

## ESG Litigation – A Follow-Up From a European Perspective

Europe Newsletter

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### I Introduction

International climate litigation is expanding rapidly in both scale and legal impact. At the international level, governments' obligations to protect the climate are receiving growing attention. Achieving global targets, such as limiting global warming to 1.5°C under the Paris Agreement, also will require the adoption of regulatory measures governing the private sector. However, legislative initiatives in this area remain limited. At the same time, national courts, especially in Europe, are beginning to hold companies financially accountable for climate change. Judicial precedents are gradually strengthening the legal basis for (transnational) liability arising from greenhouse gas emissions. As a result, companies now face expanding legal exposure, with unpredictable risks emerging that are difficult to navigate, even for those that have met the existing regulatory requirements.

### II International developments

#### 1. Key Trends

As of 2024, nearly 3,000 climate-related lawsuits have been filed globally. The majority of these cases are strategic, and initiated by politically motivated plaintiffs seeking to shape public discourse or the defendant's behavior. While most lawsuits target governments, actions against companies tend to succeed more often. These suits are expanding in terms of the types of plaintiffs, defendants, and geographical locations involved, including in the Global South, where an increasing number of public entities are acting as plaintiffs. However, NGOs and individuals remain the most frequent initiators globally.<sup>1</sup> Even though climate litigation is global in scope, cases generally are adjudicated within national legal frameworks.<sup>2</sup> The Paris Agreement continues to serve as a benchmark, not only for governments but also for corporations, as courts reference its goals when evaluating climate-related responsibilities.

#### 2. State Obligations Under International Law

National and international courts have confirmed that states are obligated to address climate change, and that this obligation encompasses a duty to regulate the behavior of private actors.<sup>3</sup> This is particularly significant in the context of the European Court of Human Rights (ECHR), which can issue judgments that are binding on its

<sup>1</sup> Setzer/Higham, *Global trends in climate change litigation: 2025 snapshot*, p. 3 ff., available under [Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf](#).

<sup>2</sup> Bertram, *Environmental Justice "Light"? Transnational Tort Litigation in the Corporate Anthropocene*, German Law Journal (2022), pp. 738-755, 742.

<sup>3</sup> On the international level, see, for example, the Advisory Opinion of International Tribunal on the Law of the Sea on State obligations to prevent, reduce and control greenhouse gas emissions from marine sources [C31\\_Adv\\_Op\\_21.05.2024\\_orig.pdf](#). On a national level, see, for example, the first successful government framework case in East Asia [Do-Hyun Kim et al. v. South Korea - press release - The Climate Litigation Database](#), for reference <https://www.lse.ac.uk/granthaminstiute/wp-content/uploads/2025/06/Global-Trends-in-Climate-Change-Litigation-2025-Snapshot.pdf>, p. 6; see also [https://www.climatecasechart.com/collections/held-v-state\\_2e16b7](https://www.climatecasechart.com/collections/held-v-state_2e16b7).

Member States and allows individuals to file complaints. In its first climate-related ruling, *KlimaSeniorinnen*,<sup>4</sup> the ECHR ruled that Switzerland violated the European Convention on Human Rights by failing to take adequate climate action.<sup>5</sup> The Court held that states have a positive obligation to protect individuals from serious climate-related harms and to provide effective remedies for inadequate climate policies. In *Cannavacciuolo*,<sup>6</sup> the ECHR ruled that Italy breached its duty to protect its citizens from known environmental hazards, reaffirming that states must actively prevent environmental harm.<sup>7</sup> The Inter-American Court of Human Rights further stated that states can be held responsible for cross-border environmental harm if there is a clear link to human rights violations,<sup>8</sup> emphasizing the need to adapt laws to align with science to address climate change.<sup>9</sup> These obligations are being affirmed on both regional and global levels: the International Court of Justice, in an Advisory Opinion, recognized that international law obligates states to address climate change and to comply with the Paris goal of limiting the increase in global warming to 1.5°C.<sup>10</sup> Scientists have determined that limiting global warming to no more than 1.5 °C above pre-industrial levels is essential to avoid the most severe climate impacts.<sup>11</sup>

These obligations influence domestic policies, regulations, and litigation. Their impact depends on whether a national legal order integrates international law directly or only through implementing legislation.<sup>12</sup>

### 3. Corporate Climate Litigation From a European Perspective

The increasing influence of human rights and scientific understanding about the causes of global warming on corporate liability, particularly in shaping duties of care, marks an evolving global trend. In Japan, a case is currently pending against multiple thermal power companies, asserting that these firms are obligated to align their operations with the 1.5°C goal, as grounded in scientific evidence. The plaintiffs base their claims on the Japanese Civil Code, arguing that it embodies duties of care shaped by the Paris Agreement, human rights, and the UN Guiding Principles on Business and Human Rights.<sup>13</sup> Similar arguments are being advanced in climate litigation worldwide, particularly in Europe, on a progressive basis. In a similar case in the Netherlands in 2021, the Hague District Court ordered a multinational energy company to reduce its emissions, recognizing that high-emitting companies have an unwritten duty of care regarding climate change. Standards of international law were factored in to interpret this obligation.<sup>14</sup> The ruling was overturned in November 2024, on the basis that the judiciary lacked the authority to impose such a duty. The appellate court found that decisions regarding emissions reduction are policy matters, reserved for the legislative and executive

<sup>4</sup> ECHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, 53600/20, 9 April 2024.

<sup>5</sup> Based on Article 8 (Right to respect for private and family life) and Article 6 (Right to a fair trial).

<sup>6</sup> ECHR, *Cannavacciuolo and Others v. Italy*, 51567/14, 27 February 2025.

<sup>7</sup> Based on Article 2 (Right to life).

<sup>8</sup> Inter-American Court of Human Rights Advisory Opinion AO-32/25, 29 May 2025, [https://www.corteidh.or.cr/docs/opiniones/seriea\\_32\\_en.pdf](https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf), paras. 277, 278.

<sup>9</sup> *Ibid.*, para. 246.

<sup>10</sup> ICI, *Obligations of States in Respect of Climate Change*, Advisory Opinion, 23 July 2025, <https://www.ici-cji.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>, p. 72.

<sup>11</sup> IPPC, *Global warming of 1.5°C - An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, [https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15\\_Full\\_Report\\_HR.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2022/06/SR15_Full_Report_HR.pdf).

<sup>12</sup> For example, in the Netherlands, pursuant to Article 93 of the Dutch Constitution, treaties and resolutions of international organizations binding upon all members are part of Dutch law, meaning courts can apply international law directly, as happened in The Hague District Court, Judgment of 26 May 2025, No. C/09/571932, <https://uitspraken.rechtspraak.nl/details?id=ELI:NL:RBDHA:2021:5339&showbutton=true>, see para. 4.1.3, 4.4.9.

<sup>13</sup> For an overview see [https://www.climatecaselaw.com/document/youth-climate-case-japan-for-tomorrow\\_74f6](https://www.climatecaselaw.com/document/youth-climate-case-japan-for-tomorrow_74f6).

<sup>14</sup> The Hague District Court, Judgment of 26 May 2025, No. C/09/571932, see fn. 11.

branches.<sup>15</sup> The case is now pending before an apex court.<sup>16</sup>

In France, NGOs and local authorities have filed a lawsuit under the French Duty of Vigilance Law, alleging that an energy company's climate strategy fails to adequately identify and mitigate environmental and human rights risks. The plaintiffs argue that the vigilance plan presented by the defendant company does not align with the 1.5°C goal. In June 2024, the Paris Court of Appeal ruled that the case was admissible, which means it will proceed to trial.<sup>17</sup> This case could set a precedent in France, and compel corporations to align their operations with international climate commitments.

Germany remains a hub for greenwashing litigation.<sup>18</sup> A recent landmark case addressed corporate liability for climate-related harms. A Peruvian farmer sued a German energy company, claiming that its emissions contributed to glacial melting, thereby increasing the risk of flooding that threatened his property and village. He sought reimbursement of 0.38% of the cost of safety measures he installed; the requested percentage reflected the company's share of global industrial greenhouse gas emissions.<sup>19</sup> Although the High Court in Hamm<sup>20</sup> ultimately dismissed the claim for lack of concrete damages, it acknowledged that, in principle, companies can be held liable for climate-related property damage even when their emissions were produced in compliance with existing environmental regulations. The court did not refer specifically to international law, but to scientific findings. It emphasized that legal responsibility may arise not from the mere legality of the conduct itself, but from the unlawfulness of its consequences, if those consequences contravene protected legal interests, such as property rights or personal safety. The case was ultimately dismissed because the farmer could not demonstrate the emissions caused direct and measurable harm, rather than potential or theoretical risks. General contributions to global climate change or accelerating factors were deemed insufficient to establish causation. Not all emitters (e.g., drivers of automobiles) are liable, but high-emitting companies in emissions-heavy industries may be.<sup>21</sup> The applicability of German law was affirmed under Article 7 of the Rome II Regulation,<sup>22</sup> as the harmful event occurred in Germany through the operation of coal-fueled power plants. Article 7 allows plaintiffs to choose between the place where the damage occurred and the location in which the harmful act originated. For industrial companies operating in Europe, this significantly broadens potential exposure. Even though the company ultimately was not held liable, the decision could pave the way for future (transnational) climate lawsuits in which plaintiffs are able to present more concrete evidence of damages. The percentage of global emissions apparently is becoming a reference point for lawsuits, and "carbon majors," in particular, may be targeted.<sup>23</sup>

A similar case in Switzerland involves residents of Indonesia's Pari Island, who are suing a Swiss company responsible for 0.42% of global industrial CO<sub>2</sub> emissions. The plaintiffs are seeking compensation for lost income, funding for local protection measures, and emissions reductions. The Swiss court in Zug will determine whether it has jurisdiction, and if so, will address the substance of the claims.<sup>24</sup>

<sup>15</sup> The Hague Court of Appeal, Judgment of 12 November 2024, Case No. 200.302.332/01,

<https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2024:2100&showbutton=true&keyword=2100&idx=1>.

<sup>16</sup> For an overview, see [https://www.climatecasemap.com/document/milieudefensie-et-al-v-royal-dutch-shell-plc\\_c3e4](https://www.climatecasemap.com/document/milieudefensie-et-al-v-royal-dutch-shell-plc_c3e4).

<sup>17</sup> Paris Court of Appeal, 18 June 2024, Decision No. 23/14348, <https://www.courdecassation.fr/en/decision/6672747f36f1fc00083aac7b>, for an overview see [https://www.climatecasemap.com/document/notre-affaire-a-tous-and-others-v-total\\_85ea](https://www.climatecasemap.com/document/notre-affaire-a-tous-and-others-v-total_85ea).

<sup>18</sup> For an update on greenwashing in advertising, see our previous newsletter, [here](#).

<sup>19</sup> OLG Hamm Decision of 28 May 2025 – 5 U 15/17, para. 286.

<sup>20</sup> OLG Hamm Decision of 28 May 2025 – 5 U 15/17.

<sup>21</sup> *Ibid.*, paras. 186 f.

<sup>22</sup> See Art. 7 Regulation (EC) No 864/2007 (Rome II): *"The law applicable to a non-contractual obligation arising out of environmental damage or damage sustained by persons or property as a result of such damage shall be the law determined pursuant to Article 4(1), unless the person seeking compensation for damage chooses to base his or her claim on the law of the country in which the event giving rise to the damage occurred."*

<sup>23</sup> Data listed here <https://carbonmajors.org/index.html>.

<sup>24</sup> ECCHR, *Climate litigation against Holcim: decision draws closer*, 3 September 2025, <https://www.ecchr.eu/en/press-release/klimaklage-gegen-holcim-030925/>; for an overview, see <https://climatecasemap.com/non-us-case/four-islanders-of-pari-v-holcim/>.

### III Outlook

On an increasing basis, states are recognized as having obligations to regulate private actors in the areas of climate change and human rights. When legislative responses lag behind, progressive courts have an opportunity to spring into action, translating science and public international standards into private law claims. This judicial activism creates complexities for companies, particularly as domestic legal systems adapt to transnational climate responsibilities that often extend beyond and appear to contravene existing regulatory compliance. National courts, especially in Europe, continue to take a progressive stance when it comes to interpreting corporate fiduciary duties and, in particular, aligning them with international climate objectives. While this trend is gaining momentum, significant legal and procedural challenges persist. Translating international standards to fit existing, abstract corporate duties within domestic legal systems depends on established doctrines, such as the duty of care and foreseeability. Nonetheless, companies face the risk of evolving case law, which threatens to hold them liable for contributions to climate change despite their compliance with all existing national environmental laws and regulations. This creates a practical problem, in that the legal boundaries within which companies operate their businesses are becoming ever more complex and difficult to understand, especially for companies operating in Europe.

The legal foundation for pursuing claims against corporations in climate matters is steadily strengthening, as courts continue to lay the groundwork to hold companies liable for climate-related harms linked to emissions. Companies operating in or from Europe, especially those with significant global emissions footprints, should anticipate heightened scrutiny and evolving liability, as well as increased risks, as climate litigation becomes an increasingly powerful tool to further and achieve climate goals.

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