

*An outlook of climate litigation:
recent cases and issues*



*French and Italian climate litigation: a
comparative perspective*

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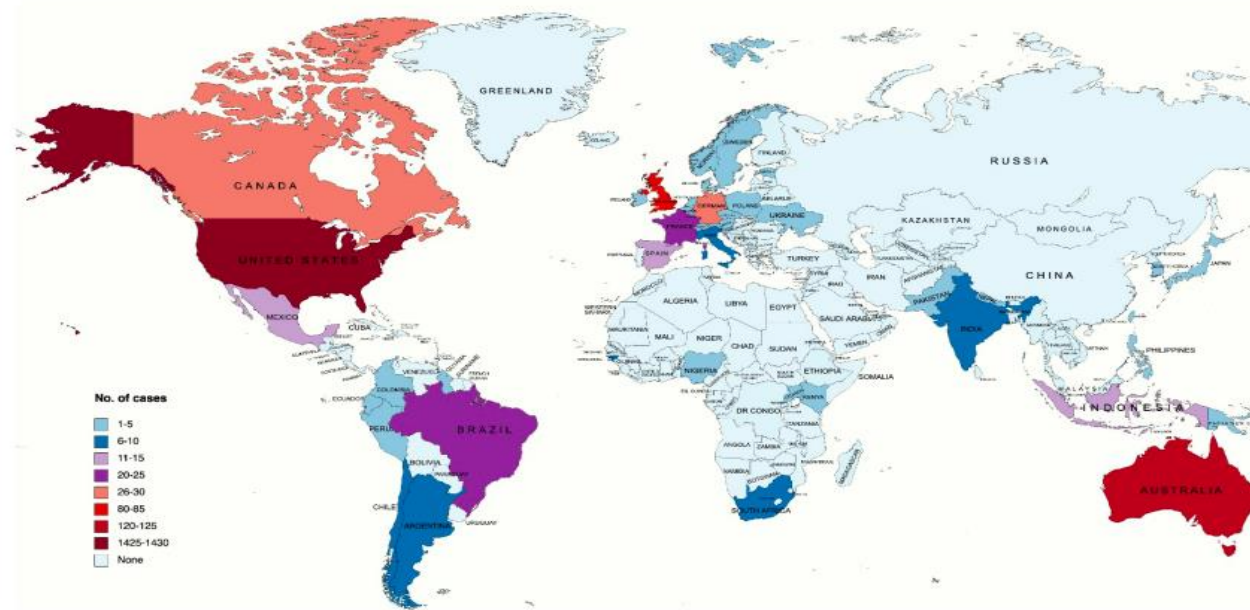


Introduction – Climate litigation

Trends around the world

- **Climate change litigation** : cases before judicial and quasi-judicial bodies that involve directly material issues of climate change science, policy, or law.

Figure 1.2. Number of climate litigation cases around the world, per jurisdiction (up to 31 May 2022)



Notes: Cumulative figures to May 2022. This figure only includes cases filed before national tribunals. The 103 cases filed before 15 international and regional bodies entities are not included.

Source: Map created with mapchart.net based on CCLW and Sabin Center data.



THE URGENDA CLIMATE CASE AGAINST THE DUTCH GOVERNMENT

Together with 900 citizens the Urgenda Foundation filed the Climate Case against the Dutch Government. On 14 April 2015, the district court in The Hague will hear the arguments of the parties.

The Urgenda Case Netherlands

- Seminal case on climate litigation
- The Dutch Supreme Court held that the Dutch government have a legal duty to its citizens to prevent climate change
- Civil Code- fault based civil liability / ECHR
- Injunctive request : reduce emissions with 25 % before end of 2020

Main points of my presentation

Overview of climate cases in France and Italy

States

Companies

The driving role of International law

The promising role of national liability law

French decision against the State

Legitimacy judgment

Commune de Grande-Synthe

City of Grande-Synthe



Compensation litigation

« L'affaire du siècle » « The case of the century »



Legality litigation (Ricorso sulla legittimità dell'atto)



Facts

The city of Grande-Synthe is located in the north of France, at the edge of the English Channel. The city is exposed to the rising sea level and submersion.

The city challenged the legality of the measures taken by the State in the field of climate policy. In particular, the State was accused of not having respected the carbon budgets established in the National Low Carbon Strategy. The applicants considered that the climate policies carried out by the State were not coherent enough.

The measures taken by the French State will not allow it to achieve the objectives imposed on it in terms of greenhouse gas reduction (resulting from international law, European Union law and the national law), the Commune of Grande-Synthe as well as its mayor asked the State to take all the necessary measures to curb the curve of emissions. Following the refusal of the State, the individual decision was challenged before the Conseil d'État. = **looking for an injunction measures.**

Judgment

On July 1, 2021, the judge found that the information provided by the State did not demonstrate that it would be possible to meet the target reduction. In addition to noting a small decrease in emissions in 2019 and an insignificant decrease in 2020, the judge found that the planned reduction for the period 2024-2028 would not allow the State to reach its objectives without additional measures.

Injunctive measure: to take additional action by March 31, 2022 to meet the goal of reducing greenhouse gas emissions by 40 percent by 2030.

The case of the century, TA Paris, 3 février 2021 et 14 oct. 2021



Fact

Several NGOs requested an order from the Paris administrative tribunal to compensate the moral and ecological damage resulting from the State's wrongful failure to combat climate change and to adopt measures to put an end to it.

In this way, the claimants brought an action for compensation.

The request was innovative because for the first time it invited the administrative judge to question not only the existence and performance of the State's obligations in the area of climate change, but also the possibility of applying the system of compensation for ecological damage under articles 1246 et seq. of the Civil Code to public persons.

3 February 2021: the State must be considered as responsible for a part of the ecological damage observed” = 15 Mt CO2 eq.

Refusal to allocate a symbolic euro to repair the ecological damage - repair must be done in priority in kind (1249 civil code).

14 October 2021: Judges imposes to the government to take all useful measures to repair and stop the ecological damage before December 31, 2022. The administrative court rejected the request for a penalty payment and merely required the Prime Minister and the competent ministers to "take all useful sectoral measures likely to repair the damage up to the uncompensated share of greenhouse gas emissions" and left the choice of measures to the "free appreciation of the Government”.

Italian actions against the State

Judgment of legitimacy/legality

IL v. Ministry of interior and and Attorney General at the Court of Appeal of Ancona

Ordinance N. 5022/2021 of the Italian Corte Suprema di Cassazione (Sez. II Civile)

Compensation litigation « The last judgment »

A sud and al. v. Italy

Civil court Rome

Pending



Italy
Climate migration
litigation

IL v. Ministry of interior
and and Attorney
General at the Court of
Appeal of Ancona
24 February 2021

- **Recognition of humanitarian protection - Delta Niger** – Nigeria IL, a citizen of the Niger Delta region of Nigeria left his home and sought international humanitarian protection in Italy. He fled in part due to armed conflict in the region, which was exacerbated by environmental destruction and climate change.
- Judge's assessment for granting humanitarian protection must now include environmental and climactic factors which influence an individual's decision to leave their home.
- In delivering its ordinance, the Court of Cassation specifically referred to the decision of the UN Human Rights Committee in the **Teitiota case – direct reference to an international decision.**

« The last judgment »

Facts:

- 5 June 2021, A Sud NGO and 200 plaintiffs filed a suit alleging that the Italian government, by failing to take actions necessary to meet Paris Agreement temperature targets, is violating fundamental rights, including the right to a stable and safe climate= negligence in reducing GHG emissions
- The applicants aim to show that Italy, as part of the Mediterranean area, is a 'hot spot' for climate change, and that it is suffering and will increasingly suffer various severe impacts.

Legal ground:

- The applicants plan to prove that Italy's inadequate climate policy has caused a serious interference with the enjoyment of the human rights of those within its jurisdiction and that such interference is unlawful under international, EU and domestic law.
- Liability under **article 2043 of Civil code** « Any intentional or negligent act that causes an unjustified injury to another obliges the person who has committed the act to pay damages » + **liability under 2051** of the Italian civil code. Damage caused by things in custody : "Everyone is liable for injuries caused by things in his custody, unless he proves that the injuries were the result of a fortuitous event ».
- Request for injunctive decision. The plaintiffs seek an order that the Italian government must cut emissions by 92% by 2030 as compared to 1990 levels

First conclusion on action against states

- 1) Coordinated interpretation of several norms
- 2) Circulation of legal strategies and arguments
- 3) The driving role of the IPCC report
- 4) The driving role of the Paris agreement

Litigation against companies

Figure 1.5. Number of climate cases involving corporate defendants by sector (31 May 2021 – 31 May 2022)



Source: Authors based on CCLW and Sabin Center data

- 90 companies are estimated to contribute 57% of the observed increase in CO₂ in the atmosphere, about 50% of the rise in temperature, and between 26% and 32% of the rise in average sea level.
- The climate litigation against companies is born in the United States (2007).
 - American Electric Power v. Connecticut in 2011 (S.C)
 - Native Village of Kivalina v. Exxon Mobil in 2012 (S.C)
 - City of San Mateo s. Chevron Corp. 2017 (cal. Dist. Court)
- **2 main categories: civil liability and greenwashing**



Total case Duty of vigilance

Civil liability litigation

Plaintiffs: several municipalities and NGOs, including Notre Affaire à Tous (already present in the "case of the century" - actors network)

What they ask for: to impose on the company Total to take measures in the fight against GHG emissions, in particular by ceasing the research of exploitation of certain sites and by reinforcing its action towards renewable energies

The remedy: an action to cease and desist, with a view to preventive measures.

Three legal bases:

Duty of vigilance under Article L. 225-102-4 of the French Commercial Code - due diligence plan (see. corporate sustainability due diligence)

General duty of vigilance on the basis of fault under the Civil Code (1240: personal liability) + environmental duty of vigilance arising from the Constitution.

mechanism of repair and prevention of ecological damage provided in the Civil Code (1246 and following Civil code)

Con **ENI DIESEL+** fino a:

- 4% di consumi,

- 40% di emissioni gassose.



ENI Italy Greenwashing

- 20 dec. 2019 -,Italy's Competition and Market Authority (all'Autorità Garante per la Concorrenza e il Mercato) fined Eni 5 million euros for the dissemination of misleading advertising messages used in its sales promotion campaign for Eni Diesel+ fuel – called “greenwashing cases”- same litigation in France against Total.
- The contested conduct of ENI constitutes an unfair commercial practice, pursuant to Articles 21 and 22 of the Consumer Code, consisting of the dissemination of misleading and false information regarding the positive environmental impact associated with the use of Eni Diesel+ fuel, as well as regarding the characteristics of this fuel in terms of reduced fuel consumption and reduced gaseous emissions. Authority ruled that Eni's Diesel+ advertising campaign constitute an "unfair commercial practice".



Thank you for your attention
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