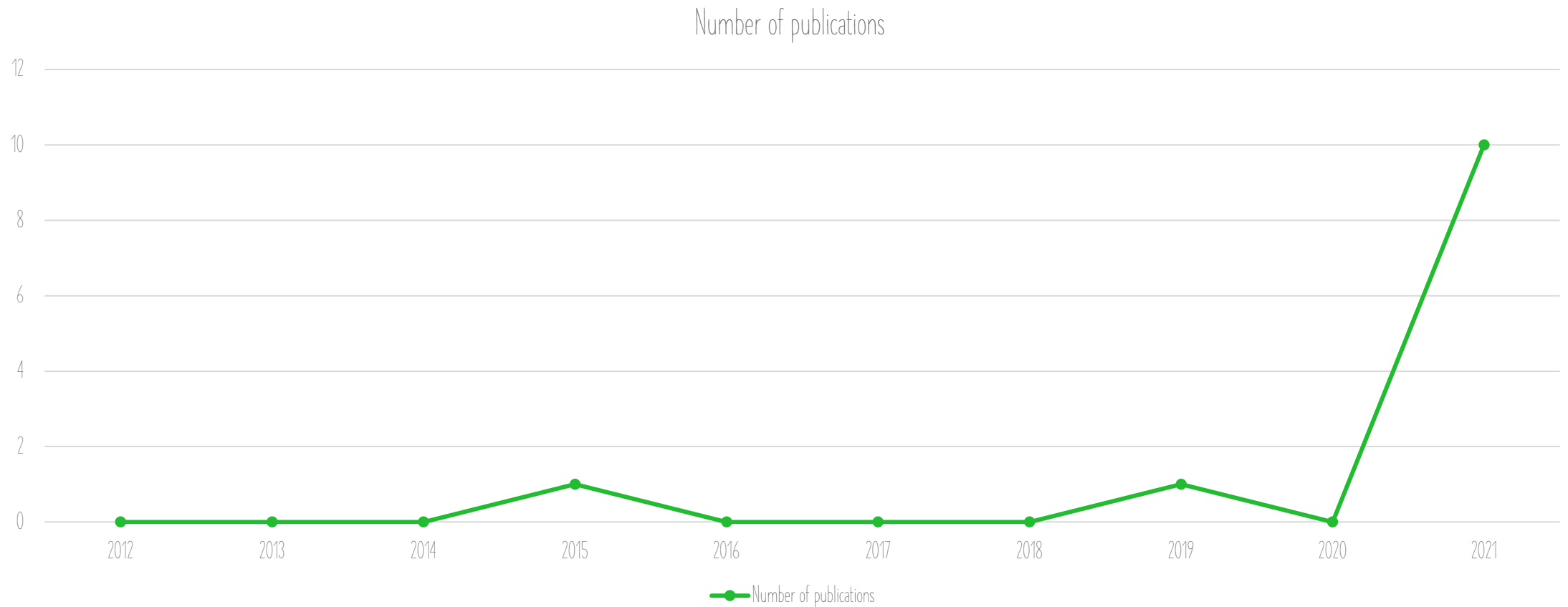


Climate change litigation in Italy: predictions for the near future

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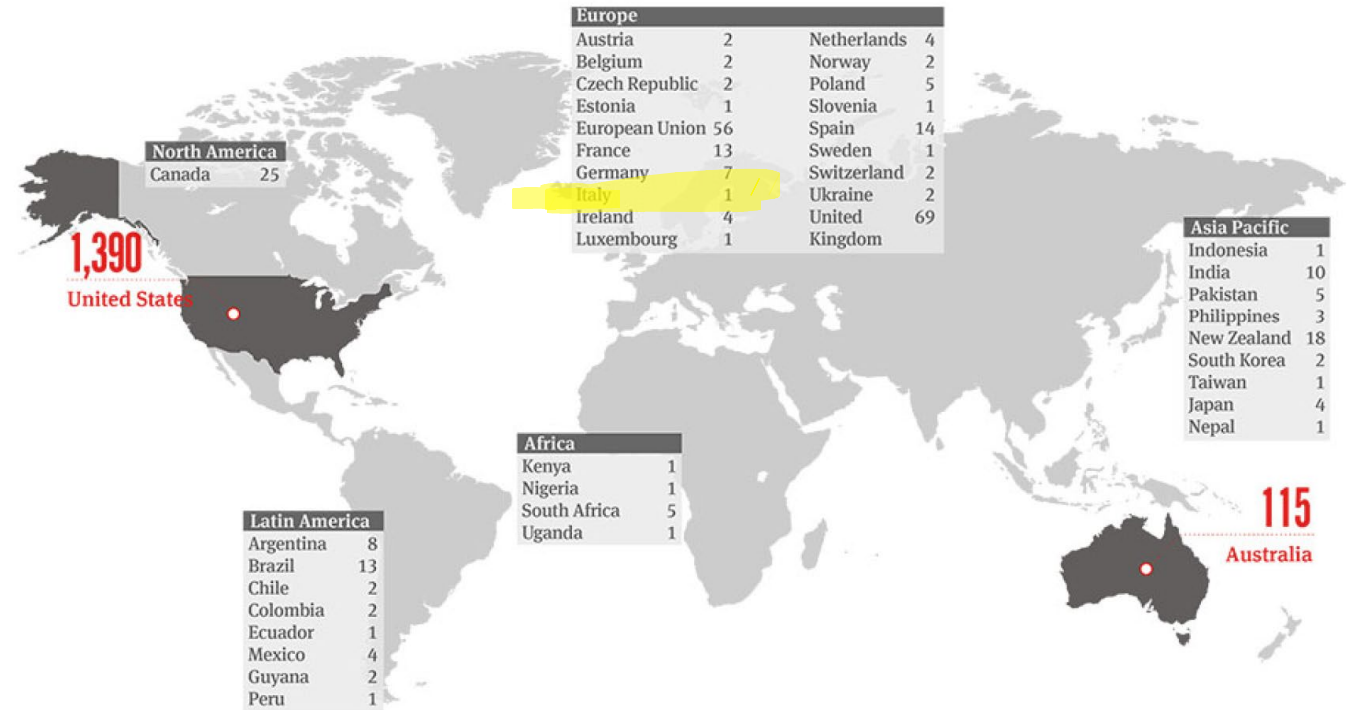
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Academic interest on climate change litigation



Italy finally on the CGL map

- First climate action filed on the 5th of June 2021
- "The Last Judgement" → a civil lawsuit aiming to establish the liability of the Italian State for negligence in reducing GHG
- Applicants = 203 citizens + several NGOs



Locus standi

- 203 citizens
 - Human Rights approach → inadequate policies of the State are putting at risk several of their fundamental rights (above all, right to live in a healthy environment) → fair chances of success
 - "Human right to a stable and safe climate" → much more problematic → new art. 9 It. Const.: environment not as an object of an individual right, but as a fundamental principle
- NGOs → standing widely recognized by legislator & courts' decisions (also in application of the Aarhus Convention)
 - Possible problem → their claims might belong to the jurisdiction of the Italian Administrative Tribunals (not to the Civil Judge)

Scope of review

- The Last Judgement is not aimed to quash a specific legislative or administrative act nor to ask for damage compensation
- It intends to obtain a Court order condemning the Italian Government to reduce the national Green House Gasses emission by 92%, compared to 1990 levels, by 2030
 - PROBLEMS → Separation of powers and "science as source of law"
- International law on climate change leaves broad margins of maneuver to the States not diminishable by non-binding indications of a technical body
- The absence of legally binding indications on emission levels still makes their determination a choice of "opportunity" (belonging to parliament/government) and not of "legality" (belonging to judges)


Remedies

- First scenario: judges pronounce a sentence of conviction → general and substantially unenforceable → the judiciary power has no means of obliging the Government to adopt the undefined range of measures necessary to achieve the required level of Green House Gases reductions
- Second scenario: the court could limit its decision to a declaratory ruling, certifying that the Italian government has not taken sufficient action to counter climate change
- In both cases, the concrete effect is to raise public awareness and, consequently, to activate the political responsibility of the Government, which might "force" the political bodies to modify their approach to climate change

Which room for the appointment of a commissioner to execute the decision?

- Case study → infringement proceeding against Italy for its violation of the European legislation on waste management
 - Case C-135/05 → Italy was found guilty of the infringement
 - Case C-196/13 → Italy was ordered to pay, every six months, a penalty for non-compliance with the previous decision, until conformity with European law is achieved
 - The Italian Government appointed a special Commissioner to carry out specific actions to adapt punctually identified landfills to the European legislation
- Could the *Last Judgment's* judges appoint a commissioner to replace the Government, in the event of its inaction, in taking all the necessary actions to reduce GHG emissions?

Which room for the appointment of a commissioner to execute the decision?

- The answer is no because:
 - The power to appoint special Commissioners lies with the Government
 - The Commissioners' specific duties and the duration of their mandate must be defined in the act of appointment
 - The Commissioners are expected to replace the ordinary authorities
- 
- The order to reduce emissions to 92% is too broad and it would entail the introduction, for an undefined period of time, of a new governing authority with no connection to popular sovereignty
 - The administrative courts can appoint "*ad acta* commissioners" to replace a p.a. only in relation to specific administrative acts

What about the "public" class action?

- Whoever holds "homogeneous interests" (or the associations representing them) may sue a public administration (but not the State "in general") for the violation of minimum standards of public services or the omission of general administrative acts
- It is a scarcely used instrument that might have some chance to be revitalized in the field climate change litigation
 - e.g.: in case of omitted adoption of regional air quality plans or of municipal traffic plans (both general administrative acts concerning air pollution)
 - If the omission is verified, the judges can order the Region or the Municipality to adopt the plan and, in case of further inaction, they can appoint an *ad acta* commissioner to replace the administration in the adoption of the plan

What about the "private" class action?

- New "private" class action (art. 840-*bis* civil procedure code) → whoever holds "individual homogeneous rights" can bring a class action to seek collective redress against any enterprise → damage compensation + injunctive relief + astreinte
- A physical injury or an economic loss must have already materialized → doubts about the possibility to order positive measures (e.g.: change in GHG policy) but room for order to stop or prevent illicit conduct from continuing
- Other possibilities → disclosure-based claims; claims against greenwashing; claims against violations of directors' fiduciary duties

Thanks!

