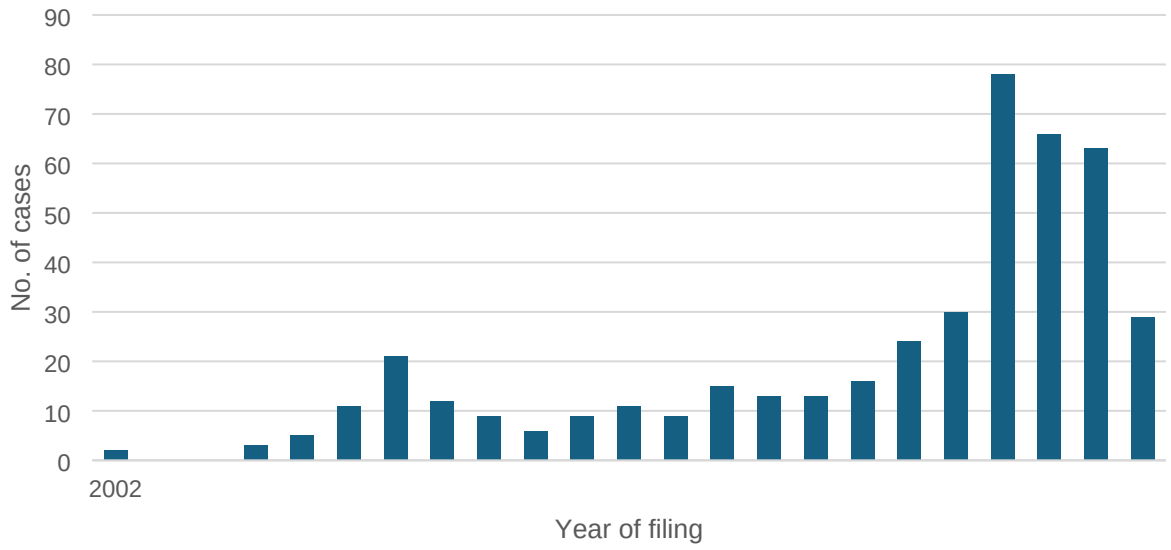

Figure 1: Number of climate change lawsuits filed in European domestic and regional courts

8. The gradual decline in the filing of new climate cases in Europe since 2022 is also reflected in global data, and it may be attributable to a growing diversification of case strategies that fall outside the current scope of climate litigation databases (Setzer & Higham, 2025).

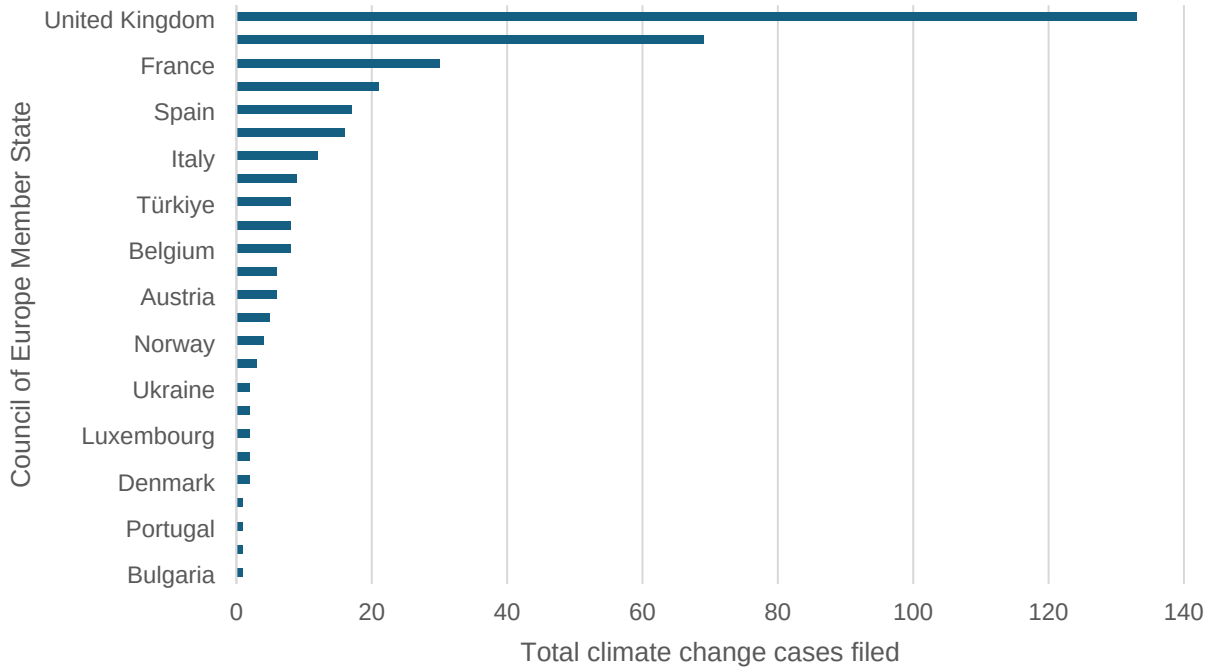

Figure 2: Distribution of climate change lawsuits in CoE member states (excluding states in which no such cases have been recorded)

9. This evolving geographical landscape illustrates a dual dynamic: climate litigation continues to proliferate at a significant pace in a few jurisdictions with established legal and activist communities, while simultaneously expanding into new national and regional forums, thereby reinforcing the role of courts as central actors in Europe's climate governance architecture.

1.2. Most common types of case strategies before courts in Europe

10. European climate litigation encompasses a diverse array of legal strategies, reflecting the region's evolving regulatory and judicial landscape. While early cases often focused on challenging individual projects - such as coal plants, pipelines, or infrastructure approvals - recent years have seen a rise in systemic and accountability-driven litigation (Setzer et al, 2022). In many of these more recent cases, different strategies overlap and evolve, with litigants increasingly experimenting with hybrid approaches, for instance, combining project-level challenges with human rights arguments.

11. Applying the categorisation of climate case strategies developed by Setzer and Higham (2025) to the subset of cases filed before European domestic courts, the most prevalent primary strategy is that of cases that seek to integrate climate considerations, standards or principles into a given decision or sectoral policy, with the dual goal of stopping specific harmful policies and projects, and mainstreaming climate concerns in policymaking. These so-called "*integrating climate considerations*" cases are also the most common globally.

12. These cases are increasingly being utilised by claimants in Europe to contest the expansion of fossil fuels. Many of these cases are grounded in environmental law, especially environmental impact assessment (EIA) regimes, and target individual projects anticipated to produce significant GHG emissions, challenging approvals granted to such projects. The question of whether Scope 3 – i.e., downstream – emissions must be considered in issuing project approvals has been increasingly brought into focus in these lawsuits.

13. This issue has been particularly prevalent before the courts of the UK and Norway, the largest oil and gas producing states in Europe. In *Greenpeace Nordic and Others v. Ministry of Petroleum and Energy (Norway)*, NGOs and individuals challenged permits for three North Sea oil and gas

fields, citing the absence of Scope 3 emission assessments in the EIAs. The case has led to two applications before the European Court (Apps Nos. 34068/21 and 19026/21) and an EFTA Court advisory opinion confirming that Scope 3 emissions are "effects" that must be considered under EIA law.

14. Although these lawsuits target public authorities, they carry direct consequences for corporate developers holding the challenged permits. The ruling of the Scottish Court of Sessions on the Jackdaw and Rosebank projects illustrate this point, with the Court emphasizing that investors' interest in legal certainty must be balanced against the rule of law and the public interest in climate mitigation. Developers that proceed with projects while legal challenges remain unresolved assume a calculated litigation risk, and the Court affirmed that this risk does not outweigh the public's interest in preventing climate harm.

15. The second most prevalent strategy in climate cases before European domestic courts are "*climate-washing*" cases. These cases challenge inaccurate government or corporate narratives regarding contributions to the transition to a low-carbon future. Recent years have seen a sharp rise in the filing of climate-washing cases, with this being the most prevalent strategy in corporate cases globally (Setzer & Higham, 2025; Chan et al, 2025). Such cases have also featured prominently before the courts of various CoE member states. These cases have seen a high success rate of climate-washing litigation before European domestic courts, with over 80% of such cases resulting in an outcome deemed to enhance climate action – higher even than the already relatively high global success rate of 60% in climate-washing cases (see Setzer & Higham, 2025).

16. Recent European climate-washing rulings include Germany's Federal Court of Justice finding Katjes' "climate neutral" claim misleading under the Unfair Competition Act because it could imply reduced production emissions or full offsetting without a clear, prominent explanation (*Zentrale zur Bekämpfung unlauteren Wettbewerbs v. Katjesadd*). In Denmark, courts likewise held Danish Crown's "climate-controlled" pork ads misleading, though they upheld the relative claim "Danish pork is more climate-friendly than you think" as sufficiently substantiated (*Vegetarian Society et al. of Denmark v. Danish Crown*).

17. The third most prevalent category of climate cases before European domestic courts are cases that challenge the ambition or implementation of climate targets and policies affecting the whole of a country's (national or subnational) economy and society, such as the *Klimaseniorinnen* litigation. Europe accounts for a significant proportion of all such cases filed globally. This type of case will be further discussed in Part 2 of this report.

1.3. Plaintiff and defendants

18. Most climate cases globally are filed against state actors. In 2024, 80% of cases filed targeted national and sub-national governments and public authorities. This trend is reflected in Europe though to a somewhat lesser degree, with almost 58% percent of cases featuring state actors as respondents.

19. Despite the corresponding lower incidence of cases targeting private entities, corporate climate litigation is clearly on the rise. As of 2024, 123 cases against corporate entities had been filed before courts in Europe, with more than three-quarters of these cases filed since 2020. A broad range of sectors are implicated in these cases, with a growing number of lawsuits targeting corporate entities active in the retail, transport, mining, and agriculture and food sectors, as well as financial and business services.

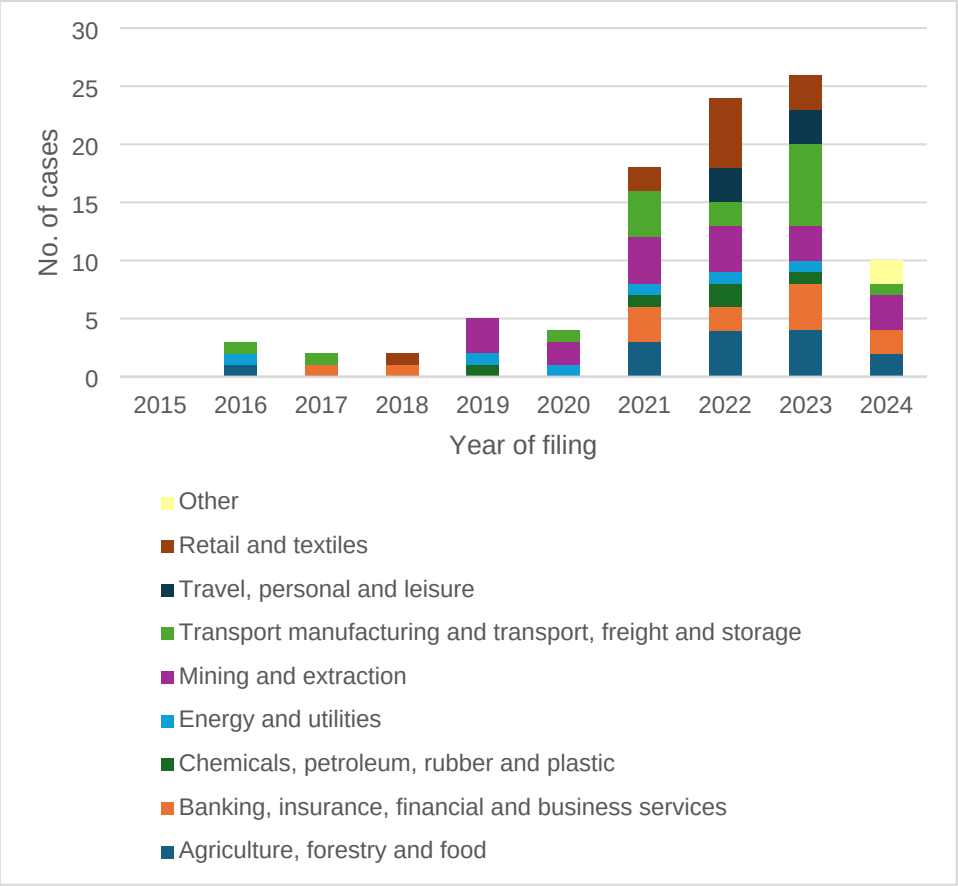

Figure 3: Corporate sectors targeted in climate litigation filed before European domestic courts, 2015-2024

20. Climate change lawsuits are most commonly filed by individuals and NGOs, often acting together: globally, 60% of cases in 2024 were filed by such actors. Cases filed before European domestic and regional courts display a similar trend: approximately 64% of cases here include NGO or individual claimants. At the domestic level, more than 70% of cases have historically been filed by these kinds of claimants in CoE member states, with this figure rising to over 85% for cases filed in 2024. Thus, although global trends show a growth in government- and prosecutor-led litigation particularly in the Global South (for instance, in Brazil and China), European climate litigation remains very much civil society-initiated.

21. Corporate entities and trade associations also feature as claimants in climate cases. Although such lawsuits tend to contest climate measures (whether broadly or in their application to a specific company), corporate actors have also been behind the filing of climate-aligned cases. For instance, in *Coolglass Windfarm Ltd. v. An Bórd Pleanála*, the applicants were developers of a wind farm who sought judicial review of a planning authority decision rejecting planning permission due to concerns around the project's visual impacts. The Irish High Court ruled in favour of the applicants, finding that refusal of the planning application based on visual concerns contravened the public authorities' obligation to "perform [their] functions in a manner consistent with" national climate plans and objectives under Section 15 of Ireland's Climate Change and Low Carbon Development Act.

22. Although generally taken against planning or other public authorities, these cases clearly have direct implications for the corporate entities to whom the challenged permit has been granted, demonstrating the two-way influence of both cases against states and corporate litigation on each other.

1.4. Strategic lawsuits against public participation (SLAPP)

23. Corporate actors are also claimants in so-called strategic lawsuits against public participation (SLAPP). SLAPPs are claims brought with the aim of deterring public participation and climate activism by intimidating and burdening defendants who are frequently already resource constrained (Manko, 2024; Setzer & Higham, 2024). Although relatively few SLAPP cases appear in climate litigation databases, concerns have been raised over their increasing prevalence and their instrumentalisation by the fossil fuel industry in an attempt to deter opponents (Nosek et al, 2025).

24. The countering of such lawsuits is also included under measures for achieving the strategic objectives of the Council of Europe Strategy on the Environment in the context of strengthening good democratic governance. Instances of SLAPP initiated by the fossil fuel industry have been documented, for instance, in France, Italy, and the UK (Eckes & Paiement, 2025). In light of these concerns, the Anti-SLAPP Directive was adopted by the European Union (EU) in April 2024. The Directive allows for the early dismissal of manifestly unfounded claims and enables penalties to be imposed on abusive claimants.

25. The Anti-SLAPP Directive will likely be put to the test in the context of the *Energy Transfer v. Greenpeace* lawsuit. The case, filed in the United States, culminated in an order for Greenpeace to pay damages of more than US$ 660 million relating to protests against the Dakota Access Pipeline – a quantum that is likely to have a chilling effect on similar advocacy efforts and may even threaten the organisation with bankruptcy (Leingang & Lakhani, 2025). In parallel, Greenpeace International - headquartered in the Netherlands - filed a lawsuit in the Netherlands invoking Dutch tort law (Civil Code art. 6:162) and Article 10 ECHR, and expressly relying on the EU Anti-SLAPP Directive to recover damages and costs arising from Energy Transfer's lawsuits; the case was publicly launched in July 2025 (Greenpeace, 2025). The case generated notable civil-society momentum, with 40 organisations across fifteen European countries urging governments to accelerate transposition of the Directive.

Part 2: Climate litigation against states in Europe

26. Governments have been the most common defendants in climate change litigation. The main reason for this is that governments bear primary responsibility for setting and implementing climate policies, as well as for meeting domestic, regional, and international climate obligations. As the main regulators of emissions, land use, and environmental protection, governments are often challenged for failing to adopt sufficiently ambitious measures to mitigate climate change or for not adequately enforcing existing commitments. *Government framework cases*, which challenge the implementation or ambition of a government's climate policy response, form a large portion of these claims (Setzer & Higham, 2025). Since 2015, at least 120 such cases have been filed worldwide, more than half of which are in Europe.

27. Although directed at public authorities, these judgments often have far-reaching effects on companies. Court-mandated increases in mitigation ambition typically translate into tighter regulation and planning constraints, affecting fossil-fuel extraction and power generation, vehicle and fleet standards, and approvals for transport infrastructure such as airports and roads. They can reshape public procurement, capital allocation, and consumer preferences, accelerating the transition across energy, transport, industry, agriculture, retail, and consumer-goods sectors, and heightening risks of stranded assets. In parallel, doctrines developed in successful cases against states - especially rights-based reasoning and carbon-budget approaches - are increasingly transplanted into corporate litigation, creating cross-pollination between public and private law claims.

28. In Europe, where human rights law plays a particularly prominent role, plaintiffs frequently frame such cases as violations of the rights to life, health, or a healthy environment, arguing that governments have breached constitutional or statutory duties by failing to prevent dangerous climate impacts. The complementarity of international human rights, environmental, and climate change law

has been further affirmed by the International Court of Justice in its advisory opinion on the obligations of states in respect of climate change, as discussed further below.

29. Governments are also frequent defendants because they are often seen as the first line of accountability for climate-related damages and adaptation failures. Communities, NGOs, and increasingly private actors bring cases against public authorities for authorizing high-emission projects, neglecting physical climate risk in planning and permitting decisions, or failing to invest in adequate adaptation measures. Such cases seek to compel governments to revise policies, strengthen regulations, or take concrete action to protect people and property from climate harms.

30. In light of this, this section analyses three key features of climate litigation against states in the European context. Part 2.1 examines the Advisory Opinion issued by the ICJ and the question that in answered - whether states have obligations under international law to protect the climate system. Part 2.2 examines litigation that invokes human rights norms. Part 2.3. examines litigation that relies on national climate change legislation. This concentration of litigation against governments reflects both their central role in shaping climate outcomes and the strategic advantage for plaintiffs in targeting a single, well-resourced actor capable of delivering large-scale systemic change.

2.1. Obligation of States with respect to climate change

31. The question of whether States have binding obligations under international law to protect the climate system, and the legal consequences of failing to do so, was addressed by the International Court of Justice (ICJ) in its landmark Advisory Opinion issued in July 2025.[6] This Opinion represents the most significant development in international climate law since the adoption of the Paris Agreement, setting out a comprehensive framework of State responsibilities that will likely shape both global climate governance and the evolution of international environmental law (Tigre et al., 2025). The Court examined State obligations under the climate change treaty regime, customary international law, the law of the sea, other environmental treaties, and international human rights law. It concluded that States have binding duties to prevent significant transboundary environmental harm, to cooperate internationally, and to safeguard fundamental human rights in the face of escalating climate risks. These obligations apply to all States, with a clear recognition that the climate system must be protected for the benefit of present and future generations.

32. One of the Opinion's most consequential contributions is its articulation of a stringent due diligence standard, rooted in the best available climate science, as reflected in the work of the IPCC. The ICJ stressed that States must act with urgency—this includes adopting and regularly strengthening national climate plans under the Paris Agreement, regulating private actors whose activities contribute to GHG emissions, and providing support to vulnerable nations. A failure to act decisively may constitute an internationally wrongful act, triggering the application of the law of State responsibility. The Court further confirmed that States, particularly major current and historical emitters, are required to enhance their Nationally Determined Contributions (NDCs) with substantially more ambitious targets and credible measures to achieve them. Insufficient action not only breaches international obligations but also violates the right to a clean, healthy, and sustainable environment.

33. On reparations, the Court clarified that the Paris Agreement— including Article 8 on loss and damage—does not displace (as *lex specialis*) the customary rules on State responsibility. Breaches

[6] Two interrelated questions were presented by the UN General Assembly to the ICJ (Resolution 76/300): the first question concerns the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations. The second question concerns the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to States, and peoples and individuals of the present and future generations affected by the adverse effects of climate change.

of climate-related obligations therefore give rise to the full suite of legal consequences: duties of performance and cessation (which may require amending domestic law and withdrawing or revising authorisations), and an obligation of reparation through restitution (e.g. restoring ecosystems or protective infrastructure), financial compensation, and satisfaction (such as acknowledgments or public education measures). The Court also characterised core mitigation duties as obligations *erga omnes*, enabling any State to invoke responsibility for their breach, and confirmed that failures to control fossil-fuel activities and private actors under a State's jurisdiction can engage that State's responsibility. While the Opinion primarily addresses inter-State responsibility and leaves individual claims to specialised treaty regimes, it nevertheless widens the space for interstate claims seeking climate-related reparations and is likely to influence how European authorities and courts conceptualise remedies and enforcement (Paiement & Heri, 2025).

34. The ICJ's Opinion is also expected to have significant domestic and transnational impacts. Authorisations for new fossil fuel exploration, subsidies, or infrastructure will likely face greater legal scrutiny, especially in wealthier nations that bear heightened responsibilities to lead emissions reductions. As the Court stated: *"Failure of a State to take appropriate action to protect the climate system from GHG emissions — including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licences or the provision of fossil fuel subsidies — may constitute an internationally wrongful act which is attributable to that State"* (para. 427). This recognition that State inaction can amount to both an internationally wrongful act and a human rights violation is poised to fuel further climate litigation. As Boyd (2025) notes, courts around the world are likely to play an increasingly prominent role in holding governments accountable for their climate, environmental, and human rights commitments.

35. In Europe, where domestic and regional courts have already played a pioneering role in climate litigation, the ICJ's Opinion is expected to provide powerful normative reinforcement. National judges and the European Court can now draw on the ICJ's authoritative interpretation to strengthen findings of State responsibility, particularly against high-emitting countries. This alignment between international law and domestic judicial practice is likely to accelerate the trend of courts scrutinising government inaction, compelling more ambitious climate policies, and reinforcing the link between climate protection and fundamental human rights.

2.1 Human Rights and Climate Change

36. The articulation of human rights within climate litigation has become a pivotal development, shaping both the doctrinal foundations and the normative reach of climate jurisprudence at domestic and international levels. Rights-based claims have become increasingly prevalent in climate litigation in Europe (Savaresi and Setzer, 2022). Almost half of all rights-based claims filed in apex courts between 2015 and 2024 were filed on the continent. As the impacts of climate change continue to materialise and intensify, the role of human rights has become increasingly prominent.

37. The catalytic *Urgenda v. Netherlands* case, brought in the Netherlands, has been highly influential in prompting claimants not only to turn to courts to compel government action on climate change, but to do so on the basis of fundamental rights. In that case, the NGO Urgenda successfully sought an order compelling the Dutch government to reduce GHG emissions to 25% below 1990 levels by 2020, based on a duty of care under Dutch civil law. The case was decided based on the rights to life and private and family life under Articles 2 and 8 ECHR, respectively. The case – which was first decided in 2015 by the District Court of the Hague and reaffirmed, in turn, by the Hague Court of Appeal in 2018 and finally by the Supreme Court in 2019 – has been credited with inspiring many subsequent rights-based climate lawsuits beyond the Netherlands.

38. Other cases forwarding arguments based on both domestic and international human rights provisions have continued to follow *Urgenda*. In particular, Articles 2 and 8 of the ECHR have been invoked in numerous domestic climate lawsuits in CoE member states. In *Notre Affaire à Tous and Others v. France*, for example, the claimant NGOs invoked Articles 2 and 8 of the ECHR alongside environmental rights under the French Charter for the Environment. In *VZW Klimaatzaak v. Belgium*

and Others the Brussels Court of Appeal found that the Belgian State and the Brussels-Capital and Flemish Regions had acted in violation of Articles 2 and 8 ECHR by taking insufficient emissions reductions measures. The respondents were thus order to achieve specific quantified emissions reductions targets.

39. This strategy has been further promoted by some successes in cases relying on domestic fundamental rights guarantees, such as *Neubauer v. Germany*. In that case, the German Federal Constitutional Court held not only that there was an obligation to act on climate change under the Constitution, but also that insufficient emission reduction measures had an "advance interference-like effect" on the claimants' fundamental rights by increasing the risk that the climate response would necessitate severe restrictions of their fundamental rights into the future. The existing legislation was thus unconstitutional insofar as it disproportionately burdened later generations with emissions reductions while allowing present generations to consume large portions of the carbon budget.

40. Argumentation inspired by the *Neubauer* judgment is seen in other lawsuits, such as the Austrian case of *In re Federal Climate Protection Act Austria*. In that case, the claimants sought the annulment of provisions of the Federal Climate Protection Act, arguing that they unconstitutionally shifted GHG emissions reductions burdens to the future, thus violating fundamental rights. A second, similar challenge was brought against the same provision of the Federal Climate Protection Act in *Children of Austria v. Austria*. In that case, the claimants relied on the rights of the child and the right to equality before the law under national and EU law. These claims, however, were dismissed by the Austrian Constitutional Court as inadmissible on procedural grounds.

41. Despite mixed domestic success over the past decade, the "rights turn" in climate litigation (Peel & Osofsky, 2018) is likely to continue accelerating across Europe in the aftermath of the judgment of the European Court issued in 2024. The Court affirmed that inaction in relation to climate change constitutes a violation of State obligations under the ECHR (see more details in Box 1).

Box 1. The three rulings by the European Court on rights-based climate cases

In April 2024, the European Court delivered three pivotal rulings that significantly advanced the field of rights-based climate litigation. Among these, the decision in *KlimaSeniorinnen and Others v. Switzerland* was successful and emerged as particularly important. Conversely, the cases of *Carême v. France* and *Duarte Agostinho and Others v. Portugal and 32 Others* were declared inadmissible by the European Court, due to issues including 'lack of victimhood' (see Torre-Schaub, 2024 for a more in-depth analysis of Carême on this basis), failure to exhaust domestic remedies and finding that climate mitigation cases of this kind cannot be brought by individuals located extra-territorially (see Heri, 2024 for a more in-depth analysis of Duarte Agostinho on this basis).

These outcomes highlight the procedural and substantive challenges inherent in climate litigation. The ruling in *KlimaSeniorinnen* affirmed that climate change poses a direct and substantial threat to human rights and cemented the obligation of states under Article 8 of the ECHR to undertake effective climate action. The ruling established that Switzerland had failed to meet its greenhouse gas emission reduction targets, highlighting significant deficiencies in its regulatory framework.

The *KlimaSeniorinnen* ruling not only aligns with but also builds upon and goes further previous domestic judicial precedents, in that it requires states to develop emissions reduction pathways "with a view to reaching net neutrality within, in principle, the next three decades". Notably, the court confirmed the concept of 'carbon budgets' as an essential tool for states, mandating that these budgets clearly quantify allowable emissions over set periods to meet climate goals effectively (Hilson, 2024). This part of the judgment stipulates that states must also establish robust intermediate greenhouse gas reduction targets and regularly update these targets based on the latest scientific evidence. This point was subsequently emphasised in the decision on implementation issued by the Committee of Ministers in March 2025 (Heri, 2025).

42. *KlimaSeniorinnen* represents an important milestone in global climate jurisprudence in its affirmation of state obligations in relation to human rights and climate change, effectively bridging these two international legal regimes (Savaresi, 2025). The ruling also signals a growing judicial consensus on the necessity for robust legal frameworks to support effective climate action. Yet, substantial challenges remain in ensuring effective and consistent application across jurisdictions. Some researchers argue that the Court has only established a "minimum standard" (Milanovic, 2024) and question if it will prompt signatories to the ECHR to significantly tighten their climate laws (Abel, 2024). Additionally, it is crucial to assess whether the regulatory framework envisioned by the Court will drive countries to fulfil their legislative climate commitments effectively (Higham et al., 2024). This judgment will likely influence future climate litigation and continue to shape the global discourse on environmental responsibility and human rights.

43. While of global relevance, *KlimaSeniorinnen* is of particular importance for CoE member states in light of its interpretation of state obligations in relation to climate change under the ECHR. The judgment has already been relied on in numerous instances of domestic climate litigation against states, including in Czechia (*Klimatická žaloba ČR v. Czech Republic*), Finland (*Finnish Association for Nature Conservation and Others v. Finland*), Ireland (*Community Law and Mediation Centre and Others v. Ireland*) Spain (*Greenpeace v. Spain II*), and Sweden (*Anton Foley et al. v. Sweden*). Reliance on the judgment has not, however, been a silver bullet for litigants.

44. In *Klimatická žaloba ČR* the Czech court rejected the relevance of *KlimaSeniorinnen* to the Czech legal context, considering that compliance with EU obligations was sufficient to satisfy the state's obligations. This case has now been appealed to the Czech Constitutional Court. Meanwhile, the Swedish Supreme Court dismissed *Anton Foley et al.* on procedural grounds, the case having been brought by individual claimants alone, without an NGO. The claimants have therefore now sought permission to amend the claim and include the youth environmental organisation Aurora as a co-claimant.

45. While the KlimaSeniorinnen judgment has not yet been definitively applied in the adjudication of a framework climate case on its merits, its impact has already been seen in project-based claims. In issuing judgment in *Coolglass Wind Farm Ltd. v. An Bórd Pleanála*, the Irish High Court affirmed that the rejection of planning permission for a wind farm project without a consideration of its climate benefits constituted a breach of Article 8 ECHR, as interpreted in *KlimaSeniorinnen*. The interpretation of human rights obligations in the context of climate change can thus have implications for decision-making on individual policies and projects, informing the exercise of powers by public authorities in planning processes, for instance.

2.2 Compliance with climate change framework laws

46. Over the past two decades, many countries have adopted climate change framework laws - comprehensive statutes that set national climate goals, establish institutional responsibilities, and create mechanisms for monitoring and accountability. Unlike sector-specific environmental regulations, framework laws provide the overarching legal architecture for climate governance, often incorporating long-term emissions reduction targets, carbon budgeting systems, and obligations to produce mitigation or adaptation plans. As these laws proliferate, litigants are increasingly turning to the courts to enforce their implementation, giving rise to a distinct category of compliance litigation. These cases do not challenge the absence or insufficiency of climate legislation; rather, they seek to compel governments to meet the obligations already enshrined in their own domestic framework laws.

47. Such cases have emerged in several CoE member states, including Austria, Finland, France, Ireland, Portugal, and the United Kingdom. They reflect a growing trend in which claimants leverage existing statutory duties and deadlines to demand government action on climate change.

48. In *Associação Último Recurso et al. v. Portugal*, three NGOs filed a class action against the Portuguese State for failure to comply with the country's Climate Framework Law. The claimants argued that the government had not met statutory obligations to adopt measures such as carbon budgets, corporate governance regulations, and revisions to hydrocarbon exploration rules within the prescribed timelines. Rather than seeking new obligations, the lawsuit focused strictly on enforcing existing legislative requirements. After the court of first instance dismissed the claim, the Supreme Court of Justice allowed an appeal, which is currently pending.

49. Similarly, *Commune de Grande-Synthe v. France* relied on national legislation, including emissions reduction targets codified in the *Code de l'énergie*. The *Conseil d'État* ruled in favor of the claimants, ordering the French government to adopt all measures necessary to meet its binding climate goals by 31 March 2022. When the deadline passed without full compliance, NGOs initiated a follow-up action. The *Conseil d'État* subsequently issued an enforcement order requiring the Prime Minister to adopt additional measures to ensure alignment with both EU and national climate objectives.

50. Some jurisdictions have seen multiple rounds of compliance litigation, illustrating the iterative nature of these cases. In Finland, the *Finnish Association for Nature Conservation and Greenpeace v. Finland* case alleged that the government's inaction breached the Finnish Climate Act. The Supreme Administrative Court dismissed the case as inadmissible, reasoning that mere inaction was not reviewable under Finnish administrative law. However, the Court's unusually detailed reasoning clarified that judicial review could be available if failure to act resulted in a breach of the Climate Act or demonstrated an intent not to comply. This guidance - together with the influence of the *KlimaSeniorinnen* judgment - prompted a second lawsuit, again invoking the Climate Act and human rights provisions. While this second case was also unsuccessful, the sequence highlights how repeated litigation can test and develop interpretations of domestic climate obligations.

51. Ireland has experienced a particularly active cycle of compliance litigation. The first systemic case, *Friends of the Irish Environment v. Ireland*, successfully challenged the National Mitigation Plan for lacking the detail required under the 2015 Climate Act. The ruling prompted the government to issue a series of Climate Action Plans. Subsequent challenges have targeted these plans for alleged non-compliance with the Act. Friends of the Irish Environment brought a 2023 case challenging the latest plan, which the High Court dismissed for lack of evidence; the decision is under appeal. In 2024, *Community Law and Mediation Centre and Others v. Ireland* continued this trajectory, alleging that the 2024 Climate Action Plan similarly fell short of statutory obligations.

52. In the United Kingdom, the Climate Change Act 2008 has been central to a series of judicial review cases. Early claims, such as *Plan B Earth and Others v. Secretary of State for Business, Energy, and Industrial Strategy*, argued that failure to revise the UK's 2050 target in light of scientific and international developments breached the Act, but were dismissed. Subsequent litigation focused on the adequacy of government strategies to meet carbon budgets. In *R (Friends of the Earth) v. Secretary of State for Business, Energy, and Industrial Strategy*, the High Court ruled that the Net Zero and Heat and Building Strategies were unlawful because the Secretary of State had failed to take into account material considerations and had withheld information necessary for proper parliamentary and public scrutiny. The government responded with a revised Carbon Budget Delivery Plan, which was again declared unlawful on similar grounds following a renewed challenge by a group of NGOs (*R(Friends of the Earth Ltd) v. Secretary of State for Energy Security and Net Zero; ClientEarth v. SSESNZ; Good Law Project v. SSESNZ (challenges to the Carbon Budget Delivery Plan*).

53. Most recently, *R(Packham) v. Secretary of State for Energy Security and Net Zero and Secretary of State for Transport* challenged the Prime Minister's "new approach to Net Zero," which reversed or delayed several mitigation measures. The claim argued that the revised policy package breached duties under the Climate Change Act 2008, particularly the obligation to ensure carbon

budgets are met, and that ministers failed to consider legally relevant factors when formulating measures to deliver those budgets. This case, together with a related claim by the same claimant, has since been settled with the UK Government.

54. These cases collectively illustrate the evolving role of climate framework laws as tools for holding governments accountable. As the European Court noted, strong climate legislation is a fundamental part of creating the regulatory frameworks required to uphold states' obligations under the Convention. By anchoring litigation in explicit statutory duties claimants shift the legal battleground from abstract questions of ambition to concrete questions of compliance - placing the focus squarely on whether governments are delivering on the commitments they have already made. States must therefore seriously engage with the legal duties created by such legislation and ensure that their interpretation of any obligations thereunder is sufficiently stringent to accord with their human rights obligations if they wish to avoid such challenges.

55. Climate framework laws have also been used by litigants to ensure that specific government decisions are made in a way that aligns with the legislation. Clear statutory mandates for all government actors to align their decisions with climate goals can facilitate a whole of government approach to climate action (Averchenkova et al, 2024), and litigation can be one tool to help ensure that this approach is adopted, as further discussed in Box 2.

Box 2. Leveraging climate legislation to ensure a whole of government approach to climate action

Ireland provides a clear example of a country in which climate legislation has been successfully leveraged to ensure alignment of government actors with climate goals. In the case of *Coolglass Windfarm Ltd v. An Bórd Pleanála*, project developers successfully challenged the refusal of planning permission for a wind farm based solely on visual impacts. The court held that the planning authority had failed to act consistently with national climate plans and objectives, thereby contravening Section 15 of the Climate Action and Low Carbon Development Act (CALCDA).

In *An Taisce v. An Bórd Pleanála and Others*, claimants contested permission for a cheese factory, arguing that the authority failed to consider upstream GHG emissions from a likely expansion of the national dairy herd. Although the case ultimately was grounded on EU environmental law (EIA, Habitats, and Water Framework Directives), the CALCDA also underpinned the claim. A further ongoing case, *Friends of the Irish Environment v. An Bórd Pleanála (2025)* may be set to continue this trend.

2.3 Damages in climate cases against governments

56. In most instances, claimants acting in lawsuits against the State seek injunctive relief compelling the adoption of (more ambitious) climate measures. In some cases, however, claimants have also sought damages. While the jurisprudence in this area is very nascent, the approach of both litigants and courts in these cases is worth examining as it could be influential in future cases against states as climate loss and damage becomes more prevalent across Europe.

57. In *Notre Affaire à Tous and Others v. France* (also known colloquially as *L'affaire du siècle*), the claimant NGOs each sought compensatory damages for environmental harm, as well as nominal damages of 1€ as symbolic compensation for moral prejudice caused by the State's failure to address climate change. The Administrative Court of Paris, finding the State responsible for environmental harm through its failure to comply with its commitments, granted the symbolic damages for moral prejudice. The Court, however, declined to award damages for environmental harm on the basis that such harm must in principle be remedied in kind (i.e., through restitutionary measures restoring the environment to its previous state). Monetary compensation may be awarded only where restitution is materially impossible or insufficient. In the instant case, the Court held that

the claimants had failed to demonstrate that the State would be unable to repair the harm complained of.

58. In a follow-up claim, the claimant NGOs sought an injunction ordering the Prime Minister and other competent ministers to adopt all concrete sectoral measures necessary to comply with the judgment of the Administrative Court of Paris, including ensuring compensatory measures for the surplus GHG emissions exceeding the first carbon budget and reparation of the environmental harm resulting from these excess emissions. This request for injunctive relief was combined with a request for damages of over 1,1 billion euros in relation to non-compliance during the first trimester of 2023 and an additional 122,5 million euros for every semester of delay in complying with the additional injunction sought. These claims were unsuccessful, with the Court ruling that the State had complied with its previous judgment as the surplus in emissions had been compensated by subsequent excess emissions reductions beyond those required by the carbon budgets. Because of this, the Court did not deem it appropriate to impose additional injunctive measures nor to grant the damages sought. As noted in the questionnaire response received from France, the issue of how the State might compensate the exceedance of the first carbon budget was the topic of some discussion following the first ruling of the Administrative Court of Paris in this case. Although proposed solutions were set aside given the excess reductions achieved in the second carbon budget period and the subsequent ruling on the matter, such solutions may become relevant for climate policy and associated litigation in other jurisdictions.

59. Damages were also sought in *Ville de Paris v. Ministry of Ecological Transition*[7], in which the claimant – the city of Paris – argued that the national government's failure to implement sufficient mitigation and adaptation measures had resulted in economic and moral harm to the claimant by forcing the city to adopt its own climate measures. The city sought damages of 40 000 euros for economic losses related to these measures in addition to moral damages of 15 000 euros for alleged reputational and brand impacts. These claims were unsuccessful, with the Administrative Court of Paris finding that the claimant had failed to establish the existence of the damage claimed and a causal link to the alleged omissions of the State. The Court also underlined that the city itself also bears an obligation, at the local level, to adopt climate adaptation measures.

60. Damages have also formed part of litigatory strategies in other CoE member states. In *Declic et. al. v. Romanian Government*, for example, claimants sought imposition of a penalty payment of 20% of the gross minimum wage per day of delay in implementing the orders sought (after expiration of a 30-day period). These punitive damages would be payable into the state budget, rather than being awarded to the claimants themselves. This case, unlike the framework cases discussed in this section, does not rely on a national framework climate law, as no such law is in force in Romania. Instead, it invokes the Paris Agreement directly, as well as the European Climate Law. Nonetheless, the case demonstrates the strategies adopted by claimants in framework litigation in seeking monetary damages from the State, attempting to use financial (dis)incentives to further climate action and accountability on the part of the State.

Part 3: Climate litigation against corporations in Europe

61. Corporations have become increasingly prominent targets in European climate litigation, reflecting heightened societal and legal scrutiny of their role in driving the climate crisis. High-emitting sectors - such as fossil fuels, cement, and automotives - are now frequently pursued in court for their substantial contributions to GHG emissions, their influence on climate policy, and their responsibilities to investors, consumers, and society at large. Claimants aim to hold companies accountable for climate-related harms, challenge misleading or "greenwashed" claims, enforce directors' fiduciary and human rights obligations, and, in some cases, block or delay carbon-intensive

[7] This case does not feature on the Sabin Centre Databases. It was reported in the questionnaire response received from France as "Jugement du tribunal administratif de Paris n° 2214357 du 10 octobre 2024 – Affaire Ville de Paris". We were not able to find more details regarding the case online.

projects. Strategic litigation against corporations also seeks to catalyse systemic change, pressuring high-emitting industries to align their operations and investments with domestic and international climate goals, including those set by the Paris Agreement.

62. The focus on corporate climate accountability has been shaped by several key developments. In 2014 Richard Heede published research attributing over 60% of global emissions to just ninety "Carbon Majors", providing a first scientific basis for assigning responsibility to major emitters. This was followed by the *Philippines Human Rights Commission's inquiry* on climate change, which explicitly linked corporate emissions to human rights impacts (Savaresi & Wewerinke-Singh, 2022; Setzer & Higham, 2024).

63. Building on these foundations, principles first established in cases against states are increasingly being applied to the private sector. Civil-society organisations and individual claimants now use litigation - often grounded in human-rights, consumer-protection, corporate-governance and tort doctrines - not only to hold corporations directly accountable but also to drive stronger regulatory oversight. Illustrative matters include *Associação Último Recurso et al. v. Portugal*, where claimants sought to compel the government to amend corporate-governance rules to align with national climate legislation.

64. Another example, drawn from Sweden's submission, shows how litigation can influence corporate behaviour where national framework laws have limited direct legal effect. In *Preemraff Lysekil*[8] several NGOs and individuals appealed a permit allowing Preem AB to expand its Lysekil refinery on the basis that the resulting, non-negligible increase in CO_2 would undermine Sweden's 2045 net-zero target. The court held that the Climate Act sets policy guidelines without direct effect in individual permit reviews; that the Environmental Code's "stop rule" could not be applied to CO_2 emissions covered by the EU ETS; and it referred the matter to the Government. Preem then withdrew its application, underscoring both the limits of framework laws in permitting decisions and the capacity of litigation pressure to shape corporate choices.

65. This Part examines four separate but related types of argument: (i) corporate framework litigation and climate-related human rights due diligence; (ii) polluter pays litigation and liability for emissions; (iii) polluter pays litigation and decommissioning obligations; and (iv) failure to adapt cases brought against corporate actors. The first type comprises claims seeking to compel companies to adopt and implement adequate climate strategies, often through injunctive relief grounded in human rights due diligence obligations. The second type involves attempts to hold major corporate emitters financially liable for the harms caused or threatened by their contributions to climate change. While the polluter pays principle has long underpinned environmental liability regimes, its application in civil climate litigation is comparatively new and marks a shift from preventive or compliance-oriented measures toward the allocation of financial responsibility for climate harm, including both historic and future impacts. The third type involves an approach yet to be adopted in Europe, which focus on increasing the costs of oil and gas extraction by ensuring that corporations actively honour their decommissioning obligations, avoiding the phenomenon of "orphaned wells". The fourth and final type involves arguments that corporations have "failed to adapt" to foreseeable physical risks, exacerbating actual or potential harm to local communities caused by climate impacts.

66. Together, these developments signal that climate litigation in Europe is no longer confined to public authorities but increasingly extends to the private sector, reshaping both corporate governance and regulatory landscapes. It is worth noting that we have not extensively covered questions regarding greenwashing or climate-washing cases in this section as although these make up the majority of corporate cases in Europe (as elsewhere) at present, their long term impacts are

[8] This case does not feature on the Sabin Centre Databases. It was reported in the questionnaire response received from Sweden as "*Preemraff Lysekil v. Environmental CSOs and individuals - Supreme Land and Environmental Court, M 11730-18*". We were not able to find more details regarding the case online.

less potentially wide-ranging and their policy implications are in some respects better understood (see Echeverri et al, 2024).

3.1 Corporate Framework Litigation and Climate-Related Human Rights Due Diligence

67. Corporate framework cases seek to hold companies accountable for their contributions to climate change by challenging group-wide policies, governance structures and decision-making frameworks (Setzer and Higham, 2025). These cases are concerned with the climate impacts of corporate practices on society and vulnerable groups or individuals. They often argue that corporations should be required to assess and mitigate climate-related risks and impacts across corporations' full value chains (Setzer and Higham, 2024). They focus on the external, society-facing impacts of corporate practices - often across full value chains - rather than on internal impacts such as shareholder value. An example of the latter, not covered in depth here due to its relative rarity, is *ClientEarth v. Shell's Board of Directors*, a shareholder action challenging directors' investment strategy in oil and gas.

68. Some of these cases have pushed the development of corporate due diligence legislation, potentially strengthening corporate climate accountability (see Rajavuori et al, 2023). International soft-law instruments such as the UN Guiding Principles on Business and Human Rights (UNGPs) and the Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises (MNE Guidelines) frame human rights due diligence as a distinct set of corporate responsibilities. These instruments have been relied on – often in combination with national tort law or human rights provisions – by claimants in litigation seeking the recognition of specific emissions reductions obligations in respect of corporate actors.

69. Climate and human rights-related corporate obligations are already being incorporated into domestic and regional legislation through the adoption of environmental and/or human rights due diligence provisions. At the national level, France's Duty of Vigilance law underpins litigation such as *Notre Affaire à Tous v. Total*, where claimants argue that the respondent must adopt Paris-aligned emissions-reduction targets as part of its vigilance plan; the case has been declared admissible and is due to be heard on the merits. At the EU level, the Corporate Sustainability Reporting Directive (CSRD) and the Corporate Sustainability Due Diligence Directive (CSDDD) advance disclosure and due-diligence obligations relevant to climate. Although transposition timelines have shifted and amendments aimed at "reducing administrative burden" have been proposed, momentum behind human-rights due diligence and its climate application suggests continued use of these concepts in litigation against major emitters (Bruno & Manna, 2025).

70. Increasingly, claimants have brough cases grounded on these soft-law instruments and legislative developments dealing with climate and human-rights related corporate obligations. Where statutory regimes are nascent or contested, civil society is likely to argue that existing domestic duties (duty of care, nuisance, consumer protection) already require emissions mitigation.

71. The leading case in seeking the imposition of such a quantified emissions reductions obligation on a corporate actor is *Milieudefensie v. Shell*, which was first decided by the District Court of the Hague in 2019 and is currently pending appeal before the Supreme Court of the Netherlands. The District Court of the Hague issued an unprecedented ruling, not only ordering Shell to reduce its emissions, but to do so at a specified rate. Although the appellate court overturned that judgment, crucially, it reaffirmed the District Court's finding that corporations do indeed bear a legal duty of care in combatting climate change and achieving the Paris Agreement targets. In so doing, the Hague Court of Appeal relied on the UNGP and OECD MNE Guidelines in addition to a range of other non-binding regulations and guidelines applicable to private actors to conclude that although human rights treaty provisions are primarily directed at States, they may impact relationships between private actors by clarifying the content of broad standards such as the social standard of care.

72. According to the Court, existing climate measures under EU and domestic law are not exhaustive – in other words, compliance with such measures does not mean that corporations are free from any further emissions reduction obligations derived from a social standard of care. Notably, the Court further indicated that expansion of fossil fuels through investments in new oil and gas fields may run counter to Shell's obligations, violating the social standard of care. In this connection, it is important to underline that the Hague Court of Appeal interpreted Shell's obligations under the applicable duty of care in light of Articles 2 and 8 of the ECHR. In doing so, the Court referred to Dutch climate precedents (specifically *Urgenda*), the judgment of the European Court in *KlimaSeniorinnen*, as well as domestic litigation from other jurisdictions – once again demonstrating the multilevel legal origins of climate-related obligations and the cross-pollination that occurs in domestic climate jurisprudence across jurisdictions and between public and private law litigation.

73. Similar claims are advanced in *Greenpeace Italy et al. v. ENI* on the basis of international human rights law and national constitutional provisions. The claimants seek a declaration that the respondents – the fossil fuel company ENI and two of its majority shareholders, including the Italian Ministry of Economy and Finance – are jointly and severally liable for past and threatened future violations of fundamental rights as a result of GHG emissions, in addition to an injunction requiring emissions reductions at a specified rate. The Italian Court of Cassation issued a landmark ruling in July 2025 confirming the admissibility of the case – and climate change cases generally – before civil courts. This judgment provides important clarification on jurisdictional questions in relation to climate litigation in Italy, given the dismissal of previous cases. The Court of Cassation affirmed – in line with climate jurisprudence in many other CoE member states and elsewhere – that adjudication of climate lawsuits does not constitute an illegitimate incursion into the political sphere or corporate liberties. Rather, determining whether an entity's conduct complies with fundamental rights guarantees in the context of climate change falls squarely within the judicial role.

74. A series of corporate framework cases have also been brought in Germany based on similar argumentation derived from the *Neubauer* judgment, transposing principles developed in public litigation to private litigation. In *Barbara Metz et al. v. Wintershall Dea AG*, the claimants are individuals – supported by the NGO Deutsche Umwelthilfe – who seek the imposition of orders against the respondent oil and gas company for the adoption of more stringent emissions reductions targets and for the cessation of extractive activities within and outside Germany, including indirect involvement in gas and oil extraction through shareholding. The case is grounded in the argument – upheld in the *Neubauer* judgment – that the respondent corporation's acts and omissions exceed a fair share of the carbon budget and thus compromise the claimants' fundamental rights. Similar grounds alleging fundamental rights' violations resulting from excessive GHG emissions are also advanced in both *Deutsche Umwelthilfe v. BMW* and *Kaiser et al. v. Volkswagen*. All three of these cases are grounded in German tort law and remain pending in the appeals process.

75. The ongoing efforts of civil society groups to apply the concept of human rights due diligence to climate change also now extends beyond major polluting industries. Litigants are increasingly targeting the financial services industries for its indirect contributions to emissions through its investment practices. These cases target the flow of finances to high-emitting activities incompatible with climate objectives by seeking to internalise climate risk into capital allocation and impacting the economic tenability of carbon-intensive investments (Setzer and Higham, 2025). This strategy type is exemplified by *Milieudefensie v. ING Bank*, in which the claimants argue that the respondent – one of the largest banks in the Netherlands – is in breach of its duty of care under Dutch tort law and international soft law by failing to reduce its financed emissions in line with the Paris Agreement (ibid). The claimants rely on human rights grounds, citing domestic precedent as well as the *KlimaSeniorinnen* judgment in support of the claim that ING has a legal obligation to protect fundamental rights under the European Court.

3.2 Polluter Pays Litigation and Damages for Emissions[9]

76. In the context of climate change, polluter pays litigation consists of litigation seeking to hold major corporate emitters – also known as carbon majors – financially accountable for damages brought about by their contributions to climate change. The polluter pays principle has long been reflected in the imposition of fines as a result of criminal prosecution for environmental harm, including in relation to climate-related measures. For instance, the questionnaire response received from France refers to a criminal case in which a ship captain was prosecuted and fined for failing to abide by NO_x emissions limits when navigating in French territorial waters.

77. In recent years, however, polluter pays litigation concerning climate change has also increasingly been brought in private law, with claimants seeking to engage the civil liability of carbon majors and other actors engaged in or enabling high-emitting activities. These cases make arguments that can be distinguished from the arguments focused on due diligence discussed above by considering the remedies requested. They seek damages for past and/or threatened future harm. Polluter pays climate litigation therefore includes a specific element of financial accountability that does not feature in other corporate climate litigation. Nonetheless, some cases combine the requests for these remedies with requests for injunctive relief typical of corporate framework cases and so the two issues remain closely connected.

78. Out of around 40 polluter pays climate lawsuits filed globally, three have been filed against corporate entities in Europe – namely, *Lliuya v. RWE* (Germany), *Asmania v. Holcim* (Switzerland), and *Falys v. Total* (Belgium). All three cases seek to engage the responsibility of the respondents for their contributions to global emissions. In other words, the claimants allege that the defendants' overall operations have contributed to climate change and seek damages because of (present and/or anticipated) climate harm.

79. The case of *Lliuya* concerns a farmer and mountain guide whose home – situated in the city of Huaraz below Lake Palcacocha, in the Peruvian Andes – is threatened by flood risk due to climate change-induced glacial melt. The action, based in German tort law, was filed against RWE, Germany's largest electricity producer and a company with a long history of involvement in coal mining. The applicant sought an order requiring RWE to make a pro rata contribution to flood protection measures in proportion to its contribution to GHG emissions.

80. In *Falys*, a Belgian cattle farmer – supported by three NGOs, namely, FIAN, Greenpeace, and Ligue des droits humains – brought an action challenging the conduct of French company TotalEnergies based on extra-contractual civil liability. The applicants request a suite of remedies, including the imposition of quantified emissions reductions obligations, a prohibition on investments in new fossil fuel projects, and damages for both material and non-material harm caused by climate change-related extreme weather events. The case, filed on 1 March 2024 before the Commercial Court of Tournai, is scheduled for hearings on 19 and 26 November 2025.

81. In *Asmania*, the claimants are four individuals residing on the Indonesian island of Pari, which is vulnerable to climate change-induced flooding as a result of sea-level rise and extreme weather events. They brought an action against Holcim, a Swiss cement corporation, before a Swiss court in January 2023. The applicants seek compensation for climate damages, a financial contribution to flood protection measures, and an order requiring Holcim to rapidly reduce its group-wide CO_2 emissions. The first hearings in the case will be held on 3 September 2025 before the Cantonal Court of Zug.

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[9] In this section, the authors draw on our previous work in Koistinen et al, *Will polluters pay? Evidentiary hearings in the case of Lliuya v. RWE in the wider European context,* (Grantham Research Institute, March 2025), available at: https://www.lse.ac.uk/granthaminstitute/news/will-polluters-pay-evidentiary-hearings-in-the-case-of-lliuya-v-rwe-in-the-wider-european-context/

82. While both *Asmania* and *Falys* remain pending, a judgment was issued in *Lliuya v. RWE* in May 2025, bringing the decade-long proceeding to an end. The case was dismissed on the facts, with the Higher Regional Court of Hamm finding that the specific flood risk to the claimant could not be sufficiently established to impose liability in the instant case. Despite this dismissal, the case has already had a significant influence on the landscape of climate litigation. One of the first of its kind when it was first filed in 2015, the case has inspired numerous subsequent cases. Moreover, the judgment elaborates numerous important principles that are likely to be influential in future climate litigation against corporate entities in Germany and elsewhere. In particular, the court's finding that major emitters can, in principle, be held liable under German tort law for climate-related harm based on their proportional contribution to global emissions sets a significant legal milestone.

83. Below, we discuss key legal issues in all three cases, with the aim of helping the reader understand the parallels and differences, which may result in substantively different outcomes in *Falys* and *Asmania.*

Standing and questions of temporality

84. In *Lliuya*, the question before the court was whether the increased risk of a future flooding event due to climate change was sufficiently significant that RWE should be required to intervene to mitigate that risk. A similar set of questions arises in *Asmania*, which also primarily concerns threatened future injuries. In both these cases, although the conduct which creates the alleged risk has already occurred, the material injury itself is yet to materialise.[10]

85. For *Asmania* the imminence of the harm complained of has implications for the establishment of a legitimate legal interest, and thus the fulfilment of standing requirements under Swiss law. *Asmania* and her co-applicants contend that the requirement of a legitimate interest should be broadly recognised in line with constitutional guarantees. The serious nature of the risk and Holcim's contribution to it is emphasised by reference to the ongoing nature of the defendant's conduct: warnings or other interventions have not led to changes in Holcim's business activities. The applicants also point to Holcim's group-wide climate strategy as evidence of their intention to continue pursuing the same line of action into the future – that is, producing excessive GHG emissions in violation of individual rights.

86. The challenge of demonstrating the imminence of harm and the severity of risk is less relevant in the case of *Falys*, where the injuries complained of, and the extreme weather events which brought them about, have already occurred. Thus, it may be easier for the *Falys* case to overcome at least the initial hurdle of establishing the claimant's legitimate interest in the proceedings.

Choice of Law

87. In all three cases, the applicants live in a country other than that in which the defendant corporation is domiciled. In legal terms, this means the claimants have a choice about which courts to apply to and which state's law should be applied. In *Lliuya* and *Asmania*, the applicants argued for the cases to be heard according to the law of the state in which the defendant corporation is domiciled, respectively Germany and Switzerland. In *Falys*, on the other hand the applicant is arguing for the application of the law of the state in which the injury occurred, i.e. Belgium, rather than the state where the defendant company is domiciled, i.e. France.

88. Under Swiss law, the general position is that the applicable law is the law of the state in which the unlawful act giving rise to the damage alleged was committed. In *Asmania*, the conduct giving rise to the damage is the decision made by Holcim to continue activities that gave rise to significant GHG emissions despite the evidence of the harm that would cause, an act committed in Switzerland. The claimants argue that in producing excessive GHG emissions, Holcim could not have been

[10] It should be noted that *Asmania* does include a claim for emotional damage which has already materialised due to the anxiety experienced by the claimants' knowing that their home is at risk due to increased climate change.

expected to know that the resulting damage would occur in Indonesia specifically. Rather, the impacts of the respondent's emissions could have been (and are) felt elsewhere also. Indeed, the nature of climate change means that the impacts of the conduct are also felt in Switzerland. The application of the polluter pays principle and the principle of rectification at source both support the idea that the issues should be resolved in Switzerland under Swiss law.

89. The judgment of the Higher Regional Court of Hamm in *Lliuya* accords with this idea. The Court not only recognised the applicability of German law to the dispute, but found that even extensive distance between the emitter and affected claimant is not an obstacle to liability. The Court thereby confirmed that geographical proximity is not a prerequisite for such claims, greenlighting future litigation concerning transboundary climate-related harm (Walker-Crawford et al., 2025).

90. The difference in the strategy adopted in *Falys* is likely explained by the fact that although transboundary harm is still at issue, the case involves two EU member states, and under EU law the relevant issues are relatively clear. The default position is that the applicable law should be that of the country in which the damage occurs (although this can be reversed in environmental cases). In *Falys*, since the applicant lives and works in Belgium, the default is that Belgian law should apply. The clarity provided by EU law may therefore allow the litigation to proceed more swiftly than cases involving claimants from the Global South. Depending on the outcomes, this latter case may also have implications for how future litigants frame questions about the location of the wrongful act in transboundary climate disputes that span two EU member states.

Causation and Evidence

91. Another reason why the two ongoing cases may achieve a different substantive outcome to *Lliuya* are developments in climate science and its translation into corporate practice. In establishing causality, the applicant must generally demonstrate both that the respondent's (in)action has contributed to climate change and, in turn, that climate change has caused/contributed to the injury complained of. Recent developments may support arguments on both elements of the claim. Firstly, understandings of corporate responsibility for "scope 3 emissions" are continually evolving, and secondly, attribution science, which measures the impact of climate change on extreme weather events in terms of the increased intensity or likelihood of such events is also developing rapidly.

Scope 3 emissions

92. Scope 3 emissions refer to GHGs emitted downstream in the value chain, notably from the use of a corporation's goods and services by consumers and corporate clients. These are distinguished from Scope 1 emissions (direct emissions produced by the corporation's operations) and Scope 2 emissions (emissions from third-party services used by the corporation, such as electricity and transport). Corporations are generally expected to understand and to take some responsibility for these emissions under soft law reporting standards, and increasingly under mandatory climate disclosure regimes. The extent to which actors can be held liable for Scope 3 emissions is a key determinant in quantifying defendants' responsibility in polluter pays cases.

93. While both *Falys* and *Asmania* reference scope of emissions, *Lliuya* does not, likely because it was filed before the widespread adoption of this terminology, and to RWE's role as an electricity producer, rather than a fossil fuel supplier. In *Asmania,* most of the defendant's emissions fall within scope 1 (from cement production), but the claimants still argue that due diligence obligations and human rights impose a duty of care to reduce GHG emissions through the entire value chain, including emissions from scope 1 through 3.

94. In *Falys*, Scope 3 emissions play a central role, given that the defendant is a fossil fuel producer with a high volume of downstream emissions. The claimants cite *Milieudefensie v. Shell*, where the Hague District Court ordered *Shell* to reduce Scope 1, 2, and 3 emissions in line with global temperature targets. Although this ruling was overturned by the Court of Appeal, the principle that Scope 3 emissions must be included in the calculation of corporate emissions for the purpose of determining the fulfilment of a duty of care persists. The Court of Appeal dismissed Shell's argument that it lacks influence over these emissions, referring to several EU legal instruments, the

OECD Guidelines, and the GHG Protocol, as well as Shell's own reporting and target-setting (which encompass Scope 3 emissions). While the Hague Court of Appeal refused to impose an order requiring Shell to achieve a quantified reduction in Scope 3 emissions, this case may continue to influence other courts tasked with considering whether companies should have any responsibility for Scope 3 emissions. The relevance of Scope 3 emissions has since been further confirmed by an advisory opinion of the EFTA court (discussed above) in the context of the conduct of environmental impact assessments for the licencing of fossil fuel exploration.

95. The inclusion and extent of Scope 3 emissions will have a significant impact on the extent of any legal liability imposed on corporations bear. This is particularly relevant in cases that may follow the model of *Asmania* and *Lliuya*, in which damages are sought on a pro rata basis corresponding to the respondents' contributions to global GHG emissions. Whether or not Scope 3 emissions are considered to fall within the scope of the respondents' legal responsibilities will inevitably alter the percentage contribution applicable.

Attribution Science

96. In *Lliuya*, the Court offered a groundbreaking affirmation of the legal value of attribution science in finding that a causal relationship can indeed be established between a given company's emissions and an increased risk of climate-related harm, based on scientific evidence. According to the Court, the science of climate change processes is sufficiently well understood to enable litigants to rely on attribution science in tracing such connections between major emitters and climate harm (Walker-Crawford et al., 2025). The *Lliuya* judgment offers an influential precedent for the claimants in both *Asmania* and *Falys* to invoke.

97. In all three cases, the attribution of the (past or anticipated) events at issue to climate change is supported by reference to scientific reports that specifically recognise their climate change-related nature, including recent attribution studies. *Lliuya* refers to the IPCC's 5th Assessment Report (AR5), which states with "a very high degree of confidence" that glacial retreat and melting in the Andes is attributable to climate change. The application additionally cites scientific studies commissioned by the government of Peru on glacial retreat and associated flood risks. Similarly, *Falys* makes reference to attribution studies on the specific extreme weather events to which the complaint relates (a stationary storm in 2016, and heatwaves and droughts in 2018, 2020, and 2022). In *Asmania*, the applicants refer to the 6th Assessment Report of the IPCC (AR6) to support their claims regarding anthropogenic sea-level rise and the associated risks to low-lying regions and small islands, such as Pari. The applicants also rely on a dedicated study by the Global Climate Forum on the impacts of climate change and sea level rise on Pari.

98. The argumentation in these polluter pays climate cases present some parallels to tobacco litigation, particularly in exposing the role of the defendant corporations in concealing and actively sowing doubt in the applicable science. Polluter pays cases are thus often supported by misrepresentation-related grounds that point to the engagement of corporate actors in misinformation campaigns discrediting climate science. For example, the claimant in *Falys* argues that the respondent's alleged deliberate concealment and undermining of climate science constitutes, in itself, a significant contribution to climate change.

99. In addition, the establishment of compensation funds in response to tobacco and asbestos litigation is echoed in arguments regarding the establishment of such funds to compensate climate-related damage. There is a significant relationship between such funds and litigation in the climate context, with the funds not only providing a non-litigatory route to compensation but also being used to bolster plaintiff's arguments in litigation. This is seen in *Falys*, in which the eligibility of the damage for compensation under the Walloon Fonds des Calamités is used to support the plaintiff's argument that the damage at issue is attributable to anthropogenic climate change and therefore to the defendant's conduct.

Calculation of damages

100. The future outcomes and impacts of *Asmania* and *Falys* may also vary based on the approach to damages adopted in each case. A conservative approach to the claims for damages was adopted in *Lliuya*: the claimant sought damages proportionate to the respondent's contribution to global emissions, rather than requesting compensation for the full extent of the alleged harm. This equated to a request for damages amounting to 0.47% of the costs associated with the adoption of protective measures against the risk of a glacial outburst flood. This percentage was calculated based on RWE's share of global emissions. A similar strategy was adopted by the claimants in *Asmania* in requesting damages for (past and future) emotional harm and damage to property, in addition to the financing of adaptation measures in their locality. As in *Lliuya*, the compensation is sought on a pro rata basis (plus interest), based on Holcim's alleged contribution to 0.42% of global GHG emissions.

101. By contrast, the damages sought in *Falys* are currently symbolic. The claimant has provisionally requested 1 euro per extreme weather event complained of, in addition to 1 euro for nonpecuniary damage. It remains to be seen whether the extent of damages sought will be varied by the claimant over the course of later submissions and, if so, how the damage attributable to the respondent will be calculated.

102. Notably, the claimant in *Falys* also seeks an injunction requiring Total to reduce its emissions – as in the corporate framework cases discussed in the preceding section – and requests the imposition of a penalty of one million euros per month of delay in compliance with the injunctions sought. The claimant thereby aims to strengthen the timely implementation of the emissions reduction orders sought by requesting corresponding financial penalties. This reflects the strategies adopted in climate litigation against the State in *Notre Affaire à Tous and Others v. France* and *Declic v. Government of Romania*, for example (discussed above).

103. Although no case has yet granted a request for damages against a corporation for its global contribution to GHG emissions, as the preceding discussion shows, this type of litigation should not be dismissed. In this regard, it is worth noting that the question of corporate financial accountability for climate damage may also be dealt with through legislation (see Section 5).

3.3 Polluter pays and decommissioning obligations

104. A new related route is emerging that uses the polluter pays principle in seeking to recoup the costs involved in the decommissioning phase of the oil and gas industry's lifecycle. This route connects the aims of strategic climate litigation against major fossil fuel polluters (i.e. to hold the oil and gas industry financially, politically and ethically accountable for its actions) with the grounds of more traditional polluters pays environmental litigation cases.

105. Decommissioning oil and gas involves plugging and abandoning the oil or gas well/s to permanently seal the reservoir off and removing and disposing of the associated equipment and infrastructure, once the asset reaches the end of its economic life. In principle, under international law, the process is complete when the host ecosystem and seafloor have been returned to their original, preexisting state. A decommissioning policy is underpinned by the polluter pays principle, means that those who have benefitted from exploitation or production hydrocarbons in the to bear the responsibility for decommissioning.[11]

106. New civil society groups are centring their campaigns around the argument that oil and gas production is in natural decline, and decommissioning oil and gas assets at the end of their productive is necessary, and very costly (e.g. the Polluters Pay Project). Research suggests that

[11] See, for example, the UK's regulatory policy Guidance Notes "Decommissioning of Offshore Oil and Gas Installations and Pipelines" (OPRED, Nov 2018).

there are around 29 million abandoned wells globally, emitting approximately 2.5 million tons methane annually. Potential future litigation might try to recoup the costs of decommissioning (end of the oil and gas life cycle), and at the same time seek to secure that the decommissioning and abatement mitigates methane emissions.

3.4 Failure to adapt cases and the risk of local liabilities

107. Finally, we consider another type of corporate climate case, where corporations are sued for failing to prepare for the physical impacts of climate change. This type of case, often referred to in the literature as 'failure to adapt cases' (see Markell and Ruhl, 2010), provides another avenue for transboundary disputes involving damages claims in CoE member states. While there are no known examples of failure to adapt cases taken against corporations in Europe yet, there are several cases against governments. There are also cases against corporations in other jurisdictions such as the US, which may inspire similar cases in Europe.

108. The most common type of 'failure to adapt' case consists of litigation seeking the enforcement of existing adaptation law or policy. Outside the European context, the case of *Northwest Environmental Defense Center v. Federal Emergency Management Agency*, for example, challenged the implementation of a national flood insurance programme in Oregon, on the basis that it had "incentivised" developments in flood-prone areas that had put both people and ecosystems at risk.

109. In the European context, one of the most recent examples of this type of litigation is found in the UK case of *R(Friends of the Earth Ltd, Mr Kevin Jordan and Mr Doug Paulley) v. Secretary of State for Environment, Rood & Rural Affairs*, which challenged the legality of the Third National Adaptation Programme (NAP3). Under the Climate Change Act of 2008, the government is required to assess climate risks every five years and publish adaptation plans setting out objectives, policies and proposals to address them. The claimants argued that NAP3 fell short of these requirements, with objectives too vague and insufficiently targeted to address the risks identified in the government's own assessment. The High Court dismissed the case, noting the absence of internationally binding standards on adaptation, in contrast to the more established norms governing mitigation. As the judge put it, "Unlike in the field of mitigation … there is no internationally binding quantified standard governing how States must adapt to climate change."

110. The ruling on *R(Friends of the Earth Ltd)* illustrates a key limitation in current adaptation litigation: the lack of clear legal benchmarks. While litigation on mitigation increasingly draws on measurable targets such as carbon budgets and 'fair share' contributions, courts remain more hesitant to scrutinise adaptation planning in the absence of equivalent standards. Ongoing international negotiations on the Global Goal on Adaptation aim to address this shortfall by providing a clear framework and targets for measuring progress on adaptation.

111. Nonetheless, as physical climate risks continue to manifest causing both financial and non-financial losses to individuals and communities, litigation seeking to hold both governments and corporations to account for inaction to address forseen and forseeable risks is likely to increase. In the US context, there are at least three types of failure to adapt cases that have already been filed against corporations.

112. Firstly, there are cases that anticipate the ways in which future physical impacts of climate change may be exacerbated by the inadequate design of plant and facilities. These include cases such as *Conservation Law Foundation, Inc. v. Shell Oil Products US*, in which the claimants argued that Shell had failed to adequately prepare a bulk storage and fuel terminal for climate change impacts, and *Public Watchdogs v. Southern California Edison Co.* in which the claimants argued that decommissioning plans for a nuclear plant had failed to adequately account for predicted sea level rise.

113. Secondly, there are cases involving claims for damages for past harms, including *Stewart v. Entergy Corp*, in which claimants argued that a utility company should be liable for damage as a result of power outages following a hurricane. The pleadings suggest that as the company was aware of climate change and the increased likelihood of hurricanes, they should have done more to ensure the resilience of their power systems. Finally, there is also a related type of case which sees claims by investors against corporate directors and officers for failing to manage climate-linked physical risks resulting in damage to both the company and third parties, and ultimately resulting in significant financial losses (see *Barnes v. Edison International* and *York County v. Rambo*). Any one of these types of cases could potentially be replicated in Europe.

Part 4: Enforcement of damages

114. A core objective of polluter-pays climate litigation is to ensure that corporate actors bear the financial consequences of the harms their activities cause. Yet, achieving meaningful compensation for victims is fraught with legal, financial, and practical challenges. Climate-related damages often involve vast, long-term, and transboundary impacts, and corporate defendants may lack the resources or willingness to satisfy substantial judgments. Even when liability is established, the gap between the scale of harm and the defendant's financial capacity can render remedies largely symbolic. This raises a critical question: how can courts and policymakers ensure that successful claims translate into actual compensation?

115. This part examines the mechanisms and barriers to enforcing compensation in corporate climate litigation. Section 4.1 considers the environmental liability regimes that form the baseline for corporate responsibility, including the EU's Environmental Liability Directive (ELD). Section 4.2 explores the intersection of corporate liability, insolvency, and insurance, focusing on the practical challenges of enforcing climate-related judgments when defendants are financially distressed or strategically shield their assets. Section 4.3 then examines emerging policy and legislative responses - such as climate superfund laws and proposals for private climate liability - which aim to bridge the compensation gap and operationalise the polluter-pays principle through statutory mechanisms. While these may suffer their own issues of enforcement, they remain a promising avenue for addressing the challenges highlighted in this part.

4.1. Environmental liability regime

116. In traditional environmental liability regimes, companies are generally required to fund remediation or compensation (Faure, 2009; Faure, 2022; Larsson, 2023). However, where companies are insolvent or otherwise unable to pay, various legal and policy mechanisms may be triggered, including public remediation or partial recovery through insolvency proceedings, although these are not yet fully adapted to address the problem.

117. In the EU a comprehensive liability regime for environmental damage based on the 'polluter-pays' principle has been set by the Environmental Liability Directive (2004/35/CE - ELD). By making those that have caused environmental damage liable for remediation, the ELD provides a strong incentive to avoid damage occurring in the first place. It also makes those whose activities threaten the environment liable for taking preventive action (European Commission, 2024).

118. In cases of urgent or serious cases of environmental liability, such as those involving threats to public health or protected biodiversity, national or local authorities may intervene to carry out necessary remediation using public funds. Articles 6 and 8 of the ELD empower competent authorities to act in cases of operator failure, and to subsequently seek cost recovery from the liable operator or its legal successors.

119. In a situation of bankruptcy, environmental liabilities are typically treated as unsecured debts under national insolvency laws, meaning they rank equally with other unsecured claims and may not be fully recovered. This is particularly relevant in cross-border contexts, which are governed by the

EU Insolvency Regulation (Regulation (EU) 2015/848). The ELD does not alter this framework or provide environmental claims with priority status in insolvency.

120. Article 14 of the ELD encourages member states to promote the availability of financial security instruments (e.g. environmental liability insurance, bank guarantees, or compensation funds). While the ELD does not mandate compulsory insurance at the EU level, some member states (such as Spain and Portugal) have introduced national requirements for certain high-risk activities.

121. While EU directives set a comprehensive framework, civil claims for personal injury, property damage, or economic loss are also governed by national tort law, which varies by country. In many jurisdictions, victims can sue for damages caused by pollution or environmental degradation, rely on strict liability regimes, and claim under nuisance, negligence, or breach of statutory duty.

122. Public services that become privatised that result in damages for the environment or climate change might also be held liable after the privatisation. Under Recommendation No. R (93) 7 on privatisation of public undertakings and activities, the privatisation of a company should not jeopardise the possibility of obtaining compensation for damage caused to the environment by the undertaking or activity in question by reason of its operations prior to the privatisation.

123. These processes, while legally available, often result in partial or no compensation for affected parties, especially when the polluting company has limited assets or is dissolved (Akey and Appel, 2021). The asymmetry between the scale of harm and the financial capacity of corporate actors has been a longstanding challenge in environmental law.

4.2. Corporate liability, insolvency, and the role of insurance in climate litigation

124. In climate litigation, compensation claims often reflect the cumulative and global nature of climate harm: property damage from sea-level rise or flooding, economic losses from declining agricultural yields, and adaptation costs required to protect vulnerable communities. Translating judicial recognition of these harms into tangible financial remedies is particularly complex when corporate defendants are insolvent, asset-poor, or protected by layered corporate structures.

125. From a financial markets' perspective, climate litigation is now widely recognized as a material risk. Solana (2020) emphasizes that financial institutions face both direct exposure - as potential defendants for financing high-emitting activities - and indirect exposure if their clients' solvency is threatened by climate claims. Sato et al. (2021) provide empirical evidence that markets react to climate litigation as a financially relevant event, affecting firm value and signalling broader systemic implications for lenders, investors, and regulators.

126. Therefore, a central challenge is ensuring that legal liability results in real recovery. If a company found liable for climate-related damages cannot or will not pay, several legal strategies and mechanisms may come into play.

127. The first legal strategy is asset recovery and enforcement. Courts can authorise the seizure of corporate assets, including international holdings, to satisfy judgments. In practice, enforcement is often lengthy and politically sensitive, particularly in cross-border contexts where recognition of foreign judgments and coordination with insolvency regimes is required.

128. The second legal strategy is to seek parent company and shareholder liability. When the liable entity is a subsidiary or special-purpose vehicle, claimants increasingly seek to pierce the corporate veil or invoke group liability, pursuing the parent company or controlling shareholders. The landmark *Vedanta v. Lungowe* decision in the UK confirmed that parent companies can owe a duty of care for environmental harms caused by foreign subsidiaries, opening critical avenues for cross-border enforcement (Varvastian & Kalunga, 2020). Tomczak (2021) further advocates for expanding

these doctrines to environmental liabilities, reflecting the principle that complex corporate structures should not shield polluters from accountability. While corporate framework cases are typically filed against parent companies directly, this line of reasoning is relevant both for establishing parent company liability for the activities of subsidiaries and potentially highly relevant in cases involving decommissioning liability or liabilities in failure to adapt cases.

129. Alternatively, it might be possible to seek successor liability. Where companies transfer assets to avoid enforcement (e.g. via mergers, acquisitions, or restructuring), courts may examine whether the new entity should inherit the liability. This doctrine is particularly relevant to climate litigation, given the risk of strategic restructurings designed to isolate or "orphan" environmental liabilities.

130. Finally, another option to seek recovery from climate liability is to rely on insurance and industry compensation funds. Liability insurance or specialized compensation funds can provide partial recovery. However, traditional insurance markets are ill-suited to address climate related damages, as many policies exclude gradual pollution or climate-related losses, and payouts are often capped. Existing coverage may therefore fall far short of the massive compensation sought in climate harm cases.

131. Insolvency adds a further layer of complexity. Large-scale climate liabilities can drive companies into bankruptcy, as seen in PG&E's $13.5 billion wildfire settlement, where protracted insolvency proceedings left many victims undercompensated (Sterett & Mateczun, 2020). Under most insolvency regimes, environmental and climate claims are treated as unsecured debts, competing alongside commercial creditors and often receiving only a fraction of their value. This dynamic has prompted growing scrutiny of directors' duties in the context of climate risk: where insolvency coincides with continued high-risk operations or breaches of ESG obligations, directors may face personal exposure.

132. These realities highlight a structural tension in polluter-pays climate litigation: legal recognition of harm does not guarantee financial redress. Effective compensation may require a combination of legal innovation, enhanced insurance mechanisms, and the strategic targeting of corporate groups and decision-makers to prevent liabilities from evaporating through insolvency or asset shielding.

4.3. Policy and legislative responses

133. The potential inability of companies to meet court-ordered climate damage awards has prompted early legislative responses in some jurisdictions. 'Climate superfund laws' aim to make fossil fuel companies financially responsible for the harm caused by climate change, avoiding the complexities involved in efforts to recoup financial losses through litigation. They are supported by civil society campaigns such as 'Make Polluters Pay', which also back strategic litigation targeting major emitters.

134. This type of legislative effort emerged so far primarily in the US. In 2024, New York and Vermont adopted climate superfund laws, with similar legislative proposals under discussion in other states. The New York and Vermont statutes establish legal frameworks enabling the state to recoup climate-related costs – such as infrastructure repair or public health expenses – from fossil fuel producers. However, implementation faces significant political and legal hurdles. Both laws have been subject to multi-state legal challenges brought by states and several fossil fuel industry associations (e.g. the American Petroleum Institute), arguing that such laws interfere with interstate commerce and unlawfully target companies for lawful past conduct (Segal, 2025).

135. A recent Executive Order from the Trump administration has also resulted in further federal-level challenges to the implementation of these laws, although the scope and enforceability of this order remain unclear. The federal government also filed lawsuits challenging the two climate superfund laws (see *United States v. Vermont* and *United States v. New York*). These developments

underscore the intensifying political and legal contestation surrounding efforts to operationalise the polluter pays principle through legislative means.

136. An alternative approach has been to enshrine private climate liability in law. In California, Senate Bill 222 (SB 222), known as the Affordable Insurance and Climate Recovery Act, was introduced in January 2025 following the devastating wildfires in the Los Angeles area. The bill aimed to allow victims of climate-related disasters, or their insurers, to sue fossil fuel companies for damages of US$10,000 or more. Unlike the laws in Vermont and New York, which focus on state-managed adaptation funding, SB 222 proposed a private right of action for individuals and insurers to recoup losses directly from fossil fuel companies accused of climate deception (see Merner et al., 2025).

137. Despite initial support, SB 222 was rejected by the California State Senate Judiciary Committee in April 2025, receiving only five of the seven votes needed to advance. The bill faced opposition from labour unions representing oil industry workers, who expressed concerns about potential job losses and increased energy costs. Critics also questioned the bill's constitutionality and its potential economic impact on consumers. Supporters argued that the legislation would hold fossil fuel companies accountable for their contributions to climate change and provide financial relief to disaster victims. The bill's defeat highlights the complex interplay between environmental policy, economic considerations and political dynamics in climate-related legislation.

138. Legislative proposals regarding the responsibility of fossil fuel companies have also been put forward in the Philippines and Pakistan. In the Philippines, the legislation has a close connection to the landmark inquiry by the Philippines Commission on Human Rights into the responsibility of these companies, which concluded in 2022 (see Bradeen et al., 2023).

139. These developments point toward a broader recognition that private liability alone may be insufficient to fund the scale of climate harm, and that public-private burden-sharing mechanisms may be needed—especially where companies no longer exist, lack assets, or operate transnationally.

Conclusion

140. Climate litigation is a significant phenomenon in Europe. Actors such as individuals, civil society groups, and corporations are using it to engage courts on climate issues, and courts in turn are taking the opportunity to clarify legal norms and responsibilities. While such clarifications are often desirable in principle, by its nature litigation is piecemeal, costly, and highly contentious in practice. In many instances judicial decisions in one case may leave significant room for interpretation about how they will apply in other contexts. As such, there is a clear need for policy makers to engage with the subject matter of climate cases in depth and consider opportunities to shape legal norms through other means such as legislation and treaties.

141. In the context of state obligations, it is increasingly clear that legislative action should include the introduction of regulatory frameworks of sufficient ambition to make a substantive contribution to climate change mitigation and adaptation, to ensure state compliance with existing legal obligations for human rights and international law. As noted in the context of the discussion of the ICJ AO, this is highly likely to include action to curtail state support for the fossil fuel industry, although how this applies in practice will vary depending on the different roles states play in both the production and consumption of fossil fuels. Failure to ensure that domestic legal regimes provide avenues to address transboundary climate harms caused by corporations may also fall foul of these principles.

142. At the same time as the law on state responsibility and the human rights obligations of states in the climate context is becoming clearer, litigation is also increasingly targeting corporate actors. This litigation takes a range of approaches, from litigation seeking injunctions requiring companies

to align with the goals of the Paris Agreement to various forms of litigation that could result in financial damages or the issuance of significant financial penalties for companies. These types of litigation are still at an early stage of development, however it is already clear that even if successful the cases may face significant challenges regarding the enforcement of damages awards, particularly where these are substantial and may impact corporate solvency. Alternative legislative regimes may be required to address these gaps. Treaties may play an important role in encouraging states to introduce such legislation, supporting recovery by communities in cases of transboundary harms.

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