

Climate Lawsuits against States

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Research field “Environmental Law: State responsibility and mitigation instruments in Climate Change Law”

Research question 1 | Cluster 1

Links to showcases Meyer 1, Meyer 2, Kirchengast 1, Kirchengast 2, Bednar-Friedl 2, Steininger 1

Background: Climate lawsuits against states (apart from such against private actors) have recently emerged as a promising instrument to fight climate change and its consequences. As governments appear reluctant to reduce GHG emissions according to their existing obligations under national and international law, let alone to undertake the more ambitious steps necessary to reach the two-degree target, it is jurisdiction that steps in: Based on concepts such as “duties to protect” citizen’s health and the environment, being derived from human rights, courts have sentenced their countries governments to take adequate action. E.g., in the landmark case of *Urgenda* a court in The Hague in 2015 has ordered the Dutch government to reduce GHG emissions by at least 25 % by 2020 compared to 1990. Similar court battles are being fought and have partly been won in Pakistan (case of *Ashgar Legarit*), Switzerland or in the US (<https://www.ourchildrenstrust.org/>). Such lawsuits against states will certainly increase and might (the claimants being citizens or other states) also aim at compensation for damage, caused either by the states inaction in mitigating climate change or by its historic emissions that contributed to global warming.

Goal: It should therefore—with a focus to EU and Austrian law—be investigated:

- (a) on what legal basis (international/national human rights, constitutional state objectives, EU-Law, international treaties, e.g., the Paris Agreement, customary international law) and in the light of which (philosophically or soft-law based) principles (e.g., Oslo principles), on which legal concepts (“duties to protect”, “public trust”) climate law suits against states can be grounded,
- (b) which agents (individuals, NGO’s), under which conditions (e.g., rights- or interest-based legal standing), by which kind of action (state liability, action for failure to act) have access to legal remedies,
- (c) how such claims can be empirically founded by natural sciences (e.g., as to the probability of extreme events due to climate change) and which empirical findings hitherto have helped to back up successful claims in court.

Methods and disciplinary background: The questions above should—in dialogue with philosophers and natural scientists and on the basis of a (possibly world-wide) survey of the relevant case law—be analysed by legal methods, including comparative law.

References:

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