sciendo

Wroclaw Review
of Law, Administration & Economics
Vol 13:1, 2023
DOI: 10.2478/wrlae-2023-0011

The Possible Impact of Urgenda and the Klimabeschluss on Climate Litigation on the Example of the Petition Pending Before the Hungarian Constitutional Court

*Petra Lea Láncos**

Keywords

Climate change, Urgenda, Klimabeschluss, climate litigation, emission reduction targets

Abstract

While there is scientific consensus on the causes and consequences of climate change, also reflected in international agreements and EU norms obliging states to reduce GHG emissions, domestic legislation has been slow or imperfect in implementing reduction duties. Although climate litigation is not a new phenomenon, a specific strand of climate litigation is now gaining impetus owing to the success garnered in *Urgenda* and the *Klimabeschluss*: litigation focusing on states' omitting to lawfully regulate emission targets. This paper presents the context of novel climate litigation in the face of Russian aggression and the ensuing disincentives to promote ambitious reduction goals, proceeding to describe the arguments and findings in the two landmark cases and their effects on future climate litigation as seen in the example of the climate petition pending before the Hungarian Constitutional Court.

* Associate Professor, Pázmány Péter Catholic University, Faculty of Law and Political Science (Budapest), former head of secretariat of Justice Szabó at the Hungarian Constitutional Court. I am indebted to Sándor Szemesi for his valuable comments on this paper.

I. Introduction

O Neill and Alblas note that 'globally, climate litigation has "exploded" in recent years (…), with over 1000 cases currently listed on the Climate Change Litigation Database, taken against a range of actors (e.g., states or private companies), on the basis of an array of legal grounds (e.g., administrative, civil, human rights based), and with diverging goals (e.g., reparation, mandating climate action)'.[1] From among these proceedings, two stand out for their succeeding in pushing the legislator to regulate emission reductions in a more feasible and proportionate way: the *Urgenda* ruling of the Netherlands' Supreme Court[2] and the *Klimabeschluss* of the German Federal Constitutional Court.[3]

The landmark climate case *Urgenda Foundation v. State of the Netherlands* was decided on 20 December 2019. The Supreme Court of the Netherlands confirmed the state's obligation to achieve a specific reduction in greenhouse gas emissions to avoid a severe impact on the lives and welfare of the residents of the Netherlands. The *Klimabeschluss* of the German Federal Constitutional Court[4] was issued on 24 March 2021 in a similar vein, obliging the federal legislature to regulate emission thresholds in a detailed, forward-looking fashion to ensure the meeting of emission targets and the sharing of environmental burdens between generations. Just five months later, on 14 September 2021, petition No. II/3536/2021 was submitted to the Hungarian Constitutional Court, challenging the Hungarian Climate Change Act for failing to effectively regulate emission targets. It appears that a specific genre of climate litigation is emerging before national courts throughout Europe. Could *Urgenda* and the *Klimabeschluss* be a model for emerging climate change litigation (and possibly, jurisprudence)?

Combatting climate change has been on the agenda of the European Union and its Member States for several decades now, the latter undertaking emission reduction commitments and fostering innovative solutions to minimise their carbon footprints.[5] However, the impending climate catastrophe notwithstanding, progress has been slow on enacting concrete and binding measures to achieve a

1 Sadhbh O Neill and Edwin Alblas, 'Climate Litigation, Politics and Policy Change: Lessons from Urgenda and Climate Case Ireland' in David Robbins, Diarmuid Torney and Pat Brereton (eds), *Ireland and the Climate Crisis. Palgrave Studies in Media and Environmental Communication* (Palgrave Macmillan 2020) 59.

2 HR:2019:2006, Hoge Raad, 19/00135.

3 Decision No. 1 BvR 2656/18 of the Federal Constitutional Court of Germany.

4 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20.

5 See Petra Lea Láncos, 'Flexibility and Legitimacy: The Emissions Trading System under the Kyoto Protocol' in Armin Bogdandy et al (eds) *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2010) 271-299.

greening of the Member States' energy mix or to enforce European air quality standards against Member States (an example would be Hungary, where poverty and a failure to implement national energy-saving schemes for households means that wood-burning fireplaces are still widespread). While the recent financial crises made investment into developing and installing climate-neutral solutions less attractive in the short run due to high sunk costs, the apparent effects of climate change are evidence that the impact of global warming is not confined to the environmental realm, but affects society, the economy, and the natural as well as the man-made environment as a whole. Droughts, soil depletion, interruptions in the global supply chain, mass migration, and terrorism have triggered crippling food prices, unemployment, national security challenges and humanitarian crises, to name just a few direct and indirect effects of the ongoing 'climate crisis.'[6]

Russia's aggression against Ukraine is another crisis facing the European continent, which threatens to set back climate protection efforts. Several Member States are reluctant to continue purchasing gas and oil from Russia, in a bid to hit the aggressor state at the heart of its financial interests. However, Member States' dependence on Russian fuel or their reluctance to cut energy ties with their main energy supplier undermine the EU's efforts to speak with one voice. Member States are hard put to find alternative solutions to replace Russian fuel supplies, with some possibly taking recourse to energy and heating solutions that may compromise the progress already achieved in carbon reduction. In Hungary, for example, the Minister for the Interior called upon public schools in the winter of 2022 to investigate possibilities to return to wood-burning, and the coal-fired Mátra Power Plant also reopened. Meanwhile, Spain advocates for the broad use of LNG to replace Russian fuel, without however mentioning the fact that LNG contributes to, and even exacerbates, climate change. Besides scrambling for alternative solutions to meet their energy demands, with the war directly 'at their doorstep', Member States may be less inclined to finance the energy efficiency upgrading of households, investments into sustainable energy sources, carbon sequestration, public transport, and urban greening, focusing on security-related investments and activities instead.

On the other hand, the Russian war on Ukraine and the imminent energy crisis may not only be considered a threat to, but also an opportunity for, boosting the climate policy aspirations of the EU. The Russian aggression may in fact speed up efforts to decouple Member States from, or at least decrease their overwhelming dependence on, external energy sources, in an effort to shift towards alternative, carbon neutral and sustainable solutions. This way, carbon neutrality commitments made by the Member States under the Paris Agreement

6 United Nations Environment Programme, Emissions gap report 2022: The closing window: Climate crisis calls for rapid transformation of societies (2022) <https://www.unep.org/resources/emissions-gap-report-2022> accessed 29 March 2023, 31, 63.

may still be met (or at least, have a better chance of being met), while at the same time accruing foreign policy gains by reducing dependence on third states.

It is in this wider and immediate context that current attempts at climate litigation may and should be viewed. Besides civil society movements such as Fridays for Future, international agenda-setting efforts and green technology innovations, climate litigation is an increasingly promising tool for pushing governments towards meeting or even exceeding carbon reduction targets. As Roger Cox, lead counsel in the *Urgenda* case, notes, 'in the legal community, there has been an increasing conviction in recent years that the law and the judiciary may have a role to play in urging states and large fossil fuel companies to deal with the climate problem. The general consensus is that politicians have put off dealing with the climate problem for far too long'.[7]

In what follows, I describe the emergence of a specific genre of climate litigation, as a novel element in the national toolbox of climate protection. I discuss the *Urgenda case* and the *Klimabeschluss* in an attempt to answer the question whether these judgements could have a shaping effect on future climate actions and serve as a model decision for national judiciaries to proceed on. I discuss the model effect of these cases in light of their impression on the petition pending before the Hungarian Constitutional Court.

II. The Landmark Urgenda Case

Climate litigation looks back at several decades of development, and in fact refers to different categories of litigation targeting the protection of the climate. Sulyok explains that climate litigation as an umbrella term covers actions related to the effects of climate change, launched before national or international courts, and involves suing companies for emissions-related damages, authorities for inaction, or governments for unambitious emission reduction targets.[8] In this paper, I analyse a specific genre of climate litigation, namely climate protection–related actions brought before national judicial fora, against the state – these seem to have a greater chance of success and are clearly catching on throughout Europe.[9]

The landmark *Urgenda* litigation targeted the Netherlands' government, the entity that had made the express legal commitment under international law to

7 Roger Cox, 'A climate change litigation precedent: Urgenda Foundation v The State of the Netherlands' (2016) 34 (2) *Journal of Energy & Natural Resources Law* 162.

8 Katalin Sulyok, 'A klímaperek kihívásai és sikerei' (2020) 13 (1) Közjogi Szemle 1.

9 Sulyok is of the view that successful climate litigation before an international forum 'is just a question of time', see ibid 2'

reduce greenhouse gas emissions. The ensuing judgement relied on the thresholds enshrined in international legal sources accepted by the state, the open standard of a duty of care, human rights instruments and the national constitution. These, in combination with findings of climate science and climate politics, helped crystallise the specific legislative obligations of the state in addressing emission reductions.[10]

The Urgenda Foundation, an NGO promoting socioeconomic sustainability, and hundreds of Dutch citizens sued the Netherlands before the Hague District Court for negligence towards its own citizens for failing to adequately regulate emission reductions. The claimants stated that the 17% emissions reductions by 2020 (compared to 1990 emission levels) prescribed under Netherlands legislation was insufficient to achieve its target of 80–95% by 2050 and claimed that reductions of at least 25% must be foreseen in national climate regulation instead. The litigants argued that the Dutch government has the power and responsibility to enact climate legislation. They alleged that the government breached its duty of care the towards citizens, since the relevant legislation enacted fails to avert hazardous climate events affecting the right to life and health of citizens.

The Netherlands' government claimed that there is no causal link between Dutch emissions and potential climate-induced harm, due to the insubstantial contribution of Dutch emissions to global emissions (0.5%). The Netherlands as a sovereign state has discretionary power in designing its policies and legislation and is not obliged to achieve targets contained in Urgenda's actions, in fact, prescribing such targets for the legislature would upset the separation of powers.

In its judgement,[11] the first instance court found that the Netherlands' climate regulations were inadequate to safeguard citizens' right to life and health (home and private life, Articles 2 and 8 ECHR) and were therefore unlawful. Relying on scientific findings alleging that a warming in excess of 2°C (as compared to pre-industrial levels) of the average global temperature would cause irreversible harm, the Hague District Court ordered that the Netherlands put in place legislation to cut emissions by at least 25% by the year 2020. As Cox notes, 'the Hague District Court apparently realised the significance and historic nature of its decision, as it was immediately made available in an English translation; the court probably expected it to generate worldwide attention, as it did.'[12] The Netherlands challenged the first instance judgement, which, however, was upheld by the Court of Appeal, and later, by the Supreme Court, on the grounds that Articles 2 and 8 ECHR on the right to life and health (home and private life), as

10 Cox (n 7) 147-148.

11 RBDHA: 2015:7145, Rechtbank Den Haag, 200.178.245/01.

12 Cox (n 7) 144.

well as the UNFCCC, oblige the Netherlands to prevent the hazardous effects of climate change.

As far as the notorious second instance judgement[13] is concerned, the Court of Appeals embarked on fact-finding, identifying potential harmful and irreversible effects of climate change within the Netherlands in case it exceeds the scientifically accepted threshold of 2°C. It then established that while the Netherlands indeed enjoys a margin of discretion in shaping national policies, it also has a duty of care not to cause harm, and while citizens may not invoke international law, the state duty is given flesh by the international obligations of the state, which the Court shall consider. Beyond the provisions of the UNFCCC, these international obligations include EU law, such as Article 191 TFEU prescribing a high level of environmental protection, and the relevant emissions-related secondary law, as well as Articles 2 and 8 ECHR on the right to life and health (home and private life). Finally, the Court of Appeals accepted that Article 21 of the Netherlands' Constitution, which reads, 'It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment,' establishes a duty of care, obliging the state to protect and improve the condition of the environment. While these sources do not vest *Urgenda* with rights, they nevertheless establish the state's duty of care (paragraph 41 of the judgement) and at the same time limit its discretion. The second instance court referred to the equity principle enshrined in Article 3 paragraph 1 UNFCCC, on the basis of which 'the Parties should protect the climate system for the benefit of present and future generations of humankind'. Observing the precautionary principle, they are 'to take precautionary measures to anticipate the causes of climate change and to prevent these causes as much as possible, and not to postpone such measures citing a lack of full scientific certainty as a reason' (paragraph 8 of the judgement). The second instance court noted that the Netherlands failed to substantiate how a lower reduction requirement could feasibly achieve the set target of 2°C (paragraph 28 of the judgement). The Court of Appeals therefore arrived at the conclusion that 'the State has done too little to prevent a dangerous climate change and is doing too little to catch up', risking a failure to meet the emission target committed to. At the same time, the rights of future generations may be disproportionately restricted by overloading later reduction periods with 'considerably more ambitious measures'. In fact, this also threatens to „substantially increase the difficulty of transition to low-longer-term emissions levels and narrow the range of options consistent with maintaining temperature change below 2º C relative to pre-industrial levels' (paragraph 71 of the judgement).

The Supreme Court was also seized with the *Urgenda* case. While upholding the Court of Appeals' judgement, the top court elaborated on important points

13 GHDHA:2018:2591, Gerechtshof Den Haag, 200.178.245/01.

raised by the Netherlands' government. Among others, it clarified that while emissions stemming from globally occurring activities not only originate from Dutch territory and have a worldwide impact, the joint responsibility of the states for these pollutions and their effects do not absolve the individual states – among them, the Netherlands – from their partial responsibility for violating human rights, such as the right to life or private life (paragraphs 5.6.3-5.7.2. of the judgement).[14] In fact, following from the generally accepted principle of international law, that is, the 'no harm principle', each state 'is obliged to do "its part" in order to prevent dangerous climate change' and the violation of human rights 'even if it is a global problem' (paragraph 5.7.1. of the judgement). The Supreme Court underlined that the Netherlands' defence that other states are not complying with their partial responsibility to mitigate cannot be accepted in view of the 'serious consequences of dangerous climate change'. Nor can the claim that the Dutch share in overall global emissions is negligible: 'indeed, acceptance of these defences would mean that a country could easily evade its partial responsibility by pointing out other countries or its own small share' (paragraph 5.7.7. of the judgement).

Another important point unfolded in the Supreme Court's judgement is the highly contested issue of whether a court can impose specific obligations on the legislator. The Supreme Court departed from the purpose of the judiciary to ensure effective legal protection,[15] to then consider the duties of the state and the reasoning it provided for its choice of measures. Of course, 'in determining the State's minimum obligations, the courts must observe restraint, especially if rules or agreements are involved that are not binding in themselves. It is therefore only in clear-cut cases that the courts can rule, (…) that the State has a legal obligation to take measures' (paragraph 6.6. of the judgement). In fact, in the Supreme Court's assessment, consensual scientific evidence[16] as well as international commitments of the EU and the individual Member States within the context of the UNFCCC render specific emission reduction thresholds mandatory in designing state policy and regulation.

---

14 NL:HR:2019:2007, Hoge Raad, 19/00135.

15 Wewerinke-Singh and McCoach note that 'a legal basis for this approach was found in Article 13 of the ECHR — which requires a national law remedy for violations of the ECHR — and the principle of effectiveness — which suggests that provisions of a treaty should be interpreted and applied in ways that make the safeguards of the relevant treaty practical and effective'. Margaretha Wewerinke-Singh and Ashleigh McCoach, 'The State of the Netherlands v Urgenda Foundation: Distilling best practice and lessons learnt for future rights-based climate litigation' (2021) 30 (2) *Review of European Comparative & International Environmental Law* 276.

16 For an assessment of the role of science in judicial reasoning, see Katalin Sulyok, *Science and Judicial Reasoning: The Legitimacy of International Environmental Adjudication* (Cambridge University Press 2020).

Finally, without explicitly referring to future generations, the Supreme Court underlined, that setting unambitious reduction targets in the initial phase of the reduction period means that 'emissions in the future will have to be reduced on an increasingly large scale in order to make up for the postponement in terms of both of time and size. This means that, in principle, for each postponement of emissions reductions, the reduction measures to be taken at a later date will have to be increasingly far-reaching and costly in order to achieve the intended result, and it will also be riskier' (paragraph 7.4.3. of the judgement).

Analysing the judgements, Leijten places the *Urgenda* judgements in a line of cases that involve 'a more abstract situation and a more precise positive obligation than is usually the case in human rights adjudication'. This is characteristic of environmental cases, where complaints and decisions 'are no solution [and] efforts need to be made to ensure that human rights "fit" climate change cases and courts can provide effective protection in this regard'.[17] Indeed, requiring human rights violations for providing legal remedy would mean requiring the concomitant (often irreversible) environmental harm to be done before legal action may be mounted. It is in this context that the probability of human rights violation due to, for example, inaction of the state suffices for admissibility in environmental cases. This also brings with it another interesting aspect of the *Urgenda*, namely, that the problems of *future generations* are explicitly mentioned in the Court of Appeal judgement, without however, their rights being considered in the case. While scholarship has long been engaged in discussing the possible rights and even standing of future generations,[18] legal practice was slow to acknowledge these.[19]

Leijten summarises the evolution in the case-law of the European Court of Human Rights (ECtHR) to discern positive state obligations in respect of the traditionally negative human rights, such as right to life and private life, as well as the admission of large-scale, future-oriented cases – these however, 'concerned a specific set of individuals' at risk, as well as specific looming violations. The *Urgenda* case, however, is an example of emerging cases involving a level of indeterminacy both regarding the scope of the potential injured parties and the possible violations ensuing from the states' infringement.[20]

---

17 Ingrid Leijten, 'Human rights v. Insufficient climate action: The Urgenda case' (2019) 37 (2) *Netherlands Quarterly of Human Rights* 112.

18 See for example, the case pending before the European Court of Human Rights Duarte Agostinho and Others v. Portugal and Others (communicated case) - 39371/20. As far as scholarship is concerned, see Axel Gosseries, 'On Future Generations' Future Rights' (2008) 16 (4) *The Journal of Political Philosophy* 446–474; Wilfred Beckerman, 'Intergenerational Justice' (2004) 2 (2) *Intergenerational Justice Review* 1-5; Wilfred Beckerman and Joanna Pasek*, Justice, Posterity, and the Environment* (Oxford University Press 2002).

19 Sulyok (n 8) 2.

20 Leijten (n 17) 116.

Finally, as Leijten explains, courts are typically reluctant to determine which specific positive obligations the state must fulfil in order to avoid the violation of human rights, affording governments a wide margin of appreciation: 'Supranational courts are generally unlikely to formulate positive obligations that are overly precise or demanding, as it is not their task to interfere with national policy-making and budgetary issues. National courts will be mindful not to upset the balance of powers.'[21] In this vein, the Netherlands court's order to adopt a specific regulatory solution is novel, but from a separation of powers view, perhaps a questionable approach. It may be added, that prescribing concrete regulatory (minimum) thresholds for the legislator also testifies to the fact that the proceeding Netherlands courts had little faith in new technologies or sequestration methods that the state may have employed in a later period where considerable emission reductions would have had to be achieved to meet the 2050 target. The courts referred to such a bold approach to technologies as unrealistic and irresponsible. As Wewerinke-Singh and McCoach note, 'this is an important judicial finding given that the Paris Agreement keeps the door open to the use of these technologies. The Supreme Court's reasoning on this point reflects best practice in climate adjudication, as it demonstrates how the application of the precautionary principle results in the rejection of uncertain and possibly dangerous solutions being used as a substitute for adequate mitigation measures.'[22]

III. The *Klimabeschluss* of the Federal Constitutional Court of Germany

While the Federal Constitutional Court had previously been faced with a complaint seeking a more stringent protection of the climate, that complaint had been dismissed. In case 1 BvR 2058/21 the complainants claimed that the Länder had failed to adequately regulate the reduction of CO_2 emissions, threatening the attainment of GHG reduction goals. In its decision, the Federal Constitutional Court ruled that it does not follow from the German constitution that the Länder would be responsible for regulating reduction plans. As such, the first 'successful complaints' for the protection of the climate were decided by the Federal Constitutional Court in the climate judgement of 2021.

In the case, the Federal Constitutional Court was seized with deciding complaints[23] seeking the annulment of certain provisions of the Federal Climate

21 Ibid. 117.

22 Wewerinke-Singh, McCoach (n 15) 278.

23 1 BvR 2656/18; 1 BvR 78/20; 1 BvR 96/20; 1 BvR 288/20.

Protection Act (Bundes-Klimaschutzgesetz (KSG) of 12 December 2019), with the complainants claiming that Germany had failed to take the necessary legislation and measures to protect the climate and to achieve the CO_2 emissions target for Germany. The federal state's target undertaken within the framework of the Paris Agreement of 2016 was to achieve carbon neutrality by 2050, with interim targets of a 55% reduction by 2030 and 88% reduction by 2040 (as compared to emission levels in 1990).

The complainants – individuals residing in Germany, Nepal and Bangladesh, as well as environmental organisations[24] – based their claims, respectively, on Article 2 paragraph 1 (physical integrity, that is, right to life and limb) read in conjunction with Article 20a. of the Basic Law (constitution) foreseeing the state's responsibility for protecting environmental conditions. They also relied on Article 1 para 1 (right to human dignity) read in conjunction with Article 14 para 1 (right to property) of the German constitution. The complainants claimed that the legislature's failure to adequately regulate the state's climate protection obligations in the KSG amounted to a violation of their fundamental right to life and property, their right to a decent future, as well as their 'right to an ecological minimum standard of living'. This is because the KSG didn't prescribe reduction targets from 2031 onwards, placing an unreasonable burden of emission reduction on the generations of that period and at the same time, threatening a failure to achieve climate neutrality by 2050. In addition, the complainants alleged that the measures contained in the KSG were insufficient to meet the climate targets set by national and EU law, since the total emissions allowed by the KSG are twice the CO_2 cap available to Germany under the Paris Agreement and the calculations underlying the measures foreseen were not based on the objective scientific threshold of 1.5° C, infringing 'the precautionary protection of fundamental rights'. Finally, the complainants claimed that the KSG violated the constitutional principle of exclusive legislative competence (*Wesentlichkeitsgrundsatz*). They claimed that while the legislature has passed the KSG itself, it had delegated the setting of specific emission reduction targets to the Federal Government, notwithstanding the fact that the regulation of emission reductions is a legislative matter (summarised in marginal notes 41-45).

The German Federal Government argued that any constitutional complaint alleging legislative omission requires a legal basis in the Basic Law which is sufficiently specific in substance and scope so as to derive duties of the legislature from the same. By contrast, Article 20a of the Basic Law is merely as *Staatsziel* (state goal, national policy), which does not give rise to enforceable claims. Since the Federal Government enjoys a wide margin of discretion in protecting fundamental rights, in particular in the context of climate policy shaped through

24 Solar Energy Support Association German and Friends of the Earth Germany.

foreign policy, the complainants cannot claim that specific legislative duties are constitutionally mandated for the protection of their fundamental rights (marginal note 55). In fact, according to the Federal Government, the complainants' rights are not presently affected by the provisions of the KSG: on the one hand, because climate change has not yet affected the individual complainants, and on the other hand, because environmental organisations have no standing for merely furthering altruistic causes (marginal note 57).

As far as the complainants' standing is concerned, the Federal Constitutional Court laconically stated that 'insofar as the complainants are natural persons, their constitutional complaints are admissible', regarding their fundamental rights to life, physical integrity and partly, their right to property. Thus, natural persons' standing was recognised, whether or not they were residents of Germany, while the environmental organisations' standing was excluded without further explanation (marginal note 90). This way, the recognition of the Bangladeshi and Nepalese residents' standing 'opens the door to Karlsruhe to all natural persons affected by climate change without examining the individual circumstances, thus creating the much-vaunted actio popularis in the area of climate protection'.[25] In Goldmann's words, now, even foreigners may 'compel Germany to live up to its duties as a good global citizen'[26] as well as fulfilling its international obligations.

The fact that the complaint concerned future violations and not current restrictions on the fundamental rights of the complainants was also discussed by the Constitutional Court in the framework of admissibility. As Saiger explains, 'according to the court, a climate target that allows for the depletion of the remaining GHG budget constitutes an 'advance interference-like effect (*eingriffsähnliche Vorwirkung*)' on individual freedoms'.[27] The Constitutional Court notes that the 'risk of future restrictions on freedom gives rise to fundamental rights being presently affected because this risk is built into the current legislation. (…) Since future impairments of fundamental rights could potentially be set into irreversible motion today, and given that lodging a constitutional complaint to address the ensuing restrictions on freedom might be futile by the time the impairments have arisen, the complainants already have standing to lodge a

25 Andreas Buser, 'Die Freiheit der Zukunft: Zum Klima-Beschluss des Bundesverfassungsgerichts' (2021/4/30) VerfBlog <https://verfassungsblog.de/die-freiheit-der-zukunft/> accessed 29 March 2023.

26 Matthias Goldmann, 'Judges for Future: The Climate Action Judgment as a Postcolonial Turn in Constitutional Law?' (2021/4/30) VerfBlog <https://verfassungsblog.de/judges-for-future/> 29 March 2023.

27 Anna-Julia Saiger, 'The Constitution Speaks in the Future Tense: On the Constitutional Complaints Against the Federal Climate Change Act' (2021/4/29) VerfBlog <https://verfassungsblog.de/the-constitution-speaks-in-the-future-tense/> accessed 29 March 2023. Petra Minnerop, 'The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court' (2022) 34 (1) *Journal of Environmental Law* 135–162.

constitutional complaint at the present time ' (marginal note 130). Rath and Benner call attention to the fact that in this case, the Constitutional Court accepted the possibility of an advance interference-like effect even where it is merely conveyed through legislation (the faulty regulation under the KSG) without any factual evidence of such effect.[28]

The decision of the Federal Constitutional Court comprises both the interpretation of certain constitutional provisions in the relevant context of the complaint, but also key pronouncements on the duty of the state legislature to safeguard the complainants' fundamental rights through protecting the climate.[29] The Federal Constitutional Court elaborated that Article 20a of the Basic Law obliges the state to protect the climate, among others, through achieving climate neutrality. In fact, '[i]n Art. 20a GG, environmental protection is elevated to a matter of constitutional significance because the democratic political process is organised along more short-term lines based on election cycles, placing it at a structural risk of being less responsive to tackling the ecological issues that need to be pursued over the long term. It is also because future generations – those who will be most affected – naturally have no voice of their own in shaping the current political agenda' (marginal note 206). While this provision of the German constitution does not take precedence over others, it must be balanced against other constitutional interests and principles, with due consideration to the fact that as climate change progresses, the relative importance of protecting the climate increases. The Federal Constitutional Court acknowledges the scientific uncertainty surrounding the causes of climate change, nevertheless, sound scientific predictions in particular, made by the IPCC, must be taken into account to avert serious or irreversible harm to the climate, since Article 20a of the Basic Law establishes a duty of care incumbent upon the legislature towards future generations. It was in this vein that the German legislature itself has set the climate objective of keeping the global temperature increase below 2°C as foreseen and undertaken in the Paris Agreement, and possibly limited to a maximum of 1.5°C above pre-industrial levels. 'It is true that climate change is a genuinely global phenomenon and could obviously not be stopped by the German state on its own. However, this does not render it impossible or superfluous for Germany to make its own contribution towards protecting the climate' (marginal note 99). Indeed, no state may shirk its own (international and constitutional) responsibility in providing solutions to protect the climate by pointing to other states' omissions and emissions.

---

28 Katja Rath and Martin Benner, 'Ein Grundrecht auf Generationengerechtigkeit? Die Relevanz des Klimaschutz-Beschlusses des Bundesverfassungsgerichts für andere Rechtsgebiete mit intergenerationaler Bedeutung' (2021/5/07) VerfBlog <https://verfassungsblog.de/ein-grundrecht-auf-generationengerechtigkeit/> accessed 29 March 2023.

29 Saiger (n 27).

Most importantly, the Federal Constitutional Court established that Article 20a of the German constitution is an enforceable legal norm, foreseeing legislative obligations with due consideration to future generations: 'fundamental rights have (…) been violated because the emission amounts allowed by the [KSG] in the current period are capable of giving rise to substantial burdens to reduce emissions in later periods' out of the dwindling 'remaining GHG budget'[30] (marginal note 142). In fact, the constitution obliges the legislature to 'distribute freedom of action' proportionally among the different generations, without unilaterally postponing and placing the burden of reducing GHG emissions on future generations, thereby restricting their freedom of action and fundamental rights. As the Constitutional Court notes, '[c]limate action measures that are presently being avoided out of respect for current freedom will have to be taken in future – under possibly even more unfavourable conditions – and would then curtail the exact same needs and freedoms but with far greater severity' (marginal note 120). The Court adds that the duty of care emanating from Article 20a of the constitution implies that the natural foundations of life as well as freedom of action must be preserved for the benefit of future generations (marginal note 194). However, while 'the duty to afford protection against risks to life and health can also establish a duty to protect future generations (…) this duty to afford intergenerational protection has a solely objective dimension because future generations – either as a whole or as the sum of individuals not yet born – do not yet carry any fundamental rights in the present' (marginal note 146).

To protect the freedom of action of the different generations, efforts to achieve climate neutrality must be started in good time, setting transparent requirements, sufficient incentives and implementation processes to enable development and planning (adaptation). In the Federal Constitutional Court's words, it is 'imperative to prevent an overly short-sighted and thus one-sided distribution of freedom and reduction burdens to the detriment of the future. This demands that the limited remaining CO2 budget be consumed in a sufficiently prudent manner, thereby helping to gain the critical time needed to initiate the transformations' (marginal note 195). In this regard, the Federal Constitutional Court confirms that it is for the federal legislature to set permissible emissions for the different reduction periods, since it is '[t]he parliamentary process – with its inherently public function and the essentially public nature of the deliberations – [that] ensures through its transparency and the involvement of parliamentary opposition that decisions are also discussed in the broader public, thereby creating the conditions by which the legislative process is made accountable to the citizenry' (marginal note 213).

30 Vividly referred to by Minnerop as 'freedom budget', see Minnerop (n 27) 152.

As far as the claim for a 'right to an ecological minimum standard of living', the Federal Constitutional Court ruled, that to invoke such a right would presuppose a climate catastrophe of such magnitude that it threatens the very conditions of social, cultural and political life. At the moment, however, such a catastrophe may be averted, according to the Court.[31] In fact, while no present restriction of the complainants' fundamental rights could be ascertained, the Constitutional Court found that the legislature had unconstitutionally omitted to regulate reduction targets for GHG emissions in detail for periods from 2031. 'Therefore, the legislature should have taken precautionary steps (…) to safeguard the freedom guaranteed by fundamental rights. (…) The legislature must enact provisions by 31 December 2022 that specify in greater detail how the reduction targets for greenhouse gas emissions are to be adjusted for periods after 2030.'[32] It is worth noting that the Federal Constitutional Court did not consider arguments related to possible adaptation measures as capable of fulfilling on their own the constitutional requirements under Article 20a Basic Law, elaborating that '[a] completely inadequate approach would be to allow climate change to simply run its course, using nothing but adaptation measures (...). The legislature must therefore protect life and health by, in particular, taking action to stop climate change. The legislature is doing this with the [KSG] and other laws that limit greenhouse gas emissions' (marginal note 157). Hence, the Constitutional Court completely ruled out the possibility of replacing emission reductions with adaptation, implying that no future developments could achieve conditions through adaptation comparable to those expected from emission reduction. This approach harks back to the perspective taken in the *Urgenda* case, where the Netherlands' courts rejected a fulfilment of constitutional duties through adaptation, sequestration and other new technologies.

In her assessment of the Federal Constitutional Court's judgement, Eckes points out that 'including ten explicit references, the *[Court]* relied heavily on the *Urgenda* case. Perhaps the German ruling would not have been possible had not the decision of the Dutch Supreme court blazed the trail before.'[33]

In Saiger's view, one of the main merits of the ruling is that it clarifies the substance and justiciability of Article 20a of the German constitution. While it had been clear that the provision was enshrined in the Basic Law in 1994 for the

31 Buser doubts that efforts in particular, made in the KSG could avert the tipping point leading to the climate catastrophe envisaged by the Federal Constitutional Court, see Buser (n 25).

32 Constitutional complaints against the Federal Climate Change Act partially successful. Press Release No. 31/2021 of 29 April 2021<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html> accessed 29 March 2023.

33 Christina Eckes, 'Separation of Powers in Climate Cases: Comparing cases in Germany and the Netherlands' (2021/5/10) VerfBlog <https://verfassungsblog.de/separation-of-powers-in-climate-cases/> accessed 29 March 2023.

purposes of environmental protection, also including the protection of the climate, with this judgement, the Constitutional Court established that Article 20a obliges the state to pursue climate neutrality, imposing also a special duty of care on the legislature.[34] A crucial element of the judgement is that Article 20a becomes justiciable, notwithstanding the fact that the provision is framed in a characteristic state goal-like manner ('broadly phrased rights').[35] Buser adds that Article 20a is now also vested with the (non-justiciable) state goal of achieving climate neutrality.

International law receives ample attention in the judgement, which plays a 'constitutional orientation role'[36], but also results in 'the skilful entanglement of international law and institutions with constitutional law'.[37] Goldmann notes the openness towards international law exhibited in the judgement, underlining that the Constitutional Court's references to IPCC sources reflect 'the functionalist hope in international institutions as havens of rational discourse, a rare quality in times of societal polarisation, spreading autocracy, mistrust in public institutions, and even state-sponsored misinformation.'[38] However, Stohlmann criticises this very same entanglement, stressing that 'this way, the values of ordinary law become constitutionally charged and hierarchically raised to a level above all other ordinary law. Meanwhile, these values do not receive constitutional status and are not removed from the grasp of the legislature. The result is an intermediate category.'[39]

Another, fundamental criticism is voiced by Ekardt, who disagrees with the approach of the Constitutional Court in framing the case as a problem of dwindling freedoms in the face of increasingly reduced emissions. He stresses that 'the greater threat to freedom is climate change and not a radical climate policy. In the

---

34 Saiger (n 27).

35 Goldmann (n 26).

36 Buser (n. 25); Maximilian Steinbeis, 'Ok, Boomer' (2021/4/30) VerfBlog <https://verfassungsblog.de/ok-boomer/> accessed 29 March 2023. Felix Ekardt, 'Climate Revolution with Weaknesses' (2021/5/08) VerfBlog <https://verfassungsblog.de/climate-revolution-with-weaknesses/> accessed 29 March 2023.

37 „Article 20a of the Basic Law stipulates the preservation of the natural foundations of life. That, the court concludes, comprises a specific temperature target. But how to define this target if not through the legislature, which would lead the attempt to bind the legislature by that target ad absurdum? The court points out that the legislature intended to implement the target of the Paris Agreement when setting its national target (para. 209). As international commitments are the only way of preserving the natural foundations of life, the background of the Paris Agreement therefore lends constitutional force to the legislative target of capping the temperature rise at below 2°C and ideally at 1.5°C above pre-industrial levels." Goldmann (n 26).

38 Ibid.

39 Bent Stohlmann, 'Keine Schutzpflicht vor zukünftigen Freiheitsbeschränkungen – warum eigentlich?' (2021/5/04) VerfBlog <https://verfassungsblog.de/keine-schutzpflicht-vor-zukunftigen-freiheitsbeschrankungen-warum-eigentlich/> accessed 29 March 2023.

case of the court, it sounds in part rather the other way around.'[40] Minnerop adds that while the judgement groundbreakingly added a clear intergenerational equity element to German constitutional doctrine, this innovation did not extend to 'the relationship that a generation of one country might have with the future generations of another country. Domestic provisions extend the time horizon of climate action and environmental protection measures, but they continue to limit the benefit and burden sharing within the jurisdiction of a single country',[41] exhibiting jurisdictional restraint within the unbounded, global context of climate change.[42]

At the end of the day, Buser notes, that 'the decision is only a small success for climate protection',[43] or as Aust puts it, the conclusions drawn from the ambitious understanding of fundamental rights in the context of climate change are 'modest'. Indeed, the Constitutional Court does not oblige the legislature to foresee zero emissions by 2040 or prescribe the introduction of more effective climate protection measures (…), '[h]owever, the decision lays the foundation for a more far-reaching and permanent constitutional court control of state climate protection efforts on the basis of fundamental rights and Article 20a of the Basic Law'.[44]

IV. The petition pending before the Hungarian Constitutional Court

On 14 September 2021 one-fourth of the members[45] of the Hungarian National Assembly (parliament) submitted a petition[46] to the Constitutional Court seeking the constitutional review of Act No. XLIV. of 2020 on the Protection of the Climate (Climate Act). The petitioners sought the *ex post* constitutional

40 Ekardt (n 36).

41 Minnerop (n 27) 155.

42 In this respect see also Katja Gelinsky and Marie-Christine Fuchs, 'Bitte noch mehr: Rechtsprechungsdialog im Karlsruher Klimabeschluss' (2021/5/26) VerfBlog <https://verfassungsblog.de/bitte-noch-mehr/> accessed 29 March 2023.

43 Buser (n 25); Helmut Philipp Aust, 'Klimaschutz aus Karlsruhe: Was verlangt der Beschluss vom Gesetzgeber?' (2021/5/05) VerfBlog <https://verfassungsblog.de/klimaschutz-aus-karlsruhe-was-verlangt-das-urteil-vom-gesetzgeber/> accessed 29 March 2023.

44 Buser (n 25).

45 The petitioners are members of opposition factions of the parliament. According to Section 32 paragraph 2 of the Act CLI of 2011 on the Constitutional Court, the Constitutional Court's 'examination of conflicts with international treaties' may be requested, among others, 'by one quarter of Members of Parliament'.

46 Petition No. II/3536/2021, <http://public.mkab.hu//dev/dontesek.nsf/0/6e82dc86ea198af3c12587640033c9f2/$FILE/II_3536_0_2021_ind%C3%ADtv%C3%A1ny.002.pdf/II_3536_0_2021_ind%C3%ADtv%C3%A1ny.pdf> accessed 29 March 2023.

review of the Climate Act as well as the examination of its conflict with the Paris Agreement. They claimed that the Climate Act violated the Hungarian Fundamental Law's Article XX (1) enshrining the right to physical and mental health, Article XXI (1) guaranteeing the right to a healthy environment and Article P paragraph 1 foreseeing a general duty to protect resources,[47] as well as the Paris Agreement. The petitioners argued that while the Climate Act is meant to counteract the effects of climate change, it lacks 'substantive regulatory content'[48] to this end, being one of the shortest acts in the domestic legal order. Beyond setting certain basic principles of national climate policy, it calls upon the government to implement 'short term, medium term and long term climate protection and climate adaptation measures'.[49] According to the petitioners, it is solely Section 3 of the Climate Act that contains normative provisions on emission reductions, prescribing a 40% GHG emissions reduction by 2030 (as compared to 1990 levels), achieving at least 21% renewables in the energy mix by the same year and complete carbon neutrality by 2050. The petitioners argued that 'these provisions are not commensurate with the severity of climate change and are also inadequate to meet the international community's climate objectives',[50] failing to meet the 55% target laid down in the European Climate Law[51] and more stringent scientific forecasts.[52] The petitioners underlined that the Paris Agreement is binding upon Hungary, and the reduction of GHG emissions is an international obligation of the state, limiting the rise in global average temperature to 2°C compared to the pre-industrial average, while striving to curb it at 1.5°C.

The petitioners claimed that the Climate Act violates the right to health and the right to a healthy environment as well as the duty to protect the natural environment, since it lacks guarantees for its implementation. At the same time, the emission goals it sets are inadequate to achieve either the 2°C target by 2030 prescribed in the Paris Agreement, or climate neutrality by 2050. In fact,

---

47 A modern environmental protection provision of the Hungarian constitution, Article P (1) foresees in the vein of the public trust doctrine that it is the duty of everyone to protect the natural environment and its elements in the spirit of intergenerational equity: 'Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation, it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations'.

48 Petition No. II/3536/2021, n. 46.

49 Ibid.

50 Ibid.

51 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') OJ L 243 (9.7.2021) 1–17.

52 Climate Analytics, European Union 2030 emissions reduction target needs to be brought into line with the Paris Agreement 1,5 °C limit, 2020, p. 7. (cited by the petition) which predicts that a 58-70% reduction in GHG emissions is necessary to limit global warming to 1.5 °C.

'even if climate neutrality is actually achieved by 2050, under these statutory conditions, the impacts of climate change will have a catastrophic impact on the living conditions of future generations'.[53] In the petitioners' view, this Act is 'incapable of serving as a basic document of climate policy',[54] while at the same time, rendering it impossible to set more ambitious reduction goals in lower level legislation. On these bases, the petitioners also alleged a violation of an international treaty: the Paris Agreement. In particular, the Climate Act's targets are inadequate to meet Hungary's international treaty obligations, they do not represent 'ambitious efforts' in the meaning of Article 3 of the Agreement, nor does the Act contain any additional normative rules governing sectoral emission targets or their implementation.

The petitioners expressly referred to the *Klimabeschluss* of the Federal Constitutional Court of Germany, noting the largely similar German and Hungarian constitutional provisions and related constitutional court practice. The petitioners further referred to the findings of the Federal Constitutional Court related to the state's obligation to protect the climate, the need to balance the increasingly important climate protection against other constitutional interests and principles and the impossibility of avoiding liability for climate protection by pointing to scientific uncertainties or other states' violations.

The Ministry for Innovation and Technology submitted its amicus brief in 2022. The Ministry underlined that while the EU did indeed increase its emission reduction target to 55% by 2030, 'the net 55% target value must be achieved jointly by the entire EU, and not individually, Member State by Member State. Consequently, it is safe to say that there is no EU expectation or legal duty that would oblige Hungary to reduce its total emissions to net 55%.'[55] To implement the national climate policy, the legislature has enacted several laws, as well as two consecutive National Climate Change Strategies which comprise measures on GHG emission reductions, as well as adaptation to and awareness of climate change. Finally, in the Ministry's view, the Paris Agreement does not foresee specific reduction targets for the signatories, leaving states a margin of discretion in this regard. Since Hungary is fulfilling its reduction duties within the framework of the EU's reduction commitments, the Climate Act violates neither the Paris Agreement nor Union law.

In his amicus brief of 2023, the Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations (the

53 Petition No. II/3536/2021, n. 46.

54 Ibid.

55 Ministry for Innovation and Technology's amicus curiae of 25 October 2021, p. 3 <http://public.mkab.hu//dev/dontesek.nsf/0/6e82dc86ea198af3c12587640033c9f2/$FILE/II_3536_2_2021_ITM_amicus_curiae_anonim.pdf> accessed 29 March 2023.

Hungarian 'Ombudsman for Future Generations') underlined that the Climate Act can only fulfil this function 'if the substance of its provisions provides an appropriate framework for the prevention of hazards, and the minimisation of risks. A piece of legislation that is strongly diluted in substance is unsuitable for the protection of fundamental rights.'[56] Indeed, according to the Ombudsman for Future Generations, the Climate Act 'does not designate appropriate bodies for its implementation, nor does it provide them with the general legal and financial means to implement the broadly defined objective in concrete terms, failing to foresee sanctions that are necessary to ensure effective implementation.'[57] This finding seems to echo another angle of the *Wesentlichkeitsgrundsatz* invoked by the German petitioners. The Ombudsman for Future Generations notes that Article P of the Fundamental Law establishes a duty of care binding the Hungarian state, following among others 'from the international jurisprudence related to the public trust doctrine, which also requires the sovereign trustee to exercise enhanced care in the conservation of the natural heritage entrusted to them'[58]. This means that the legislature must set an emission reduction target that represents a substantial contribution to the international fight against climate change. Making a direct reference to the *Klimabeschluss*, the Ombudsman for Future Generations stresses that the envisaged transition to climate neutrality under the present rules would require a near 'emergency brake'–type shift in lifestyle, affecting the transport, diet, leisure and energy consumption of future generations, to their detriment. Finally, delaying reduction measures under the Climate Act flies in the face of the precautionary principle, which requires taking due consideration of scientific evidence when designing policies affecting the environment.

The petitioners were clearly influenced by the *Klimabeschluss* in their drafting of the petition. They were most probably aware of the fact that the Hungarian Constitutional Court has a long history of referring to and borrowing from the jurisprudence of the German Federal Constitutional Court. This may have been an important reason they chose to structure the Hungarian petition in a similar way as the presumed complaints before the German Federal Constitutional Court.

The Hungarian Constitutional Court developed an extensive jurisprudence on environmental protection, including the constitutional principle of *non-*

---

56 Ombudsman for Future Generations' amicus curiae of 13 March 2023 <http://public.mkab.hu//dev/dontesek.nsf/0/6e82dc86ea198af3c12587640033c9f2/$FILE/II_3536_5_2021_JN%C3%89VE_%C3%81ll%C3%A1sfog_anonim.pdf> accessed 29 March 2023.

57 Ibid. 5.

58 Ibid 6.

retrogression (or non-derogation).[59] According to this principle developed by the Constitutional Court, the right to a healthy environment (invoked also by the petitioners) requires that the level of statutory protection of the environment already achieved not be reduced. Hungary implemented the Paris Agreement in Act L of 2016, which transformed the international obligations of Hungary as a Party to it into domestic law. Adopting a Climate Act in 2020 which would clearly fail to achieve the reduction targets set in the Paris Agreement and the ensuing European Climate Law[60] effectively amounts to unconstitutional retrogression on the side of the national legislature. This approach, coupled with the Hungarian Constitutional Court's willingness to rely on models of constitutional protection developed by the *Bundesverfassungsgericht,* foreshadow a judgement in the vein of the *Klimabeschluss*.

Two years on, however, the case is still pending before the Constitutional Court. It is worth noting that based on its rules of procedure, the Constitutional Court has no deadline within which it must render its decision on the petition. In view of the energy crisis brought on by the Russian aggression, the Constitutional Court may be reluctant to render a decision[61] in the vein of *Urgenda* and the *Klimabeschluss* – hence, the petitioners and those anticipating a Hungarian breakthrough judgement for the protection of the climate may be in for a long wait. Allowing for the passing of time, however, would fly flat in the face of the urgency to take action in reducing harmful emissions.

V. Assessment and conclusions

This brief perusal of *Urgenda*, *Klimabeschluss* and the Hungarian climate protection petition clearly indicate the emergence of a novel, promising strand of climate litigation, with the landmark decisions playing a model role in shaping future litigation strategies. This model approach focuses on the legislator's duties regarding the setting of binding emission targets and deadlines and the definition

59 See Decision 28/1994 . (V . 20 .) AB of the Hungarian Constitutional Court which foresaw that the legislator cannot lower the level of protection afforded tot he environment, see in detail Marcel Szabó, 'Az egészséges környezethez való jog anyagi jogi és eljárásjogi kérdései az Alkotmánybíróság újabb gyakorlatában' (2022) 10 (2) Acta Humana 83 et seq. and Sándor Szemesi, 'From Non-Derogation to the Duty to Progress. Key Elements of the Right to a Healthy Environment in the Case Law of the Hungarian Constitutional Court' (2023) 11 (1) Hungarian Yearbook of International Law and European Law 335-348.

60 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, *(*OJ L 243, 9.7.2021, p. 1–17).

61 Petra Lea Láncos, 'Passivist Strategies Available to the Hungarian Constitutional Court' (2019) 79 (4) Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 971.

of detailed reduction paths. Following on the *Urgenda* line of cases, new litigation tacitly or expressly builds on the legal bases and arguments that proved successful in previous judgements: for example, the *Urgenda* references and similar arguments brought forward in the constitutional complaints before the Federal Constitutional Court of Germany or the Hungarian petition that contains an express reference to the *Klimabeschluss*.

Courts seized by this new line of climate cases seek to operationalise the precautionary principle by admitting cases even before provable harm had occurred. Through the figure of advance interference-like effect fundamental rights may be afforded preliminary protection in situations where consensual scientific findings rationally predict the occurrence of irreversible harm. This judicial perspective on climate cases upgrades the relevance of science in the fact finding (or in the case of constitutional courts: the clarification of the facts) phase of the procedure, setting the factual context upon the backdrop of which a constitutional violation through omission occurs. Affording constitutional protection to fundamental rights against future looming harm gives the precautionary principle teeth. It imposes obligations on the legislature to prevent the unravelling of events towards an (avoidable) climate catastrophe through setting feasible, enforceable, detailed and proportionate emission reduction targets.

Urgenda and the *Klimabeschluss* capture the duty of the state within the context of the 'entanglement' of international law, union law, constitutional law and domestic climate law. Broad national constitutional provisions, in particular, on the protection of the environment are interpreted in light of specific international commitments of the state (and related EU implementing legislation). Beyond shaping the substance of specific human rights, the constitutional yardstick of environmental protection obligations can be (at least in part) located in international agreements undertaken by the signatory state.

While it is the standing of the petitioners and complainants through the threatening encroachment of their fundamental rights that triggers the proceedings of the high court or constitutional courts in climate cases, the interests of future generations figure heavily in the petitions and the decisions rendered. It is (also) in their interest that the state's duty of care and the doctrine of public trust limit the margin of discretion enjoyed by the legislature in choosing the measures necessary to fulfil its constitutional obligations to preserve and protect the environment. Finally, although this new strand of climate litigation seems particularly promising, O Neill and Alblas rightly note that climate litigation 'by itself is unlikely to be sufficient to effect the emission reductions that are recommended by the IPCC. As such, it is vital that ENGOs and civil society continue to push for climate action across the different advocacy channels

discussed in this volume, including activism, community and political engagement and fostering media attention.'[62]

References

Aust HP, '*Klimaschutz aus Karlsruhe: Was verlangt der Beschluss vom Gesetzgeber?*' (2021/5/05) *VerfBlog* https://verfassungsblog.de/klimaschutz-aus-karlsruhe-was-verlangt-das-urteil-vom-gesetzgeber/.

Beckerman W and Pasek J*, Justice, Posterity, and the Environment* (Oxford University Press 2002).

Beckerman W, 'Intergenerational Justice' (2004) 2 (2) *Intergenerational Justice Review* 1-5.

Buser A*,* '*Die Freiheit der Zukunft: Zum Klima-Beschluss des Bundesverfassungsgerichts*' *(2021/4/30) VerfBlog* https://verfassungsblog.de/die-freiheit-der-zukunft/.

Cox R, 'A climate change litigation precedent: Urgenda Foundation v The State of the Netherlands' (2016) 34 (2) *Journal of Energy & Natural Resources Law* 143-163.

Eckes C, 'Separation of Powers in Climate Cases: Comparing cases in Germany and the Netherlands' (2021/5/10) VerfBlog https://verfassungsblog.de/separation-of-powers-in-climate-cases/.

Ekardt F, 'Climate Revolution with Weaknesses' (2021/5/08) VerfBlog https://verfassungsblog.de/climate-revolution-with-weaknesses/.

Gelinsky K and Fuchs M-C, 'Bitte noch mehr: Rechtsprechungsdialog im Karlsruher Klimabeschluss' (2021/5/26) VerfBlog https://verfassungsblog.de/bitte-noch-mehr/.

Goldmann M, 'Judges for Future: The Climate Action Judgment as a Postcolonial Turn in Constitutional Law?' (2021/4/30) VerfBlog https://verfassungsblog.de/judges-for-future/.

Gosseries A, 'On Future Generations' Future Rights' (2008) 16 (4) *The Journal of Political Philosophy* 446–474.

Láncos PL, 'Flexibility and Legitimacy: The Emissions Trading System under the Kyoto Protocol' in Armin Bogdandy et al. (eds.) *The Exercise of Public Authority by International Institutions: Advancing International Institutional Law* (Springer 2010) 271-299.

Láncos PL, 'Passivist Strategies Available to the Hungarian Constitutional Court' (2019) 79 (4) Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 971-993.

Leijten I, 'Human rights v. Insufficient climate action: The Urgenda case' (2019) 37 (2) *Netherlands Quarterly of Human Rights* 112–118.

Minnerop P, 'The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court' (2022) 34 (1) *Journal of Environmental Law* 135–162.

O Neill S and Alblas E, 'Climate Litigation, Politics and Policy Change: Lessons from Urgenda and Climate Case Ireland' in Robbins David, Torney Diarmuid and Brereton Pat (eds), *Ireland and the Climate Crisis. Palgrave Studies in Media and Environmental Communication* (Palgrave Macmillan 2020) 57-72.

62 O Neill, Alblas (n 1) 70.

Rath K and Benner M, 'Ein Grundrecht auf Generationengerechtigkeit? Die Relevanz des Klimaschutz-Beschlusses des Bundesverfassungsgerichts für andere Rechtsgebiete mit intergenerationaler Bedeutung' (2021/5/07) VerfBlog https://verfassungsblog.de/ein-grundrecht-auf-generationengerechtigkeit/.

Saiger A-J, 'The Constitution Speaks in the Future Tense: On the Constitutional Complaints Against the Federal Climate Change Act' (2021/4/29) VerfBlog https://verfassungsblog.de/the-constitution-speaks-in-the-future-tense/.

Steinbeis M, 'Ok, Boomer' (2021/4/30) VerfBlog https://verfassungsblog.de/ok-boomer/.

Stohlmann B, 'Keine Schutzpflicht vor zukünftigen Freiheitsbeschränkungen – warum eigentlich?' (2021/5/04) VerfBlog https://verfassungsblog.de/keine-schutzpflicht-vor-zukunftigen-freiheitsbeschrankungen-warum-eigentlich/.

Sulyok K, 'A klímaperek kihívásai és sikerei' (2020) 13 (1) *Közjogi Szemle* 1-7.

Sulyok K, *Science and Judicial Reasoning: The Legitimacy of International Environmental Adjudication* (Cambridge University Press 2020).

Szabó M, 'Az egészséges környezethez való jog anyagi jogi és eljárásjogi kérdései az Alkotmánybíróság újabb gyakorlatában' (2022) 10 (2) *Acta Humana* 77-92.

Szemesi S, 'From Non-Derogation to the Duty to Progress. Key Elements of the Right to a Healthy Environment in the Case Law of the Hungarian Constitutional Court' (2023) 11 (1) *Hungarian Yearbook of International Law and European Law* 335-348.

UNEP (2022) 'The Closing Window: Climate crisis calls for rapid transformation of societies.' ISBN: 978-92-807-3979-4

Wewerinke-Singh M and McCoach A, 'The State of the Netherlands v Urgenda Foundation: Distilling best practice and lessons learnt for future rights-based climate litigation' Review of European' (2021) 30 (2) *Comparative & International Environmental Law* 275-283.