



British Institute of  
International and  
Comparative Law

**Climate Change Litigation in Europe:  
Comparative & Sectoral Perspectives and the Way Forward**  
18-19 February 2022  
*Hasselt University, Martelarenlaan 42, Hasselt*

## Overview

Climate change litigation has upsurged over the last decade as a global phenomenon encompassing the societal strive for radical changes, the need to establish responsibilities of both private and public organisations in light of the compelling evidence of climate change, and the collective awareness of the major efforts needed to achieve effective and ambitious GHG emission reductions, in line with the best climate science. In this regard, the initial wave of strategic climate change litigation is now leaving room to a more structural phenomenon, which arguably enshrines climate litigation as a transnational climate governance mechanism. In this regard, several underlying trends are being appraised, which nevertheless underpin the always larger bulk of cases being brought before jurisdictions all over Europe, at the domestic and regional level.

This conference will aim to take stock of the current developments in **climate change litigation in Europe**, while addressing in a systematic and comprehensive way the most relevant trends therein. More specifically, the conference will focus both on its comparative perspectives, through some of the most significant domestic experiences, and on its sectoral perspectives: human rights, State responsibility, international trade and investment protection, corporate responsibility and procedural hurdles. Finally, these perspectives will provide the necessary framework to highlight the way forward, taking into consideration the suggestions and proposals provided by practitioners, academic, judges and other experts participating in this discussion.

## Structure of the Conference

The conference will take place as a hybrid event (in person and online), organised by Hasselt University and the British Institute of International and Comparative Law (BIICL). The conference will consist of 2 half-days to be held on Friday 18 and Saturday 19 February 2022, from 14:00 to 18:00 (Day 1) and from 9:00 to 13:00 (Day 2) Brussels time (CET).

The event will consist of a plenary session with three panel discussions on the first day, and five parallel workshops and a closing panel discussion on the second day. The workshops will collect presentations on the submitted papers for the conference. The workshops' chairs will present their remarks and the final results of the parallel sessions at the closing panel discussion. The proposed structure of the conference is as follows:

## DAY 1

14:00 – 14:15 – Welcoming and Introductory remarks

14:15 – 15:00 – Introductory conversation – “Climate Change, Economy and the Courts”  
Keynote Speakers: Justice Luc Lavrysen (Constitutional Court of Belgium) & Economist TBC  
Discussant: Michael Faure (Maastricht University)

15:00 – 15:45 – “Climate Change Litigation before European Regional Courts”  
Keynote Speakers: Judge Tim Eicke (European Court of Human Rights) & Marc Willers QC (Garden Court Chambers)  
Discussant: Sanja Bogojević (University of Oxford)

15:45 – 16:15 Coffee Break

16:15 – 17:45 – “Climate Change Litigation in Europe: Comparative Perspectives”  
Chairs: Matteo Fermeiglia (Hasselt University) & Ivano Alogna (British Institute of International and Comparative Law – University Paris 1 Panthéon-Sorbonne)

- Belgium: Carole Billiet (Equal Partners)
- France: Sébastien Mabile and François de Cambiaire (Seattle Avocats)
- Germany: Roda Verheyen (Rechtsanwälte Günther)
- The Netherlands: Dennis van Berkel (Urgenda Foundation)
- The United Kingdom: Nigel Pleming QC (39 Essex Chambers)

17:45 – 18:00 – Concluding remarks for Day 1

## DAY 2

9:00 – 11:00 – Parallel Workshops – “Climate Change Litigation in Europe: Sectoral Perspectives”  
[Call for Papers]

1. ***Human Rights and Climate Change Litigation***

Chair and discussant: Annalisa Savaresi (University of Eastern Finland – University of Stirling)

2. ***State Responsibility and Climate Change Litigation***

Chair and discussant: Dennis van Berkel (Urgenda Foundation)

3. ***International Trade & Investment Protection and Climate Change Litigation***

Chair and discussant: Harro van Asselt (University of Eastern Finland)

4. ***Procedural Hurdles to Climate Change Litigation***

Chair and discussant: Marjan Peeters (Maastricht University)

5. ***Corporate Responsibility and Climate Change Litigation***

Chair and discussant: Jaap Spier (University of Cambridge – University of Stellenbosch)

11:00 – 11:30 Coffee Break

11:30 – 12:50

“Climate Change Litigation in Europe: The Way Forward”

Chairs: Justice Luc Lavrysen (Constitutional Court of Belgium) and Carole Billiet (Hasselt University)

Presentations by workshops’ chairs and Q&A

12:50 – 13:00

Concluding remarks

## Call for papers

The conference will host a Call for Papers to collect contributions from both young and senior academics, and practitioners working in the field of climate litigation. The selected contributions will be presented at the respective workshop. The proposed contributions should be focused on one of the five topics (and relative sub-topics) of the parallel workshops.

In all the conference topics, we particularly welcome contributions from extra-EU countries, within the geographical scope of the Council of Europe.

We invite research papers under the following topics and sub-topics:

### 1. Human Rights and Climate Change Litigation

Whilst traditionally the human rights and environmental law regimes have developed in silos, the current wave of climate litigation has clearly marked the strive to achieve full justiciability of climate change as a transnational human rights issue. Human rights violations are consistently raised before national Courts to substantiate unlawful conducts by States and private entities regarding the actual and future harm caused by climate change. Furthermore, and importantly, such trend has prompted action directly before the European Court of Human Rights. Hence, as John H Knox stated: “Human rights and the protection of the environment are inherently interdependent”. Under this topic, we welcome contributions aimed at dissecting the interplay between the human rights regime as enshrined in Europe through the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, domestic constitutional and legislative provisions, as secured, and applied by national and regional Courts.

Possible sub-topics under this topic include (but are not limited to):

- a. Theoretical perspectives on the recognition of climate change as a human rights issue under the European Convention of Human Rights and the EU Charter of Fundamental Rights
- b. Human rights arguments in domestic climate change litigation
- c. Justiciability of climate change before European regional Courts (European Court of Human Rights and EU Court of Justice)

### 2. State Responsibility and Climate Change Litigation

The shift away from purely strategic climate change litigation in the wake of the *Urgenda* case in the Netherlands has unfolded the existence of clear-cut obligations on States to both prevent dangerous climate change and protect their citizens against the consequences thereof. In sum, such obligations have generally been enshrined through the recognition of a “duty of care” owed by some States vis-à-vis their citizens. However, the argumentations and backdrops in which such arguments are being brought and appraised vary widely in Europe between different States. Moreover, the debate rages on as to whether courtrooms are indeed the most fit place to develop and enforce climate policies. Prospectively, inter-State litigation might arise as a means to push States to foster action on climate change or redress harm associated with impacts of climate change. This workshop aims, therefore, to analyse the current trends amidst the staggering liability cases brought against European States, with a particular focus on highly contentious points, such as the issue of the separation of powers, the role of climate science and its appraisal by national Courts, and the yet overlooked issue of challenges to adaptation measures and liability for failure to adapt to the consequences of climate change. We particularly welcome contributions exploring prospective developments in Eastern Europe countries as well as EU neighbouring countries.

Possible sub-topics under this topic include (but are not limited to):

- a. Duty of care of States towards their citizens with regard to their action against dangerous climate change
- b. Inter-State climate change litigation
- c. Separation of powers in climate change litigation brought against States
- d. Role of climate science in climate change litigation brought against States
- e. Intergenerational equality and States' obligations with regard to dangerous climate change
- f. Liability of States for failures to adapt to climate change and challenges to adaptation measures

### 3. International Trade & Investment Protection and Climate Change Litigation

Alongside the wealth of climate-related cases filed at the national and regional level across Europe, international adjudicatory bodies on trade and investment protection are gaining attention as a forum for climate change litigation. On the one hand, although a direct clash between international trade law and multilateral climate treaties has yet to occur, a new generation of trade disputes has emerged, centred on government efforts to boost low-carbon industries. On the other hand, the international investment legal regime as a means to protect foreign investments is increasingly being put at odds with the need for sovereign States to adopt ambitious climate policies at the detriment of investors' property rights on their assets. The recent flood of Investor-State Dispute Settlement (ISDS) cases challenging the support schemes for renewable energy generation in Spain and Italy are examples in this regard. Amidst this backdrop, this topic aims to assess if, and how, litigation in the international trade and investment protection arena entails actual and future climate change-related issues, and whether such arenas are well-placed to accommodate climate change matters.

Possible sub-topics under this topic include (but are not limited to):

- a. Climate change-related ISDS cases within the EU and in the European region
- b. Climate change-related WTO and Preferential Trade Agreements trade cases
- c. Dispute settlement mechanisms in Free Trade and Investment Agreements in the European region

### 4. Procedural Hurdles to Climate Change Litigation

Besides liability and human rights cases on climate change public policies, relevant actions are being brought to directly challenge specific climate change-sensitive projects within the realm of domestic administrative procedures. In this context, States bear obligations to ensure full transparency, access to information, public participation and, not less importantly, full judicial review, and access to justice to review decisions taken by public authorities as enshrined in the UNECE Aarhus Convention. However, several blind spots remain on all the above fundamental issues, which ultimately constitute a barrier to ensure accountability of public authorities and, thus, curtail litigation. Contributions under this topic should, thus, investigate the lingering pitfalls in the application of the above fundamental issues in both EU Member States, other European countries (being part or not to the Aarhus Convention) and before EU institutions in relation to climate change matters.

Possible sub-topics under this topic include (but are not limited to):

- a. Public participation and access to information on climate change matters (e.g., in EIA/SEA procedures)
- b. Access to justice before domestic and European Regional Courts (Court of Justice of the European Union and European Court of Human Rights) on climate change matters
- c. Other barriers to judicial review of climate-change related domestic administrative decisions

## 5. Corporate Responsibility and Climate Change Litigation

As the landmark decision in the Shell case has demonstrated, non-State actors are all but void of legal obligations as to their contribution in the global fight against climate change. Historically, 100 multinationals are responsible for 71% of global greenhouse gases emissions since 1988. Such contribution is now clearly ascertained by attribution science, thus, paving the way for justiciability of companies (mis-)conducts to effectively tackle climate change. Likewise, climate litigation is now targeting the financial sector and central banks to hold them accountable for their support to investments which are not in line with the overarching Paris Agreement goals. At the same time, litigation can involve the private sector from the inside, as shareholders might challenge fossil fuels company boards' decisions with regard, among other things, to greenwashing, misrepresentation of the costs stemming from climate change-related regulations and the non-disclosure of information related to the awareness of climate change. This workshop will, thus, address in a systematic way the patchwork of climate-related cases involving the private sector, with a specific look at the role of attribution science in determining legal obligations on companies to take action against climate change.

Possible sub-topics under this topic include (but are not limited to):

- a. The Shell case and beyond: non-State actors' obligations under tort law to reduce GHG emissions
- b. Climate change liability of central banks and the financial sector
- c. Shareholder's climate-related litigation against companies
- d. Attribution science and companies' obligations on GHG emissions
- e. Climate change due diligence of companies and obligations under international soft law instruments (OECD Guidelines, UN Guiding Principles, etc.)

Submissions must contain the title, the relevant conference topic(s) and sub-topic(s), name(s) of the author(s), institutional affiliation, and contact details (email and institution's address), and a short bio (**max 300 words**). **The full text of the abstract should not exceed 400 words**. Abstracts and short bios must be submitted **by October 31, 2021**. **Final decision upon acceptance** of the abstracts for the call for papers will be communicated **by November 30, 2021**. **A draft paper (max. 5.000 words)** should be submitted **by January 31, 2022**. **Full papers (max. 8000 words)** shall be submitted **before March 18, 2022, to be collected in an edited volume**.

**Abstracts and papers should be sent to:** [climatelitigation@biicl.org](mailto:climatelitigation@biicl.org).

**Registrations fees for accepted authors: 100 €** (including access to all sessions, coffee breaks, dinner on day 1 of the conference, and publication of the paper in the edited volume).

### Organising Committee

Ivano Alogna, Arthur Watts Research Fellow in Environmental and Climate Change Law, British Institute of International and Comparative Law, and University of Paris 1 Panthéon-Sorbonne

Carole Billiet, Professor of Environmental Law, Head of the Environmental Law Unit, Hasselt University

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Alina Holzhausen, Research Assistant in Environmental and Climate Change Law, British Institute of International and Comparative Law, and University of Aberdeen