

Opinion

Climate Litigation Against States: Emerging Trends

Rūta Slidžiauskaitė-Maskoliūnė

Public Law Institute, Law School of Mykolas Romeris University, LT-08303 Vilnius, Lithuania; r.slidziauskaite@mruni.eu

How To Cite: Slidžiauskaitė-Maskoliūnė, R. Climate Litigation Against States: Emerging Trends. *Earth: Environmental Sustainability* 2025, 1(2), 221–234. <https://doi.org/10.53941/eesus.2025.100018>

Received: 1 July 2025

Revised: 8 October 2025

Accepted: 10 October 2025

Published: 3 November 2025

Abstract: This opinion paper examines the rapidly evolving landscape of climate-related litigation against states and public entities, analyzing how these legal challenges are reshaping climate governance and accountability mechanisms. Drawing on landmark cases from diverse jurisdictions, this analysis traces the evolution of legal arguments—from early rights-based claims to emerging doctrines centered on fiduciary obligations and intergenerational equity. The analysis would explore courts’ shifting interpretations of governmental climate obligations, highlighting the transition from viewing climate action as discretionary policy to recognizing it as a legally enforceable duty. This work critically evaluates litigation’s effectiveness as a climate action tool compared with other regulatory approaches, identifying both its catalytic potential and inherent limitations. By synthesizing recent judicial developments, this work aims to provide timely insights for policymakers, legal practitioners, and climate advocates on how litigation is influencing climate policy, driving regulatory innovation, and potentially accelerating the transition to more ambitious climate action.

Keywords: climate litigation; human rights; climate change; environmental law; judicial accountability

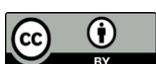
1. Introduction

The adverse consequences of climate change pose significant challenges to the world’s population, and for a very large proportion of them, they directly affect their health, living conditions, and socioeconomic welfare, while simultaneously imposing substantial adaptation costs and other inconveniences. Despite widespread recognition of these challenges, governmental responses have routinely ‘failed’ to keep pace with the impacts of climate change, and traditional legislative mechanisms have demonstrated insufficient agility addressing both sudden emergence of extreme events and the long-term risks associated with climate change.

While states routinely announce ambitious climate commitments and policy frameworks, a persistent implementation gap exists between declared intentions and actual delivery of effective climate action. Faced with perceived governmental inaction or inadequacy, an increasing number of citizens and non-governmental organizations around the world are turning to judicial mechanisms as an effective way to compel state accountability for climate policy failures.

Climate litigation represents a complex but often necessary remedy when conventional political and legislative measures fail to produce timely or sufficient responses to the challenges of climate change. This emerging form of legal activism seeks to bridge the gap between governmental commitments and their implementation through judicial intervention.

The spread of climate litigation against states reflects a trend toward judicial enforcement of climate obligations, with national and international courts increasingly being asked to adjudicate on the adequacy of governmental actions. Such litigation serves dual functions: it directly challenges insufficient climate action through legal mechanisms while simultaneously shaping public discourse and creating pressure for more ambitious and proactive climate policies.



This judicial trend represents a fundamental shift in climate governance, transforming courts into forums for climate accountability and establishing new precedents for state obligations in addressing climate change. The outcomes of these cases have far-reaching implications not only for the immediate parties involved but for the broader evolution of climate law and policy frameworks globally.

This paper adopts a qualitative, comparative case study approach to examine climate litigation against states. Cases were selected based on their legal significance, jurisdictional diversity, and contribution to doctrinal developments in climate law. Primary sources include judicial opinions and official legal documents, while secondary sources consist of scholarly commentary and databases. The analytical framework emphasizes three dimensions: (1) rights-based versus commitment-based claims; (2) jurisdictional and procedural innovations; and (3) remedial approaches. This systematic method ensures that the cases discussed are not merely illustrative but collectively illuminates broader trends in the evolving jurisprudence of climate litigation.

2. International Legal Framework for Climate Change Justice

International and regional courts offer various legal mechanisms for climate litigation. They provide a legal framework for addressing climate-related issues, including holding governments accountable for their actions or omissions and promoting climate justice. However, challenges exist, such as jurisdictional limitations and the complexities of proving causation in climate change cases. Understanding how law can develop more effective climate change legislation requires examining these mechanisms in detail.

International law recognizes the right to participate in climate change litigation, though the procedures are often complex, varied, and difficult to navigate.

We can divide two approaches of climate change litigation into:

- (1) Obligations based on international commitments.
- (2) Human rights-based approaches grounded in internationally recognized human rights.

While rights-based litigation dominates contemporary climate cases, commitment-based litigation represents an important complementary strategy. The focus on rights-based approaches reflects their greater procedural accessibility and enforcement potential, as international climate commitments often lack direct domestic enforceability. However, notable commitment-based cases do exist. The Urgenda Climate Case [1] partially relied on the Netherlands' commitments under The United Nations Framework Convention on Climate Change [2] (UNFCCC) and European emission reduction targets alongside rights claims. In *Massachusetts v. Environmental Protection Agency* (2007) case [3], the U.S. Supreme Court found that the Clean Air Act created enforceable obligations for Environment Protection Agency action on greenhouse gases. Similarly, *Neubauer v. Germany* (2021) case [4] referenced constitutional climate commitments. While commitment-based litigation faces significant standing difficulties and enforcement challenges, it may gain prominence as international climate law develops more robust enforcement mechanisms and as domestic courts become more willing to treat international climate obligations as justiciable domestic duties.

2.1. International Climate Change Commitments

Obligations based on international commitments it is worth noting that these obligations come from international climate law, including several key instruments:

The United Nations Framework Convention on Climate Change [1] (UNFCCC), signed in 1992 and came into effect in March 1994 and is the most important international convention towards building international cooperation to combat climate change and aims to prevent dangerous human interference with the effects of climate change.

The Kyoto Protocol [5], adopted in 1997, established the first legally binding agreement for developed countries to cut their emissions.

The Paris Agreement [6], the first universal legally binding agreement adopted in 2015. Building upon the UNFCCC and with countries agreement to reduce emissions and adapt to climate change impacts aiming to combat climate change by limiting global warming to below 2 °C above pre-industrial levels, with efforts to limit the temperature increase to 1.5 °C.

2.2. Rights-Based Climate Litigation

Human rights-based climate change litigation encompasses cases where human rights are implicated. These rights are grounded in international human rights treaties, constitutional law, and emerging norms around climate justice. Most noteworthy are:

- the Universal Declaration of Human Rights [7],
- the European Convention on Human Rights [8],
- the American Convention on Human Rights [9].

While rights-based climate change litigations present significant challenges, but they are increasingly growing each year. Figure 1 Rights-based climate litigation cases [10] demonstrates how in the past ten years this dynamic of evolution of climate change litigation cases (both against governments and private entities) changed in the entire world.

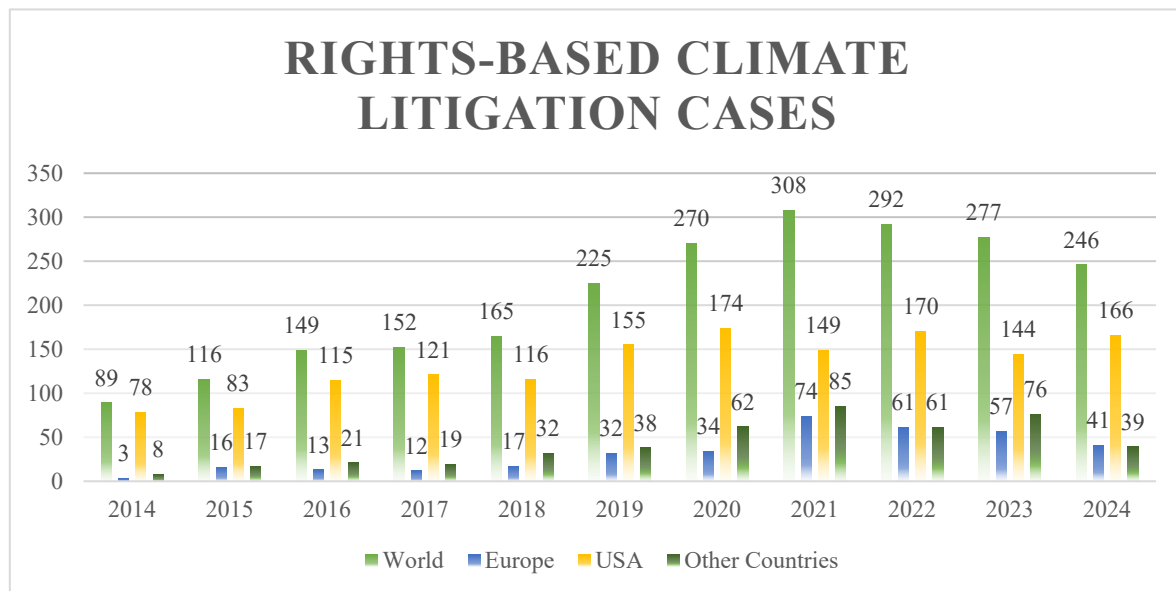


Figure 1. Rights-based climate litigation cases

2.3. Growth Trends in Climate Litigation

From 2014 to 2024, the total number of rights-based climate litigation cases worldwide increased nearly threefold, rising from 89 cases in 2014 to 246 cases in 2024. This growth trajectory demonstrates the expanding recognition of climate change as a fundamental rights problem, with legal systems worldwide increasingly acknowledging the link between environmental degradation and human rights violations.

The most dramatic surge occurred between 2018 and 2021, when global cases jumped from 165 to 308—an 87% increase in just three years. This period coincided with landmark climate decisions and growing public awareness of climate impacts, suggesting that legal precedents and social movements mutually reinforced each other to accelerate litigation activity.

Regional Patterns:

The United States has consistently maintained the highest volume of cases, peaking at 174 cases in 2020 before stabilizing around 144–170 cases in recent years. This leadership position reflects the country’s established legal tradition of rights-based litigation and its federal system, which provides multiple venues for climate cases.

European litigation has shown steady but more modest growth, increasing from just 3 cases in 2014 to 41 cases in 2024. While Europe’s absolute numbers remain lower, the consistent upward trend suggests growing sophistication in European climate law and increasing the willingness of courts to engage with climate rights arguments.

The “Other Countries” category—representing the rest of the world beyond the US and Europe—has experienced the most dramatic proportional growth. Starting from 8 cases in 2014, this category reached 39 cases by 2024, indicating the global spread of climate litigation strategies and the emergence of new legal frameworks in developing nations.

The sustained growth in case numbers also indicates that despite the inherent difficulties of climate litigation—including challenges in establishing causation, standing, and remedy—legal practitioners and civil society organizations view the courts as viable venues for advancing climate action. This persistence suggests that even when unsuccessful cases serve broader strategic purposes in raising awareness, establishing precedents, and pressuring governments and corporations to strengthen their climate policies.

Law provides various legal avenues for individuals and groups to participate in climate litigation and to appeal decisions related to climate action, particularly when those actions affect human rights, but their practical application varies significantly across jurisdictions and legal systems.

3. Jurisdictional Challenges in Climate Litigation

The transnational character of climate change shows unprecedented challenges to traditional legal frameworks, creating complex jurisdictional questions that fundamentally shape the accessibility and effectiveness of climate litigation. These challenges manifest across three critical dimensions: standing requirements, territorial jurisdiction, and remedial jurisdiction.

3.1. Standing Requirements: Who Can Address the Courts?

Standing requirements determine who may legitimately bring climate litigation and under what circumstances courts will recognize their legal capacity to challenge governmental climate action or inaction. In climate litigation, most jurisdictions require plaintiffs to prove that specific governmental actions or omissions have caused identifiable harm to the plaintiff that judicial relief can meaningfully address. This generally requires showing an individual impact—for example on health, living conditions or other values protected by human rights. However, climate impacts typically affect broad populations simultaneously, creating difficulties in establishing the individual harm required by traditional standing doctrines.

Progressive jurisdictions have begun recognizing expanded standing concepts to accommodate climate litigation. Some courts accept representative actions on behalf of future generations, while others recognize organizational standing for environmental groups representing affected communities. Constitutional systems with explicit environmental rights provisions often provide broader standing opportunities, allowing citizens to challenge governmental failures to protect constitutional environmental guarantees without demonstrating specific individual harm. Specific examples include:

- (1) South Africa: Section 24 of the Constitution [11] guarantees everyone the right “to an environment that is not harmful to their health or well-being” and requires the state to take “reasonable legislative or other measures to prevent pollution and ecological degradation”, Section 38 grants broad standing: anyone acting in the public interest may approach a court to enforce constitutional rights, including environmental rights. In the case *Save the Vaal Environment v. Director of Mineral Development* (1999) [12]—an NGO challenged a mining license on environmental grounds; the court recognized the constitutional environmental right and allowed public-interest standing.
- (2) Portugal: Article 66 of the Portuguese Constitution [13] guarantees the right to a healthy and ecologically balanced environment, Article 52(3) allows *actio popularis*—any citizen, association, or foundation can bring actions to defend collective rights, including environmental rights, regardless of personal injury.
- (3) Colombia: Article 79 of the Colombian Constitution [14] establishes that “all persons have the right to enjoy a healthy environment” and places duties on the state to protect environmental diversity and integrity. In the case *Future Generations v. Ministry of the Environment and Others* [15] youth plaintiffs plead for the protection of “supralegal” rights, highlighting those of “enjoying a healthy environment”, life, and health and the Supreme Court ruled recognized the ineffectiveness of governmental measures adopted to grant the protection for the breach of fundamental guarantees to water, air, a dignified life, health, among others in connection with the environment.

These explicit provisions contrast with countries like the United States or United Kingdom, where environmental protection relies on statutory frameworks rather than constitutional rights, creating different standing requirements and judicial approaches to climate cases.

3.2. Territorial Jurisdiction: Addressing Cross-Border Climate Impacts

The global nature of climate change fundamentally challenges territorially based jurisdictional concepts, such as for example greenhouse gas emissions released in one jurisdiction advance to climate impacts experienced in the world. This creates complex questions about which courts have authority to address climate effects and which governments bear responsibility for extraterritorial climate impacts.

Traditional territorial jurisdiction principles struggle to accommodate climate change’s boundary-transcending character. Courts must determine whether they can exercise jurisdiction over governmental climate policies that primarily affect foreign populations, or conversely, whether foreign actions or inactions that impact domestic populations fall within their jurisdictional purview. This challenge is particularly acute for small island states and vulnerable communities whose climate harm primarily results from harm originating in other jurisdictions: for example, Tuvalu. With a maximum elevation of 5 m above sea level, Tuvalu faces existential threat from sea level rise caused primarily by emissions from major industrialized nations. Despite contributing less than 0.0001% of global emissions, Tuvalu experiences severe coastal erosion, saltwater intrusion into

freshwater supplies, and increasingly frequent flooding during king tides. Also the Marshall Islands contributed virtually zero emissions historically but faces displacement of entire communities. The country has pursued legal action, including attempts to bring cases against nuclear powers at the International Court of Justice, arguing that major emitters have violated their obligations under international law.

These examples illustrate the fundamental jurisdictional challenge: traditional legal concepts of territorial sovereignty and causation struggle to address harm where the victims and perpetrators exist in different jurisdictions with vastly different historical responsibilities for emissions.

Most courts addressing territorial jurisdiction in climate cases have been cautious about expanding their reach beyond traditional territorial boundaries. For example, European Court of Human Rights: In *Duarte Agostinho v. Portugal and 32 Other States* [15], the Court rejected extraterritorial jurisdiction over 32 co-respondent states, maintaining territorial limitations and finding jurisdiction only over Portugal; European Court of Justice: in the *People’s Climate Case* [16], the court dismissed claims without addressing territorial jurisdiction, focusing instead on standing requirements; U.S. Federal Courts: in *Juliana v. United States* [17], courts have struggled with separation of powers concerns rather than territorial issues, but have been reluctant to address global climate effects through domestic constitutional frameworks.

However, some courts have begun recognizing expanded territorial jurisdiction concepts in climate cases, accepting that governments owe duties of care to prevent transboundary environmental harm with more expansive approaches: The United Nations Human Rights Committee (UNHRC) determined in September 2022 [18] that Australia violated the cultural rights of Torres Strait Islanders and unlawfully interfered with their private lives, families, and homes, thereby contravening articles 27 and 17 of the International Covenant on Civil and Political Rights [19]. Australia’s negligence to adequately address the impacts of climate change in the region was the reason for this finding.

The *Billy v. Australia* [18] decision demonstrates willingness to hold states accountable for extraterritorial climate effects on specific communities within their jurisdiction; in *Neubauer*, while addressing domestic obligations, the German Constitutional Court acknowledged that German emissions contribute to global harm and that this creates obligations to reduce extraterritorial effects; in *Urgenda Netherlands* Supreme Court recognized that domestic emission reductions serve global climate protection, implicitly acknowledging transboundary effects.

This approach draws on established international environmental law principles, including the no-harm rule and the duty to prevent environmental damage to other states. But the practical application of these principles to climate litigation remains inconsistent and will require time to establish as universal principle across jurisdictions.

3.3. Remedial Jurisdiction: Courts’ Capacity to Enforce Climate Obligations

Remedial jurisdiction concerns courts’ practical capacity to craft and enforce meaningful relief in climate litigation, addressing fundamental inquiries about the appropriate role of judicial institutions in climate governance. This dimension of jurisdiction involves both legal authority and practical capability to implement climate-related judicial orders.

Courts face significant challenges in designing appropriate remedies for climate cases, given the technical complexity of climate policy, the need for ongoing governmental flexibility in policy implementation, and the potential for judicial overreach into executive and legislative domains. Traditional legal remedies, such as monetary damage or injunctive relief, often prove inadequate for addressing the systemic nature of climate challenges.

Courts have developed innovative remedial approaches, including:

- (1) declaratory judgments that establish governmental climate obligations without prescribing specific implementation measures, thereby preserving governmental discretion while establishing legal accountability.
- (2) mandatory injunctions requiring governments to achieve specific emissions reduction targets or develop comprehensive climate action plans within prescribed time limits. For example, in *Neubauer v. Germany* (2021), the German Federal Constitutional Court mandated the legislature to amend existing climate legislation by establishing specific provisions for greenhouse gas emission reductions from 2031 onwards, with a deadline of end-2022 for implementation. The court also directed the German government to revise and strengthen the climate act provisions to enhance future mitigation strategies through concrete emission reduction measures [20].

The enforcement of climate-related judicial orders presents particular challenges, as courts must ensure compliance with complex, long-term governmental obligations while maintaining appropriate separation of powers. International and regional courts face additional remedial jurisdiction challenges, as their orders depend on state cooperation for implementation and often lack direct enforcement mechanisms.

The effectiveness of supranational climate litigation therefore depends heavily on domestic legal systems' willingness to implement international judicial decisions and the broader international community's commitment to supporting judicial climate accountability mechanisms. For example, European Court of Human Rights rulings often face implementation challenges. While not yet assessed extensively in climate cases, the court's authority relies entirely on member states' willingness to comply and countries like Turkey and Russia have increasingly ignored court's rulings on various issues, suggesting potential resistance to future climate litigation enforcement.

These jurisdictional challenges and implementation concerns become clearer when examined through the lens of actual climate litigation cases that have emerged across different jurisdictions in recent years. By analyzing specific cases from various legal systems—ranging from constitutional courts to supreme courts to regional or international courts—we can identify recurring patterns in judicial reasoning, remedial approaches, and enforcement outcomes that illuminate both the potential and obstacles of climate litigation as a tool for environmental governance.

4. Climate Litigation Cases and Recurring Patterns

4.1. Domestic Courts

The Urgenda Climate Case [1] against the Dutch Government marked the first instance globally where citizens successfully demonstrated that their government bears a legal obligation to prevent hazardous climate change. This groundbreaking case in the Netherlands resulted in the supreme court compelling the government to cut emissions, creating a legal precedent for climate litigation. Filed on behalf of 886 Dutch citizens, the case elevated climate change to a prominent political and social concern in the Netherlands and reshaped the country's domestic climate policy.

On 20 December 2019, the Dutch Supreme Court stated that the Dutch government must immediately reduce emissions in accordance with its human rights obligations—marking a historic triumph for climate justice. The court ordered that the Dutch state to “limit greenhouse gas emissions to 25% below 1990 levels by 2020, finding that the government's existing pledge to a 17% reduction was insufficient for achieving the state's proportionate responsibility in limiting climate warming to the internationally agreed two-degree threshold above pre-industrial temperature baselines” [1].

The court determined that the state bears a duty to implement real climate change alleviation measures given the magnitude of potential climate impacts and the substantial probability of severe environmental disruption. This case exemplifies the broader shift toward recognizing enforceable state duties under human rights frameworks. The Urgenda Climate Case sparked similar climate change cases in Belgium, Canada, Colombia, Ireland, Germany, France, New Zealand, Norway, the UK, Switzerland, and against the EU.

However, the Urgenda victory reveals the limitations of litigation as a sustainability tool. While the court mandated a 25% emissions reduction, it provided no guidance on ensuring this transition occurs equitably or sustainably. The Netherlands subsequently implemented carbon pricing mechanisms that disproportionately burden low-income households while allowing wealthy consumers to maintain high-emission lifestyles through offset purchases. This outcome illustrates how litigation-driven climate action, absent comprehensive sustainability frameworks, can exacerbate social inequalities.

The case of *Ashgar Leghari v. Federation of Pakistan* [21] is a groundbreaking 2015 Pakistani court case where a farmer and lawyer successfully sued the government for inaction and failure to address climate change, arguing that it violated his fundamental rights. The Lahore High Court delivered a groundbreaking ruling in favor of Leghari, explicitly recognizing the right to a healthy environment as a fundamental human right and ordering the government to take concrete actions on climate change by implementing national policies on climate change [13].

This case is significant as it was one of the first judicial decisions to display a direct link between human rights violations and climate change effects and while establishing a legal precedent for climate litigation in Pakistan. Here, the court's approach was very initiative-taking, going beyond a simple declaration of rights to mandate specific governmental actions. The court ordered government ministries to nominate a climate change point-person within their department to guarantee implementation of the Framework for Implementation of Climate Change Policy (2014–2030) [22]. In addition, the court required these ministries to present comprehensive lists of action points by the end of the year calendar, establishing clear timelines and accountability mechanisms and to present a comprehensive action framework within year [20]. This dual requirement created both immediate responsibility and measurable deadlines for climate action.

In a particularly innovative aspect of its decision, the court established a Climate Change Commission comprising representatives from relevant government ministries, civil society organizations, and scientific experts [20]. The court not

only mandated the creation of this Commission but also specified its exact composition, designated responsibilities, required actions, and reporting schedules, ensuring robust monitoring of the government's climate commitments.

The Leghari case represents an important moment in climate jurisprudence, demonstrating how judicial intervention can bridge the gap between climate policy and implementation while establishing enforceable rights-based approaches to environmental protection. The proactive remedial approach resonates with Urgenda case and illustrates how courts in diverse jurisdictions converge on expanding state accountability for climate action. This decision has since inspired similar climate litigation efforts, proving that domestic courts can serve as powerful catalysts for climate action when governments fail to meet their environmental obligations.

The Leghari case exemplifies both the potential and pitfalls of judicial intervention in developing countries. While the court's creation of a Climate Change Commission appears innovative, subsequent implementation has been hampered by inadequate funding, limited technical capacity, and political resistance. The Commission's recommendations often conflict with Pakistan's development priorities, creating tensions between climate action and poverty reduction. This highlights the need for integrated sustainability approaches that reconcile climate imperatives with development needs, rather than imposing top-down judicial mandates.

The Bushfire Survivors Case [23] represents another compelling example of how domestic courts can adopt a highly proactive stance in climate change policy, showing judicial willingness to impose concrete obligations on government agencies. In this Australian decision, the court found that the New South Wales government held a legal obligation to pursue meaningful climate action in Australia, specifically mandating the Environmental Protection Authority to regulate greenhouse gas emissions.

On 26 August 2021, the New South Wales Land and Environment Court directed the New South Wales Environmental Protection Authority to establish comprehensive environmental quality objectives, guidelines, and policies to safeguard environmental protection against climate change impacts [23]. This ruling established a clear legal framework requiring active governmental intervention rather than passive regulatory approaches.

The court's reasoning centered on finding that the Environmental Protection Authority's duty to establish environmental safeguarding mechanisms inherently included the duty to formulate targeted climate mitigation tools. This expansive reading of existing legislation demonstrates how domestic courts can leverage current legal frameworks to address emerging environmental challenges without requiring new legislative action.

The Bushfire Survivors Case exemplifies the growing trend of judicial activism in climate governance, where courts move beyond traditional adjudicatory roles to become active participants in shaping environmental policy. This decision illustrates how strategic litigation can transform abstract climate obligations into concrete regulatory requirements, establishing enforceable duties that compel government agencies to translate climate commitments into actionable protection measures. The Bushfire Survivors Case reflects a doctrinal innovation where statutory duties are reinterpreted expansively, aligning with global jurisprudence that converts abstract obligations into operational mandates.

Brazil presents an unusual yet significant case in global climate litigation through *Partido Socialista Brasileiro et al. v Brazil (The Climate Fund Case)* [24], where political parties themselves initiated legal action against governmental climate inaction. Four major Brazilian political parties submitted a Direct Action of Unconstitutionality by Omission to the Federal Supreme Court of Brazil. The plaintiffs contended that governmental omissions, including the improper suspension of the Climate Fund in 2019–2020, as well as numerous other climate-related actions and omissions, violated constitutional principles and had caused Brazil to enter a state of environmental regression and an inadequate environmental protection [25].

On 30 June 2022, the Supreme Court [24] issued a groundbreaking ruling that substantially changed Brazil's approach to climate policy, dismissing the governmental arguments and determining that executive authorities cannot disregard legislative climate directives. Instead, the court ruled that the executive branch bears a constitutional obligation to implement and fund the Climate Fund for climate change mitigation, anchored in separation of powers doctrine and the constitutional entitlement to environmental health.

The Court's reasoning extended beyond domestic constitutional law to embrace international climate commitments. The Court determined that the judiciary is obliged to prevent the decline of environmental safeguards and stated that environmental law treaties are as a specialized category of human rights treaties with "supranational" status [24]. This "supralegality" of human rights treaties positions them above ordinary legislation in Brazil's legal hierarchy, meaning that any Brazilian statute or executive order contradicting the Paris Agreement, including nationally determined contributions, could be declared invalid. The Supreme Court established that any governmental activity or inactivity contrary to environmental protection simultaneously breaches of both constitutional provisions and human rights. The constitutional responsibility for effective fund allocation translates into a binding obligation, duty to pursue climate change mitigation aligned with international commitments within the global climate governance framework. This groundbreaking ruling represents a corner

moment in climate jurisprudence, demonstrating how domestic supreme courts can serve as guardians of international climate commitments while establishing enforceable constitutional duties for climate action.

It appears that the examined domestic cases mentioned in this subsection underscore the crucial role that domestic courts can play in bridging the implementation gap between climate policy aspirations and regulatory reality, particularly when legislative or executive action proves inadequate to address urgent environmental threats. These landmark decisions collectively demonstrate an emerging pattern of judicial activism in climate governance, where courts increasingly view themselves as guardians of environmental rights and international climate commitments, willing to impose concrete obligations on reluctant governments and transform abstract climate policies into enforceable legal duties.

4.2. European Court of Human Rights

The case of Verein KlimaSeniorinnen Schweiz and others v. Switzerland [26] was the most shocking event in European climate law in 2024. This case showed that four women and the Swiss association, whose members were apprehensive about global warming's impact on their living conditions and health, could successfully bring a claim before the European Court of Human Rights (the ECHR).

In this decision, the ECHR ruled, that Switzerland's failure to fulfill its positive duties to combat climate change is the violation of Article 8 of the European Convention on Human Rights [5], which safeguards the right to respect for private and family life. According to the case law of the ECHR, contracting states must implement appropriate measures when a genuine and immediate threat to people's lives or welfare exists and the state has knowledge of such risk.

Most significantly, that court took the position and ruled that the duty to implement appropriate measures extends to environmental dangers threatening large populations or communities, even when such dangers will manifest over extended timeframes. In this case, the ECHR not only considered the significant human rights impacts of climate change, but also the long-term dimension of these impacts. This judgment not only shocked all members of the European Convention on Human Rights because they recognized that insufficient climate action could and would be matter of climate litigation in the ECHR but also attracted a lot of public attention and further encouraged the public and NGOs to pursue climate litigation to protect their human rights in courts. This judgment, when read alongside Urgenda and Neubauer, demonstrates a unifying trend of rights-based adjudication anchoring climate duties in fundamental freedoms.

Another significant case is Duarte Agostinho and Others v. Portugal and 32 Other States [15]. This litigation initiated by six Portuguese youth, addresses carbon emissions from thirty-three contracting States, which the petitioners argue contribute to planetary warming and generate various consequences, including extreme heat events that impact the claimants' residential circumstances and wellbeing. The applicants filed a complaint to the European Court of Human Rights against thirty-three nations alleging non-compliance with their commitments in the 2015 Paris Agreement [6] to limit global warming.

The applicants emphasized the absolute urgency of acting on climate change and considered that, given this context, the Court should acknowledge the states' collective responsibility and waive the applicants' requirement to exhaust domestic remedies in each member state. The complaint invoked Articles 2 (right to life), 8 (right to privacy) and 14 (prohibition of discrimination) of the European Convention on Human Rights.

In this case the ECHR granted third party interventions from seven parties. Notably, Amnesty International provided written submissions backing the petitioners' stance, offering legal reasoning to demonstrate that international law mandates states to prevent harm and prohibit corporate entities within their authority from damaging human rights of individuals beyond their territorial boundaries.

Also in this case, the European Commission presented its written submissions to the ECHR, stating that: "the increasing number of climate change-related applications provide the Court with a unique opportunity to continue to forge the legal path towards a more complete implementation of the Convention and to offer real-life protection to individuals affected by environmental degradation and climate change" [15].

Notwithstanding these efforts, on 9 April 2024, the ECHR ruled the application inadmissible. Concerning transnational jurisdictional authority, the court determined insufficient justification for expanding judicial reach, consequently establishing territorial competence solely regarding Portugal. Therefore, the complaint was declared inadmissible against the thirty-two contracting states. Furthermore, since the applicants did not exhausted domestic remedies in Portugal, the complaint was also ruled as inadmissible [15]. The dismissal underscores the limits of judicial reach in transnational climate governance, raising concerns about fragmented protection and the uneven availability of remedies. Once again, this case demonstrated that the question of territorial jurisdiction remains a

critical issue and that all procedural requirements, including exhaustion of domestic remedies, must be satisfied before bringing applications to the ECHR.

Two additional important climate litigation cases are still awaiting ECHR rulings:

- (1) Six individuals and two non-governmental organizations (NGOs) brought this case. The applicants contend, invoking Articles 2, 8, 13 and 14 of the European Convention on Human Rights, regarding the judicial review-proceedings in which the applicants failed to obtain a judgment invalidating a Norwegian Government decision made by the Norwegian Government to issue petroleum exploration licenses for the Norwegian continental shelf in the Barents Sea within the Arctic Ocean. The ECHR's forthcoming decision will establish whether oil licensing authorization constitutes human rights violations under the European Convention on Human Rights [27].
- (2) These cases were initiated by two Italians who assert, citing on Articles 2 (right to life), 8 (right to respect for private and family life), 13 (right to an effective remedy), and 14 (prohibition of discrimination) of the European Convention on Human Rights, that the greenhouse gas emissions from 33 member states have generated global warming, producing various consequences including extreme weather phenomena such as heatwaves and storms, which impact the applicants' living conditions and mental health. The complainants alleged that the states had failed to meet human rights obligations by not achieving carbon emission decreases necessary to constrain global warming to the 1.5-degree Celsius target established under the Paris agreement [28,29].

These cases collectively illustrate the growing function of the ECHR in climate litigation and governance, demonstrating both the potential and limitations of using human rights law to compel state climate action. While the Swiss case represents a breakthrough in establishing positive obligations for climate protection under Article 8, the Portuguese case highlights the persistent challenges of territorial jurisdiction and procedural requirements in transnational climate litigation. The pending cases will further clarify the extent of state obligations and the Court's willingness to address climate change as a human rights issue, potentially establishing the ECHR as a crucial venue for enforcing climate accountability across Europe.

4.3. European Court of Justice

The European Court of Justice (ECJ) has encountered various climate-related cases that primarily center on EU regulatory compliance and administrative law matters rather than fundamental human rights considerations. These cases encompass challenges to the EU Emissions Trading Scheme [30], disputes over the EU Taxonomy Regulation's classification of certain energy sources as "green investments" [31], and issues related to national compliance with EU climate obligations. The European Court of Justice cases tend to focus more on the European Union regulatory compliance and administrative law issues, and don't address fundamental human rights implications of climate change.

The most prominent rights-based challenge before the ECJ occurred in *Armando Ferrão Carvalho and Others v. The European Parliament and the Council (the People's Climate Case)* [16] where ten families, including children, from Portugal, Germany, France, Italy, Romania, Kenya, Fiji, and the Swedish Sami Youth Association Sáminuorra, brought an action seeking to compel the EU to take more stringent greenhouse gas (GHG) emissions reductions.

The plaintiffs alleged that the EU's existing target to reduce domestic GHG emissions by 40% by 2030, as compared to 1990 levels, was insufficient to avoid dangerous climate change and threatened plaintiffs' rights of life, health, occupation, and property.

On 25 March 2021, the ECJ dismissed the applicants' allegations as inadmissible based on standing criteria, finding that they had failed to establish individual harm from Europe's climate policy. The court ruled that applicants lacked standing to pursue the matter since climate change impacts all persons in various ways and ECJ jurisprudence mandates that claimants demonstrate effects from the disputed action that are "peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually" [16].

This decision illustrates the ECJ's restrictive approach to standing in climate cases, emphasizing procedural barriers over substantive climate obligations. Yet, critics caution that restrictive admissibility standards risk insulating EU institutions from accountability, thereby limiting the court's potential contribution to coherent climate jurisprudence. The ruling demonstrates how traditional administrative law doctrines can limit access to justice in climate litigation, as the diffuse nature of climate harm makes it hard for plaintiffs to establish the individualized injury required under EU law.

4.4. The International Court of Justice

The International Court of Justice (ICJ) represents a pivotal forum for establishing binding international legal principles on state obligations regarding climate change. Unlike domestic courts that primarily address national climate policies, the ICJ's involvement signals a shift toward clarifying fundamental duties under international law and potential consequences for climate inaction.

The ICJ has previously addressed few cases with climate-related environmental dimensions, such as disputes involving nuclear testing [32] and transboundary environmental harm [33], but these are not framed as comprehensive climate litigation. The current advisory opinion proceedings represent the first case specifically designed to address state obligations and legal consequences under international law regarding climate change, making it the ICJ's inaugural true climate litigation case.

The proceedings of the case began when, on 29 March 2023, the 77th session of the United Nations General Assembly passed resolution A/77/L.58 [34], seeking an advisory opinion from the International Court of Justice (ICJ) regarding state duties concerning climate change matters, specifically addressing these following legal questions:

- (a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations;
- (b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:
 - (i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?
 - (ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?

The ICJ received a substantial volume of written submissions from States and organizations, reflecting unprecedented global engagement with the proceedings. The court subsequently held oral hearings in December 2024. ICJ's advisory opinion was delivered on 23 July 2025 [35]. The ICJ confirmed that states have a legal obligation under international law to address climate change in a manner proportionate to their capabilities. This includes a duty to act with due diligence to prevent activities within their jurisdiction from causing significant harm to the climate and other parts of the environment. The Court found that greenhouse gas emissions constitute pollution of the marine environment under the United Nations Convention on the Law of the Sea (UNCLOS), and states have a positive obligation to prevent, reduce, and control this pollution. The opinion of ICJ's confirmed that it's possible to attribute wrongful acts or omissions related to climate change to a state. It clarified that the wrongful act is not the emission of GHGs itself, but rather the failure to fulfill the obligation to protect the climate system. The Court even noted that modern science makes it possible to determine each state's total contribution to global emissions. A breach of these obligations constitutes an internationally wrongful act, which can lead to legal consequences, including the duty of the state responsible to cease the wrongful actions and potentially provide reparations. Additionally, the Court identified several guiding principles applicable to the interpretation of international law regarding climate change, including sustainable development, common but differentiated responsibilities, and the precautionary approach.

This advisory opinion represents a watershed moment in international climate law, as it confirmed authoritative interpretations of state obligations under international environmental law, human rights law, and the law of state responsibility in the climate context. The case's significance extends beyond its legal implications, as an ICJ opinion provides crucial direction for domestic courts worldwide and strengthens the normative foundation for future climate litigation. The broad participation in the proceedings, with submissions from numerous states and international organizations, underscores the global acknowledgement of climate change as a fundamental challenge to international legal order.

4.5. International Tribunal for the Law of the Sea

On 12 December 2022, the Commission of Small Island States on Climate Change and International Law (the Commission), submitted a request [36] for an advisory opinion from the International Tribunal for the Law of the Sea (ITLOS) on the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (UNCLOS) [37], particularly under Part XII, regarding climate change. This request marked a strategic effort by vulnerable island nations to establish clear legal obligations for climate action through maritime law.

The two legal questions posed were:

- Question (a): What are the specific obligations of State Parties to prevent, reduce, and control pollution of the marine environment? This includes pollution resulting or likely to result from climate change, such as ocean warming, sea level rise, and ocean acidification, which are caused by human-made greenhouse gas emissions into the atmosphere.
- Question (b): What are the specific obligations of State Parties to protect and preserve the marine environment in relation to climate change impacts? This includes effects like ocean warming, sea level rise, and ocean acidification.

On 21 May 2024, ITLOS delivered a groundbreaking advisory opinion [38] regarding the duties of State Parties to UNCLOS concerning climate change and the marine environment. The Tribunal's findings were groundbreaking in several key respects: regarding Question (a)—the Tribunal made the crucial determination that anthropogenic greenhouse gas emissions into the atmosphere constitute “pollution of the marine environment” as defined in Article 1, paragraph 1, subparagraph 4 of UNCLOS. The Tribunal concluded that States Parties have specific obligations under UNCLOS Part XII to prevent, reduce, and control marine pollution from anthropogenic greenhouse gas emissions and these obligations include taking all necessary measures, preventing transboundary pollution, adopting national legislation and international standards, enforcement, global and regional cooperation, technical assistance, monitoring and environmental assessment. Regarding Question (b)—the Tribunal recognized this question possesses broader scope than Question (a) and relates to the interpretation and extent of Article 192 of UNCLOS, which provides that “States have the obligation to protect and preserve the marine environment”. The Tribunal emphasized that this obligation is comprehensive and includes those outlined in other UNCLOS provisions, including those related to pollution. Additionally, regarding protection and preservation, the Tribunal highlighted the need for protecting rare or fragile ecosystems and habitats and implementing adaptation measures. In its Operative Clause, the Tribunal affirmed that States Parties to UNCLOS have specific duties to protect and preserve the marine environment from climate change impacts and ocean acidification, which result from anthropogenic greenhouse gas emissions.

The ITLOS advisory opinion provided legal guidance and clarification on a specific matter of international law, establishing for the first time that greenhouse gas emissions constitute “pollution” under international maritime law. While advisory opinions are not directly binding like judgments in contentious cases, this ruling provides authoritative legal interpretation that significantly strengthens climate litigation. It serves as a crucial legal benchmark that informs and encourages more robust action to safeguard the marine environment from the effects of climate change and provides small island developing states with stronger legal grounds for pursuing climate justice.

While climate litigation has expanded to various international forums, including specialized bodies such as the Paris Agreement Implementation and Compliance Committee, the United Nations Human Rights Committee, and the Aarhus Convention Compliance Committee, this publication focuses on the most significant judicial venues that have shaped the contemporary climate litigation landscape. The forums examined—domestic courts, the European Court of Human Rights, the European Court of Justice, the International Court of Justice, and the International Tribunal for the Law of the Sea—represent the primary judicial mechanisms where binding precedents are established, comprehensive legal interpretations are developed, and enforceable remedies are potentially available to climate litigants.

In conclusion all the international, regional and domestic judgements and decisions discussed in this analysis mark historic advancements in climate litigation, as we saw they happened in the whole world, marking a big achievement for all parties involved, how climate litigation can help and advocate for people against inactive or not enough active governments. While not all court rulings have been favorable to complainants, even those that have been unsuccessful will allow others to avoid the same mistakes and to make the right choice of the most appropriate court for their next complaint.

5. Conclusions

- (1) The analysis of climate litigation against states reveals a transformative legal landscape where courts worldwide are increasingly recognizing their role as guardians of climate justice and enforcers of governmental climate obligations. Climate litigation has evolved from early experimental cases to a sophisticated legal strategy that bridges the persistent gap between governmental climate commitments and their implementation. The threefold increase in rights-based climate cases from 2014 to 2024 demonstrates growing legal activity and evolution of climate law as a distinct legal discipline. This evolution reflects courts' increasing willingness to engage with the technical complexities of climate science while developing innovative remedial approaches that respect separation of powers principles yet ensure meaningful governmental accountability'. However, the effectiveness of litigation as a governance tool must be assessed

with caution. Judicial overreach risks undermining democratic legitimacy, while politically sensitive rulings may trigger backlash or non-compliance by states. Moreover, inconsistent jurisprudence across jurisdictions threatens coherence, as similar claims may yield divergent results. These limitations underscore that litigation should complement, rather than substitute, comprehensive legislative and policy measures.

- (2) The examination of jurisdictional challenges reveals both significant innovations and limitations in climate litigation. Courts have demonstrated remarkable creativity in addressing standing requirements; but persistent jurisdictional barriers continue to limit climate litigation's effectiveness. The ECHR's dismissal of the Portuguese youth case and the ECJ's restrictive standing requirements in the People's Climate Case demonstrate that procedural hurdles remain formidable obstacles to climate justice.
- (3) The analysis reveals the variety of remedial approaches—declaratory judgments, mandatory injunctions, institutional reforms, and ongoing monitoring mechanisms—demonstrates judicial recognition that climate litigation requires innovative solutions that extend beyond traditional legal remedies. However, enforcement challenges remain significant, particularly for international and regional courts that depend on state cooperation for implementation.
- (4) The successful integration of human rights law into climate litigation represents the most significant development in environmental law. The KlimaSeniorinnen case demonstrated that fundamental rights could provide enforceable frameworks for climate action. Similarly, the ITLOS advisory opinion's determination that greenhouse gas emissions constitute marine pollution under UNCLOS creates new avenues for rights-based climate claims. This rights-based approach transforms abstract climate policy debates into concrete questions of governmental duty and individual protection, ensuring that climate action receives the legal priority that fundamental rights demand.
- (5) Climate litigation's effectiveness extends beyond individual case outcomes to encompass its broader catalytic effects on climate governance. Even unsuccessful cases contribute to legal precedent development, public awareness, and political pressure for enhanced climate action. The strategic value of litigation lies not only in securing favorable judgments but in establishing climate action as a legal imperative that governments cannot indefinitely postpone.
- (6) While climate litigation has achieved remarkable successes in establishing legal principles and compelling governmental action, it cannot substitute for comprehensive legislative and executive climate policies. Courts can establish obligations and deadlines, but they cannot design technical climate solutions or allocate resources for climate action. Future climate litigation will likely focus on enforcement of existing climate commitments, intergenerational equity, and corporate accountability. The pending ICJ advisory opinion proceedings may provide authoritative guidance on state obligations under international law, potentially strengthening the normative foundation for domestic climate litigation worldwide.
- (7) A balanced view suggests that climate litigation is a powerful but partial tool—it can catalyze political will and develop legal doctrine, yet its structural limitations mean it should be integrated with broader legislative, diplomatic, and regulatory strategies. The coexistence of breakthroughs (e.g., KlimaSeniorinnen, ITLOS opinion) and setbacks (e.g., Duarte Agostinho, ECJ standing rulings) highlights the uneven terrain of climate adjudication and the need for a framework that connects case law to systemic climate governance reforms.
- (8) While climate litigation has emerged as a prominent tool for compelling state action, its relationship with sustainable development presents complex paradoxes. Litigation fundamentally operates as a reactive mechanism—addressing failures after they occur rather than proactively building sustainable governance systems. This temporal misalignment raises critical questions about whether judicial interventions can genuinely advance sustainability, which requires long-term planning, integrated solutions, and preventive approaches. Sustainability requires moving beyond the litigation paradigm toward integrated governance approaches that combine judicial accountability with participatory democracy, adaptive management, and justice-centered planning. Courts can establish minimum standards and accountability mechanisms, but achieving sustainability requires democratic deliberation about values, trade-offs, and visions of the future—conversations that transcend legal frameworks.

Funding

This research received no external funding.

Institutional Review Board Statement

Not applicable.

Informed Consent Statement

Not applicable.

Data Availability Statement

No new data were created or analyzed in this study. The research is based on publicly available legal documents, court decisions, and secondary literature cited in the references. Therefore, data sharing is not applicable to this article.

All case law and legal materials referenced in this article are publicly accessible through official court databases or recognized legal repositories such as the Sabin Center for Climate Change Law database.

Conflicts of Interest

The author declares no conflict of interest. No funding was received for this research, and no external party influenced the conception, analysis, or writing of this manuscript.

Use of AI and AI-Assisted Technologies

During the preparation of this work, the author used the AI tool ChatGPT, Claude to suggest synonyms, improve phrasing, and provide guidance on writing proposals. After using these tools, the author reviewed and edited all content as needed and takes full responsibility for the content of the published article.

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