Study on national climate litigation

Prepared by Dr Joana Setzer and Ms Catherine Higham,
Grantham Research Institute on Climate Change and the Environment
(London School of Economics and Political Science - LSE), under
the supervision of the European Committee on Legal Co-operation (CDCJ)

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At its 105th plenary meeting (November 2025), the CDCJ examined the study and authorised its publication.

Contents

List of abbreviations

AR5 / AR6	Fifth / Sixth Assessment Report (IPCC)
CALCDA land)	Climate Action and Low Carbon Development Act (Ire-
CDC of Europe)	European Committee on Legal Co-operation (Council
CJEU	Court of Justice of the European Union
CO_2	Carbon Dioxide
CSRD	Corporate Sustainability Reporting Directive (EU)
CSDDD	Corporate Sustainability Due Diligence Directive (EU)
ECH	European Convention on Human Rights
EFTA Court	Court of the European Free Trade Association
EIA	Environmental Impact Assessment
ELD EC)	Environmental Liability Directive (Directive 2004/35/
ESG	Environmental, Social and Governance
EU	European Union
EU ETS	European Union Emissions Trading System
GHG	Greenhouse Gas
GHG Protocol dard)	Greenhouse Gas Protocol (corporate accounting stan-
GR	Grantham Research Institute on Climate Change and the Environment (LSE)
ICJ	International Court of Justice
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 (US)	Racketeer Influenced and Corrupt Organizations Act
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 (the Court) 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.

Strategic 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 (ICJ) 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 in a judgment 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. The study analyses 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 courts 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.** Litigation may also challenge government and corporate failures to build resilience to specific physical climate risks identified in a geographical area. Such cases may involve civil suits for damages following a company's failure to adapt physical assets to avoid harm to local communities. In the United States of America (US), these cases have been accompanied by shareholder suits against directors and officers for associated management failures.

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 (ELD) interface to targeting parent-company responsibility and bolstering financial security requirements.

Introduction

1. Climate change poses an unprecedented challenge of civilisational proportions. The United Nations Intergovernmental Panel on Climate Change (IPCC) has established, 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.

2. 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 at the United Nations Climate Change Conference 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).

3. 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 Agreement era (Setzer & Higham 2025).

4. This study 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.

5. Historically, more than 70% of climate cases worldwide have targeted governments (Setzer & Higham 2024). This study explores several key trends within these cases, considering their direct impact on national policy landscapes directly, and their more indirect impacts in laying the foundations for corporate climate accountability.

6. The study then discusses a small but potentially significant group of lawsuits seeking to attribute liability for climate-related harm - commonly referred to as "polluter-pays". 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.

7. The study also discusses other forms of litigation involving corporations, including emerging litigation over end-of-life obligations for fossil fuel infrastructure and cases targeting public or private actors for neglecting to anticipate or respond adequately to foreseeable climate risks in a given geography. These cases, which are often described as failure to adapt cases are relatively rare. However, they have the potential to generate transboundary disputes and substantial financial liabilities, underscoring the need for proactive legal and policy responses.

8. Finally, this study 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

9. This study 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 and Higham 2025).

10. This study 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. 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 study – 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.

11. 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 member states through their delegations of the European Committee on Legal Co-operation (CDCJ).[1]

1. The questionnaire was prepared by the Secretariat of the CDCJ, revised by the Bureau, and distributed to members of the CDCJ. The questionnaire invited member states to report recent domestic case law on climate change, involving both the state and private entities, particularly where private-party litigation influenced public policy or regulation of climate change relevant activities. States were asked to provide key details, including parties involved, main legal arguments, outcomes and their implications for climate policy or industry practice, as well as any challenges to the compatibility of governmental action with international climate commitments. Seventeen member states responded to this questionnaire.

12. 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).

13. The study focuses on developments until the end of August, 2025.

Part 1

Overview of climate litigation in Europe

14. 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 and Higham 2025).

15. This part of the study 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 study).

1.1. Geographical distribution of cases

16. 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).

17. Historically, most cases have been filed in Western and Northern Europe, with countries such as the United Kingdom, Germany, France, Switzerland, 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. Early cases in countries such as 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.

18. At the same time, there are signs that systemic cases (i.e. those targeting whole-of-government climate policy responses) and rights-based cases may proliferate across Europe, particularly as EU law and the 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*, 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 European Court of Human Rights (the Court) will play in future, but strategic litigants will certainly continue to leverage the judgment in cases before national courts.

19. 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 these 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 and 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).

20. As Figure 1 shows, domestic climate lawsuits have been recorded in 25 countries in Europe since 2002, with a further 12 cases filed before the Court and 70 before the CJEU. These cases are not evenly distributed across member states: the highest number of cases are seen in the United Kingdom (133), Germany (69), France (30), and Switzerland (21), while no known climate cases have been documented in 21 member states.

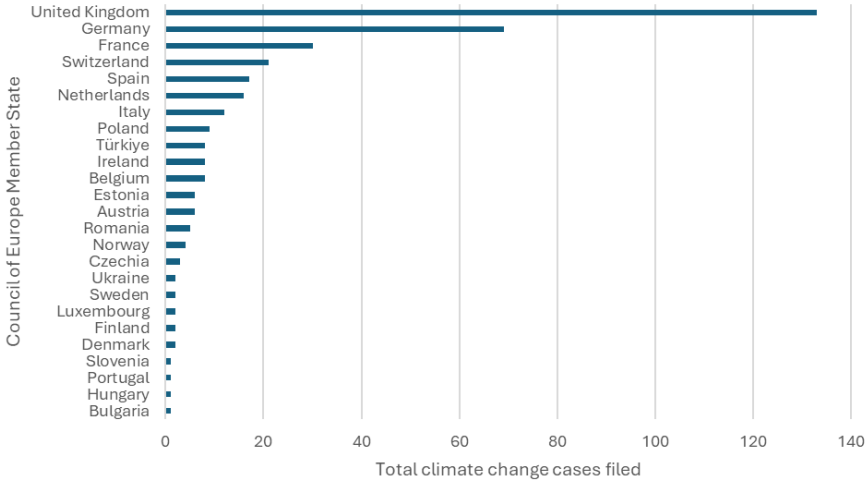

Figure 1: Distribution of climate change lawsuits in Council of Europe member states (excluding states in which no such cases have been recorded)

Table 1. Domestic climate lawsuits in Europe since 2002 identified in questionnaire responses compared to those in the Sabin Centre database

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 No. 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.*

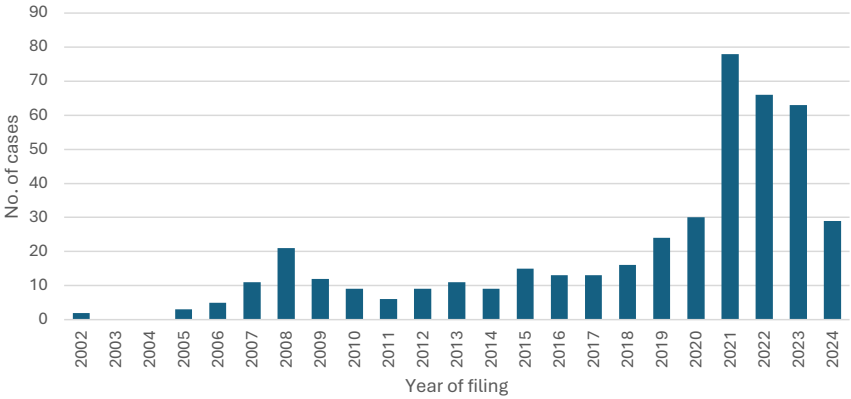

Figure 2: Number of climate change lawsuits filed in European domestic and regional courts

21. Figure 2 shows a gradual decline in the filing of new climate cases in Europe since 2022. This 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 and Higham 2025).

22. 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

23. 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.

24. Applying the categorisation of climate case strategies (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.

25. 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.

26. 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 Barents 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 of Human Rights (Applications Nos. 34068/21 and 19026/21) and a Court of the European Free Trade Association (EFTA) advisory opinion confirming that Scope 3 emissions are "effects" that must be considered under EIA law.

27. 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 this court emphasising 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.

28. 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 and Higham 2025, Chan et al 2025). Such cases have also featured prominently before the courts of various member states.

29. 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 study.

1.3. Plaintiff and defendants

30. 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.

31. Meanwhile, corporate climate litigation is clearly on the rise. As of 2024, at least 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.

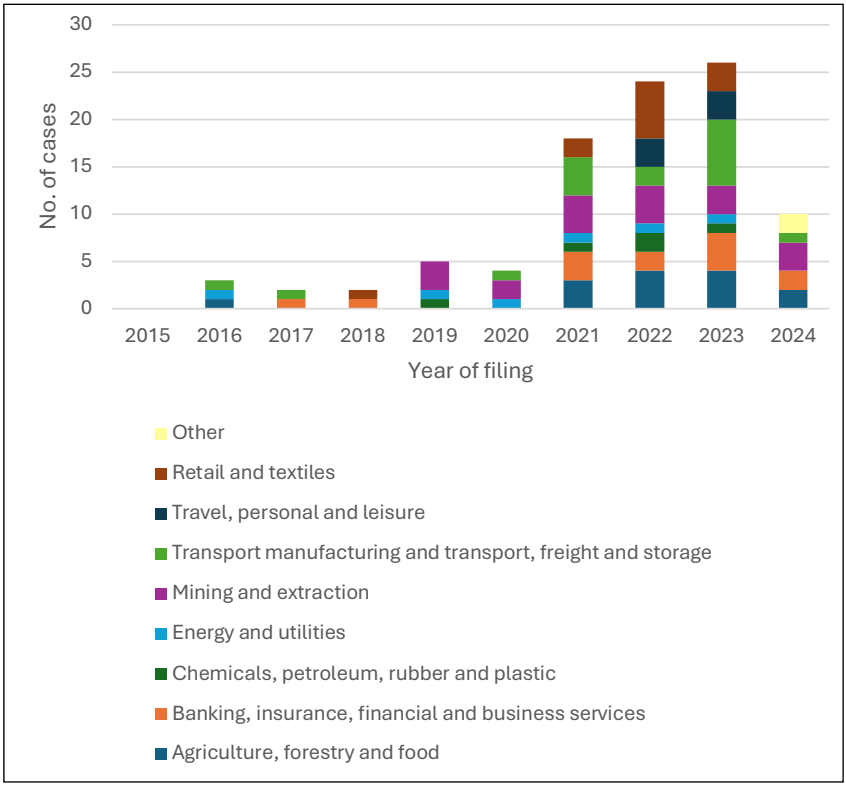

Figure 3: Corporate sectors targeted in climate litigation filed before European domestic courts, 2015-2024

32. 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 Council of Europe 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.

33. 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. In Ireland, 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 Action and Low Carbon Development Act.

34. 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)

35. 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 and 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). Instances of SLAPP initiated by the fossil fuel industry have been documented, for instance, in France, Italy, and the UK (Eckes and Paiement 2025).

36. The Council of Europe Strategy on the Environment includes the objective of countering such lawsuits in the context of strengthening good democratic governance. Likewise, the Committee of Ministers Recommendation CM/Rec(2024)2 on countering the use of strategic lawsuits against public participation (SLAPPs) and the EU Anti-SLAPP Directive were adopted in 2024. Both instruments allow for the early dismissal of manifestly unfounded claims and enables penalties to be imposed on abusive claimants.

37. The principles of the Anti-SLAPP Recommendation and Directive will likely be put to the test in a number of new cases. In March 2025, the Energy Transfer v. Greenpeace lawsuit 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 reference to this case, 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 has 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

38. 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 (also known as systemic cases), which challenge the implementation or ambition of a government's climate policy response, form a large portion of these claims (Setzer and Higham 2025). Since 2015, at least 120 such cases have been filed worldwide, more than half of which are in Europe.

39. 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. Proponents argue that such cases can reshape public procurement, capital allocation, and consumer preferences, accelerating the transition across energy, transport, industry, agriculture, retail, and consumer-goods sectors. As a result, they may heighten 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.

40. 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 (ICJ) in its advisory opinion on the obligations of states in respect of climate change, as discussed further below.

41. 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 it 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

42. 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 ICJ in its landmark Advisory Opinion issued in July 2025.[2] 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 ICJ 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.

43. One of the Opinion's most consequential contributions is its articulation of a stringent due diligence standard, rooted in the best available climate science (Tigre et al, 2025). 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

2. 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.

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 ICJ further confirmed that states not only have procedural obligations to submit Nationally Determined Contributions (NDCs) under the Paris Agreement (paragraph 234) but also considered their obligations with regard to the content of NDCs. The ICJ confirmed that the "level of ambition" in each NDC is not "left entirely to the discretion of the parties" but rather that each must be "capable of making an adequate contribution" to global temperature goals (paragraph 242).Collectively, NDCs when "taken together" should be "capable of achieving the temperature goal of limiting global warming to 1.5°C above pre-industrial levels" and states must exercise due diligence to ensure this (paragraph 245). However, the ICJ acknowledges that the standard when assessing the NDCs should be consistent with each party's historical contributions to cumulative emissions, level of development and national circumstances (paragraph 247). The ICJ also concluded that "under international law, the human right to a clean, heathy and sustainable environment is essential for the enjoyment of other human rights" and noted that "it is difficult to see how" states' obligations under international human rights treaties to which they are party can be fulfilled without ensuring the protection of this right (paragraph 393).

44. On reparations, the ICJ clarified that the Paris Agreement – including Article 8 on loss and damage - does not displace the customary rules on state responsibility. Breaches 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 ICJ 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.

45. The ICJ's Opinion is also expected to have significant domestic and transnational impacts, including influencing how European authorities and courts conceptualise remedies and enforcement (Paiement and Heri, 2025). 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 ICJ 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" (paragraph 427). The Opinion also confirms that "the adverse effects of climate change may impair the effective enjoyment of human rights" (paragraph 386) and that states have obligations to prevent and remedy that impairment. 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. Courts around the world are likely to play an increasingly prominent role in holding governments accountable for their climate, environmental, and human rights commitments (Boyd 2025).

46. 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 Court may now draw on the ICJ's authoritative interpretation to strengthen findings on 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.

2.2. Human rights and climate change

47. 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.

48. The catalytic *Urgenda v. Netherlands* case 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 in and beyond the Netherlands.

49. 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 Council of Europe 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 ordered to achieve specific quantified emissions reductions targets.

50. 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 German 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.

51. Argumentation inspired by the *Neubauer* judgment is seen in other lawsuits, such as the Austrian case of *In re Federal Climate Protection Act Austria* and *Children of Austria v. Austria*.

52. Despite mixed domestic success over the past decade, the "rights turn" in climate litigation (Peel and Osofsky 2018) is likely to continue accelerating across Europe in the aftermath of the judgment of the Court in *KlimaSeniorinnen and Others v. Switzerland* issued in 2024. In that decision, the Court affirmed that inaction in relation to climate change constitutes a violation of State obligations under the ECHR. 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 (Heri, 2025). This point was subsequently emphasised in the decision on implementation issued by the Committee of Ministers in March 2025.[3]

53. However, the cases of *Carême v. France* and *Duarte Agostinho and Others v. Portugal and 32 Others* were declared inadmissible by the 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). One of the key differences between these cases and the *KlimaSeniorinnen* decision was the Court's determination in the latter that an association could be given standing even when it's members would not individually reach the relevant threshold (Letwin 2024).

54. *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.

55. While of global relevance, *KlimaSeniorinnen* is of particular importance for Council of Europe 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*

3. 1521st meeting (4-6 March 2025) (DH) - H46-30 Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (Application No. 53600/20).

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.

56. 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.

57. 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.

2.3. Compliance with climate change framework laws

58. 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.

59. Such cases have emerged in several 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.

60. 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.

61. 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 favour 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. In a decision of 24 October 2025, the *Conseil d'État* closed the proceedings by ruling that the results were achieved and the measures taken by the Government allow for the conclusion that the objective of reducing GHG emissions by 40% between 1990 and 2030, which was the subject of the dispute, will be met. The Conseil d'État thus held that the orders it issued against the Government in 2021 and 2023 have been implemented.

62. 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.

63. Ireland has also 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. The country has also seen litigation relating to specific projects under section 15 of its framework law, which aims to ensure the activities of all public authorities are consistent with obligations under the legislation. Although not strictly "framework cases", these share many similarities with the other compliance cases mentioned here. The *Coolglass* case noted above is a case in point.

64. 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*). A further case (*R(Packham) v. Secretary of State for Energy Security and Net Zero and Secretary of State for Transport*) was settled following a change of government.

65. These cases collectively illustrate the evolving role of climate framework laws as tools for holding governments accountable. As the Strasbourg Court noted, strong climate legislation is a fundamental part of creating the regulatory frameworks required to uphold states' obligations under the ECHR. 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 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.

2.4. Damages in climate cases against governments

66. 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.

67. In *Notre Affaire à Tous and Others v. France*, 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. However, the court 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 Administrative Court held that the claimants had failed to demonstrate that the State would be unable to repair the harm complained of.

68. 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 Administrative Court ruling, in December 2023, 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 Administrative Court did not deem it appropriate to impose additional injunctive measures nor to grant the damages sought. The claimant associations have since lodged an appeal before the Paris Administrative Court of Appeal, reiterating both their request for injunctive relief and request for damages.

69. 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.

70. Damages were also sought in *Ville de Paris v. Ministry of Ecological Transition*,[4] 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 million 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.

71. Damages have also formed part of litigatory strategies in other 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.

4. 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.

Part 3

Climate litigation against corporations in Europe

72. 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 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.

73. The focus on corporate climate accountability has been shaped by several key developments. In 2014 research was published attributing over 60% of global emissions to just 90 "Carbon Majors", providing a first scientific basis for assigning responsibility to major emitters (Heede 2014). This was followed by the *Philippines Human Rights Commission's inquiry* on climate change, which explicitly linked corporate emissions to human rights impacts (Savaresi and Wewerinke-Singh 2022, Setzer and Higham 2024).

74. 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.

75. Another example, drawn from Sweden's response to the questionnaire, shows how litigation can influence corporate behaviour where national framework laws have limited direct legal effect. In *Preemraff Lysekil*[5] 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. Nonetheless, Preem withdrew its application, underscoring both the limits of framework laws in permitting decisions and the capacity of litigation pressure to shape corporate choices.

76. 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.

77. 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 this study has 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 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

78. 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

5. 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.

on the external, society-facing impacts of corporate practices – often across full value chains – rather than on internal impacts such as shareholder value.

79. International soft-law instruments such as Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, 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. Some of these cases have pushed the development of corporate due diligence legislation, potentially strengthening corporate climate accountability (see Rajavuori et al 2023).

80. 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 and Manna 2025). 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.

81. 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 UNGPs 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.

82. 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 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.

83. 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 member states and elsewhere – that adjudication of climate lawsuits against companies 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.

84. 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.

85. 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 ECHR.

3.2. Polluter pays litigation and damages for emissions[6]

86. 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.

87. 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

6. 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/

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.

88. 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.

89. 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.

90. 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.

91. 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.

92. 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 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.

93. Below, the study discusses key legal issues in the 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

94. 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. Ultimately, it was this point that the Court found was not sufficiently well substantiated by the evidence before it, and which led to the dismissal of the case. 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.[7]

95. 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.

96. 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

7. 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.

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.

Causation and evidence

97. 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 causation, 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

98. 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.

99. In *Lliuya*, which was filed before Scope 3 emissions became so widely understood, the majority of emissions at issue were scope 1 emissions. This is also true of *Asmania,* where most of the defendant's emissions fall within scope 1 (from cement production). However, 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.

100. In *Falys*, on the other hand, 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). 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.

101. The inclusion and extent of Scope 3 emissions will have a significant impact on the extent of any legal liability imposed on corporations. 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

102. In *Lliuya*, the Higher Regional Court of Hamm 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.

103. 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 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.

104. Polluter pays cases are 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.

Calculation of damages

105. 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.

106. 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.

107. 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 (see above).

108. Although no case has yet granted a request for damages against a corporation for its global contribution to GHG emissions, 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 litigation and decommissioning obligations

109. 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.

110. 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, meaning that those who have benefitted from exploitation or production hydrocarbons in the to bear the responsibility for decommissioning.[8]

111. 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 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.

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

3.4. Failure to adapt cases and the risk of local liabilities

112. Finally, the study considers 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 Council of Europe 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.

113. 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.

114. 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."

115. 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.

116. 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 failing to address foreseen and foreseeable 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.

117. 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.

118. 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.

119. 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

120. 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?

121. 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. 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 which aim to bridge the compensation gap and operationalise the polluter-pays principle through statutory mechanisms.

4.1. Environmental liability regime

122. 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.

123. 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).

124. 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.

125. 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.

126. 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.

127. 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.

128. 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.

129. 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

130. 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.

131. 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.

132. 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.

133. 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 and 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.

134. 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.

135. 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.

136. 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 and 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.

137. 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

138. 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.

139. This type of legislative effort has 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).

140. 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.

141. 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).

142. 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.

143. 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).

144. 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

145. 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.

146. 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 the discussion of the ICJ Advisory Opionion, 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.

147. 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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Climate litigation in Europe is rapidly evolving as expectations for resolute climate actions from both states and businesses grow amongst the public. Building on an increasing number of court cases, including before the European Court of Human Rights and the Court of Justice of the European Union, national courts are progressively connecting the adequacy of climate policies and their respect to fundamental rights and rule of law obligations. This study, commissioned by the European Committee on Legal Co-operation (CDCJ), examines how recent court proceedings - brought against both public authorities and corporate actors - raise questions of legal accountability for mitigation of and adaptation to climate change, the protection of human rights, and the allocation of responsibility for climate-related harm.

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