

The ‘Last Judgment’: Early reflections on upcoming climate litigation in Italy

Riccardo Luporini*

1. Introduction

Human rights arguments have increasingly become a suitable ground for litigation on climate change. Among many others, the *Urgenda* case, adjudicated at district level in 2015 and upheld by the Supreme Court of the Netherlands in December 2019, has rapidly become the landmark in this context.¹ A large set of complaints has been filed with domestic courts in both global north and south drawing inspiration from the *Urgenda*'s success.² In Europe, human rights-based climate lawsuits have been brought before domestic courts in the Netherlands, Austria, Belgium, France, Germany, Ireland, Norway, Sweden, Switzerland, and the United Kingdom, along with the General Court of the European Union.³

* Riccardo Luporini is a PhD Fellow in International Law at the Sant'Anna School of Advanced Studies of Pisa. The author wishes to thank Annalisa Savaresi, Roberto Buizza and the reviewers for their comments on earlier drafts of this contribution. The author wishes to thank Luca Saltamacchia, member of the legal team of ‘*Giudizio universale*’ (the ‘*Last Judgment*’), for the interview released about the case. All errors remain the author's own. The online materials referenced were last accessed on 10 January 2020.

¹ *The State of the Netherlands v Stichting Urgenda* (2019) ECLI:NL:HR:2019:2007 (English version) (‘*Urgenda*’ or ‘the *Urgenda* case’). See A Nollkaemper, L Burgers, ‘A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the *Urgenda* Case’ EJIL:Talk! (6 January 2020) <www.ejiltalk.org/a-newclassic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/>.

² See J Setzer, R Byrnes, ‘Global trends in climate change litigation: 2020 snapshot’ (2020) London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy <www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2020-snapshot/>.

³ All the cases are available in the databases of the Sabin Center for Climate Change Law <<http://climatecasechart.com/non-us-climate-change-litigation/>> and the Grantham Research Institute on Climate Change and the Environment <www.climate-laws.org>.



Against this backdrop, the time for the first Italian climate lawsuit seems to be ripe. A group of social and environmental associations, assisted by a dedicated legal team, is planning a lawsuit against the Italian State for insufficient climate action. The lawsuit is supported by a political campaign started in June 2019. ‘*Giudizio Universale*’ – the ‘*Last Judgment*’ in its English version – is the name chosen for the initiative.⁴ The legal team and campaign leaders planned to lodge their complaint in 2020. However some events, and in particular the health emergency due to the Covid-19 pandemic, forced the applicants to postpone their submission. The lawsuit is expected to be lodged in 2021. As the summons is not public yet, the present contribution is based on several publicly available sources.⁵

The article provides a first appraisal of the impending Italian climate case, shedding light on its prospects as well as on the possible obstacles it could run into. First, the main points of the legal strategy of the ‘*Last Judgment*’ are illustrated. Second, some controversial aspects of the case are discussed. Ultimately, the ‘*Last Judgment*’ serves as a case study for the author to address the potential and shortcomings of human rights-based climate litigation before domestic courts.

2. *The ‘Last Judgment’: The claim and the legal strategy*

According to the associations supporting it, the ‘*Last Judgment*’ will be a civil lawsuit aiming to establish the liability of the Italian State for negligence in reducing GHG emissions, and thus failing to mitigate climate change.⁶ The lawsuit will not aim to quash a specific legislative or administrative act nor to receive compensation for damages. Instead, the applicants plan to demand the Court to order the Italian government to

⁴ The website of the campaign is the following: <www.giudiziouniversale.eu> (in Italian). There is a short English version at <www.giudiziouniversale.eu/home-english-version/>.

⁵ Along with the website of the campaign disclosing the legal strategy of the case, the members of the legal team gave also a few webinars, organised, among the others, by the Ca’ Foscari University of Venice, the ‘Centro Documentazione Conflitti Ambientali’ (CDCA) and the ‘A Sud’ Association.

⁶ In the Italian legal order, the ‘extra-contractual civil liability’ is regulated under art 2043 of the Italian Civil Code.



reduce GHG emissions, as well as to properly inform all within Italy's jurisdiction about the risks related to climate change and the policies adopted to prevent and respond to such risks. The applicants will be Italian citizens, including some minors represented by their parents, alongside environmental and social NGOs. The complaint will be brought before an ordinary civil judge and will be addressed to the Italian Presidency of the Council of Ministers. Overall, the '*Last Judgment*' will constitute a representative example of 'strategic human rights-based climate litigation', which follows in the footsteps of the *Urgenda* case.⁷

Special attention should be paid to the Italian territory and its specific vulnerability. In this respect, the applicants aim to show that Italy, as part of the Mediterranean area, is a 'hot spot' for climate change, and that it is suffering and will increasingly suffer various severe impacts. In this regard, a 2020 report by the Euro-Mediterranean Center on Climate Change (CMCC, 'Centro Euro-Mediterraneo sui Cambiamenti Climatici') offers a detailed risk analysis for climate change scenarios in Italy.⁸ Italy is particularly vulnerable to various climate change risks, especially in relation to hydrogeological instability linked to extreme rainfall episodes, coastal erosion, water scarcity, heat waves, and forest fires. Along with this factual evidence, the applicants also refer to various political declarations in which representatives of the Italian State show full awareness of the seriousness and gravity of the 'climate crisis' and of Italy's specific vulnerability to climate-related risk.

Notwithstanding this awareness, according to the applicants, the Italian authorities have failed to adopt appropriate measures to mitigate climate change.

First, the applicants plan to argue that the Italian authorities have not undertaken a planned and constant reduction of GHG emissions. Emission reductions in Italy were especially large between 2008 and 2014,

⁷ It is also to be noted that the Urgenda Foundation established a 'climate litigation network' to actively support climate cases worldwide.

⁸ D Spano and others, 'Analisi del rischio. I cambiamenti climatici in Italia' (CMCC 2020) <www.cmcc.it/it/analisi-del-rischio-i-cambiamenti-climatici-in-italia>. The executive summary is also available in English.



when Italy was in economic recession. Emissions, however, increased between 2014 and 2017.⁹ Thus, emission reductions in Italy appear to be largely due to the economic crisis, rather than to effective climate policy. A partial ‘decoupling’ between GHG emissions and the economic growth in Italy seems to have occurred only in more recent years (2017-2018).¹⁰

Second, the applicants are planning to take aim at Italy’s emissions reduction targets for 2030 and 2050. The applicants argue that Italy’s emission reduction commitments are not at all in line with the global goal to keep warming ‘well below’ 2°C and preferably below 1.5°C enshrined in the Paris Agreement. Italy’s current emission reductions trajectory and projections show that in a few years the ‘carbon budget’ left for Italy will have been used up.¹¹

Against this factual background, the applicants plan to prove that Italy’s inadequate climate policy has caused a serious interference with the enjoyment of the human rights of those within its jurisdiction and that such interference is unlawful under international, EU, and domestic law.¹²

Various international documents acknowledge the serious implications that climate change has and will have on the enjoyment of a vast array of human rights. The UN Office of the High Commissioner for Human Rights (OHCHR) and the UN Special Rapporteur on human rights

⁹ See D Romano and others, ‘Italian Greenhouse Gas Inventory 1990-2018 National Inventory Report 2020’ 318 ISpra 2020 <www.isprambiente.gov.it/files2020/pubblicazioni/rapporti/Rapporto_318_2020.pdf>.

¹⁰ In 2018, GHG emissions were 17,2% lower than in 1990, and the emissions level was for the first time lower than in 2014. Estimated data for 2019 indicate approximately 2 % reduction more from previous year. See D Romano, ‘L’andamento delle emissioni nazionali di gas serra’ (ISpra 2020) <www.isprambiente.gov.it/files2020/eventi/gas-serra/romano.pdf>.

¹¹ Essentially, in this context by ‘carbon budget’ is meant the limited amount of CO₂ that can still be released into the atmosphere if we want to limit global warming to 1.5°C. Nowadays, scientific consensus exists on using the carbon budget as a further important benchmark for assessing climate policy. See D Messner and others, ‘The budget approach: a framework for a global transformation toward a low-carbon economy’ (2010) 2 *J of Renewable and Sustainable Energy*; and J Rogelj and others, ‘Estimating and tracking the remaining carbon budget for stringent climate targets’ (2019) 571 *Nature* 335.

¹² In this respect, reference should be made to art 117 (1) of the Italian Constitution, according to which the legislative function is exercised by the State and the regions in respect of the Constitution, and the obligations deriving from the EU legal order and international obligations.

and the environment have extensively examined the issue in their reports.¹³ The UN Human Rights Council has recognised these implications in several resolutions, and different UN human rights treaty monitoring bodies have addressed them both in General Comments and Concluding Observations.¹⁴

Italy is party to several UN human rights treaties and to the Paris Agreement,¹⁵ and is also a signatory to the Geneva Pledge for Human Rights in Climate Action,¹⁶ which both recognise the link between human rights and climate change. Although climate change can potentially affect all human rights, the applicants stress the implications of climate change for the enjoyment of the right to a healthy environment, which is protected under the Italian Constitution (under the right to health at Article 32).¹⁷ In addition, the applicants plan to ask the court to formally recognise that a ‘right to a safe climate’, arising from the interplay between the Italian Constitution and international climate change law, is already part of the Italian legal order as a corollary to the right to a healthy environment.¹⁸

¹³ As for the OHCHR reports, see <www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx>. As for the reports of the UN Special Rapporteur on human rights and the environment see <www.ohchr.org/en/Issues/environment/SREnvironment/Pages/SREnvironmentIndex.aspx>.

¹⁴ The relevant resolutions of the Human Rights Council can be found here <www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/Resolutions.aspx>. As for the practice of human rights treaty bodies see, among the others: UN Human Rights Committee, ‘General Comment N° 36 on the right to life’ (October 2018) UN Doc CCPR/C/GC/36 para 62; UN Committee on Economic Social and Cultural Rights, ‘Climate change and the International Covenant on Economic, Social and Cultural Rights’, Statement of the CESCR (October 2018); and UN Committee on the Elimination of All Forms of Discrimination Against Women, ‘General Recommendation N° 37 on Disaster risk reduction in the context of climate change’ (February 2018) UN Doc CEDAW/C/GC/37.

¹⁵ See Status of Ratifications, Italy on the website of the UN OHCHR <www.ohchr.org/EN/Countries/ENACARRegion/Pages/ITIndex.aspx>. Italy ratified the Paris Agreement on 11 November 2016, see <<https://unfccc.int/node/61088>>.

¹⁶ The initiative was hosted by the Republic of Costa Rica, see <www.rree.go.cr/files/includes/files.php?id=453&tipo=contenido>. Italy signed the Geneva Pledge following its adoption in February 2015.

¹⁷ See Italian Constitutional Court (1987) decision n 210 and n 641.

¹⁸ On the significance of the recognition of the right to a safe climate, or more generally of the right to a healthy environment with a safe climate as one of its ‘vital elements’, see the 2019 dedicated report of the UN Special Rapporteur on human rights and the environment: ‘Human rights obligations relating to the enjoyment of a safe, clean, healthy

The applicants plan to allege that the conduct of the Italian State is unlawful, in the first place, under international climate change law. Building on the arguments that were for the first time successfully tested in the *Urgenda* case, the applicants allege that international climate treaties¹⁹ impose an individual responsibility on each State party to reduce GHG emissions. The extent and timeframes of emissions reduction are determined in light of the scientific reports produced by the Intergovernmental Panel on Climate Change (IPCC), which are endorsed by the State parties to the UNFCCC, including Italy. Basically, IPCC reports identify trajectories and timeframes of emissions reduction to be pursued in order to fulfil the overall objective of the treaties, namely, to prevent dangerous anthropogenic interference with the climate system and limit global warming.

The applicants further allege that, with its inadequate climate action, Italy is also violating its positive obligation to protect human rights arising under international, EU and constitutional law. According to the applicants, the Italian authorities have the obligation to take appropriate measures to prevent climate change from interfering with human rights, also considering their full awareness about the gravity of such interference. The Italian Constitution protects fundamental rights overall at Articles 2 and 3, and explicitly the right to health at Article 32. The European Convention on Human Rights (ECHR) protects the right to life and to private life at Articles 2 and 8, respectively. According to the European Court of Human Rights (ECtHR), the scope of protection envisaged in these articles includes ‘real and immediate risks’ to the enjoyment of human rights, also arising from environmental degradation, of which the public authorities have knowledge.²⁰ Unlike in the Netherlands, in Italy

and sustainable environment’ UN Doc A/74/161 (15 July 2019) <www.ohchr.org/EN/Issues/Environment/SREnvironment/Pages/SafeClimate.aspx>. See also A Boyle, ‘Human Rights and the Environment: Where Next?’ (2012) 23 *Eur J Intl L*, 613; JH Knox, R Pejan (eds), ‘The Human Right to a Healthy Environment’ (CUP 2018) and G Adinolfi, ‘The Right to a Healthy Environment: Delineating the Content (and Contours) of a Slippery Notion’, in F Zorzi Giustiniani and others (eds), *Routledge Handbook on Human Rights and Disasters* (2018 Routledge) 211.

¹⁹ The United Nations Framework Convention on Climate Change (UNFCCC) (especially art 4 para 2) and the Paris Agreement (especially arts 2, 3 and 4)

²⁰ See *Osman v United Kingdom* Appl 23452/94 (ECtHR, 28 October 1998). See also *Budayeva et al v Russia* Appl 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (ECtHR, 20 March 2008).



the ECHR cannot be directly invoked before a national judge; it constitutes, however, an ‘interposed parameter of constitutional legitimacy’ (*parametro interposto di costituzionalità*) to be respected by the national law.²¹ On the other hand, Article 37 of the Charter of Fundamental Rights of the EU enshrines the right to a healthy environment, which, as an integral part of EU Treaties, enjoys direct applicability in the Italian legal system and therefore is also relevant to the case.

The applicants also contend that the Italian State also has the obligation to provide the population with an adequate access to information about climate change causes and effects as well as on Italian climate policy more generally. The applicants maintain that the Italian State is not fulfilling this obligation, which arises, among others, from the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).²²

3. *A preliminary appraisal of the ‘Last Judgment’*

Human rights-based climate litigation in general and the ‘*Last Judgment*’ in particular raise various contentious points. The present section addresses in the first place the question of the justiciability of the claims, with special regard to the *locus standi* of the applicants and the role of the ‘separation of powers’ doctrine. The section discusses then some substantive issues, namely: to what extent climate-related risks fit within the scope of protection envisaged by human rights law; how the questions of objective causation and subjective attribution in relation to climate harm can be handled in human rights-based litigation; and the role of climate science in this type of case law. The Italian climate policy is taken into exam in this context.

3.1. *Locus standi*

Admissibility can constitute a major obstacle to human rights-based climate litigation. The first point to be stressed in this context is that in

²¹ See Italian Constitutional Court (2007) decisions n 348 and n 349.

²² Italy ratified the Aarhus Convention on 13 June 2001.

domestic climate litigation the procedural aspects of the case depend to a significant extent on the specific internal legal order of the State of jurisdiction. This was arguably key to the success of the *Urgenda* case in the Netherlands. Indeed, the Dutch legal order is particularly favourable to strategic climate litigation. First of all because it grants ample space to litigation that pursues public interests, and second, because it is very open to international law. The Dutch civil code gives ample space to collective action claims. In the specific case of *Urgenda*, the Dutch Supreme Court, decided that the interests of the Dutch citizens in connection to climate change can be gathered together in a collective action to grant them more effective protection.²³ The *locus standi* of the applicants was not disputed by the Dutch government. This was not the case in other climate lawsuits, which have been declared inadmissible due to the applicants' lack of standing.²⁴ For example, in *Union of Swiss Senior Women for Climate Protection v Switzerland*, the fact that the applicants belong to a particularly vulnerable group – namely older women whose health is specially affected by hot weather periods due to climate change – was thought to give them a particularly strong argument for standing.²⁵

²³ *Urgenda* (n 1) para 5.9.2. It is worth to note however that following the *Urgenda* judgment, art 3:305 of the Dutch Civil Code has been changed quite drastically. Since 1 January 2020, a foundation must be 'sufficiently representative' in order to institute legal proceedings aimed at protecting a general interest. On this and more generally on the impact of *Urgenda* and other similar cases on public interest litigation in the Netherlands see O Spijkers, 'Public Interest Litigation Before Domestic Courts in The Netherlands on the Basis of International Law: Article 3:305a Dutch Civil Code' EJIL:Talk (6 March 2020) <www.ejiltalk.org/public-interest-litigation-before-domestic-courts-in-the-netherlands-on-the-basis-of-international-law-article-3305a-dutch-civil-code/> and O Spijkers, 'Urgenda and Dutch Dikastophobia: Is this the end of public interest litigation for the environment, and the end of Article 3:305a Dutch civil code?' (2020) The Global Network for Human Rights and the Environment (GNHRE) <www.gnhre.org/2020/02/17/urgenda-and-dutch-dikastophobia-is-this-the-end-of-public-interest-litigation-for-the-environment-and-the-end-of-article-3305a-dutch-civil-code/>.

²⁴ Five human rights-based complaints have been rejected on admissibility grounds by European domestic courts so far. See *Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others*, *Plan B Earth and Others v UK Secretary of State for Business, Energy, and Industrial Strategy*, *Family Farmers and Greenpeace Germany v Germany*, *Greenpeace et al v Austria*, *PUSH Sweden*, *Nature and Youth Sweden and Others v Government of Sweden* ('Magnolia case') all available in the climate change litigation database of the Sabin Center <<http://climatecasechart.com/>>.

²⁵ *Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others* English Summary of the application (2016) 7 <www.climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>.



Nevertheless, standing was denied. According to the Swiss courts, the applicants' rights had not been affected. Instead, they were solely pursuing public interests, which under Swiss law is not enough to grant the status of victim.²⁶ The applicants filed an application to the ECtHR in October 2020.²⁷

The '*Last Judgment*' demands an ordinary civil judge to issue an injunctive order against the government as part of strategic legal action. This is not at all common in the Italian legal system. Accordingly, the admissibility stage could constitute a serious hurdle. The applicants contend that as the inadequate climate policy of the State is causing a serious interference with their fundamental rights, the civil judge is the most appropriate judicial body to hear their claim. In addition, the State will have to respond to alleged breaches of national, EU and international law. In this connection, the success of the *Urgenda* case may also be attributed to the openness of the Dutch legal order to international law. According to Article 93 of the Dutch Constitution, international law provisions that may be 'binding on all persons' (by virtue of their content) are directly applicable in the domestic system. The Court of Appeal granted the ECHR 'direct effect', while other relevant international norms – including the international climate treaties, the 'no harm' and the precautionary principle – were widely relied upon for interpretative purpose.²⁸ It remains to be seen what role international law can play in the Italian lawsuit. As already mentioned, the ECHR does not enjoy 'direct effect' in the Italian legal system. Yet, the ECHR still constitutes an 'interposed parameter of constitutional legitimacy' ('*parametro interposto di costituzionalità*'), which the national law must follow.²⁹

²⁶ *Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others*, English translations of decisions <www.climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>.

²⁷ *Union of Swiss Senior Women for Climate Protection v Swiss Federal Council and Others*, Application to the ECtHR <www.climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-parliament/>.

²⁸ The Advocate-General and Procurator-General of the Dutch Supreme Court issued his Opinion on the *Urgenda* case in September 2019. In the opinion, he deals with the issue of 'direct and reflex effects' of international law provisions in the Dutch legal order. See *The State of the Netherlands v Stichting Urgenda*, Procurator General of the Supreme Court of the Netherlands, Conclusion (2019) ECLI:NL:PHR:2019:1026 paras 2.26-2.30.

²⁹ See n 22. See also A Caligiuri, N Napoletano, 'The Application of the ECHR in the Domestic Legal Systems' (2011) 10 Italian YB Intl L 125.



3.2. *The separation of powers doctrine*

Another obstacle to climate lawsuits like the ‘*Last Judgment*’ may come from the so-called ‘separation of powers’ doctrine, hence from the presumption that by adjudicating on climate policy, the judiciary is interfering into matters that are intrinsically political.³⁰ Defendant governmental actors usually challenge the justiciability of climate cases by raising this point in the proceedings. The issue, for instance, was amply discussed both in *Urgenda* and in *Friends of the Irish Environment v Ireland*.³¹ In both cases, however, the argument was in the end rejected by the courts.³² In this respect, the applicants of the ‘*Last Judgment*’ argue that public authorities must always act within the limits of the law and respecting the primary norm of *neminem laedere*. In line with the Italian civil code and the jurisprudence of the Italian Constitutional Court, a conduct (or omission) that infringes fundamental rights should always be ‘justiciable’; hence the victims can appropriately demand relief, also in the form of an injunctive order to the State.³³

Arguably, a difference should be made between raising the separation of powers as a challenge to the admissibility of the complaint, and the argument that *in the merits* of climate policy ample discretion should be granted to the government. Setting a precise emission reduction target through a judicial decision may be considered an encroachment on the discretionary powers of the executive/legislative powers. In *Friends of the Irish Environment*, the Court of first instance ruled in favour of the Government because, in its opinion, it had appropriately exercised its discretion in relation to the making and adoption of Irish National Mitigation

³⁰ P Mikuli, ‘Separation of Powers’ (2018) Max Planck Encyclopedia of Comparative Constitutional Law <www.opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1603>.

³¹ In the latter case, the environmental NGO sued the Irish Government alleging that the National Mitigation Plan adopted in 2017 was not sufficient to achieve substantial emissions reduction in the short term and its approval was thus violating Ireland’s Climate Action and Low Carbon Development Act of 2015, the Constitution of Ireland, and Ireland’s obligations under the ECHR. In 2020, the Supreme Court of Ireland issued a ruling quashing the plan. See *Friends of the Irish Environment v Ireland* (2020), Supreme Court of Ireland [Appeal No:205/19].

³² *Urgenda* (n 1) paras 8.3.1-8.3.5 and *Friends of the Irish Environment v Ireland* (n 31) paras 6.23-6.27.

³³ See in particular: Italian Constitutional Court (1987) decision n 641.



Plan.³⁴ Conversely, the French *Conseil d'Etat* has declared that the complaint brought by the municipality of *Grande-Synthe*, located in the very Northern part of France and particularly vulnerable to sea-level rise and flooding, was admissible.³⁵ In *Urgenda*, the Supreme Court observed that the Government had yet sufficient discretion in deciding which measures to adopt in order to achieve the given emission target. Another argument put forward in *Urgenda* to overcome the separation of powers objection is that a judicial body could set a specific emissions reduction target if this represents the 'minimum threshold' under which the human rights of the individuals subject to the jurisdiction of the State would be seriously endangered.³⁶

3.3. Climate-related risks and the scope of human rights protection

The extent to which the adverse effects of climate change can fit within the scope of protection envisaged by human rights law is topic of debate in the literature.³⁷

Here, special attention is paid to the fact that in cases like *Urgenda* and the '*Last Judgment*', the risks that climate change entails for the future are also taken into full consideration, alongside with past and present climate change impacts. Human rights law is characterised by a reactive or *ex-post* approach, since, normally, human rights claims address infringements that have already been committed. However, human rights

³⁴ *Friends of the Irish Environment*, High Court (2019) IECH 747 para 113.

³⁵ *Commune de Grande Synthe v France*, Conseil d'Etat, N.427301 (19 November 2020) <<http://climatecasechart.com/non-us-case/commune-de-grande-synthe-v-france/>>. For a comment, see B Parance and J Rochfeld, 'Un tsunami juridique: la première décision "climatique" rendue par le Conseil d'État français le 19 novembre 2020 est historique' *leclubdesjuristes* (2020) <<https://blog.leclubdesjuristes.com/un-tsunami-juridique-la-premiere-decision-climatique-rendue-par-le-conseil-detat-francais/>>.

³⁶ *Urgenda* (n 1).

³⁷ See, among the others: JH Knox, 'Climate Change and Human Rights Law' (2009) 50 *Virginia J Intl L* 163; M Wewerinke-Singh, *State Responsibility, Climate Change and Human Rights under International Law* (Hart Publishing 2019); A Savaresi, 'Human Rights and the Impacts of Climate Change: Revisiting the Assumptions' (2020) *Onati Socio-legal Series* <<https://onatifirstonline.wordpress.com/2020/11/26/human-rights-and-the-impacts-of-climate-change-revisiting-the-assumptions-annalisa-savaresi/>>.



law also includes, to a certain extent, the obligation to take all the appropriate measures aimed to *prevent* future infringements.³⁸ It is today accepted that States should exercise due diligence in preventing environmental harm that interferes with the enjoyment of human rights.³⁹ In this context, several UN human rights bodies have authoritatively stated that positive human rights obligations include taking action to reduce climate risks and prevent future impacts.

The ECtHR has on several occasions observed that ‘real and immediate risks’ fit within the scope of protection envisaged by the Convention, also in specific connection to environmental degradation.⁴⁰ In 2020, the ECtHR received its first two applications concerning climate change.⁴¹ It remains to be seen whether and to what extent the Court will extend its jurisprudence on ‘risk regulation’ to encompass also climate change.⁴² In *Urgenda*, the Dutch Supreme Court observed that climate-related risks fall within the scope of protection envisaged by Articles 2 and 8 of the ECHR. To this purpose, the Dutch Court relied heavily on the precautionary principle and stressed the exceptional severity of climate-related risks, including for a well-developed State of Western Europe as the Netherlands.⁴³

³⁸ See, for example, UN Human Rights Council, ‘The Role of prevention in the Promotion and Protection of Human Rights’ Report of the OHCHR (July 2015) UN Doc A/HRC/30/20 para 4.

³⁹ See OHCHR, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018) UN Doc A/HRC/37/59 para 5.

⁴⁰ See (n 21) above. See also L Seminara, ‘Risk Regulation and the European Convention on Human Rights’ (2016) 7 Eur J of Risk Regulation 733.

⁴¹ In September 2020, six Portuguese youth filed a complaint against 33 States alleging that the latter are violating their human rights by failing to take sufficient action on climate change. They thus demand the ECtHR to issue an order compelling them to more ambitious action. Interestingly, the applicants argue that there is no adequate domestic remedy, in particular because there is an extremely limited amount of time available to take the steps necessary to prevent global warming from exceeding 1.5°C. The application form is available at < www.climatecasechart.com/non-us-case/youth-for-climate-justice-v-austria-et-al/ .> As said, in October 2020 the *Union of Swiss Senior Women for Climate Protection* brought its case against Switzerland before the ECtHR.

⁴² For the moment, the Court decided to grant the first case priority on the basis of the ‘importance and urgency of the issues raised’ and demanded the 33 defendant States to respond to some questions by the end of February 2021.

⁴³ As for the severity of the risks, in *Urgenda* the Dutch Court emphasised the risks arising from sea-level rise, as they are the most relevant to the Netherlands. As mentioned above, the Italian territory also faces several climate related-risks going from hydrological

This approach sounds promising. The scope of human rights protection should evolve in line with society, adapting to the new threats that human rights face. It was more than 40 years ago that the first explicit reference to the ECHR as a ‘living instrument’ appeared in the Court’s case-law.⁴⁴ Today it is acknowledged that the Convention is to be interpreted in light of ‘present-day conditions’, taking into account social and scientific transformations as well as evolving human rights standards.⁴⁵ It has already been recognised at the highest possible level that ‘climate change poses an existential threat to humanity’ and that ‘the world has never seen a threat to human rights of this scope’.⁴⁶ The uncertainty embedded in climate science should not preclude States from taking all the appropriate measures to confront climate-related risks.

3.4. *Establishing objective causation and subjective attribution*

Establishing objective causation and subjective attribution in relation to climate harm is normally considered a major obstacle for climate change litigation. Albeit intertwined and often dealt with together, objective causation and subjective attribution are different questions.⁴⁷ With regard to causation, the question is, put succinctly, whether a causality link can be established between the release of GHG emissions and the specific harm allegedly suffered by the applicant. The causal link is indirect: emissions release causes climate change, whose adverse effects cause individual harm. As for attribution, the problem is to what extent the damage suffered can be attributed to a given State, considering that, first, not only State actors but also (and mainly) private actors release

risks following heavy rain episodes to drought and desertification, which can increasingly constitute a serious threat to the enjoyment of human rights.

⁴⁴ See *Tyrer v United Kingdom* App 5856/72 (ECtHR 25 April 1978) para 31.

⁴⁵ See ECtHR Registry, ‘Background paper for the judicial seminar 2020: The Convention as a living instrument at 70’ <https://echr.coe.int/Documents/Seminar_background_paper_2020_ENG.pdf>.

⁴⁶ See UNnews, ‘Climate change: An “existential threat” to humanity, UN chief warns global summit’ (15 May 2018) <www.news.un.org/en/story/2018/05/1009782> and ‘Global update at the 42nd session of the Human Rights Council’, Opening statement by UN High Commissioner for Human Rights Michelle Bachelet (9 September 2019) <www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24956&LangID=E>.

⁴⁷ See O Quirico, ‘Climate Change and State Responsibility for Human Rights Violations: Causation and Imputation’ (2018) 2 *Netherlands Intl L Rev* 185.



GHG emissions; and second, that the atmosphere does not recognise boundaries, hence the individuals subject to the jurisdiction of that given State also suffer the effects of the GHG emissions released in the territory of another country. The point to be discussed here is how causation and attribution can be established in climate cases like *'Last Judgment'*, and whether and to what extent these obstacles can be 'softened' by using human rights arguments.

Regarding causation, today it is – or at least it should be – undisputed that GHG emissions linked to human activities are the principal cause of climate change. As already mentioned, it is also widely recognised that, *in abstracto*, the adverse effects of climate change can cause interference with the enjoyment of a vast array of human rights. However, in human rights-based climate litigation, the difficult part comes when the applicant has to prove a clear causal link between climate change and the encroachment on his/her specific rights. On the one hand, this causal nexus might seem easier to establish in cases in which the applicants claim to have suffered damage from a climate-related event that has already happened, like a flash flood or a heat wave.⁴⁸ This is not the case of the *'Last Judgment'*, where the applicants follow the path laid down by *Urgenda* and allege more generalised human rights violations, resulting from the overall impact of climate change. On the other hand, *Urgenda* shows how causality 'only plays a limited role' in those cases in which the applicants are not demanding damage compensation.⁴⁹ Compared to tort law, under human rights law victims should have the burden of proof significantly eased. When the applicants demand protection against a 'real risk' of human rights violations due to climate change, the application of the precautionary principle should lead to a 'probabilistic approach to causation', as this 'seems indispensable to guaranteeing the right to a remedy for victims of human rights violations that result from climate change'.⁵⁰

⁴⁸ Progress in the science of 'extreme weather event attribution' might be particularly useful in this context, see S Marjanac, L Patton, 'Extreme Weather Event Attribution Science and Climate Change Litigation: An Essential Step in the Causal Chain?' (2018) 36 *J of Energy & Natural Resources L* 265.

⁴⁹ *Urgenda* (n 1) para 64

⁵⁰ M Wewerinke-Singh, 'Remedies for Human Rights Violations Caused by Climate Change' (2019) 9 *Climate Law* 232. See also L A Omuko, 'Applying the Precautionary Principle to Address the "Proof Problem" in Climate Change Litigation' (2016) 21 *Tilburg L Rev* 52.



Concerning attribution, under human rights law States have an obligation to prevent human rights violations, regardless of whether they have directly caused the harm. There is much practice asserting that States have to take positive steps to protect individuals from third-party interference with their rights, and that they can be held responsible for human rights harms caused by private actors operating within their jurisdiction.⁵¹ Secondly, in *Urgenda* the Court held that each State has its own independent obligation to ‘do its part’ in order to prevent climate change impacts. In other words, the fact that the Netherlands is only one (and also a relatively small one) among the many contributors to climate change did not prevent the Court to establish its individual and independent obligation to reduce emissions. According to the Dutch Court, the Netherlands ‘is obliged to do its part in order to prevent dangerous climate change, even if it is a global problem’. By relying on this argument, the Dutch Court was able to establish an individual obligation for the Netherlands to meet a certain emissions target, despite the fact that that IPCC has only indicated a collective target for developed country parties to the UNFCCC.⁵² This was arguably the single most controversial aspect of the *Urgenda*’s judgments. To support its conclusion, the Dutch Supreme Court referred to various international sources, including international climate treaties, the no harm principle, and the Articles on Responsibility of States for Internationally Wrongful Acts (Article 47 in particular).⁵³ Similar to what argued above on causation, the fact that in *Urgenda*, as well as in the ‘*Last Judgment*’, the applicants are not claiming compensation for a tort but they are ‘only’ alleging human rights violations makes some difference for attribution. In particular, in these cases

⁵¹ See for example Human Rights Committee, General Comment No 31 (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 8: ‘the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights...[t]here may be circumstances in which a failure to ensure Covenant rights...would give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities’.

⁵² *Urgenda* (n 1) para 5.7.1

⁵³ *ibid* para 5.7.6.



the judge does not have to take a stance on the complex issue of quantifying shares of reparation responsibility to allocate among multiple States.⁵⁴ In these cases, the ‘doing its part’ (or the ‘fair share’) argument is used ‘just’ to establish the individual obligation to meet a certain target of emissions reduction.⁵⁵

3.5. *The role of climate science*

Climate science plays a major role in human rights-based climate litigation, providing the factual basis for the legal claims put forward in the complaints. This is mainly the case of the IPCC reports, which constitute the most established source of scientific evidence on climate change.⁵⁶ The legal value of these reports is however controversial. The IPCC is an intergovernmental body, and its reports are requested by State parties, and by them endorsed.⁵⁷ The IPCC reports are not binding law *per se*, but as explained above, they can integrate the international treaties on climate change.

⁵⁴ This question has come up in other climate cases. See in particular *Luciano Lliuya v RWE AG*, 2 O 285/15 (2015) Essen Regional Court. The Peruvian farmer Lliuya demands a German Court to order the German Energy company RWE to compensate 0.47% of the damages he suffered due to climate change, as RWE contributed 0.47% to historical global GHG emissions.

⁵⁵ On the ‘fair share’ issue in human rights-based climate litigation see G Liston, ‘Enhancing the Efficacy of Climate Change Litigation: How to Resolve the “Fair Share Question” in the Context of International Human Rights Law’ (2020) 9 Cambridge J Intl L 241.

⁵⁶ IPCC reports are based on hundreds of peer-reviewed scientific papers. The IPCC provides regular summaries of the state of the knowledge, by analysing hundreds of reviewed papers, which presents results and discuss scientific issues linked to climate change, applying the scientific method.

⁵⁷ States Parties to the UNFCCC endorse the IPCC reports through a three-level process: approval; adoption; and acceptance. ‘Approval’ means that the material has been subjected to detailed line-by-line discussion and agreement. This is the procedure used for the ‘Summary for Policymakers’. ‘Adoption’ describes a section-by-section endorsement. This is used for the ‘Synthesis Report’ and overview chapters of the ‘Methodology Reports’. ‘Acceptance’ signifies that the material has not been subject to line-by-line or section-by-section agreement but nevertheless it presents a comprehensive, objective and balanced assessment of the subject matter. See Appendix A to the Principles Governing IPCC Work: Procedures for the Preparation, Review, Acceptance, Adoption, Approval and Publication of IPCC Reports, adopted at the Fifteenth Session (San Jose, 15-18 April 1999) and amended at various following sessions <www.ipcc.ch/site/assets/uploads/2018/09/ipcc-principles-appendix-a-final.pdf>.



The ruling of the Dutch Supreme Court in the *Urgenda* case is the most renowned example of climate science being ‘enforced’ in court. The court ordered the Government of the Netherlands to reduce its GHG emissions by 2020, based on a specific collective target for developed countries parties to the UNFCCC, which was extracted from an Annex to the IPCC 2007 Assessment Report 4 (AR4).⁵⁸ In order to convert the collective target identified by the IPCC in a benchmark, the Dutch Court relied on the interpretative mechanism of ‘European consensus’ (also referred to as the ‘common ground method’) established in the ECtHR’s case law.⁵⁹ What, in the reasoning of the Dutch Court, turned such target into the ‘common ground’ is that it was endorsed by the State parties to the UNFCCC in multiple occasions, hence denoting that ‘there is a high degree of international consensus’ on it.⁶⁰ In this way, climate science becomes a fundamental legal parameter that States should comply with.

Since 2015, when the *Urgenda* case was launched, the climate policy scenario evolved, and certainly not for the better. Upon request of the UNFCCC parties, in 2018 the IPCC released its Special Report on ‘Global Warming of 1.5°C’.⁶¹ This Report makes very compelling arguments for limiting global warming to 1.5°C, showing how much higher the risks of a 2°C global temperature increase are.⁶² This higher impact

⁵⁸ B Metz and others (eds), *Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Inter-governmental Panel on Climate Change* (CUP 2007) 776.

⁵⁹ The ECtHR in interpreting the Convention can rely on specialised international instruments and on the practice of contracting States when these ‘denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies’, ECtHR, *Demir and Baykara v Turkey* (12 November 2008) Appl no 34503/97, para 85-86.

⁶⁰ *Urgenda* (n 1) para 5.4.2.

⁶¹ V Masson-Delmotte and others (eds), ‘IPCC, 2018: Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty’ (In Press, 2018).

⁶² See also K Levin, ‘8 Things You Need to Know About the IPCC 1.5°C Report’, 2018 World Resources Institute <www.wri.org/blog/2018/10/8-things-you-need-know-about-ipcc-15-c-report>.



would make the difference also from a human rights perspective.⁶³ According to the IPCC, in order to limit global warming to 1.5°C, global net anthropogenic CO₂ emissions will have to ‘decline by about 45% from 2010 levels by 2030’ and we will have to reach net zero around 2050.⁶⁴ The UNEP Emissions Gap Report 2020 stresses that ‘current NDCs remain seriously inadequate to achieve the climate goals of the Paris Agreement and would lead to a temperature increase of at least 3° C by the end of the century’.⁶⁵ Although 2020 emissions will be much lower than those of previous years due to the COVID-19 crisis, UNEP recalls that such immediate reduction in emissions is expected to have a negligible long-term impact on climate change, as GHG concentrations in the atmosphere continue to rise.⁶⁶ Indeed, the Copernicus Climate Change Service reports that the global-average warming with respect to the pre-industrial level stands now at 1.28°C. Given that during the last decade the global temperature increased, on average, by about 0.2°C every ten years, unless drastic emission cuts are implemented, the world is a decade away from reaching the 1.5°C limit and about three decades from the 2°C limit.⁶⁷ In terms of carbon budget, the Mercator Research Institute on Global Commons and Climate Change (MCC) estimates that, if global emissions continue at the current pace, the entire remaining budget to stay within 1.5°C global warming will be gone in 7 years and in 25 years for a 2°C warming.⁶⁸

Within this scenario, Italy is responsible for a share of approximately 1% of global emissions. In 2018, Italy emitted around 428 Mt of CO₂-

⁶³ See the 2019 report of the Special Rapporteur on human rights and the environment (n 18) para 22 and the IPCC 2018 Special Report (n 62) 469.

⁶⁴ In addition, ‘modelled pathways that limit global warming to 1.5°C with no or limited overshoot involve deep reductions in emissions of methane and black carbon (35% or more of both by 2050 relative to 2010)’ (*high confidence*). Overall, the IPCC highlights that ‘[p]athways limiting global warming to 1.5°C with no or limited overshoot would require rapid and far-reaching transitions in energy, land, urban and infrastructure (including transport and buildings), and industrial systems’ (*high confidence*). See IPCC 2018 (n 62).

⁶⁵ UNEP Emissions Gap Report 2020, 11 <www.unenvironment.org/emissions-gap-report-2020>.

⁶⁶ *ibid* 14.

⁶⁷ See Copernicus Climate Change Service (C3S) <www.climate.copernicus.eu>.

⁶⁸ See Mercator Research Institute on Global Commons and Climate Change (MCC) MCC Carbon Clock <www.mcc-berlin.net/en/research/co2-budget.html>.



eq, thus scoring amongst the twenty largest emitters worldwide.⁶⁹ Its current emissions per capita, however, are slightly lower than those of many other European countries, including the Netherlands.⁷⁰ In terms of future projections, in 2019 Italy adopted the Italian National Plan on Energy and Climate (PNIEC) and the so-called ‘Climate Decree’ (*Decreto clima*). These instruments are aimed to implement Italy’s obligations under the EU 2030 Climate and Energy Framework, which commits the EU as a whole to reduce GHG emissions by at least 40% (below 1990 levels) within 2030.⁷¹ Such EU targets however have already been assessed as insufficient. Climate Action Tracker – an independent body that assesses States’ climate action against the objectives of the Paris Agreement – estimates that the EU is not doing its ‘fair share’ as its emissions reductions are ‘not sufficient to hold warming below 2°C, much less 1.5°C, unless others do substantially more’.⁷² In addition, the Climate Transparency Report 2020 – a global partnership with a shared mission to stimulate through enhanced transparency a ‘race to the top’ in climate action in G20 countries – calculated that ‘Italy is not yet on track for a 1.5°C world’, as it is not doing its ‘fair-share’.⁷³ The same assessment emerges if

⁶⁹ See Global Carbon Atlas <www.globalcarbonatlas.org/en/CO2-emissions> and Our world in data <www.ourworldindata.org/co2/country/italy?country=-ITA>. A carbon dioxide equivalent or CO₂ equivalent, abbreviated as CO₂-eq, is a metric measure used to compare the emissions from various greenhouse gases on the basis of their global-warming potential (GWP), by converting amounts of other gases to the equivalent amount of carbon dioxide with the same global warming potential.

⁷⁰ See Eurostat, ‘Greenhouse gas emissions per capita table’ <www.ec.europa.eu/eurostat/web/products-datasets/-/T2020_RD300>.

⁷¹ See EU 2030 Climate and Energy Framework <www.ec.europa.eu/clima/policies/strategies/2030_en>. The Framework includes several legal instruments, in particular for the climate component: Revised Emissions Trading Directive (2018/410); Regulation 2018/842 on Effort Sharing; Regulation on Land Use, Land-Use Change and Forestry (2018/841). Accordingly, the PNIEC aims to 40% emissions reduction by 2030, with a 33% reduction from non-ETS sectors, such as transport (aviation and international maritime shipping excluded), buildings, agriculture and waste <<https://www.mise.gov.it/index.php/it/2040668>>.

⁷² Climate Action Tracker (CAT) originates from the collaboration between two organisations, Climate Analytics and New Climate Institute, and has been providing this independent analysis to policymakers since 2009. See <<https://climateactiontracker.org/countries/eu/>>.

⁷³ The Climate Transparency Report (previously known as the ‘Brown to Green Report’) covers easy-to-use information on climate policy and includes detailed fact sheets on all G20 countries. It is published on an annual basis on the eve of the G20 Summit. See <www.climate-transparency.org/wp-content/uploads/2020/11/Italy-CT-2020-WEB.pdf>.

one looks at the Italian carbon budget. In a 2019 study, EURAC Research calculated that the remaining carbon budget for Italy is 3.8 GT CO₂. If the present emissions pathway does not change, this budget will have been used up before 2030.⁷⁴

Responding to these criticisms, in March 2020 the EU Commission put forward a proposal for a new European Climate Law. Such new instrument pursues higher emission reduction targets: 55% below 1990 levels within 2030 and net zero by 2050. The law will be adopted when a final agreement between the Council of the EU and the Parliament is reached, which should happen in 2021.⁷⁵ For the moment, the 55% target has been agreed at the political level and has already been submitted to the UNFCCC as part of the new EU's nationally determined contribution.⁷⁶ Yet, this new target has also been regarded as incompatible with the Paris Agreement's 1.5° goal. As Climate Analytics reports, in order to be compatible with the goal, domestic emission reductions for the EU27 should be in the range of 58-70% below 1990 levels.⁷⁷ To meet these new targets, Italy will have to increase significantly its 'climate ambition'.⁷⁸ To complicate even more the matter, such efforts will have to be performed within the unprecedented economic recovery program in the aftermath of the Covid-19 crisis. Italy has put the ecological and low-carbon transition at the core of its recovery plans. Yet, a preliminary assessment of the extent to which COVID-19 fiscal rescue and recovery measures to date

⁷⁴ EURAC calculated the Italian budget according to the Italian per capita emissions starting from the Nature study cited above (n 11). See <www.eurac.it/it/research/technologies/renewableenergy/Documents/20191204_Eurac_ItalyEnergyModel_online_EN_02.pdf>.

⁷⁵ See EU Commission, 'Proposal for a Regulation of The European Parliament and of The Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999' (European Climate Law) (4 March 2020) COM(2020) 80 final 2020/0036(COD).

⁷⁶ See Council of the EU, 'Paris Agreement: Council transmits NDC submission on behalf of the EU and member states' Press release 18 December 2020 <www.consilium.europa.eu/media/47652/st14222-re01-en20.pdf>.

⁷⁷ See R Wilson and others, 'European Union 2030 emissions reduction target needs to be brought into line with the Paris Agreement 1.5° C limit', Climate Analytics Briefing (9 December 2020) <https://climateanalytics.org/media/eu_1p5ndc_dec2020.pdf>.

⁷⁸ According to the 'Italy Climate Report 2020' of the 'Italy for Climate' initiative, in order to stay into the new EU targets for 2030 and 2050, Italy should cut every year 17 MtCO₂ eq from 2021 to 2030, while from 2014 to 2019 reduction was just 1,4 MtCo₂ eq per year <<http://italyforclimate.org/wp-content/uploads/Italy-Climate-Report-2020-web.pdf>>.



support low- or high-carbon development shows that while ‘only a few countries have transformed green rhetoric into low-carbon recovery measures’, the picture of Italy is still very much unclear.⁷⁹

Some human rights-based climate lawsuits are already dealing with the new EU climate policy scenario. For instance, in *Neuber, et al v Germany* the applicants contend that the German 2030 target of 55% reduction below 1990 levels is too low and, as such, infringed upon their human rights. The applicants argue that, based on the findings of the IPCC, Germany has to reduce emissions of about 70% (compared to 1990) ‘in order to do ‘its part’, in any case the minimum of what is globally necessary’.⁸⁰ In France, two similar cases are pending, brought by the *Commune de Grande-Synthe* and four French NGOs, respectively.⁸¹ Following in the footsteps of *Urgenda* and these more-recent climate lawsuits, the ‘*Last Judgment*’ too will have to prove that Italian climate policy is insufficient, and that Italy is not doing its ‘fair share’, thus causing a serious interference with the human rights of the individuals subject to its jurisdiction.

4. Conclusive remarks

Human rights-based domestic litigation is increasingly resorted to with the strategic intent of advancing climate action. In this framework, human rights arguments serve as a legal tool to prompt States to take appropriate climate measures. For the many reasons above discussed, the ‘*Last Judgment*’ can be considered an illustrative example of strategic human rights-based domestic litigation on climate change. Two sets of conclusive remarks are here made in this regard.

First, besides being used as a strategic tool (one among the others), the link between human rights and climate change has value *per se*. In some cases, especially for the most vulnerable groups and inhabitants of the global south, climate change is already causing serious interference

⁷⁹ UNEP Emissions Gap Report 2020 (n 66) 38.

⁸⁰ See *Neuber et al v Germany*, Summons (English translation) 10 <<http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>>.

⁸¹ See *Commune de Grande-Synthe* (n 36) and *Notre Affaire à Tous and others v France (L’Affaire du siècle)* <<http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/>>.



with human rights. In cases like the ‘*Last Judgment*’, perhaps this interference may seem less immediate as the rights of inhabitants of the well-developed global north are at stake. Nevertheless, according to scientific evidence, in the near future climate change will pose exceptional and existential threats also to the European population, if adequate measures are not taken today.⁸² In this context, complaints like the ‘*Last Judgment*’ are a manifestation of the necessity to convincingly shift our approach to human rights protection towards prevention and to rely more heavily on the precautionary principle.

Second, strategic human rights-based climate litigation has several limitations. Some of these limitations are intrinsic to litigation on climate change, and in particular to litigation before domestic courts, while some other are to be ascribed to human rights arguments specifically. Climate litigation came to light starting from the difficulties of concluding effective multilateral negotiations. Considering the global scope of the climate change issue, international judicial bodies should represent the natural *fora* for such litigation. Yet, attempts of inter-State adjudication on climate change have been abandoned, at least for the moment.⁸³ It is in this context that domestic climate litigation arises as a practical way through. The present contribution focused on the complaints filed with European domestic courts. European countries, despite being among the largest historical emitters, are currently doing much better than others in reducing emissions. In addition, tougher emissions reduction policies carried out only in such countries might increase ‘carbon leakage’, i.e., the transfer of emissions to the jurisdiction of other countries with less stringent regulations. Thus, even if successful, domestic climate litigation addressing European State actors would not constitute the ultimate panacea for climate change, as multilateral cooperation still represents the optimum option ahead of us.

⁸² See among the others: N Watts and others, ‘The 2019 report of The Lancet Countdown on health and climate change: ensuring that the health of a child born today is not defined by a changing climate’ (2019) 34 *The Lancet* 1836. For example, the heat wave in summer 2003 made an unusually large number of deaths all over Europe; in a warmer climate these events become more intense and more frequent, see P Stott, D Stone, M Allen, ‘Human Contribution to the European Heatwave of 2003’ (2004) 432 *Nature* 610.

⁸³ There are also severe limitations to international litigation, even if it were ever to be made. See A Savaresi, ‘Inter-State Climate Change Litigation: “Neither a Chimera nor a Panacea”’ in I Alogna, C Bakker, JP Gaucci (eds), *Climate Change Litigation: Global Perspectives* (forthcoming 2021).



With specific regard to human rights-based climate litigation, some of its most evident shortcomings have been discussed. The individualistic and *ex post* nature of human rights remedies has been highlighted as an obstacle for climate litigation pursued to safeguard the public interest against climate-related risks. We discussed the limited scope of protection envisaged by human rights law, as well as the difficulty of establishing objective causation and subjective attribution in relation to the alleged human rights infringements, as other potential shortcomings to substantial human rights arguments. However, human rights-based litigation has also some significant advantages. In particular, human rights norms should be interpreted so as to make them practical and effective and adapt them to the new threats that human rights may face in the present day. This ‘evolutive interpretation’ of human rights norms is arguably the real added value of this legal tool. If it is true that ‘the world has never seen a threat to human rights of this scope’, we should be willing to ‘push the boundaries’ of human rights law to address it effectively.⁸⁴ Extant and upcoming lawsuits, like the ‘*Last Judgment*’, may further develop human rights law towards the prevention of harm and the protection of public interests, if not yet of the environment *per se*. At the same time, the impact of such lawsuits is not limited to the legal sphere. They can bring further attention to the problem of climate change and not only push policy makers to action but also generate fruitful engagement and activism in civil society.

⁸⁴ See Opening statement by UN High Commissioner for Human Rights Michelle Bachelet (n 47) and A Savaresi, J Auz, ‘Climate Change Litigation and Human Rights: Pushing the Boundaries’ (2019) 9 *Climate L* 244.

