



Can judges save the world? Perspectives on climate change litigation

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Overview

1. Where do we need to go? Scientific background
2. Climate litigation: Statistics, databases and reports
3. Some case examples
4. Some observations

1. Where do we need to go?

a) Paris Agreement (Art. 2):

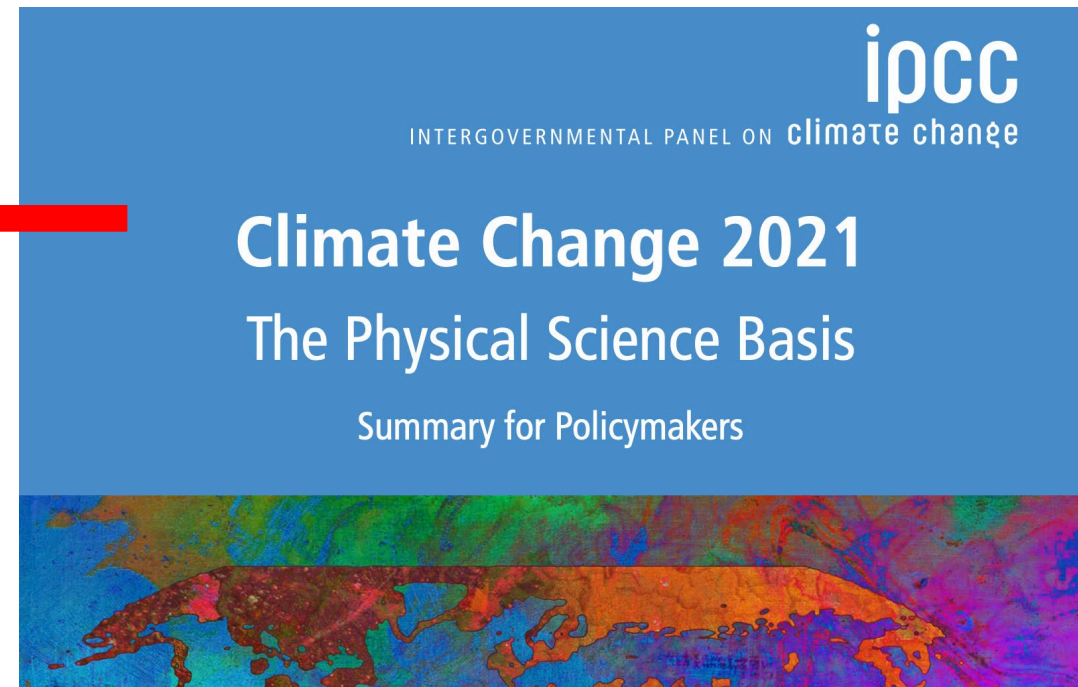
1. This Agreement ... aims to strengthen the global response to the threat of climate change, including by:

(a) Holding the increase in the global average temperature to **well below 2°C** above pre-industrial levels and pursuing efforts to limit the temperature increase **to 1.5°C** above pre-industrial levels...



a) Paris Agreement (Art. 4.1):

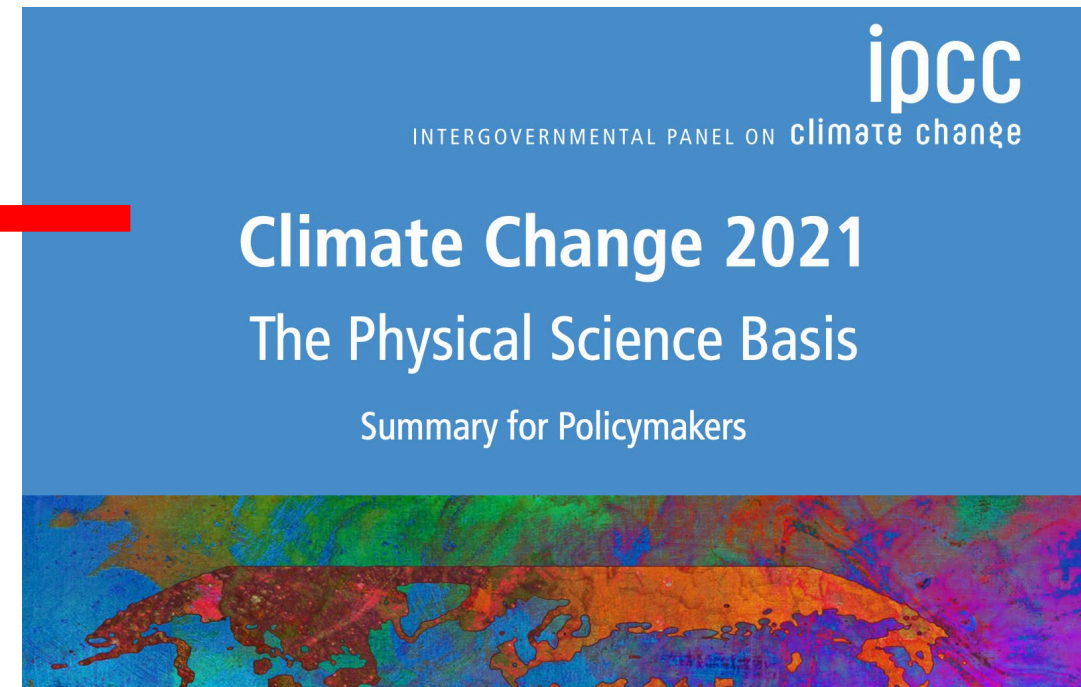
In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of greenhouse gas emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter **in accordance with best available science**, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of greenhouse gases in the second half of this century ...



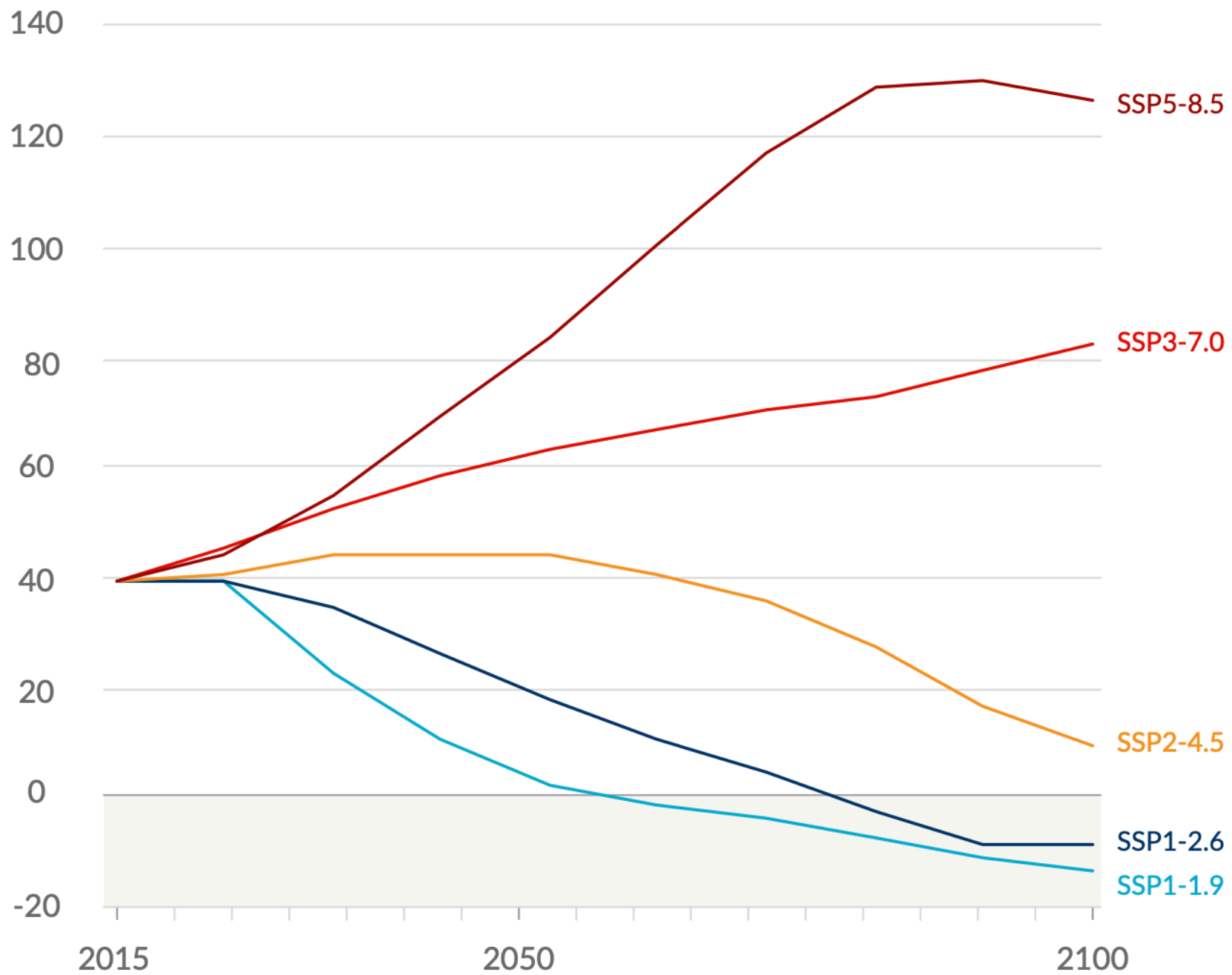
IPCC (2018)

In model pathways with no or limited overshoot of 1.5°C, global anthropogenic CO₂ emissions must:

- **Peak before 2025**
- **Decline by about 45% from 2010 levels by 2030**
- **Reach net-zero around 2050**
- **Fall to negative until the end of the century**



Carbon dioxide (GtCO₂/yr)



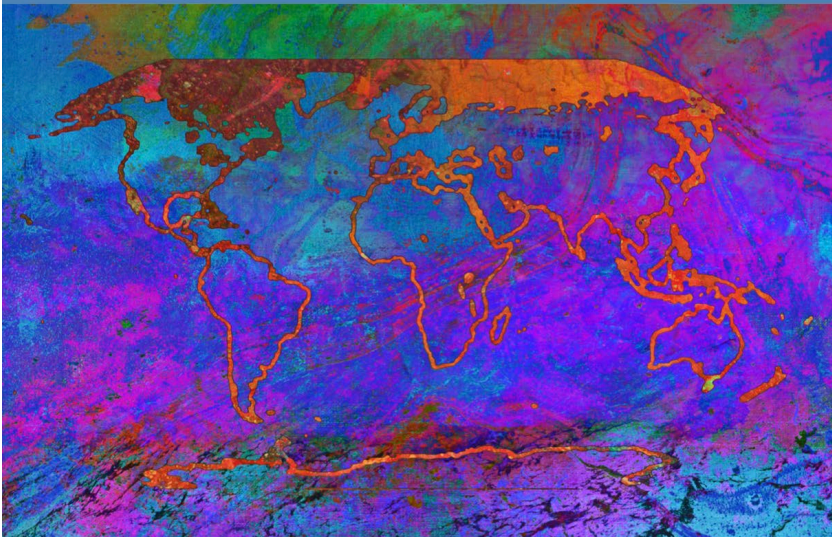
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INTERGOVERNMENTAL PANEL ON climate change

Climate Change 2021

The Physical Science Basis

Summary for Policymakers



WGI

Working Group I contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change



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INTERGOVERNMENTAL PANEL ON climate change

Climate Change 2022

Impacts, Adaptation and Vulnerability

Summary for Policymakers



WGII

Working Group II contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change



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INTERGOVERNMENTAL PANEL ON climate change

Climate Change 2022

Mitigation of Climate Change

Summary for Policymakers



IPCC AR6 WG III (4 April 2022): “It is now – or never.”

- Limiting global warming will require major transitions in the **energy sector**. This will involve a substantial reduction in fossil fuel use, widespread electrification, improved energy efficiency, and use of alternative fuels (such as hydrogen).
- Reducing emissions in **industry** will involve using materials more efficiently, reusing and recycling products and minimising waste.
- **Agriculture, forestry, and other land use** can provide large-scale emissions reductions and also remove and store carbon dioxide at scale. However, land cannot compensate for delayed emissions reductions in other sectors. Response options can benefit biodiversity, help us adapt to climate change, and secure livelihoods, food and water, and wood supplies.
- **Financial flows** are a factor of three to six times lower than levels needed by 2030 to limit warming to below 2°C. There is sufficient global capital and liquidity to close investment gaps. However, it relies on clear signalling from governments and the international community, including a stronger alignment of public sector finance and policy.

IPCC (2018)

“Pathways limiting global warming to 1.5 °C ... **require rapid and far-reaching transitions** in energy, land, urban and infrastructure (including transport and buildings), and industrial systems necessary. **These systems transitions are unprecedented in terms of scale**, but not necessarily in terms of speed, and imply deep emissions reductions in all sectors, a wide portfolio of mitigation options and a significant upscaling of investments in those options.”

(IPCC, 2018, C.1)

2. Climate Litigation: Recent Reports

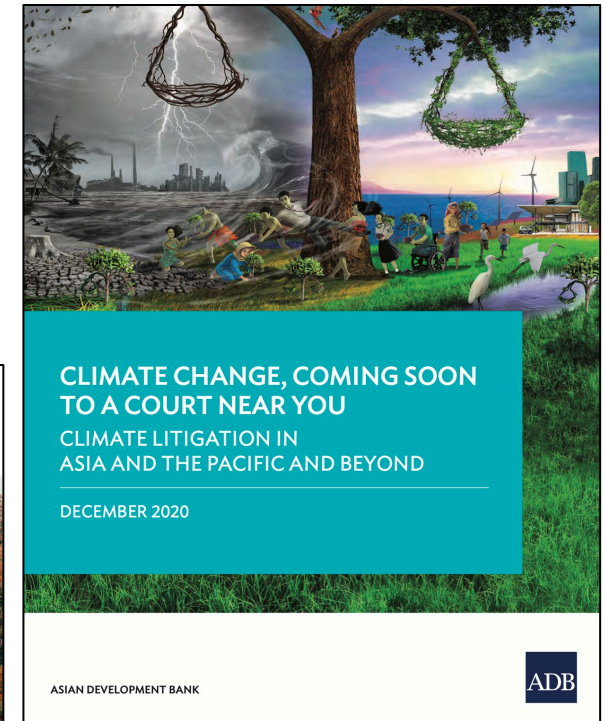
The Geneva Association (APRIL 2021)

[Climate Change Litigation – Insights into the evolving global landscape](#)

Asian Development Bank (DECEMBER 2020)

[Climate Change, Coming Soon to a Court Near You – Climate Litigation in Asia and the Pacific and Beyond](#)

United Nations Environment Programme (2020) [Global Climate Litigation Report: 2020 Status Review](#)



Databases

[Sabin Center for Climate Change Law](#)

Columbia University, NYC

[Grantham Research Institute on Climate and the Environment](#)

London School of Economics

Climate Change Litigation Databases

U.S. CLIMATE CHANGE LITIGATION

NON-U.S. CLIMATE CHANGE LITIGATION

This site provides two databases of climate change caselaw. Cases in the databases are organized by type of claim and are searchable. In many cases, links are available to decisions, complaints, and other case documents.



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Climate Change Laws of the World

Use our database to search and browse climate laws, policies and litigation cases globally.

Search for countries, legislation and policies and litigation cases



Climate laws and policies

2123



Climate litigation cases

1777



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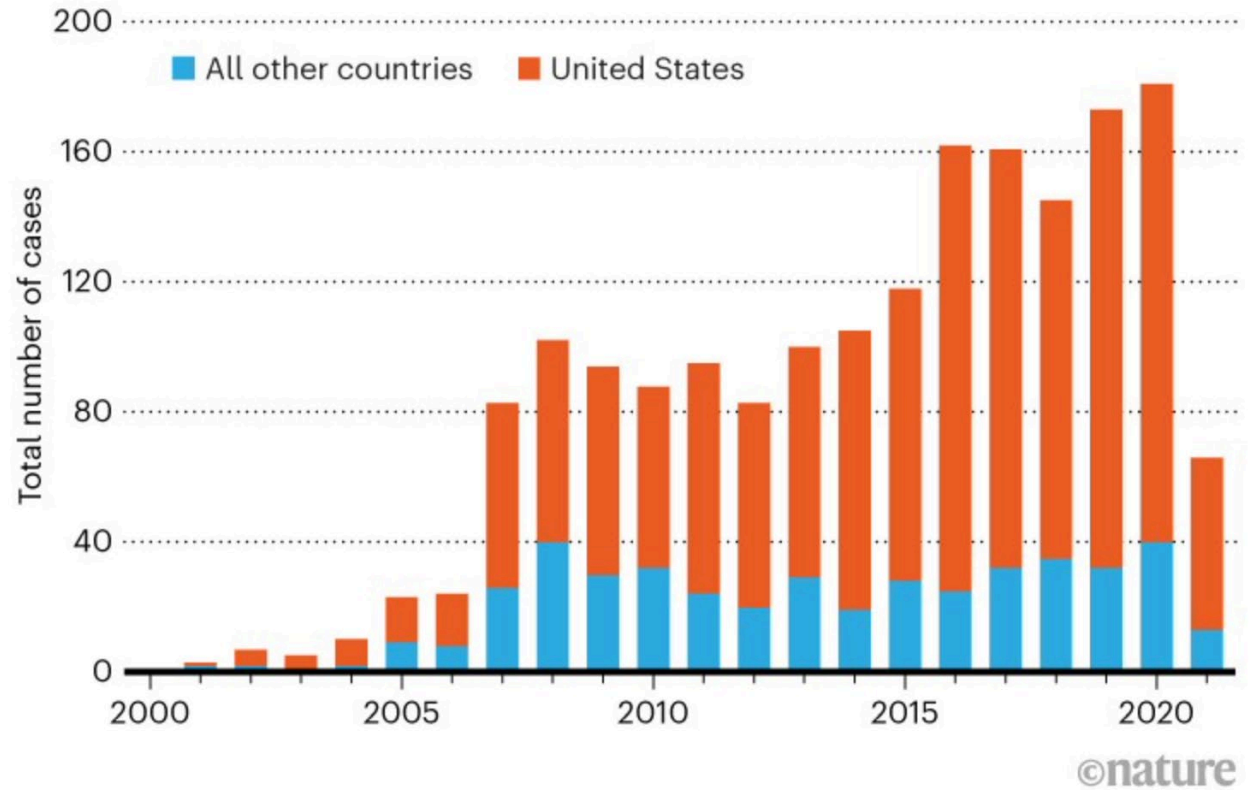
Visualise data on the map



Statistics

CLIMATE CASES ON THE RISE

There has been a sharp increase in the number of lawsuits related to climate change in the past five years.



SUITS AGAINST GOVERNMENTS

Just transition

[2 Cases]

Trade and Investment

[17 Cases]

GHG emissions reduction and trading

[179 Cases]

Access to information

[17 Cases]

Environmental assessment and permitting

[206 Cases]

Human Rights

[87 Cases]

Failure to adapt

[11 Cases]

Protecting biodiversity and ecosystems

[16 Cases]

Public Assembly

[0 Cases]

Public Trust

[5 Cases]

Corporations

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graph TD; A[Corporations] --> B[Climate damage  
[11 Cases]]; A --> C[GHG emissions reduction  
[18 Cases]]; A --> D[Misleading advertising  
[9 Cases]]; A --> E[Environmental assessment and permitting  
[18 Cases]]; A --> F[Disclosures  
[10 Cases]]
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Climate damage

[11 Cases]

**GHG emissions
reduction**

[18 Cases]

**Misleading
advertising**

[9 Cases]

**Environmental
assessment and
permitting**

[18 Cases]

Disclosures

[10 Cases]

3. Some case examples

***Urgenda* Foundation v. State of the Netherlands (2019)**

Claim: In 2015, the Urgenda Foundation – and environmental NGO - and 900 Dutch citizens requested the State to reduce GHG emissions in the Netherlands *by 25-40% by 2020* (from then 17%)

Findings:

District Court (The Hague) ordered the State to reduce GHG emissions *by 25% below 1990 levels by 2020*



***Urgenda* Foundation v. State of the Netherlands (2019)**

Legal basis:

General **duty of care** to take climate change mitigation measures (Dutch Civil Code) informed by Dutch Constitution, “no harm” principle of international law; the precautionary principle, and Human Rights

Hague Court of Appeal and Supreme Court upheld the ruling



Vereniging Milieudefensie et al. v. Royal Dutch Shell (2021)

Judgment: 26 May 2021, The Hague District Court, Netherland

Claim: Shell has to reduce its CO2 emissions by 45% in 2030

Legal basis: violation of duty of care (Dutch Civil Code), informed by human rights obligations

Scientific basis: IPCC 1.5 °C report (2018)

Finding: Royal Dutch Shell is to limit CO2 emissions (from all of its operations) **to at least 45% at end 2030**, relative to 2019 levels





Dutch Civil Code

Book 6 The law of obligations

Title 6.3 Tort (unlawful acts)

Section 6.3.1 General provisions

Article 6:162 Definition of a 'tortious act'

- **1.** A person who commits a tortious act (unlawful act) against another person that can be attributed to him, must repair the damage that this other person has suffered as a result thereof.
- **2.** As a tortious act is regarded a violation of someone else's right (entitlement) and an act or omission in violation of a duty imposed by law or of what according to unwritten law has to be regarded as proper social conduct, always as far as there was no justification for this behaviour.
- **3.** A tortious act can be attributed to the tortfeasor [the person committing the tortious act] if it results from his fault or from a cause for which he is accountable by virtue of law or generally accepted principles (common opinion).

Neubauer et al. vs. Germany

German Federal Constitutional Court (2021)

Decision: 24 March 2021
Constitutional complaints

Finding:

- German Climate Protection Act implements the Paris Agreement and contains carbon-neutrality goal for 2050; but it does not contain specific emission reduction measures for time after 2030
- This violates the constitutional right to personal freedom (Art. 2.1 GG) of the (young) complainants in an inter-temporal manner
- In order to reach carbon-neutrality by 2050, future burden disproportionately higher

Order: Government until 31. December 2022 to revise the Act accordingly

German climate change law violates rights, court rules

🕒 29 April



Germany's climate change laws are insufficient and violate fundamental freedoms by putting the burden of curbing CO2 emissions on the young, its highest court has ruled.

German Constitution (Grundgesetz)

Art. 2

[Personal freedoms]

(1) Every person shall have the right to free development of his personality insofar as he does not violate the rights of others or offend against the constitutional order or the moral law.

(2) Every person shall have the right to life and physical integrity. Freedom of the person shall be inviolable. These rights may be interfered with only pursuant to a law.

The Findings

Violation of «freedom rights» under Art. 2.1 GG

Significant emission reductions are constitutionally required (under Art. 20a); i.e. carbon neutrality in 2050 follows from Art. 20a

But CPA contains only 2030 target and no specific measures until 2050

Significant part of reductions are delayed until post 2030: These reductions will lead to *drastic limitations* on the **freedom to CO₂-emitting activities** of the young claimants – in every way (because all areas of human life are connected to the emission of GHGs)

Art. 2.1 protects the general freedom to act (Handlungsfreiheit) in an **inter-temporal manner** (non-action now leads to severe restrictions in the future)

Art. 2.1 is violated for claimants living in Germany; unproportionate and irreversible limitations (National rest budget after 2020: 6.7 GtCO₂; after 2030 would <1Gt remain until 2050 (pp 233))

German Federal Constitutional Court

Political reaction:

Government adopted revision of the German Climate Protection Act on **12 May 2021**:

Goal for carbon-neutrality in **2045**

Germany to bring forward climate goals after constitutional court ruling

Government proposes net zero deadline of 2045 instead of 2050, but critics demand actions not numbers



▲ The coal-fired Neurath power station. Coal-powered energy is currently scheduled to be phased out by 2038.
Photograph: Ina Fassbender/AFP/Getty Images

Germany's government is to revise its emission reduction targets after the country's constitutional court declared the current climate protection

De Justicia vs Government of Colombia

Supreme Court of Justice (STC4360-2018 of 5 April 2018):

- “for the sake of protecting this vital ecosystem for the future of the planet” the Court “recognized the Colombian Amazon as an entity, *subject of rights*, and beneficiary of the protection, conservation, maintenance and restoration that national and local governments are obligated to provide under Colombia’s Constitution”



Constitution of Colombia

“Tutela” Action

Article 86

Every individual may claim legal protection before the judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whoever acts in his/her name, the immediate protection of his/her fundamental constitutional rights when the individual fears the latter may be jeopardized or threatened by the action or omission of any public authority.

Article 79

Every individual has the right to enjoy a healthy environment. An Act shall guarantee the community’s participation in the decisions that may affect it.

It is the duty of the State to protect the diversity and integrity of the environment, to conserve the areas of special ecological importance, and to foster education for the achievement of these ends.

4. Observations

- Climate litigation is a global phenomenon
- Supported by the emergence of global databases
- Novel ways of using established rules and principles, e.g. due diligence, duty of care, equity and fair share, human rights, freedom rights, inter-temporal dimension of rights, intergenerational equity
- Right to a clean, healthy and sustainable environment: limited use so far; but significant potential
- Use of cases from different jurisdictions (“cross-fertilization”)
- Growing networks in the legal community, e.g. IUCN World Commission on Environmental Law; Global Judicial Institute for the Environment



“... we say to judges ..., uphold the law, protect rights, balance interests, and rely on science. Be vigilant and watch for the day when climate change comes to your courtroom. Tomorrow will dawn and in it our children must build their lives in the world that we create. Let them stand on the shoulders of those who advocate for integrity, justice, and fairness.”

(Asian Development Bank (DECEMBER 2020) *Climate Change, Coming Soon to a Court Near You – Climate Litigation in Asia and the Pacific and Beyond*, page 224)