Human Rights-Based Litigation as a Tool to Address Climate Change:

The Impact of Courts and Media on Climate Policy

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Abstract

Human rights-based climate change litigation can be an effective tool for persuading states to take more ambitious climate change action, and media attention can amplify the success of lawsuits both in and out of court. As climate change poses a serious threat to humanity and threatens the enjoyment of basic human rights worldwide, lawsuits can result in measures to mitigate and adapt to climate change. Current global efforts are insufficient to avert catastrophic consequences and to meet the actions that are urgently needed from a scientific perspective. This paper examines the extent to which effective climate policy and human rights protection can be granted through climate litigation. Therefore, the study looks at how climate litigation can be used strategically and how external factors like the media influence the overarching success for the climate. Timely and far-reaching political decisions on climate protection are essential for a livable environment in the future. The current trend of climate claims and the recent change in public and court perceptions regarding climate change could achieve this. Through a qualitative case analysis of three complaints, the impact of specific lawsuits in Pakistan, the Netherlands and Germany is examined. The jurisprudential and sociological analysis aims to determine the extent to which litigation and accompanied media attention are leading to concrete climate policy outcomes, the implementation of the judgments, and thus more climate protection. The study concludes that human rights-based climate litigation can be a useful tool for more climate protection, as the court decisions and extrajudicial effects can have a significant impact on climate policy. Likewise, strategic litigation plays a crucial role, especially for very ambitious lawsuits, as in Urgenda Foundation v the State of the Netherlands. Climate-protecting political measures can thus be influenced in a targeted manner through climate change litigation.
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Lea
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<th>Abbreviation</th>
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<tr>
<td>ACHPR</td>
<td>African Charter on Human and People’s Rights</td>
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<td>ACHR</td>
<td>American Convention on Human Rights</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<td>COP</td>
<td>Conference of the Parties</td>
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<td>ECHR</td>
<td>European Convention of Human Rights</td>
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<td>European Court of Human Rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>GG</td>
<td>German Constitution</td>
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<td>GHG</td>
<td>Green House Gas</td>
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<td>GLAN</td>
<td>Global Legal Action Network</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ILC ARS</td>
<td>International Law Commission, Articles on Responsibility of States</td>
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<td>IPCC</td>
<td>Intergovernmental Panel on Climate Change</td>
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<td>KSG</td>
<td>Germany's Climate Protection Act</td>
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<tr>
<td>NDCs</td>
<td>Nationally Determined Contributions</td>
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<tr>
<td>NGOs</td>
<td>Non-Governmental Organizations</td>
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<tr>
<td>OHCHR</td>
<td>Office of the High Commissioner for Human Rights</td>
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<td>UN</td>
<td>United Nations</td>
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<td>UNCRC</td>
<td>United Nations Convention on the Rights of the Child</td>
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<td>UNDRIP</td>
<td>United Nations Declaration on the Rights of Indigenous Peoples</td>
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<td>UNEP</td>
<td>United Nations Environment Programme</td>
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<td>UNFCCC</td>
<td>United Nations Framework Convention on Climate Change</td>
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UN HRC United Nations Human Rights Council
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“Human beings are part of nature, and our human rights are intertwined with the environment in which we live. Environmental harm interferes with the enjoyment of human rights, and the exercise of human rights helps to protect the environment and to promote sustainable development.”

John H. Knox

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1. Introduction

Climate change is one of the biggest threats to humanity. Its adverse effects have been scientifically confirmed and are considered a significantly greater challenge than the current Covid-19 pandemic (IFRC 2020, 17). Thus, the enjoyment of basic human rights is at risk and states are confronted with the task of taking immediate action and pursuing active climate policies. Climate change-related impacts are already being felt in the form of increasing heat waves in Europe, heavy rainfall in South Asia, and global droughts and extreme weather events (cf. IPCC 2018). These impacts, as well as the dramatically rising sea level, threaten fundamental human rights such as the right to life, health, food, and shelter.

1.1 Setting the Scene

Although the risks and dangers of climate change are well known, there is a lack of ambitious global climate policy. Various conferences and agreements on climate issues fall short of what scientists consider to be urgently needed to mitigate and adapt to climate change (Harvey 2021). While the Paris Agreement (2015) set a milestone in international climate policy, it also gave countries very wide discretion in reducing their greenhouse gas (GHG) emissions and taking climate-protective measures. As a result, current global measures are insufficient to address climate change.

States and corporations can be seen as the main responsible parties for the current climate crisis. However, states have a co-responsibility for corporations and can constrain and impose conditions on them. Therefore, this paper will focus on states as the primary bearers of responsibility for climate change action. But how can states be persuaded to implement urgently needed, more ambitious climate policies and to take climate-protective measures? An increasingly popular method for this is climate change litigation\(^2\) based on human rights. While climate litigation itself is not a new phenomenon and can be based on other legal grounds as well, there is an emerging trend of human rights-based cases, which are particularly boldly argued and result in far-reaching and groundbreaking court rulings, such as in *Urgenda Foundation v State of the Netherlands*. These judgments are binding on the state in question and can obligate it to take climate change action.

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\(^2\) Climate change litigation, hereafter climate litigation, includes all cases that raise material issues of law or fact relating to climate change mitigation, adaptation, or the science of climate change (cf. UNEP 2020, 6).
Furthermore, the media has a great influence on the public opinion of a population and can also influence politics (Koch-Baumgarten and Voltmer 2009). Therefore, by reporting on climate litigation, pressure can be exerted on governments to actually fulfill the court requirements and to act in a climate-friendly manner. Interestingly, human rights-based climate claims have received disproportionately high media attention in the past compared to other climate lawsuits, which is why this thesis will focus on this type of claims and their extra-judicial effects. In addition, an increasing attention for climate policy issues can be observed on social media (Mavrodieva et al. 2019). The relationship between increasing human rights-based climate litigation, media attention to it (and the climate crisis in general), and climate policy actions by governments will be further explored in this study. Climate litigation is therefore understood as a method of political participation, as citizens actively seek to shape climate policy through it.

Since there are de facto no legally binding international laws on climate protection and the United Nations Framework Convention on Climate Change (UNFCCC), established in 1992, only contains the unused possibility that states could sue each other, climate litigation by citizens can be an extremely useful tool to achieve more climate protective action from states. The fundamental problem of attributing climate change to individual actors and the fact that GHG emissions do not stop at national borders further demonstrate the need for global action. Collective responsibility starts with the actions of each state and only works if everyone meets their 'fair share'. Well-targeted climate claims can help to achieve this. Another factor is that, paradoxically, the countries most affected by climate change are those that contribute the least to it. At the same time, most of them are the poorest countries in the world, which in turn makes it much more difficult for them to take appropriate adaptation measures. Thus, climate litigation against any state can benefit the whole world, especially developing states, and contribute to more climate justice. Every measure a state has to take can be counted as a global success in the fight against climate change.

1.2 State of the Art

As early as 1972, the first official link between human rights and environmental rights was established at the Conference on the Human Environment in Stockholm. But only lately, and especially since the adoption of the Paris Agreement, has this connection received more attention – for instance, through the Framework Principles on Human Rights and the Environment by the former Special Rapporteur on Human Rights and Climate Change J. Knox
(UN HRC 2018). These set out the basic human rights obligations of states relating to the enjoyment of a safe, clean, healthy and sustainable environment, which is the basis for the enjoyment of human rights (ibid.). Wewerinke-Singh (2019) further researches the relevance of climate litigation and state responsibility in relation to climate change, stating that human rights law has exceedingly great potential in this regard and is complementary to climate change law. Savaresi and Auz concretize:

Human rights-based climate litigation can be formulated in two main ways: applicants may complain that there has been a failure to act (e.g. a failure to adopt or implement ambitious climate policies) resulting in human rights violations; or that certain activities (e.g. permits or licenses to extract fossil fuels or log forests) have led to human rights violations. (Savaresi and Auz 2019, 249)

Furthermore, according to Savaresi and Auz (2019, 246), a fundamental distinction can be made between proactive and reactive lawsuits. Proactive lawsuits are mostly directed either by the population against governments or against companies (ibid., 247). They aim at the adoption or reform of climate legislation and thus a change in policy (ibid., 246). Since the state is the main duty bearer under human rights law, most lawsuits to date have been directed against states (ibid., 247). Reactive lawsuits, on the other hand, are mostly brought by companies that oppose such changes (ibid., 246). Since this thesis deals with lawsuits against states, it will focus on proactive lawsuits.

During the writing of this paper, it has been observed that a new human rights-based climate litigation against states is added almost weekly, provided by the Sabin Center for Climate Change Law at Columbia Law School and the Grantham Research Institute on Climate Change and the Environment at the London School of Economics. As of 05 May 2021, 53 lawsuits against states relating in whole or in part to human rights could be counted. Not included here are various climate-related lawsuits in the U.S., most of which refer to specific climate legislation. However, since it cannot be ruled out that these lawsuits also relate to human rights and since new cases are constantly arising that cannot be taken into account by the two research centers, no claim to completeness is made here. The majority of the cases have not yet been decided at the time of writing. Nevertheless, it can already be stated that a change in thinking can be observed among courts and legislators. Through human rights-based arguments, the rights of future generations and extraterritorial state obligations, for example, are taken into account (cf. Savaresi and Auz 2019, 262). Additionally, damages caused by state and private actors, such as corporations, can be addressed (ibid., 262). Existing cases show that human
rights-based climate litigation is proving to be a useful tool to encourage state and corporate actors to increase their ambition in addressing climate change and to remedy harms caused by their impacts. Therefore, this very trend of emerging human rights-based climate lawsuits will be examined in the following chapters.

1.3 Purpose and Methodology

The purpose of this thesis is to investigate if and how court decisions and media attention influence climate protection measures. It will be examined to what extent landmark court rulings are actually implemented, what the overall impact of the lawsuits is, and what the role of the media as an external factor is in this process. Since there are only a few studies on the long-term effectiveness of climate litigation and equally little literature on the influence of media in relation to the success of climate claims, this thesis seeks to help fill this research gap. Therefore, it will address the following research question:

“To what extent do human rights-based climate change litigation and attendant media attention influence climate policy?”

To answer it the following sub-questions will be addressed step by step:

- How are climate change and human rights interrelated? (Chapter 2)
- What role does the media play in policy making? (Chapter 3)
- How does the legal framework for environmental protection look like? (Chapter 4)
- What kind of climate litigation exists and where is it heard? (Chapter 5)

In order to obtain concrete results, a case study is conducted in Chapters 6-8 which is guided by the following sub-questions:

- What do judicial decisions look like?
- How much media attention is being paid to climate litigation and climate change?
- Do climate policy measures exist as a result of climate litigation?
As a number of studies have already been devoted to the general topic of climate litigation this thesis will focus on the strategic part of climate claims which are based on human rights. Furthermore, most studies examine legal possibilities for climate claims and potential interpretations of existing laws. Since this research already exists, this paper will not revisit it, but instead focus on the interplay between existing court decisions and media. Legal and social science aspects will be considered equally to address a broader context. The scope of this study is limited to claims against states and will not include lawsuits against corporations or other private actors. Furthermore, the research is limited to aspects relevant to the relationship between judicial decisions and the media. Also, only media attention and social context are examined as external factors of the lawsuits.

To answer the sub-questions and the overarching question of the extent to which human rights-based climate processes and the associated media attention influence climate policy, a qualitative case analysis is conducted with three case examples. The use of a case study provides the opportunity to look at the cases from different perspectives and a deductive approach allows the cases to be compared to the existing literature. The cases were selected based on their relevance in this research area. All currently existing human rights-based climate litigation cases listed by the Sabin Center for Climate Change Law at Columbia Law School were considered in the selection and broadly analyzed (see Annex 1). The three cases selected are particularly representative because they are already decided and involve very unusual, novel court decisions that are also relevant to future lawsuits. In addition, all three cases resulted in a great deal of scholarly and media attention as well as concrete political action, making them particularly well suited for the analysis of this thesis.

The first case deals with Leghari v Federation of Pakistan, the second with Urgenda Foundation v State of the Netherlands, and the third with Neubauer et al. v Germany. The jurisprudence of the cases, the measures imposed on the respective state, the social context, the media attention, and the actual climate policy measures implemented are analyzed step by step (see Annex 2). This examines the implications for climate policy and the interplay between media and human rights-based climate processes. The social context is included, as the media can hardly be considered as a stand-alone extra-judicial factor. It includes public perception on climate change, social movements, coverage on social media, policies of the incumbent government, and how the country is affected by climate change.
The assumption underpinning this study is that a 'greening', i.e. an environmentally friendly interpretation, of human rights can contribute to a more ambitious climate policy. Human rights can thus serve as a tool for climate change mitigation and adaptation. This effect can be further enhanced by media and social movements by raising awareness of the issue and thus exerting pressure on policymakers. In addition, strategic climate litigation exists that builds on these factors and pursues goals for society as a whole that go beyond trial success (Graser 2019, 14). Thus, the hypothesis is that climate litigation that is accompanied by environmental movements and a high media presence is more successful overall.

The disposition of the thesis consists of nine chapters and is divided into a theoretical part (chapters 2-5) and an empirical part (chapters 6-8). Chapter two initially explains the fundamental link between climate change and human rights. For this, the theoretical context of human beings and human rights law with the environment is analyzed. Likewise, the impact of climate change on human rights is discussed in more detail. It will be examined which human rights are violated and affected by climate change and how. Subsequently, the third chapter explains the influence of mass media and social media in this field and the concept of strategic litigation to illustrate the relevance of social factors and media attention to lawsuits. The fourth chapter discusses the legal framework for climate claims and shows why human rights law is an essential complement to existing climate change laws to address climate change through international legislation. On this basis, climate litigation itself is then described in more detail in chapter five. The possibilities of claims before international and domestic courts are explained, as well as the different types and bases of climate lawsuits.

The second part of the thesis then follows with the case study, which begins with the presentation of the cases and their relevance in chapter six. Here, they are also classified into the previously established categories of climate litigation. Then, in the following chapter seven, the case analysis is conducted, which is built along the cases. First, the judicial decision of each case is reproduced. Then, the case is placed in the social context, the media coverage and publicity is examined, and it is seen whether strategic litigation is evident. Afterwards, the study looks at whether there are notable climate policy changes in the respective countries in connection with the cases and whether the court rulings have been implemented. Chapter eight will then summarize and discuss the results, review the assumptions made and answer the hypothesis. It should be noted here that this work cannot claim to be exhaustive due to its capacity limitations, as only three cases are analyzed in detail and likewise not every single factor in these sample cases can be fully considered. Due to the small case selection, there is a
possibility that the results could have been different with a different selection. Likewise, the study is conducted from a European perspective, which means that a Western influence cannot be entirely avoided. Language barriers, especially in the case of Pakistan, may contribute to the lack of information and lead to bias.

Finally, the conclusion in chapter nine provides an overview of the thesis, answers the research question, and provides an outlook for further studies. It will conclude that human rights-based climate litigation is a useful tool for more climate action and that media attention can play a crucial role in this as it actively influences policy. The rather discreet climate-protective political measures taken by states up to now can thus be driven forward and intensified through climate claims.

2. Climate Change and Human Rights

Climate change and human rights are not necessarily related at first sight. In order to answer the research question, I will first establish a clear link between human beings, the environment and human rights and highlight the necessity why it is indispensable to link human rights with the environment and climate change.

2.1 Theoretical Contextualization of Human Rights and the Environment

The subject of climate change, as opposed to human rights, is quite new and is usually addressed and placed in its theoretical context in terms of environmental law. However, the discourse on contemporary anthropogenic climate change is closely related to human rights, as these are based on a healthy environment. Given that the subject of human rights is based on an individual approach that focuses on the individual human being and that environmental law, on the other hand, is addressing collective concerns, it could even be argued that human rights, with its anthropogenic principle, has been and continues to be detrimental to the development of environmental law and environmental protection (Gearty 2010, 7; Grear 2011, 24). Yet, more recent theories increasingly point to the relevance of human rights in the fight against climate change, arguing that a healthy environment is an indispensable factor for human existence and the enjoyment of human rights and thus should be counted among substantive human rights (Grear 2011).
To achieve a deeper knowledge of the connection between human beings and nature, the roots of Western legal anthropocentrism, which are to be found in the Cartesian/Kantian tradition are looked at more closely. Anthropocentrism is the central element of law and especially the foundation of human rights (Grear 2011, 25). The whole legal system was made for natural human beings (ibid., 25). Here a fundamental separation is made between human beings and nature (ibid., 26). The human being was initially equated with male man and understood as the only rational living being (ibid., 26). Thus, nature is seen as an object that can be exploited, consumed, used, and turned into profit by the rational male human being – equally the human body, which is the cover for the mind and is equated with nature (ibid., 26). The human person is thus ontologically split and disembodied (ibid., 27). Descartes refers to the human mind as res cogitans, which is ontologically independent of the human body, and the human body as res extensa, which is an external object that is in turn observed by the mind (ibid., 27). This Cartesian dualistic ontology extends to the coalescence of the body, emotions, women, and nature, which are dominated by the rational mind, man, reason, and culture (ibid., 28). Rationality is automatically understood as superior and masculine (ibid., 28). This Western worldview is also held by Kant. He sees the liberal legal subject as disembodied, masculine and rational (ibid., 29). The body including emotions is to be considered external and independent of the mind (ibid., 29). From these considerations arises the legitimacy to dispose arbitrarily over everything else that is not seen as the rational mind – so also and especially over nature, to which no rights were attributed (ibid., 30). The environment was not understood in the law as an essential part of the human being (ibid., 42). The civilized man is alienated from nature and sees himself as the superior element of the natural order, which allows him to change and use everything as he wishes (Pathak 1992, 205 f.). The feminization and objectification of nature subordinates it to the disembodied, rational, and masculine juridical person (Grear 2011, 30). This fundamental split between nature and humans can be further explained by Hobbes' philosophy, according to which the individual struggles to survive as an autonomous being in a hostile state of nature (Gearty 2010, 7).

Since human rights developed on this basis, it is not surprising that they hardly include any direct protection of nature. The main discourse of human rights deals with the self-realization of every human being and how it can be achieved (ibid., 7 f.). This is mostly done at the expense of the non-human environment (ibid., 8). Likewise, human beings in international human rights law were initially viewed as individuals rather than collectives (ibid., 8), which is why laws that could address collective problems (such as climate change) are fragmentary. In fact, this
approach may also explain why climate change law does not include effective remedies and why progress on climate change mitigation and adaption is slow. Therefore, it is necessary to rethink the relationship between human beings and the environment and to use human rights as a complementary tool to address climate change. Only when human beings see themselves as part of nature, they can treat it with respect. It is a fallacy that rational human beings seem to be at the top of the order of life (Pathak 1992, 205). By exploiting nature, human beings are depriving themselves of their own livelihoods and, in the long term, possibly causing the extinction of planetary life and thus also of their own species (Schwedt 2021). The earth, on the other hand, would probably survive the crisis of anthropogenic climate change in the long run and could form new forms of life (ibid.). Thus, the relevance of a healthy environment for human beings and for the enjoyment of their human rights is out of doubt.

Merleau-Ponty’s philosophy also urges for a fundamental rethinking (Grear 2011, 38). It implies that the human being and the environment must be understood as interconnected forms of a unified, vulnerable order of life (ibid., 38). According to Merleau-Ponty, human perception, knowledge, and rationality are inescapably interconnected and anchored in the body (ibid., 39). This approach distances itself from the Cartesian/Kantian tradition of splitting the mind from the body and nature (ibid., 39). Human beings are rather understood as part of the environment, as they only perceive themselves through their bodies, which are located in the environment (ibid., 40). This approach also distances itself from an independent self with a separated world, as human beings and nature are mutually dependent (ibid., 42). It is necessary to see human beings also legally within vulnerable nature and to rethink human subjectivity and legal subjectivity of humans and non-humans as a form of intersubjectivity (ibid., 42). Since a healthy environment is an essential factor for humanity and the basis for the enjoyment of human rights, environmentalists also make use of human rights law in addition to environmental law (Gearty 2010, 7). These can be substantive human rights such as the right to life or procedural human rights that e.g. guarantee freedom of expression and demonstration. A change in thinking thus enables a reinterpretation, and hence a greening, of existing human rights with regard to state obligations to protect the climate.

2.2 The Impact of Climate Change on Human Rights

After placing human rights and the environment in the theoretical context, the concrete impact of climate change on humanity and human rights will now be looked at. First of all, the term 'climate change' describes the (also naturally occurring) change of the global mean surface
temperature of the earth, which has always been changing. Since pre-industrial times, though, it has warmed dramatically due to the increase in GHG emissions, leading to an accelerated change in the climate (IPCC 2018). Thus, the current common term climate change describes an anthropogenic global warming, which leads to a fast-moving climate change and brings with it an ecological and social crisis. The term global warming could be more concrete, but also misleading, as warmer weather is not the only consequence of climate change (Pettenger 2007, 5). Thus, I will also use the universal terminology 'climate change', which is agreed upon by the United Nations (UN) as well and defined as follows:

Climate change means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods. (Art. 1 (2) UNFCCC)

The consequences of climate change are already clearly visible and demonstrate the need for action at the global level. An increase in extreme weather events can be observed, as well as the rise in sea level and the associated loss of biodiversity (IPCC 2018). Compared to pre-industrial times, the Earth has already warmed by 1°C (ibid., 4). Weather extremes such as heat waves, heavy rainfall, floods and hurricanes are becoming more severe and frequent (ibid., 7). Likewise, precipitation deficits are accumulating, leading to drought zones (ibid., 7). Also, the melting of sea ice and glaciers, which leads to a rise in sea level and makes entire areas uninhabitable, poses a threat to human and ecological systems (ibid., 7 f.). The thawing of a permafrost area in the range of 1.5 to 2.5 million square kilometers and the associated release of vast amounts of climate-damaging methane is also estimated to be very likely if global warming is not slowed down (ibid., 8). Such phenomena are described as so-called tipping points, which are irreversible and would accelerate climate change on their own (Harvey 2021). Moreover, there is a general international scientific and political consensus that global warming must be limited to 1.5°C in order to curb the damage to human beings and nature (ibid.). In 2018, the Intergovernmental Panel on Climate Change (IPCC) pointed out in its 1.5°C report that even a warming of 2°C would have much more devastating consequences. Without significant action, the 1.5°C limit would already be reached between 2030 and 2052 (IPCC 2018, 4). To reach the 1.5°C target, CO2 emissions (especially GHG) would have to be reduced by 45% from 2010 to 2030, and net-zero would have to be reached already by 2050 (ibid., 12). Thus, the impact of climate change on humanity becomes more drastic the less action is taken.
Human rights can be a crucially helpful factor here, as their enjoyment is threatened by the adverse effects of climate change. Particularly affected are the rights to life, health, adequate standard of living, food, safe drinking water and sanitation, shelter, participation in cultural life, and development (UN HRC 2018, 7). Similarly, the exercise of procedural human rights, particularly the rights to freedom of expression and assembly, to education and information, and to participation and effective remedy, is highly relevant for the protection of the environment, since they enable the people to participate in policy-making (ibid., 8). In concrete terms, this means that civil and political as well as economic, social and cultural human rights are threatened by climate change. Millions of human beings have already lost their shelter due to floods or storms or have been injured or killed as a result (OHCHR 2018, para. 4). Others suffer hunger or die of malnutrition as droughts destroy their crops or as ocean acidification damages fisheries (ibid., para. 4). Similarly, many lack access to safe drinking water and sanitation as groundwater levels fall due to droughts and rising sea levels salinize existing groundwater (ibid., para. 4). Also, a heat-related increase in mortality rates can be observed, as well as in other health risks such as the spread of diseases like malaria or dengue fever (IPCC 2018, 9). Substantive rights are thus clearly threatened by climate change.

Additionally, procedural rights are threatened, for example, by the increasing violence against climate change activists. The UN Human Rights Council (HRC) noted in 2019 that environmental human rights defenders are among the most vulnerable human rights defenders (UN HRC 2019, 2). This is consistent with statements by the charity 'Global Witness' which counted over 200 environmental activists killed worldwide in 2019 (Global Witness 2021, 17). In addition, many more are threatened and injured (ibid., 17). At the same time, the work of environmentalists is incredibly important, as they have a vital, supporting role for states in meeting their commitments under the Paris Agreement and achieving the 2030 Agenda for Sustainable Development (UN HRC 2019, 3). Economic interests are being placed above environmental interests, and activists are purposefully eliminated (Watts and Vidal 2017). Frequently, incidents related to mining, agribusiness, illegal logging, and dam construction have been noted (ibid.). Threatening activities emanating from states and corporations affect, among other things, the rights to freedom of opinion, expression, peaceful assembly, and association, online and offline, which are essential to the promotion and protection of human rights and the protection and preservation of the environment (UN HRC 2019, 3).

These multiple threats of climate change lead to greater loss of livelihoods and an increase in poverty (OHCHR 2018, para. 4). Particularly already vulnerable groups, such as women,
children, indigenous peoples, people with disabilities, the elderly, and minorities, are hit even harder by climate change (UN HRC 2018, 16). Women, for example, are responsible for providing water in many areas (ibid., 17). When this becomes increasingly difficult due to drought and women have to walk extremely far to reach a safe water source, the risk of assault increases (ibid., 17). Likewise, women are often excluded from decision-making processes and do not receive relevant information (ibid., 17). Furthermore, an increase in the HIV rate can be observed in rural areas in southern Africa after drought periods caused by climate change (Patt, Dazé, and Suarez 2009, 84). This is a consequence of women and children being sold or prostituted as a consequence of the weather extremes and the resulting crop failures in order to compensate for the lack of income and to protect the family from hunger (ibid., 85). Also, groups of people such as indigenous peoples who live in close harmony with nature and rely on agriculture or coastal livelihoods are particularly at risk, as their whole livelihoods are in danger (UN HRC 2018, 17).

Currently, the areas most threatened by these events are developing regions in Africa, Asia, Latin America and Small Island Developing States (cf. Eckstein, Künzel, and Schäfer 2021). Although there are already various official statements from international bodies on the link between climate change and human rights, there is not yet an official statement on violations of human rights due to climate change. Nevertheless, there is a growing trend to use human rights as a basis for climate change-related lawsuits, as judicial bodies can derive legal responsibility standards from legal obligations related to climate change (Wewerinke and Yu 2010, 46).

3. Strategic Litigation and Media Relevance

Since human rights-based climate claims are becoming more popular, I would like to introduce the concept of strategic litigation, which is increasingly used in this field. Strategic litigations are legally substantiated claims that pursue further goals beyond trial success (Graser 2019, 14). They usually address politically highly relevant issues that are accompanied by social movements and high media presence (ibid., 14), such as climate lawsuits that take place in the context of environmental movements, as currently characterized by Fridays for Future (FFF). In order to achieve success for society as a whole, such as a more ambitious climate policy, the following factors are deliberately taken into account for a strategic case: suitable plaintiffs, a suitable court, the best possible type of proceedings, the right time, a targeted launch in the media and extensive involvement in other structures (Helmrich 2019b, 32). Attempts are thus being made to enforce political demands by legal arguments and mechanisms. Since this usually
happens under broad public and media interest, the courts are under a certain pressure, which is taken into account by the plaintiffs (Däubler 2019, 106). In this context, it seems helpful to use individual destinies, as is common in human rights arguments, since these focus mainly on the individual, as described in chapter 2.1.

Strategic litigation can be found all over the world in a wide variety of thematic areas. What they all have in common, however, is that they address social and political issues, such as in the People's Climate Case. In this case, 37 plaintiffs from different nations asked the European Court and the Court of Justice of the EU (CJEU) to order the European Union to take stronger measures to reduce GHG emissions (Carvalho and others v Parliament and Council of the European Union (Case T-330/18) 2018). They argued that the European Union (EU) is obliged to avoid climate change-related violations of the rights stated in the European Convention on Human Rights (ECHR) (ibid., para. 1). Specifically, they referred to the rights to life, physical integrity, work, property, equal treatment and the rights of children (ibid., para. 1). As the case is unique in its kind and has achieved a very high level of publicity, the relevance of climate change is highlighted in the public – despite the rejection of the case in March 2021 for lack of exclusive concern. It follows from this that public opinion and the media have a decisive influence on policy formation and the political decision-making process, which means that strategic processes can be successful even if they lose the judicial process.

A similar case is Youth 4 Climate Justice, in which six children and young adults from Portugal are suing 33 countries before the European Court of Human Rights for not doing their part to avert climate change (Duarte Agostinho and others v Portugal and 32 other States (Application No. 39371/20) 2020). This case has not yet been decided but has already achieved an incredible amount of public attention and is fast-tracked by the court. Unlike the people's climate case, in this case the member states of the EU and six other European countries are being sued individually and not as a separate entity (ibid.). The plaintiffs are not seeking financial compensation but rather want governments to act in order to protect their future (ibid.). The youth are supported by the non-profit organization 'GLAN' and are using internet and media attention in a strategic way (ibid.). It remains interesting how this case will be decided. But it is evident that the lawsuit itself has already attracted an incredible amount of extrajudicial attention.

Today, the media are no longer just the 'mouthpiece' of politics through which political decisions are announced. Rather, they actively shape politics by selecting events and issues that
they consider relevant and report on (Koch-Baumgarten and Voltmer 2009, 302). This leads to a construction of reality to which politics has to adapt, at least in part, in order to do justice to public awareness (ibid. 302). Media reporting is usually event-centered, personalized and simplified, which means that complex and long-term issues such as environmental policy or sustainability are rarely discussed (ibid., 303). Therefore, in contrast, ambitious and sensational climate litigation finds a central place in the media, as it is mostly about the fates of a few, mostly vulnerable, plaintiffs such as children, who are well worth reporting on. Moreover, they are event-centered, as the claim is either upheld or rejected and the court decision is an event that is easy to report on. This increases public awareness of the issue. The more drastic the issue, the greater the media coverage (cf. ibid., 304). The discursive power of the media can thus influence policymaking (ibid., 305). Short-term media events such as key events, scandals or emotional terms can create political pressure to act and lead to long-term changes (ibid., 305). Since political decision-makers (at least in democracies) are legitimacy-dependent and do not want to cause a loss of popularity or elections, they orient themselves to media discourse and public opinion (ibid., 306). However, this impact of public opinion strategies varies between issue areas, policy fields and countries (ibid., 306).

Similarly, judicial decisions that rule in favor of strategic litigation can have a direct impact on the stages of the policy-making process. They can lead to political agenda-setting when policy makers have not previously addressed the issue; gaps in the law can be highlighted, creating political pressure for social or legislative change; the visibility of social groups can be increased; small marginalized groups without a lobby can make their voices heard more easily than through traditional party-political participation; parliamentary policy formulation can be replaced and the interpretation of fundamental rights can be achieved beyond political power relations (Fuchs 2019, 48). In addition, legal recourse can be the fastest form of political participation, as forms of political party work or petitions are much more protracted (ibid., 48). However, this forced expansion of the competences of courts should not be viewed without suspicion, at least in a separation of powers, as it can lead to a loss of power of the legislature (ibid., 51). If the judiciary indirectly takes over political decision-making processes, the balance of the separation of powers is affected and the whole democratic system is thus threatened.

A leading example of strategic litigation is the case of *Lliuya v RWE*, in which a Peruvian farmer sues RWE in Germany with the help of the organization Germanwatch. He accuses the company of being significantly involved in climate change, which is leading to the melting of glaciers above his village (*Lliuya v. RWE (Case No. 2 O 285/15 ) 2016, para. 11*). This, in turn,
would lead to an enormous increase in the water volume of a lagoon near the village, which would threaten the village with flooding. An expert opinion determined that RWE was responsible for 0.47% of the damage, which resulted in the equivalent of €17,000 (ibid., para. 11, 18). Since the preparation of the expert report alone exceeds this sum and more than 99% of the polluters are not sued, the aim of this case is clearly strategic (Helmrich 2019a, 126). It is about creating a precedent that can be used as a basis for subsequent cases and to build up pressure on politicians to act (ibid., 126). Although the facts of this case have not yet been decided, there has already been a significant development in law, as the higher regional court recognized that a private company could potentially be held liable for the climate change-related damages of its GHG emissions (Lliuya v RWE (Case No. 5 U 15/17) 2018). Climate change-related strategic litigation thus aims to create milestones and to establish new ways of dealing with the environment and climate change. In doing so, it operates both within and outside the legal system.

Likewise, social media such as Twitter, Facebook, YouTube or Instagram and the fact that information is available at any time via Internet-enabled smartphones can influence politics, as they have a significant impact on shaping public opinion and social movements (Demirhan 2014, 286). The Internet provides an open space for users to act politically and contribute to the political process (ibid., 286). Thus, for example, through the possibility to participate in the discourse on climate change (ibid., 286). It follows from this that these low barriers to political participation make the Internet and social media in particular extremely interesting for strategic climate litigation in order to generate attention in a short period of time. Furthermore, the use of social media has increased enormously in recent years, especially among younger people, and it has become easier for ‘little-known’ political actors to find a mouthpiece and reach a large number of individuals outside traditional media. Here, a first connection can be made to the fact that the plaintiffs are predominantly youths and young adults.

Studies show that a connection between the use of social media and political actions exist and that this can also be extended to climate change-related actions (Anderson 2017, 9 f.). The global climate strike in March 2019, for example, which was initiated by the Swedish youth climate activist Greta Thunberg, was significantly accompanied and disseminated via social media (Boulianne, Lalancette, and Ilkiw 2020, 208). Around 1.4 million demonstrators worldwide took part in the strike, which can be attributed to the possibility of political engagement through social media, especially for the younger generation (ibid., 208). Thunberg also generated a lot of attention in general, especially via Twitter, so that she has been invited
to various international conferences on climate change (ibid., 216). It can be stated that social media have a great impact and can influence opinions, knowledge and behavior around climate change (Anderson 2017, 11). This can be attributed, among other things, to the fact that information from bottom-up communication channels, such as Facebook or Twitter, is conveyed in a way that is easy to understand and usually visually underpinned (Mavrodieva et al. 2019, 11). However, as the use of social media is dominated by algorithms, it could also be that existing opinions regarding climate change are merely reinforced and no new people are reached or opinions are changed (Anderson 2017, 11). By liking and sharing posts and following other users, the information feed is automatically personalized and customized (ibid., 3). Thus, individuals are grouped unnoticed among like-minded people and posts matching their interests are displayed (ibid., 3). However, this does not affect the enormous reach of social media in general.

Mavrodieva et al. (2019) consider the debate on climate change in social media even as a soft power instrument. In their study, they conclude that there are visible links between social media and changing public perceptions regarding climate change, with the possibility that public opinion in turn influences policy-making – especially the scope of policies adopted and thus how comprehensive or broad legislative activity is regarding climate change (ibid., 11). Mavrodieva et al. note:

We can observe that the increasing information-sharing and trans-nationalization of climate initiatives, has forced leaders to consider the inclusion of climate change policies more thoroughly into domestic agendas, has helped spread low-carbon policy approaches and technologies around the world, and is stimulating a growing interest in innovative global solutions. (Mavrodieva et al. 2019, 12)

On this basis, it can be assumed that a high presence of climate litigation and the general information about climate change in social media can also exert pressure on governments to act in a more climate-friendly way. Likewise, the pressure on governments to actually implement and comply with the required measures in the case of court rulings that are decided in favor of the climate is increased if these generate a lot of attention. It can thus be assumed that the targeted and strategic use of social media plays an important role in strategic litigation.
4. Legal Framework for Climate Protection in International Law

The legal framework for the protection of the climate in international law consists on the one hand of direct climate change laws and on the other hand of laws that are indirectly applicable to the climate and the environment. This is the case, for example, for various human rights. Since climate change threatens the enjoyment of human rights, obligations can be derived from international human rights law for states to protect against this threat and to take effective action. Since it is difficult to hold actors liable under climate change legislation, the human rights law-based approach to climate change is elaborated here.

4.1 Human Rights Law

International human rights law is a part of international law and includes various obligations for states to protect human rights. These obligations to respect the universal, indivisible, interdependent, interrelated, and indispensable rights of all human beings are stated in the Universal Declaration of Human Rights. Furthermore, the Charter of the United Nations contains a general reference to respect for these rights, and the two main human rights treaties have made them legally binding. These are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). In addition, there are various regional legally binding conventions on these rights and treaties that protect the rights of specific groups. They include, for example, treaties on the rights of children, women, or indigenous peoples (cf. UNCRC, CEDAW, UNDRIP). Since human rights have developed on the principle of the supremacy of the rational man, who sees nature as exploitable, as discussed in chapter 2.1, it can be explained why nature is not taken into account in human rights legislation, although a healthy environment is the very basis for the enjoyment of human rights. Even though human rights law does not actually make a direct reference to environmental protection, various human rights can be, and are, interpreted to require states to reduce their GHG emissions and protect their populations from the adverse effects of climate change. This represents the already mentioned greening of human rights.

The fact that climate-related threats to human rights are not directly addressed in international human rights law and that no direct violation of human rights by climate change has yet been recognized by international human rights bodies, can be seen as a hurdle to be overcome. Since the human rights legislation in its original form not only contains an exploitative character towards nature but is also strongly male and western influenced, but there
are now various human rights treaties specifically for the rights of women or indigenous people, there is a chance that the approach of human rights towards the environment and climate change will change as well. This can also be attributed to the fact that human rights law is dynamic and therefore changes in its interpretation are not uncommon. Moreover, a significant move forward can already be noted through the current discussions on the relevance of the attribution of rights to nature, the need for a right to a healthy environment, and the scholarly debate of including ecocide as a new core crime of the International Criminal Court (ICC). Until this chance will be achieved, and in order to get there, a greening of human rights is an exceedingly legitimate way to address climate change-related infringements of human rights.

The obligations for states set out in international human rights law form the basis for human rights-based climate litigation. Various human rights bodies have discussed and interpreted the relationship of human rights to climate change and established a clear link. Although they don’t state a direct violation of human rights, they conclude that climate change threatens the enjoyment of several human rights, and that states and private actors have extensive human rights obligations and responsibilities (cf. OHCHR 2018; UN HRC 2018). Both substantive human rights, such as the right to life, shelter, food, and health and procedural human rights, such as the right to access to justice and the right to participate in the conduct of public affairs are directly related to climate change (Savaresi and Auz 2019, 247). Human rights bodies concluded that states have an obligation under human rights law to take measures to prevent future harm and to redress harm that has already occurred (cf. OHCHR 2018; UN HRC 2018). This includes prevention and mitigation of negative effects of climate change that would affect the enjoyment of human rights (ibid.). The UN Human Rights Committee (2019, para. 62) determined in particular for the right to life, which is stated in Art. 6 ICCPR, that the “implementation of the obligation to respect and ensure the right to life […] depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors”. Furthermore, Art. 6 (1) ICCPR contains on the one hand the prohibition of arbitrary deprivation of life and on the other hand the obligation for states to take positive measures to protect the right to life. This includes, among other things, measures to protect the climate, such as ensuring a sustainable use of natural resources, developing and implementing substantive environmental standards, conducting environmental impact assessments and consulting with relevant States about activities likely to have a significant impact on the environment (UN Human Rights Committee 2019, para. 62).
Since states must respect, protect and fulfill all human rights (including the right to life), they must refrain from violating human rights by causing or allowing environmental harm (UN HRC 2018, 7). In addition, they must protect against harm from other sources, such as private actors, corporations, or natural causes (ibid., 7 f.). Protecting the public from third parties is vitally important, as emissions are largely caused by non-state actors (Savaresi and Auz 2019, 248). Last but not least, they must take effective measures to preserve the ecosystem and biodiversity (UN HRC 2018, 8). Specifically, this can be applied to the right to health under Art. 12 ICESCR, for example. States must respect this law and thus have, among other things, the duty to refrain from unlawful pollution of air, water, or soil (OHCHR 2000, para. 34). Likewise, states must protect this right, which means that they must take measures against environmental health hazards, such as implementing effective national policies to reduce and eliminate air, water, and soil pollution (ibid., para. 35). Finally, states must also fulfill the right to health. This is done by recognizing the right in national political and legal systems (ibid., para. 36). Art. 26 ICCPR and Art. 2 ICESCR state further that states must ensure non-discrimination and equality, which are fundamental norms of international human rights law. The framework principles on human rights and the environment substantiate that this implies, for example, the avoidance of clustered permits for activities that endanger climate and health, such as mining or logging, near the livelihoods of minorities (UN HRC 2018, 8).

Moreover, States have the obligation to take all measures necessary to ensure procedural rights such as the rights to freedom of opinion, expression, peaceful assembly and association (UN HRC 2019, 3). The before mentioned framework principles also refer to the relevance of procedural rights, stating that access to understandable, complete, and up-to-date information regarding climate change must be provided to everyone at all times (UN HRC 2018, 11). Public participation in climate-related decision-making processes must also be guaranteed, as must access to effective legal remedies (ibid., 12 f.). This is crucial since public participation plays an important role in both human rights law and environmental law. As explained in chapter 3, public opinion can be used to influence policy and thus achieve greater climate protection. As a result, procedural rights can contribute to the fulfillment of substantive rights. Additionally, the framework states that potential negative effects on climate must always be considered by state actors before a project or action is approved (ibid., 11).

It is of interest that human rights-based climate litigation to date has actually mainly referred to substantive rights, such as the right to life or health, or specific group rights, such as the best interest of the right of the child. Procedural rights are rarely claimed, although they play an
indispensable role especially in strategic litigation and appendant media and public engagement. Climate change-related violations of procedural rights can be seen as much more difficult to prove than substantive rights and may have more appeal in the future. Nevertheless, as described in chapter 7, the court in Leghari v Federation of Pakistan included procedural rights in its judgment. Moreover, the most enforceable procedural right is potentially the right to remedy. Wewerinke-Singh sees this right at the heart of the human rights-based approach to climate change which calls for global action, as the requirement that the remedy be effective calls for collective action at the international level (Wewerinke-Singh 2019, 166 f.).

4.2 Climate Change Law

International climate change law arises from the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement. The UNFCCC was adopted at the 1992 UN Conference in Rio de Janeiro and entered into force in 1994. It established for the first time the principle of common but differentiated responsibilities and respective capabilities and divided countries into developed and developing countries. Developed countries were to reduce their emissions and help developing countries due to their responsibility. The Conference of the Parties (COP) was established as the supreme decision-making body to implement the convention. In 1997, the Kyoto Protocol was adopted at the 3rd COP for the implementation of the provisions of the UNFCCC. In 2015, this was then replaced at the 21st COP by the Paris Agreement, which introduced the 2°C target. The Paris Agreement developed commitments to the UNFCCC by requiring nations to formulate Nationally Determined Contributions (NDCs) to reduce GHG emissions and to add to them on a regular and progressive basis. However, since states are free to choose these contributions, it is not surprising that current efforts are far from sufficient to achieve the scientifically established urgently needed goal of limiting global warming to 2°C or, better, 1.5°C (Harvey 2021). Moreover, there are no sanction mechanisms in the agreement nor in the convention, making it difficult to hold states accountable under international law for their inaction. This can also be attributed to the fundamental attitude of human beings towards nature, as nature continues to be given less priority. Thus, the relevance of international human rights law in relation to climate change mitigation and adaptation increases, as it is applicable horizontally to every law and, unlike the legal framework of the UNFCCC, allows individuals to sue states if they fail to comply with their duties.
Likewise, the 'no-harm' rule under general international law plays a decisive role. Under this principle, stated in Principle 21 of the Stockholm Declaration on the Human Environment, all states have a duty to avoid transboundary environmental damage. As in Urgenda Foundation v State of the Netherlands ((No. 19/00135) 2019, para. 5.7.3, 5.7.5), where the court argued with the individual responsibility of states to mitigate dangerous climate change according to their common but differentiated responsibilities enshrined in the UNFCCC and the no harm principle of international law, from a human rights perspective, the no-harm rule imposes positive obligations on states due to the risks of climate change to third states. In the cited case, the court derived legally binding obligations for governments to sharply reduce GHG emissions and thus mitigate climate change (ibid., para. 7.5.1–7.5.3). Likewise, the same reasoning held that violations of human rights can exist even despite scientific uncertainty about climate change-related impacts, and that even if the contribution of emissions from the respective country is small globally, state obligations are not affected (ibid., 5.3.2, 5.7.7). This demonstrates the potential power of a human rights-based approach to climate change.

Furthermore, under UNFCCC legislation, states could sue each other if the law is activated through the framework of state responsibilities between states. These secondary rules of international law arise when a state has breached an international obligation towards another state, such as contributing to climate change that adversely affects another state. If a state is doing so, it can be held accountable under the rules of state responsibility. These are stated in the articles of the international law commission on the responsibility of states for international wrongful acts (ILC ARS). Article 2 of the ILC ARS states that a state has committed an internationally wrongful act if it is a) attributable to the state under international law and b) constitutes a breach of an international obligation of a state. Through these two general and flexible points, there is technically the possibility of holding states accountable for actions and inactions regarding climate change that impact human rights (Wewerinke-Singh 2019, 61). However, due to diplomatic relations, this has not yet happened.

5. Climate Change Litigation

Although climate litigation is not a new phenomenon per se, a significant increase in climate-related lawsuits has been observed in recent years. They have increased especially since 2015 with the adoption of the Paris Agreement, which created a new legal possibility for plaintiffs to invoke and raised public awareness about climate change. In 2020, over 1500 cases were counted in 38 countries (39 with EU courts) (UNEP 2020, 4). This compares to only 884
cases in 24 countries by 2017 (ibid., 4). This increase is not surprising, as climate litigation can be a powerful tool to force governments and companies to pursue more ambitious climate mitigation and adaptation goals (ibid., 7). To better understand the scope of climate litigation, the following sections discuss where climate claims can be brought and how the different categories of climate lawsuits, as well as their legal bases look like.

5.1 Actions before International Human Rights Bodies

First of all, complaints can be brought before international human rights bodies and most of them are negotiated at the regional level. The few petitions, complaints and communications to UN bodies, such as to special rapporteurs or committees, were rejected or have not been decided at the time of writing. Currently, a total of three regional human rights systems exist in Africa, the Americas, and Europe. In them, the relevant regional basis for legal obligations regarding the environment are the European Convention on Human Rights, the American Convention on Human Rights (ACHR), and the African Charter on Human and People’s Rights (ACHPR). Each of these treaties has an executive body. For the ECHR, it is the European Court of Human Rights (ECtHR) that has created the most environmental jurisprudence to date. For the ACHR, it is the Inter-American Commission and Court of Human Rights, which in 2017 stated in its Advisory Opinion OC-23/17 that the right to a healthy environment is a fundamental human right and in this context also explained the obligations of states when they cause significant (including transboundary) environmental damage. Further, for the ACHPR, the executive body is the African Commission and Court on Human and People’s Rights, which held in the Ogoniland case (2002) that states are responsible not only for their own actions, but also for protecting human rights from private actors (Knox 2009, 27).

Technically, violations of human rights due to climate change impacts could also be addressed at the international level through the complaint procedures related to the Special Procedure mechanisms of the UN HRC, the individual and intergovernmental complaint procedures of the UN Human Rights Treaty Bodies and the International Court of Justice (for example through CEDAW) (cf. Wewerinke-Singh 2019, 156–164). A detailed analysis, however, would go beyond the scope of this work and would not be relevant for the further course of it.
5.2 Actions before Domestic Human Rights Bodies

The majority of human rights-based climate litigation to date has been brought before domestic courts. This is a logical consequence, as international legal action is more difficult and national remedies almost always have to be exhausted for lawsuits at regional levels. Most cases are based on domestic rights and often additionally refer to regional and international human rights, as well as climate change legislation. This is not surprising, as most national fundamental rights rely on international human rights and are therefore closely interrelated. In addition, many national lawsuits relate directly to the right to a healthy environment, which various states have recognized through their constitutions (UNEP 2020, 42).

For example, the case of *Future Generations v Ministry of the Environment and Others* (No. 11001-22-03-000-2018-00319-01) 2018) invokes both fundamental national rights and international human rights. 25 Young people in this case argued that deforestation of the Amazon in Colombia was contributing to climate change and threatening the enjoyment of their rights (ibid., para. 1 (2)). They invoked the rights to life, health, food, water, and a healthy environment, which are enshrined in the Colombian Constitution and in international human rights treaties ratified by Colombia (ibid., para. 1 (1)). Similarly, the case of *Leghari v Federation of Pakistan* (W.P. No. 25501/2015) 2015), in which the Pakistani government was sued for failing to implement its national climate change policies and thus failing to adequately address the hazards associated with climate change. A court upheld the suit, ruling that “the delay and lethargy of the State in implementing the framework offends the fundamental rights of citizens which need to be safeguarded” (ibid., para. 8).

A major advantage of actions before domestic courts is that binding judgments can be obtained that prevent future harm and simultaneously compensate plaintiffs (Wewerinke-Singh 2019, 149). Furthermore, it can be easier to involve civil society and to gain media attention, which is important for strategic litigation, as mentioned in chapter 3. It is also geographically easier to reach domestic courts than international human rights bodies (ibid., 149). In particular, those most affected by climate change may find it easier to seek local courts. On the other hand, it may be considered futile for citizens of a vulnerable state that contributes little to climate change to sue their own state. In chapter 7, the case study will analyze in more detail the cases *Leghari v Federation of Pakistan, Urgenda Foundation v State of the Netherlands*, and *Neubauer et al. v Germany*, which were brought before domestic courts.
5.3 Categories of Climate Cases

According to the 2020 Global Climate Litigation Report from the UN Environment Programme (UNEP), climate litigation can fall into one or more of six categories. These are a) climate rights; b) domestic enforcement; c) keeping fossil fuels in the ground; d) corporate liability and responsibility; e) failure to adapt and impacts of adaptation; and f) climate disclosure and greenwashing (UNEP 2020, 13). Since it is quite complicated to strictly categorize climate litigation, these categories will serve as a structuring mechanism for a better understanding of climate cases.

The first category, 'climate rights', includes lawsuits related to inadequate mitigation measures. Claimants argue that this violates their international and constitutional rights to life, health, food, water, liberty, and family life, among others (ibid., 13). This includes, for example, the Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights, mentioned above. Also belonging to this category is the Communication to the Committee on the Rights of the Child Sacchi et al. v Argentina et al. (2019) in which sixteen children are suing Argentina, Brazil, France, Germany and Turkey for violating their rights under the United Nations Convention on the Rights of the Child (UNCRC). They accuse the nations of insufficient reductions in GHG emissions and failure to get the world's largest emitters to curb carbon pollution (ibid., para. 216, 230). The plaintiffs allege that climate change violates their rights to life, health, and the primacy of the best interests of the child and the cultural rights of claimants from indigenous communities (ibid., para. 3–4). They argue that because all of the respondents have ratified the UNCRC, they are members of the G20, and, moreover, they have all signed the Paris Agreement, they are failing to meet their obligations to mitigate climate change (ibid., para. 18, 55–59). These types of lawsuits have increased significantly in recent years and are experiencing more and more success. Rulings in the past have included, for example, orders forcing governments to revise their climate policies or orders fixing delays for certain projects (UNEP 2020, 17). With many potential remedies available in the event of a successful lawsuit, it is not surprising that lawsuits based on fundamental and constitutional rights are increasing.

The second category, 'domestic enforcement', is about lawsuits regarding governmental agreements to mitigate climate change and adaptation to it. International agreements, laws, regulations, and policy statements contain binding obligations on the basis of which lawsuits can be brought in the event of non-compliance (ibid., 17). Thus, governments can be sued if they fail to implement agreed-upon mitigation and adaptation measures and fail to take
sufficiently ambitious national climate action in relation to existing legal and policy commitments (UNEP 2020, 19). This includes, for example, lawsuits related to the NDCs of the Paris Agreement. While states can decide for themselves how their NDCs for reducing GHG emissions and achieving the 2°C target will look, they must abide by that decision they have made themselves. If a state fails to meet its own ambitions, citizens can sue it and demand compliance.

'Keeping fossil fuels in the ground' is the third category of climate litigation. These lawsuits relate to the negative effects of mining and drilling activities on water, air quality, and land use, as well as long-term global effects (ibid., 20). Most of these lawsuits challenge decisions for fossil fuel licenses or projects (ibid., 20). The negative effects (including long-term and global effects) should be considered in decision making and construction projects (ibid., 20). In Greenpeace Nordic Association v Norway Ministry of Petroleum and Energy ((HR-2020-2472-P) 2020, 2), the plaintiffs argued that Norway's Ministry of Petroleum and Energy violated the Norwegian Constitution by issuing a block of oil and gas licenses for deep water exploration at sites in the Barents Sea. Further fossil fuel development would be incompatible with the internationally recognized need to protect the climate, and the extreme northern area would border the ice zone, thereby increasing the risk of damage and leaks to drilling rigs and tankers (ibid., 44). Also, emissions of black carbon to the highly sensitive Arctic would increase (ibid., 31).

Although most climate litigation is directed against states, there is also an increasing number of lawsuits against companies, which form the fourth category 'corporate liability and responsibility'. These lawsuits hold companies accountable for their part in climate change (UNEP 2020, 22). However, it is extremely complicated to establish a direct link between GHG emissions and climate change-related damages. Although there is no doubt about the negative impacts of climate change, the question of proportional responsibility remains unresolved. The 'fair share question' is a fundamental problem in climate litigation and also exists in lawsuits against states (Liston 2020, 263). As a result, many plaintiffs are calling for the ambiguity of this question to be decided in favor of victims rather than states or corporations (ibid., 263).

The fifth category includes lawsuits that relate to a 'lack of adaptation to climate change or damage caused by adaptation' to climate change. In the In Re Katrina Canal Breaches Litigation case ((No. 14-30060) 2015), for example, property owners sued the U.S. government. They argued that the negligent management of canal infrastructure contributed to the damage caused
by Hurricane Katrina (ibid.). More recent cases argue that governments would ignore the
dangers of climate change in their decision-making, exposing their populations to avoidable
risks (UNEP 2020, 23). Failure to take action to adapt to climate change would violate states' positive obligations to protect human rights (ibid., 23). There are also lawsuits suing companies on the basis that they are not taking measures to adapt to climate change-related risks (ibid. 23). These risks include, for example, sea level rise, storms or floods, which pose hazards to facilities that operate with dangerous substances (ibid., 23). Named events could lead to disasters if factories were damaged or destroyed (ibid., 24). Other lawsuits of this category, however, relate to damage caused by climate change adaptation measures. The UNEP (2020, 25) states that in the reactive lawsuit *Ambuja Cement v Rajasthan Electricity Regulatory Commission*, for example, a group of manufacturers challenged a decision by the commission. In it, India requires that factories obtain a share of their energy from renewable sources (ibid., 25). However, since the plaintiffs own their own power plants, they argued that they should not be affected by this regulation (ibid., 25).

The last category is 'climate disclosure and greenwashing', which includes plaintiffs who take action against misleading or fraudulent statements. It also incorporates lawsuits against greenwashing campaigns that merely pretend to be more sustainable and thus lead to lies to the consumer (ibid., 26). A lawsuit filed by Client Earth, for example, led to British Petroleum (BP) having to stop a misleading campaign regarding renewable energies (ibid., 27). Similarly, there are lawsuits that address misinformation provided to stockholders about the risks of climate change to their companies (ibid., 26). Similarly, a lawsuit can be brought if different costs are publicly presented than internally (ibid., 27).

5.4 Basis for Climate Cases

In order for the previously classified climate litigation to have a right to be heard, it must first comply with justiciability. Here, the biggest obstacles for climate claims are that the plaintiff must have standing to bring the case and that the lawsuit must not seek to resolve issues reserved for other parts of the government (UNEP 2020, 37). Only when justiciability is established will the substantive merits of the lawsuit be considered (ibid., 37). Thus, critical factors in the success of a climate litigation are who brings the suit and before which court (ibid., 37).
Equally relevant is the legal basis for climate claims. Climate-related rights and obligations fall into three categories, but it is, of course, possible that some lawsuits can be assigned to more than one. The first includes 'statutory or policy causes of action'. Existing laws and national policies, such as the US 'Clean Air Act', serve as the basis for these lawsuits (UNEP 2020, 41). Accounting for about three-quarters of all climate claims, this is the most widely used basis for climate litigation (ibid., 41). The second basis is that of 'common law and tort theories'. There are relatively few cases that rely on these bases. They include claims for damages from states or private actors (ibid. 42). Comparable civil causes of action are also recognized to some extent (ibid. 42). However, as the failure to take action to adapt to climate change continues, these lawsuits may increase significantly in the future (ibid., 42).

The third and for this work most important category is that of 'constitutional and human rights'. Any climate-related violations of these rights fall under this category (ibid., 41). So far, about one-sixteenth of all climate litigation is based on these rights (ibid., 41). However, the number of climate-related lawsuits based on constitutional and human rights has been rising sharply recently. This is hardly surprising, as these types of climate litigation typically seek bold and striking remedies that have a very large impact on overall climate governance (ibid., 42). At the same time, it generates a great amount of attention from the scientific community as well as the general public. Also, as explained in chapter 3, human rights-based climate litigation achieves the most media attention due to the fact that it deals with fateful stories worth reporting on.

5.5 Intermediate Result

The following assumptions arise from the arguments developed in the first part of the thesis and form the basis for the methodological approach to the analysis in the following second part. The environment and human beings have an indispensable relationship – as do climate change and human rights. Climate change has been shown to have negative impacts on the enjoyment of human rights, and a healthy environment is indispensable to the existence of human beings and their enjoyment of human rights. Human rights are already being violated by the impacts of climate change, and there is a very large scientific consensus that this will intensify in the coming years. Environmental protection and an ambitious climate policy can be pursued through a greening of human rights by (re)interpreting human rights law, which is not actually geared to the environment, in an environmentally relevant way. Human rights law can thus be a legitimate means of enforcing a more ambitious climate policy. In particular, strategic
litigation in the area of climate litigation can lead to greater environmental protection and to the influencing of policy, as well as society. Here, the social context and media attention to the cases and the climate crisis in general are crucial.

Thus, the hypothesis is that strategic climate claims, i.e. those that are accompanied by environmental movements and a high media presence, are particularly successful. On the one hand, this refers to the judgments of the courts, since judges, as members of society, are also increasingly aware of the relevance of the climate crisis and are thus more likely to rule in favor of the climate. On the other hand, it refers to the extrajudicial effects that occur even when lawsuits are rejected and can thus still be considered successful for the goal of climate protection. Media attention on climate change in general and climate litigation in particular can also put pressure on governments to act in a climate-friendly way and to actually comply with and implement court rulings. Well-structured climate litigation can attract a lot of attention and raise awareness of the dangers of the climate crisis among the public and politicians. Based on this theoretical foundation, the three cases are examined in the following second part (chapters 6-8) of the paper. The jurisprudential and sociological investigation of the study aims to determine the extent to which human rights-based climate litigation leads to policy outcomes and the implementation of judgements.

6. Presentation of the Cases

The following three cases are climate litigations that have constitutional and international human rights as their legal basis. In each case, the lawsuit was brought by citizens or other non-state actors against a democratic³ state. Moreover, all of the cases are not about individual grievances and compensation claims, but instead are about demanding actions from governments which will protect everyone from climate change. All three cases are decided and have been heard in the past six years. Also, all cases are proactive lawsuits and have been decided in favor of the plaintiffs and thus in favor of the climate. Hence, follow-up actions exist for all cases.

One of the first successful and groundbreaking human rights-based climate cases is Leghari v Federation of Pakistan. In this case, a farmer sued the Pakistani government in 2015 for failing to implement its national climate policy and thus failing to adequately address the threats

³ The first case covers Pakistan, which is de facto a democracy, but one that has some difficulties.
associated with climate change (Leghari v Federation of Pakistan (W.P. No. 25501/2015) 2015). Finding that federal and provincial officials had in fact done little to implement adaptation measures, the court concluded that citizens' fundamental rights are threatened (ibid., para. 8). Through the bold jurisprudence, progressive green interpretation of fundamental rights, consideration of climate justice, and effective judicial enforcement, this case set a milestone in the history of climate litigation. It was also the first case from the Global South to achieve enormous attention in the Global North, although it was not as well publicized as, for example, the Urgenda case, which began at the same time (Barritt and Sediti 2019, 2). It may seem strange at first that a state such as Pakistan is being sued for climate change, given that it is already severely affected by climate change while contributing very little to it. However, this lawsuit was rather aimed at getting the government to take adaptation measures than to mitigate climate change. Also, climate change can be put on the political agenda through this, so that the government advocates internationally for climate change mitigation. Courts in the Global South have taken a transformative approach to jurisprudence already frequently to address legislative gaps and government inaction – especially in adjudicating fundamental rights (ibid., 6). Thus, it is not surprising that the practice of judicially appointed commissions taking on policy functions is part of Pakistan's legal culture (ibid., 5). The case can thus be seen as an important step towards greater climate justice, as it established that government's inability to take timely action violates citizens' fundamental rights. Furthermore, the complaint can be assigned to two of the previously listed categories. First, this lawsuit falls into the 'domestic enforcement' category because the government failed to implement its self-imposed climate change adaptation measures and to take ambitious national climate action on existing legal and policy commitments. In addition, the lawsuit falls into the category of 'failure to adapt' to climate change because the government's negligent actions and ignoring of the dangers of climate change in its decisions generally exposed the public to avoidable risks. Thus, the failure to act breached the positive obligations of states to protect fundamental human rights.

The second case and probably the most famous and groundbreaking climate case related to human rights is Urgenda Foundation v State of the Netherlands. It includes the world's first court decision against a state to limit GHG emissions for reasons other than statutory mandates. The case was brought to court in 2015 and finally decided in December 2019. The state of the Netherlands was required to reduce its GHG emissions by 25% from 1990 levels by the end of 2020 (Urgenda Foundation v State of the Netherlands (Case No. 19/00135) 2019). Although the decision was ultimately based on the 'open standard' of Dutch tort law, international human
rights law and other international laws played a crucial role in the proceedings and contributed to the landmark case. It was the first one to establish that governments have binding legal obligations under international human rights law to sharply reduce emissions of GHG’s and thus mitigate climate change. The case was also promoted extremely effectively. Since the Urgenda Foundation filed the lawsuit together with around 900 citizens, the number of interested persons was correspondingly large. This capability was possible due to the special Dutch regulation on the legal standing of non-governmental organizations (NGOs) representing collective interests or the public interest (van Loon 2020, 70). The case falls into the category of ‘climate rights’ as it relates to inadequate mitigation measures.

The most recent of the three cases is Neubauer et al. v Germany, which was decided in April 2021. A group of children and young adults complained to the Federal Constitutional Court against Germany's Climate Protection Act (KSG), arguing that it was not ambitious enough and therefore unconstitutional (Neubauer et al. v Germany (1 BvR 2656/18) 2021). Furthermore, it was not in line with the Paris Agreement and would also violate the plaintiffs' fundamental rights (ibid., para. 42). The Federal Constitutional Court agreed, saying the emissions budget is disproportionately divided between current and future generations (ibid., para 126). Through this ruling, climate neutrality and intergenerational justice were made legally binding for the first time. The government was required to set a date for net-zero emissions and to take into account the burden on future generations. In addition, the precautionary interpretation of the law established that climate goals cannot be postponed but must be addressed now. The court's bold reasoning for the ruling also creates a quotable basis for future debates and lawsuits in other courts. Another remarkable aspect of this case is the extremely quick reaction of the government, which submitted a revised version of the KSG just two weeks after the ruling was announced, even though it was given almost two years to do so. Moreover, also this case falls into the category of 'climate rights', as it complains of insufficient measures taken by the state to mitigate climate change. The complainants invoke their fundamental rights and demand from their government a stronger and more long-term reduction of GHG emissions.

Additionally, all three countries submitted their first NDCs under the Paris Agreement. Thus, all three countries have obligations to the Paris Climate Agreement based on their submitted NDCs. Nevertheless, the Netherlands and Germany were ranked as moderately ambitious in the 2021 Climate Change Performance Index with respect to the goals of the
agreement (Burck et al. 2021). Pakistan, on the other hand, does not appear on the list of 57 countries and the EU surveyed as it is not one of the largest emitters (ibid.).

7. Analysis

The following section will now analyze the three cases. After their general relevance has been presented in the previous chapter, the judicial decision, the social context and media attention, and the follow-up actions and impact in the states will now be analyzed step by step. After analyzing the three cases, legal issues and the problem of implementing such ambitious jurisprudence will be discussed.

7.1 Leghari v Federation of Pakistan

7.1.1 Judicial Decision

Ashgar Leghari, a Pakistani farmer and then law student, filed a public interest litigation against the national government of Pakistan and the regional government of Punjab. He denounced that the National Climate Change Policy (2012) and the Climate Change Policy Framework (2014-2030) were delayed and not implemented (Leghari v Federation of Pakistan (W.P. No. 25501/2015) 2015, para. 1). Thus, as there were no measures to address climate change-related hazards, the fundamental constitutional rights to life and dignity were being violated (ibid., para. 7). He claimed that climate change threatens Pakistan's water, food, and energy security, resulting in a violation of the fundamental right to life under Article 9 of the Constitution of Pakistan (ibid., para. 1). For the implementation of the climate laws, 734 action points were originally drafted, of which 232 were noted as most important and were to be implemented within two years (ibid., para. 2). Many of them are linked to procedural rights such as the right to information. One of these priority action points is to “organize [an] awareness campaign for the farmers and other relevant stakeholders regarding safe and efficient use of agriculture land” to adapt to climate change (Framework for Implementation of Climate Change Policy 2013, para. 5.3.0 Action 1.2.2). This is particularly important since it is crucial for farmers, especially small landowners and tenants, to have easy access to information, institutional services, and training on how to apply advanced measures to reduce the negative impacts of climate change at the farm level (Abid et al. 2019, 110). The Green Bench found that federal and provincial officials had indeed done little to implement adaptation measures and, therefore, no adequate progress in implementing the action points was evident (Leghari v
As mentioned before, an appeals court granted the claim and noted:

> [The r]ight to life, right to human dignity, right to property and right to information under articles 9, 14, 23 and 19A of the Constitution, read with the constitutional values of political, economic and social justice, provide the necessary judicial toolkit to address and monitor the Government's response to climate change. (Leghari v Federation of Pakistan (W.P. No. 25501/2015) 2015, para. 7)

The Lahore High Court ruled on September 4, 2015, referring to these national procedural and substantive rights as well as to international legal principles, that the delay and lethargy of the state in implementing the climate policy violates the fundamental rights of the citizens (ibid., para. 8). It invoked international environmental law principles such as the precautionary principle and intergenerational justice, as well as broader constitutional principles such as democracy and equality, and thus performed a greening of existing fundamental rights (ibid., para. 7, 12). On this basis, it instructed various ministries, departments and authorities to appoint a focal person to ensure the implementation of the framework (ibid., para. 8). They were supposed to prepare a list of adaption action points achievable by December 31, 2015 (ibid., para. 8). Also established was a Climate Change Commission, consisting of representatives from key ministries, NGOs and technical experts, to monitor the government's progress (ibid., para. 8). This was followed by a supplementary decision on September 14, of the same year, in which 21 people were appointed by the court to the commission and were given powers.

Ruling that government inaction constitutes a violation of human rights, the case established the right to challenge a lack of action to address climate change on the basis of human rights (Laville 2019). Moreover, the case established for the first time in Pakistan that the right to life and dignity includes the right to a favorable climate. Because of this uniqueness, the case provides a helpful framework for similar cases in the region. But also, as mentioned before the high attention in the global North testifies to the relevance of this case. Unlike this case, cases in the Global South do not usually achieve serious scientific interest in countries of the Global North (Barritt and Sediti 2019, 8).
7.1.2 Social Context and Media Attention

In recent years, Pakistan has already been hit by severe climate change-related impacts. Devastating floods and droughts are leading to far-reaching consequences in water and food security, as well as high economic costs (Chaudry 2017). Rising sea levels and average annual temperatures also clearly show that Pakistan is already affected by climate change (ibid.). Though, climate change generally received very little attention in Pakistan around the time of the lawsuit (Zaheer and Colom 2013). It is therefore not too surprising that the Leghari v Federation of Pakistan case also attracted only limited local attention and was not publicized that well in the media. Although Pakistan is ranked in the top ten countries most affected by climate change by the Global Climate Index (Eckstein, Künzel, and Schäfer 2021, 13), little has been reported on this issue and the associated risks. There was also very little public knowledge in Pakistan regarding climate change in general at the time of the lawsuit (Zaheer and Colom 2013, 4). In a 2013 study, while about half of the people surveyed said that their living conditions had worsened in recent years and that changes in climate were affecting their lives, over 65% did not know what the term climate change means (ibid., 4). Extreme weather events and changes in climate were mostly attributed to the will of God (ibid., 4). On the one hand, this can be explained by the fact that Pakistan is an Islamic republic and religious values play a very central role. On the other hand, there was, and to some extent still is, a lack of education and poor access to information, especially in rural areas (ibid., 36, 42). The most commonly used source of news gathering in rural and urban areas was television (ibid., 66).

However, even when there was access to media and news, there was a lack of environment-related education, because little importance has been placed on the environment in the news and there has been little to no coverage of climate change (Sharif and Medvecky 2018, 2). According to a 2018 study, this is because there is no funding for environmental issues and thus no comprehensive research is conducted (ibid., 6). Moreover, the Pakistani media was declared as very policy-oriented and as devoting 80-90% of its coverage to political issues (ibid., 6 f.). For various reasons, the explanation of which is beyond the scope here, climate change was not considered a political issue in Pakistan. Since the media in Pakistan is also very event-oriented, climate change was only reported in connection with certain events (ibid., 8). These can be floods, droughts or conferences and press releases related to climate (ibid., 13). However, climate change as a phenomenon was not presented. The study found that another problem was the limited access for journalists to technical equipment and Internet and the knowledge of how to use this (ibid., 10). The problem, though, is that most climate-related
information is available online. At the same time, the study found that Pakistani journalists had little to no interaction or exchange with climate scientists (ibid., 10). Thus, technical and interactive problems made it difficult to access climate-related information. Thereby, environment-related issues were considered to have very low news value, making climate change reporting virtually non-existent (ibid., 10). However, there is an increasing amount of reporting on climate change-related issues now. Also, various climate activists reach several followers via social media. However, the analysis of social media is difficult in this case, as the popularity of accounts today is not comparable to 2015.

The particularly vulnerable situation and the low social relevance of climate change back then make the case of Leghari v Pakistan even more relevant. Given that Pakistan accounted for less than 1% of global GHG emissions in 2015, it stands to reason that the implications of the case are primarily focused on climate change adaptation measures (Ritchie and Roser n.d.)

### 7.1.3 Follow-up Action and Impact on Climate Policy

The court-established joint expert-government climate commission issued a report stating that 66% of the climate-related priority actions were implemented from September 2015 to January 2017 (Leghari v Federation of Pakistan (W.P. No. 25501/2015) 2015, para. 19). The court took note of this report on January 25, 2018. Subsequently, the Climate Commission was dissolved and replaced by a Standing Committee to oversee the remaining action items to implement both laws (ibid., para. 25). Court-appointed commissions to resolve complex climate-related issues were used in Pakistan prior to 2015 and continue to find favor after the Leghari case, as they have proven to be quite successful (Mirza 2020, 62). The Pakistani judiciary has developed a dense jurisprudence of public interest environmental litigation to enforce the fundamental rights of the people (ibid., 62). This seems particularly important since many poor and especially vulnerable people do not have access to the courts and have knowledge gaps regarding climate change. Thus, the court protects the fundamental rights of the people from government inaction. Since implementation problems are seen as a central problem of the government, the role of the judiciary in this separation of powers is enormously important (Zaheer and Colom 2013, 21).

In 2018, a study concluded that the population's awareness of climate change has increased significantly (Hussain et al. 2018, 796). Only 13% of respondents said they were not
sure about climate change or did not consider it important (ibid., 796). In contrast, 87% said
that climate change was a very important or quite important issue (ibid., 796). Also in 2018, the
Chief Justice of the Lahore High Court, Muhammad Yawar Ali, announced that henceforth
judges would have to take into account the impact of climate change while interpreting the
constitution and deciding constitutional issues (Dawn 2018). He specifically referred to the
impact of climate change on vulnerable groups such as women and children and those living in
poverty (ibid.). Therefore, general awareness among the population towards the climate crisis
seems to be growing since the Leghari case.

Also, in September 2019, thousands of people demonstrated for the climate and for more
action against climate change in more than 26 cities in Pakistan as part of the global climate
strike (Ali 2019). The citizen-led initiative was organized by the Climate Action organization
(ibid.). It was mostly students and schoolchildren who participated in the nationwide
demonstrations (ibid.).Celebrities as well as senators called on the people to join the marches
(ibid.). Also, the English-language newspaper Dawn wrote various articles about this event and
environmental rights of the population. Likewise, Pakistan's climate policy has become much
more ambitious. However, the extent to which this can be directly attributed to the Leghari case
or more likely to the general global increase in awareness of climate change remains
questionable. What is clear, though, is that since the verdict and the obligations imposed on the
government, a change has taken place both in politics and among the population. In addition,
Pakistan has improved in the global ranking of vulnerability to climate change. Rai Muhammad
Murtaza Iqbal of the ruling party and member of the National Assembly Standing Committee
on Climate Change said in a 2021 interview that “Pakistan was striving hard to take measures
to reduce the impact of climate change” (Kunbhar 2021).

It can therefore be stated that the lawsuit was successful and the demands were largely
implemented. In addition, no significant influence of the media or the public can be identified,
which could have had an influence on the outcome of the lawsuit. There are also no indications
of strategic litigation, as no targeted content from the plaintiff can be found and the lawsuit
cannot be classified as part of a social movement. More political participation for climate
protection and a more ambitious climate policy could only be observed after the case. In
addition, Pakistan's climate policy as a whole has become more stringent and the population's
awareness of climate change has increased since then. However, on the basis of current studies,
there is still a need for further action, especially in rural areas and with regard to procedural
7.2 Urgenda Foundation v State of the Netherlands

7.2.1 Judicial Decision

The second case Urgenda Foundation v State of the Netherlands, hereafter called Urgenda case, was first heard shortly before the Leghari v Federation of Pakistan verdict in June 2015. In October 2018 then, an appeals court upheld the first judgment and in December 2019, the Supreme Court agreed with the decision. Back in 2013, the Urgenda Foundation, along with 900 citizens, filed the lawsuit against the Dutch government seeking a drastic reduction in GHG emissions. They demanded a reduction of 40%, or at least 25%, by the end of 2020 compared to 1990 levels (Urgenda Foundation v State of the Netherlands (Case No. 19/00135) 2019, para. 2.2.2).

The district court upheld the lawsuit and ruled that the state of the Netherlands must reduce its emissions by at least 25% in the stated time (ibid., para. 2.3.1). Referring to various national and international laws, the court ruled that past and planned reductions in GHG emissions were insufficient to make the appropriate contribution to meeting the international 2°C goal of the Paris Agreement. The court concluded that the government was required to take mitigation measures because of the “severity of the impact from climate change and the significant chance that […] dangerous climate change will occur” (ibid., para. 2.3.1). After the government appealed, the appeals court affirmed the district court's decision. It argued, in addition to the first ruling, among other things, that the state had positive obligations under the right to life under Art. 2 and the right to respect for private and family life under Art. 8 of the ECHR (ibid., para. 2.3.2). The court ruled that climate change risks fall within the scope of the ECHR because climate change poses a serious risk to the lives and welfare of human beings in the Netherlands (ibid., para. 2.3.2).

After the government also appealed this ruling to the Supreme Court, the latter upheld it as well. The Supreme Court also ruled that, with respect to climate change, it was not necessary for the risks to be immediate in order to invoke positive obligations on states (Urgenda Foundation v State of the Netherlands (Case No. 19/00135) 2019, para. 5.2.2). Positive obligations would also apply to known long-term or future risks (ibid., para. 5.2.2). Additionally, the court argued that the existence of scientific uncertainty does not relieve the state of this obligation (ibid., para. 5.3.2). Also, according to ECtHR case law, it is not necessary to identify individual victims (ibid., para. 5.3.1). Rather, states have an obligation to the general
population to protect them from the negative effects of climate change (ibid., para. 5.3.1). Moreover, the state of the Netherlands was obliged to reduce GHG emissions on its territory in accordance with its shared responsibility (ibid., para. 5.8). The Supreme Court reasoned that this is based on the individual responsibility of states to mitigate dangerous climate change in accordance with their common but differentiated responsibilities set out in the UNFCCC and the no harm principle of international law (ibid., para. 5.7.3, 5.7.5). Furthermore, shared responsibility was in line with the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ibid., para. 5.7.6). For this reason, it did not matter that the Netherlands' emissions were quite low by global standards.

Interestingly, unlike the previous case study of *Leghari v Federation of Pakistan*, this case did not involve a direct violation of human rights. Rather, human rights were used as an interpretive tool in the investigation of the case, and the courts' decisions were ultimately based on the 'open standards' of Dutch tort law. How the state implements emission reductions was left up to the government and was not judicially mandated.

### 7.2.2 Social Context and Media Attention

Effects of climate change can already be observed in the Netherlands as well as in Pakistan. For example, extreme weather events have increased significantly and the average temperature has risen (Nwanazia 2018). Likewise, the country is located below sea level which makes it vulnerable to further rising sea levels (ibid.). However, the state of the Netherlands is well prepared to adapt to the effects of climate change, such as with dikes.

In general, the public awareness of climate change in the Netherlands, media attention and social side effects for the Urgenda case can be classified as quite high. According to a study conducted by the European Commission in 2019, 69% of respondents believed that climate change is one of the biggest problems facing the world as a whole, and 27% of respondents were most likely to see climate change as the world's biggest problem (European Commission. Directorate General for Climate Action. 2019, 7, 14). These numbers were almost unchanged from the same survey conducted in 2017 (European Commission. Directorate General for Climate Action. 2017, 7, 12). Nevertheless, since these values increased by 17 and 11 percentage points, in contrast to a previous survey in 2015, it can be assumed that there is an increasing awareness regarding the relevance of climate change in the Netherlands (ibid., 8, 13). Furthermore, 71% of respondents indicated that they believe national governments are
responsible for addressing climate change (European Commission. Directorate General for Climate Action. 2019, 30). 67% also believed that business and industry were responsible and 67% indicated that the EU was responsible (ibid., 30). However, 60% also said that everyone was personally partly responsible (ibid., 30). The same study also concluded that more citizens in the Netherlands are taking climate-friendly actions themselves to mitigate climate change (ibid., 37). This figure increased by 17 percentage points to 64% compared to 2015 (European Commission. Directorate General for Climate Action. 2017, 33).

At the same time, the Urgenda case is used in almost every academic paper on climate litigation and generated a lot of media attention both in the Netherlands and outside the country. Wonneberger and Vliegenthart (2021, 1), in their study on socio-political consequences of climate litigation published in 2021, using the Urgenda case as an example, concluded that climate litigation can have indirect consequences beyond the court ruling and that media attention for this lawsuit led to greater parliamentary attention for the case. Using a variety of methods, the study confirmed that newspaper coverage of the Urgenda case led to more parliamentary attention (ibid., 9). In addition to influencing political attention, media attention to the case also led to more media attention on climate policy and climate change in general (ibid., 11). The study found that one additional article about the Urgenda case led to more than five additional articles about climate change in general (ibid., 11). As noted in chapter 3, climate change in itself is not particularly newsworthy because it does not meet various criteria. In the context of sensational events, such as climate litigation, this changes, at least in the short term, and can thus initiate agenda-setting processes in politics (ibid., 12). Just as media coverage of climate change can lead to parliamentary attention for climate policy, however, parliamentary attention can also lead to media interest (ibid., 12).

Also, Civil movements show that the Netherlands is a country that is very aware of the relevance of climate concerns. Many citizens frequently protest for more climate protection, and global school strikes, organized by e.g. Youth for Climate or FFF are very popular in the Netherlands (Lalor 2019). Likewise, groups such as Extinction Rebellion or Greenpeace regularly draw attention to the relevance of climate protection with drastic actions (Brady 2021; Townsend 2021). Greenpeace in particular is pushing various other climate litigation in the Netherlands. But so are organizations like Urgenda or various citizens. Urgenda reports extensively on the Urgenda v Netherlands case on its website and also provides information on various social media platforms, such as Facebook, LinkedIn, Twitter and YouTube. For example, the organization currently counts close to 40,000 followers on Twitter.
These findings suggest that the Urgenda case can be considered a strategic lawsuit, as it is definitely embedded in a social movement. Likewise, this can be confirmed by the fact that it was a strategic collective action that pursued a public interest and was supported by a number of individuals (van Loon 2020, 70). Since the Urgenda lawsuit has proven to be an effective means of generating media attention and thus political attention, it confirms that climate litigation can be an effective method of persuading states to act climate friendly. Thus, ambitious climate policies and reduction of GHG emissions can be achieved through targeted human rights-based lawsuits. In comparison, hardly any non-human rights-based climate litigation has reached such a high level of attention so far. On the one hand, it can be assumed that the media attention of the lawsuit led to a higher relevance of the implementation of the court decision in the government. On the other hand, it must also be taken into account that without the social context and the civil movements for more climate protection, the outcome of the landmark ruling might have been different, since judges are also reached by public opinions.

7.2.3 Follow-up Action and Impact on Climate Policy

Preliminary figures show that the Dutch government has not fully complied with the ruling to reduce its GHG emissions by 25% by the end of 2020. After the ruling in 2019, the cabinet promised to meet the target (Schuttenhelm 2021). But despite an unexpected drop in emissions in 2020 due to the current Covid-19 pandemic, the Netherlands is likely to miss the target by 0.5% (ibid.). This is indicated by preliminary figures from Statistics Netherlands (ibid.). Also, the pandemic-related decrease in road traffic and industrial activity will not be permanent, and emissions are very likely to rise again (ibid.). At this point, however, it has not yet been conclusively determined whether the Netherlands has in fact failed to implement the judgment. Similarly, it has not yet been assessed whether the government has done all it can and whether the measures taken were adequate and appropriate to comply with the judgment. Since the government did not really address the issue until after the Supreme court's ruling in 2019, and many measures, such as the reduction of the speed limit on highways, were not taken until 2019, the outcome of this assessment remains interesting (Douglas 2019).

It is clear, however, that the case represents a landmark and previously unprecedented ruling. Media, public and political attention was generated, leading to an increased awareness of climate issues and the existence and potential of climate litigation. Due to this and the fact that the state of the Netherlands has complied with the judgment to a great extent, the case can be considered a success and set a precedent for further lawsuits worldwide. Through the
extrajudicial effects and the use of human rights as an interpretive tool alone, the lawsuit as a whole can be considered effective in the fight against climate change.

### 7.3 Neubauer et al. v Germany

#### 7.3.1 Judicial Decision

The third and most recent case is *Neubauer et al. v Germany*. In February 2020, nine teenagers and young adults filed a complaint at the Federal Constitutional Court against the KSG. They argued that the 55% GHG reduction quota by 2030 contained therein was insufficient and violated the complainants' fundamental rights (*Neubauer et al. v Germany* (1 BvR 2656/18) 2021). Specifically, they invoked the guarantee of human dignity in Art. 1 which is stated in the German constitution (GG) in conjunction with Art. 20a GG, which includes the protection of the natural basis of life, and the right to life and physical integrity in Art. 2 (2) GG (ibid., para. 1). Since some of the complainants or their families practice organic farming and sustainable tourism, they also invoked the right to freedom of occupation in Art. 12 and their freedom of property in Art. 14 GG (ibid., para. 1). They also referred to Art. 2 and Art. 8 of the ECHR and referenced the Urgenda judgment of the Netherlands (ibid., para. 60). The complainants demanded that current findings of science and the IPCC be taken into account in the revision of the KSG and, with reference to the Paris Agreement, that the law be adapted so that Germany does its part to limit global temperatures to 1.5°C (ibid., para. 72). To achieve this, Germany would have to reduce its GHG emissions by about 70% by 2030 compared to pre-industrial times (ibid., para. 5). Regulations should also be created that prohibit Germany from transferring emission allocations to neighboring European countries as long as EU climate protection law does not provide a level of protection that is adequate for fundamental rights (ibid. para. 93).

In April 2021, the court announced that it was upholding the complaint and ruled that certain parts of the KSG were incompatible with fundamental rights and thus unconstitutional, as there was no projection of reduction targets from 2031 onwards (*Neubauer et al. v Germany* (1 BvR 2656/18) 2021, para. 266). The court determined that the legislature must set them by the end of 2022 (ibid., para. 268). It further stated that the protection of life and physical integrity also includes protection against environmental pollution (ibid., para. 147). Thus, it said, the state has an obligation to protect life and health from the dangers of climate change, including with respect to future generations. In addition, Art. 20a GG also aims to achieve
climate neutrality and requires the state to act internationally to protect the climate, since it is “a justiciable legal norm that is intended to bind the political process in favor of ecological concerns, also with a view to future generations that are particularly affected” (ibid., para. 197). Similar to the Urgenda ruling, it was also stated here that the state cannot evade its responsibility by referring to GHG emissions in other states. The state must also treat the natural foundations of life with care and leave them in an appropriate condition for future generations, which includes initiating climate neutrality in a timely manner.

7.3.2 Social Context and Media Attention

Similar to the Netherlands, Germany is already affected to some extent by climate change. Extreme weather events and a rising temperature are already noticeable and have serious consequences for human beings and the environment (Herbstreuth 2021). But the consequences are not yet as noticeable as in countries like Pakistan. Therefore, the media and social media play a crucial role in countries like Germany to draw attention to the severity of climate change.

According to the study of the European Commission from 2019 which was already mentioned in the previous case, the perception of climate change is quite high in Germany. 30% of Germans said that climate change was the most serious problem facing the world (European Commission. Directorate General for Climate Action. 2019, 7). This number increased by 16 percentage points compared to the survey in 2017 (ibid., 7). And a total of 71% of respondents answered that they see climate change as one of the world's biggest problems (ibid., 14). In 2017, only 53% of respondents said the same (European Commission. Directorate General for Climate Action. 2017, 12). In addition, over 60% of respondents in Germany saw business and industry as responsible for tackling climate change, with 52% stating that the EU was responsible and 51% believing that national governments were responsible (European Commission. Directorate General for Climate Action. 2019, 31). However, 48% also said that everyone was individually responsible (ibid., 31). These figures suggest that the perception and relevance of climate change is also increasing in Germany.

Just as the perception of climate change has increased, so has the media coverage of the climate crisis, which can be linked to the FFF movement and the associated demonstrations and school strikes (Herbstreuth 2021). Neubauer, one of the plaintiffs in Neubauer et al. v Germany, is also the main organizer of the FFF movement in Germany, which has become very popular.
Perhaps because of this, and because it was a groundbreaking and so unexpected ruling by the Federal Constitutional Court, the case gained a lot of media attention. Currently, there are also other climate litigations, partly by the same complainants, against the Federal Republic of Germany. Neubauer and FFF also have a large range of influence through social media accounts. The FFF Germany account currently counts close to 200,000 followers on Twitter and over 500,000 on Instagram. Neubauer also currently counts 250,000 followers on both platforms. Unlike the two previous case studies, however, there is no Wikipedia entry for this case yet, which may be due to the case's current nature. As Neubauer is one of the driving forces behind FFF Germany and part of further climate litigation, this case can also be seen as a strategic litigation. The case is embedded in a social movement and is accompanied by high media attention regarding climate change.

Likewise, the Green Party, which advocates more environmental and climate protection, has gained significant popularity in Germany in recent years. It should also not be forgotten that federal elections are due in September 2021 and the election campaign was already in progress when the complaint was negotiated. The Green Party is running a candidate for Chancellor and, according to current polls at May 2021, would have a real chance of winning the election (Bundestagswahl-2021.de). The extent to which this contributes to the extremely quick reaction of the current government to the verdict will be examined in the next subchapter. Another indication of strategic litigation is that some of the complainants are minors who are not yet eligible to vote. One of them said he is excited that he has already won a climate litigation case even though he is not allowed to vote (Starzmann 2021). Since children and youth are particularly exposed to the impacts of climate change and for a proportionally long time, it is only logical that they want to participate in the political process. Thus, this climate litigation can be seen as a successful political participation for more climate protection both for minors and adults.

7.3.3 Follow-up Action and Impact on Climate Policy

The government did not approve the KSG as part of the German government's climate package until the end of 2019 after various lengthy negotiations. Accordingly, the positive reaction of politicians to the ruling was surprising, as climate policy has been pursued rather hesitantly up to then. After the ruling virtually all German parties emphasized how important this groundbreaking statement is for climate protection (Schneider-Eicke 2021). It is at least as surprising that after the ruling was announced on April 29, 2021, the KSG was already tightened
on May 12, 2021. The amended KSG now includes climate neutrality by 2045 and binding reduction targets for the period in between (KSG draft law (Drs. 19/30230) 2021, Art. 1 (3)). Emissions are to be reduced by 65% by 2030 and by 88% by 2040 (ibid., Art. 1 (3)). Tougher levels of annual emissions caps have also been set for the energy, industry, buildings, waste, transport and agriculture sectors (ibid., Art. 1 (9)).

The rapid action can be explained on the one hand by the fact that the current government is under strong pressure due to great awareness of climate change among the population, media coverage, the upcoming Bundestag elections, and very good poll results for the Green Party. On the other hand, however, the EU also decided at the end of 2020 to sharpen its climate target of GHG emission reduction to 55% instead of 40% by 2030 and thus also foresees a tightening of Germany's climate targets (Ehring 2021). Therefore, the higher 2030 target would have been necessary anyway due to EU standards. Surprisingly, Germany also met its 2020 climate target of a 40% reduction in GHG emissions (Altegör 2021, 16). Emissions already fell by 40.8% compared to 1990, according to the Federal Environment Agency, but much of this can be attributed to reductions in transport and industry due to the Covid-19 pandemic (ibid., 16). However, the German environment minister noted that progress has been made even independently of the pandemic and sees the new law as a guarantee that the government will not let up on climate protection and will reliably meet all climate targets (ibid., 16 f.). The extent to which the new targets of the KSG will actually be implemented and adhered to remains questionable and leaves room for further climate litigation.

However, it can also be stated in this case that the lawsuit can already be considered as extremely successful. First, the legislature had until the end of 2022 to tighten the climate law – but did so within two weeks of the ruling. This can be attributed to the exceedingly smart placement of the lawsuit and the extrajudicial effects, such as media exposure and public perception of climate change in general. Although there are no studies yet on the correlation of articles on the case and coverage of climate change in general and perceptions of the climate crisis in politics, it can be assumed that social and media effects had a major impact on the surprisingly quick reaction of the government regarding the verdict. Likewise, milestones were set as climate change was judicially recognized as a serious problem with a particular focus on protecting future generations and the relevance of reaching climate neutrality promptly.
7.4 Legal Issues and Implementation Challenges

Despite these successful examples, there are also certain barriers that climate litigation must overcome. These are explained in the following. As already mentioned in chapter 5.4, lawsuits must first meet justiciability. This means that the claim's standing to be heard is examined. In addition, there are other factors that are common to all lawsuits. For example, they must allege a judicially enforceable basis, which usually relates to one of the bases presented in chapter 5.4. For each type of lawsuit, there are also different remedies and targets. These range from very high or even moderate claims for damages, to injunctive relief (UNEP 2020, 43). These can be limited and targeted or broad and far-reaching, as in the Urgenda case. Last but not least, perhaps one of the biggest obstacles is the attribution of climate change and its consequences. First, there must be scientific evidence of the extent to which GHG emissions contribute to climate change, since climate litigation is based on science (ibid., 44). Additionally, certain negative impacts, such as extreme weather events, must be attributed to climate change (ibid., 44). These two points still pose several challenges to science and can be seen as weaknesses of climate litigation. In addition, it is particularly difficult to link emissions of e.g. companies to direct climate change-related effects and thus to hold them responsible. Therefore, media attention is crucial to create awareness among the population and to push the courts to go beyond legal standards.

The so-called People's Climate Case, in which the European Parliament and Council were sued for insufficient GHG emission reductions, caused quite a lot of attention. However, it was dismissed by the European general court in 2019. This happened on procedural grounds and the court did not address the merits of the lawsuit. It said that the plaintiffs lacked standing because they were not sufficiently and directly affected by the EU policies (Carvalho and others v Parliament and Council of the European Union (Case T-330/18) 2018, para. 33). Since every person will be affected by climate change and the law requires, however, that the plaintiffs be affected in an individual, direct way that distinguishes them from all other persons, the court rejected the claim. In March 2021, the European Court of Justice upheld this decision based on the lack of individual concern and declared the lawsuit inadmissible on standing grounds (Carvalho and others v Parliament and Council of the European Union (Case C-565/19 P) 2021). It can be noted here, as mentioned before, that this case, through its uniqueness and through the media attention generated, has nevertheless made a clear contribution to raising awareness of the climate crisis in the EU. As noted in chapter 7.3.3, the EU has meanwhile decided to reduce its GHG emissions and is aiming for a stricter climate policy. To what extent
this lawsuit contributed to this remains questionable. However, this type of lawsuit can effectively make the voices of those affected heard. The extent to which rejected lawsuits can lead to more ambitious climate policies would also be extremely interesting and leaves room for further studies.

But another problem arises after the closure of climate litigation. Even if a court decides in favor of a lawsuit and thus rules in favor of the climate, this does not mean that the decision will actually help the climate. Since climate litigation has only recently begun to become a trend and is being used *en masse* to advocate for more climate protection, there are hardly any representative evaluations of this. What is clear, however, is that in many countries not too much will happen if the state does not comply with the court-imposed requirements. If it is not a matter of votes and compensation, there is not much incentive for politicians to act quickly and ambitiously. This was the case, for example, in the Colombian *case Future Generations v Ministry of the Environment and others*. The case in itself can be considered a textbook case, as the court upheld the young people's claim in April 2018. The plaintiffs argued that their fundamental rights were being violated due to climate change and the contributing to that through deforestation of the Amazon (*Future Generations v Ministry of the Environment and Others* (No. 11001-22-03-000-2018-00319-01) 2018). The court agreed to the claim and recognized the Colombian Amazon as a legal subject that must be protected and preserved (ibid., para. 14). It ordered the government to create and implement appropriate action plans.

Now, three years later, no mitigation of rainforest deforestation is evident. Although there was a slight decrease between 2018 and 2019, the Amazon's share of national deforestation increased again by 10% from early 2019 to early 2020, to over 68% (Frasao 2020). Similarly, total deforestation in Colombia increased by approximately 29% between 2019 and 2020 (ibid.). The National Development Plan for 2018-2022, while providing for no increase in deforestation, maintains the previously existing level at a constant level (Guillau 2019). As a result, 219,973 hectares keep being deforested annually (ibid.). Since attempts by the government to implement some of the requirements are thus recognizable, however, it can be concluded overall that the Colombian government is not effectively complying with the court ruling. Also, Colombian activists complain that no attempt is being made to comply with or implement the requirements (ibid.). They are calling on the government to act and more follow-up lawsuits are already planned (ibid.). The organization ‘Dejusticia’ judges that the Colombian government has failed to comply with the Supreme Court's landmark order to protect the Amazon (ibid.).
Due to power distributions, corruption and other interests, non-fulfillment of climate litigation judgments can always occur. It is also a fact that there are no real sanction measures when this happens. Possibilities for the population to react to this are to file further lawsuits, also before international human rights bodies, or political and civil participation. Likewise, a functioning separation of powers can be seen as crucial for climate litigation against governments to reach its intended extent.

8. Results and Discussion

In the following, the results of the case study are summarized and discussed in order to answer the question to what extent human rights-based climate litigation and the associated media attention influence climate policy. The results are subject to the caveat that this sample of cases is very limited and that the results could have been different had the sample been selected differently.

Overall, it can be stated that all three cases analyzed, both in and out of court, can be considered successful. All of them are based on a groundbreaking and exceptional, positive court ruling that imposed climate policy conditions on the respective state. As of this writing, these conditions have been largely fulfilled by the governments in all three cases. Thus, it can be stated that human rights-based climate litigation can definitely have a positive impact on governments' climate policies. In all cases, climate change was generally recognized as a threat and a violation of fundamental human rights, due to government inaction and non-fulfillment of state obligations, was found. Since courts typically take action only after an illegal act has occurred, it is equally stunning that all three cases were decided without an explicit event and required states to act in a climate-friendly manner.

In addition, clear extra-judicial effects can be seen in all three examples, as the cases attracted a lot of media and scientific attention. Since the media (incl. social media) have a strong influence on the perception of the population and can raise public awareness regarding the issue of climate change, the relevance of media attention to climate litigation can also be seen as confirmed. As democratic governments should represent the will of the population, a high relevance of climate protection among the population should equally lead to a more ambitious climate policy. Climate claims can contribute to the presence of climate change in the media and the formation of public opinion about the climate crisis, as well as it can be created by public opinion and social movements themselves. It can also be noted that media
coverage of individual climate litigation and climate change in general can influence political actions and exert pressure on governments to comply with court-imposed obligations. This is particularly interesting because there is no guarantee that a government will comply with its court-imposed obligations. Even if a lawsuit passes all legal barriers and is upheld, the distribution of power, corruption, and other interests can guide governments more than court decisions, since there are no direct sanction mechanisms if a government fails to meet its obligations. Therefore, some problems of climate litigation remain even after a claim has been upheld by a court.

The analysis showed that climate litigation is closely related to public perceptions about climate change in a population. After the Leghari case was heard, much more attention was paid to the climate crisis in Pakistan, both politically and socially, and a much more ambitious climate policy has been observed lately. However, the influence of the case on the formation of public opinion could not be conclusively clarified. In the Netherlands, however, public awareness existed before the case and was definitely raised further by the lawsuit. For every article about the Urgenda case, more than five articles appeared about climate change in general. This, in turn, contributed to the formation of public opinion and had an impact on policy formation. Since the case was litigated for a time period of over four years and kept generating new attention, it is not surprising that the relevance of climate change in the Netherlands has increased significantly in recent years. In the Neubauer case, on the other hand, the lawsuit seems rather to have arisen primarily as a result of public awareness and a social movement. Since the climate crisis already played a major role in German media before the lawsuit and a large climate movement existed that is strongly organized via social media, the lawsuit seems to be rather shaped by public awareness and to be part of the current climate litigation trend. The consequences of this case for society as a whole are still difficult to assess due to its actuality. Nevertheless, the court's classification of climate change as a real danger and the stated need to protect future generations will probably cause the climate movement in Germany to continue to grow.

Overall, all three cases received a high level of media attention, both domestically and abroad. However, the media attention of the Pakistani case was significantly lower than the other two cases. On the one hand, this may be because the environment was not given much importance in the Pakistani media and climate change was generally not seen as a primarily political issue back then. On the other hand, it may also be due to the fact that the case was already litigated in 2015 and climate change generally received much less attention worldwide.
by then than it does today. Furthermore, strategic litigation is clearly evident in the Dutch and German cases, as both cases were accompanied by large environmental movements and a high media presence. In the Pakistani case, this is not evident. This is not least because the awareness of the population and the media attention in Pakistan regarding climate change were still quite low at the time of the lawsuit and no social environmental movements existed. However, since this lawsuit was also extremely successful politically and socially, the question arises as to what influence the media and the social context actually have on the judicial and social/political success of climate litigation.

The initial hypothesis was that climate claims are particularly successful when they are based on strategic litigation, i.e. when they are embedded in relevant social contexts and have a high level of media attention. This can be confirmed by the Urgenda case, in which, in the context of a very large social movement and high media attention, a revolutionary ruling was created, which for the first time established that governments are legally obligated under international human rights law to sharply reduce GHG emissions and thus mitigate climate change. Also the Neubauer case confirms the hypothesis, because also here the factors for a strategic litigation were given. In addition to the large social movement and media attention, there was the factor of the upcoming federal election and the current popularity of the Green Party, which may have put additional pressure on the current government and led to the government's extremely quick political reaction. The Leghari case, on the other hand, could be seen as a counterargument to the hypothesis that strategic lawsuits are particularly successful since it was very successful without a strategic part. Yet, the nature of the lawsuit is interesting here. The Pakistani case, unlike the other two, falls into the categories of 'domestic enforcement' and 'lack of climate change adaptation measures'. It was judged on the basis of national fundamental rights and a clear breach of existing policies was condemned. It was therefore a matter of implementing obligations that had already been adopted. The government was 'merely' given the task of implementing these existing obligations. No new measures or actions by the government were required. The Dutch and German cases, on the other hand, fall into the category of 'climate rights' and could therefore perhaps be considered more ambitious, as the plaintiffs demanded concrete, new actions from the government. This type of political intervention lies in a gray area between the legislative and judicial powers and is therefore more difficult to assess in legal terms. Also, the courts in these cases argued with the international responsibility of the countries. This may be due to the fact that they are developed countries that contribute significantly more to climate change than e.g. Pakistan. The rights of future
generations were also implicated. These two aspects can be the most important of strategic human rights-based climate litigation, as extraterritorial obligations and the rights of future generations are difficult to address through other legislation and leave much room for interpretation. Thus, societal factors may well be relevant to such interpretation of the laws by the courts and may also be exceedingly relevant to the acceptance of the judgment by the government.

It can thus be assumed that climate litigation that falls into the category of 'climate rights' is strengthened by social contexts, such as social movements, and media presence. It should not be forgotten here that there are exceedingly many lawsuits that meet these criteria and are nevertheless rejected. However, the proportion of these seems to have decreased significantly in recent years, which can be linked to the rise in climate awareness among the population and social movements. Thus, the possibility of success seems to be increased by strategic litigation. In addition, even if strategic lawsuits are rejected, they can bring immense social and political effects, as they receive a great amount of media attention and raise awareness about climate change in general. This in turn can contribute to greater political participation. Moreover, since all three lawsuits are unique and groundbreaking, they all seem to provide a basis for the emergence of further lawsuits and thus form part of the current environmental movement. The correlation of an increasingly large global environmental movement, which is largely driven by social media and the Internet, and the very rapidly increasing share of climate lawsuits also seems to indicate that social movements, media attention and climate litigation influence each other and thus are shaping climate policy.

9. Conclusion and Prospect

Climate lawsuits are an important component of addressing anthropogenic climate change. Through human rights-based climate litigation, more climate action and climate justice can be achieved, and states can be held accountable for inaction and wrongful actions regarding climate change. At the same time, this ensures the protection of fundamental human rights. The impact of climate litigation can furthermore be significantly amplified through media attention and social contexts.
In the most recent draft to the sixth assessment report from the IPCC, experts state that policy decisions made now could still mitigate some of the most severe impacts of climate change (Schwet 2021). If the 1.5°C target is missed by the end of the century, the consequences would be dramatic and have irreversible effects on human beings and ecological systems (ibid.). The current global climate targets, however, would lead to a warming of around 3°C (ibid.). Therefore, much more ambitious action by states is essential in order to be able to avert the catastrophic climate consequences. The experts emphasize that every 'fraction of a degree of warming' counts and that climate-protective measures could save humanity from extinction (ibid.). Thus, every single climate litigation that leads to climate-protective measures, such as reductions in GHG emissions, is a success for humanity. The draft report notes that the worst is yet to come and will affect the lives of our children and grandchildren much more than ours (Harvey 2021). Severe droughts, water shortages and flooding will dramatically threaten the lives of future generations, even despite adaptation measures (Schwet 2021). In addition, the Earth's livable surface will continue to shrink and climate-related migration will increase (ibid.).

In conclusion, since human rights-based climate litigation can be seen as a useful tool to achieve more climate-protective policies, it plays an extremely important role in mitigating climate change and possibly still achieving the 1.5°C target. Accompanied media attention plays a crucial role and can lead to more success of the lawsuits, both in court and out of court. However, it should not be ignored that not all lawsuits are successful, and even those decided in favor of the climate do not necessarily result in concrete actions.

The case study conducted in this paper confirms the initial hypothesis. All three cases achieved a lot of political, media and scientific attention and led to more awareness of the climate crisis in general, as well as to concrete political actions related to the lawsuits. Particularly very ambitious lawsuits, like the Urgenda case, which are based on a greening of the laws, benefit from strategic litigation. For example, strong GHG emission reductions, climate change adaptation measures, and the adoption of long-term climate targets have been achieved through the cases. Based on the study, it can be stated that climate litigation, media, and politics are mutually dependent. Climate claims can generate media attention, increase public awareness of climate change, and bring about political action. Likewise, climate litigation can arise in the context of social movements, which are also accompanied by the

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4 Based on the second-order draft of the working group II report, which isn’t publicly available yet.
media, especially social media. In this case, the lawsuit generates further attention and thus puts pressure on the government to pursue a more ambitious climate policy.

The lack of global sanction mechanisms and an international court for climate matters can thus be compensated to some extent by the action of citizens. Climate litigation functions as a form of political participation and can specifically enhance its influence through media. A precondition for this, however, is the possibility of exercising procedural human rights, such as the right to information, the right to effective legal remedies or the right to freedom of opinion. Likewise, a democratic form of government with separation of powers is used as a basis for the results here. The extent to which climate litigation works in other forms of government and countries with severely limited freedom of expression and freedom of the press would be interesting for further study. Likewise, it would be interesting for further studies to determine which climate policy effects rejected climate claims have in the long term and the extent to which they influence public perception through media attention.

In general, climate litigation should be further exhausted and explored, as it offers a great potential to address climate change and push states to make policy-relevant decisions. Although states still have the option to outsource their GHG emissions, global climate litigation can contribute to an overall reduction and may even prohibit this mechanism in the future. Therefore, human rights can be seen as a useful tool to address climate change. Climate change lawsuits based on them and the associated media attention can help shape climate policy and force states to mitigate and adapt to climate change. This is imperative as “life on Earth can recover from a drastic climate shift by evolving into new species and creating new ecosystems … but human beings cannot” (Harvey 2021).
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**Others**


## Annex

### 1. Human Rights-Based Climate Cases (Status as of March 29, 2021)

<table>
<thead>
<tr>
<th>Nr.</th>
<th>Case</th>
<th>Jurisdiction/ Principal Laws</th>
<th>Justification</th>
<th>Filing Date, Decision</th>
<th>Actions taken</th>
<th>Website/ Media</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Greenpeace Mexico v Ministry of Energy and Others (on the national electric system policies)</td>
<td>Mexico, First circuit collegiate tribunal + District court in administrative matters/ Electricity industry law + general law on CC + Constitution</td>
<td>Whether National Electric System policies are unconstitutional for discriminating against renewables.</td>
<td>May 2020, Pending</td>
<td>/</td>
<td>Yes, on Greenpeace + articles</td>
</tr>
<tr>
<td>2</td>
<td>Petition to the Inter-American Commission on HR – seeking to redress violations of the rights of Children, Cité Soleil, Haiti</td>
<td>Inter-American Commission on HR/ American Convention on HR</td>
<td>Whether the health harms from trash disposal, exacerbated by climate change, violate Haitian children's human rights.</td>
<td>February 2021, Pending</td>
<td>/</td>
<td>No, but articles</td>
</tr>
<tr>
<td>3</td>
<td>Greenpeace Netherlands v State of the Netherlands</td>
<td>Netherlands, District Court/ UNFCCC =&gt; PA + ECHR</td>
<td>Whether the Dutch government violated its duty of care to prevent dangerous climate change by failing to attach stringent climate conditions to its coronavirus bailout package of the airline KLM</td>
<td>October 2020, Claim rejected: No obligation of the state to attach climate conditions to the bailout package. Executive has a wide margin of discretion in acting to respond to the pandemic.</td>
<td>X</td>
<td>Yes, on Greenpeace + articles</td>
</tr>
<tr>
<td>4</td>
<td>Institute of Amazonian Studies v Brazil</td>
<td>Brazil, Federal district court of Curitiba/ PPCDAm + National CC policy +</td>
<td>Whether the Brazilian Constitution guarantees a fundamental right to a stable climate and whether the Brazilian government may be compelled to meet</td>
<td>October 2020, Pending</td>
<td>/</td>
<td>No</td>
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<td></td>
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<td>Constitution of 1988</td>
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<td>5</td>
<td>PSB et al. v Brazil (on deforestation on HR)</td>
<td>Brazil, Federal supreme court/PPCDAm + Constitution of 1988</td>
<td>Whether Brazil’s failure to curb deforestation and resulting climate change violates fundamental constitutional rights of indigenous peoples and current and future generations</td>
<td>November 2020, Pending</td>
<td></td>
<td>No</td>
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<td>6</td>
<td>Greenpeace Mexico v Ministry of Energy and others (on the energy sector program)</td>
<td>Mexico, District court in administrative matters/Electricity industry law + constitution</td>
<td>Whether Mexico’s energy sector policy violates human rights by promoting fossil fuels at the expense of renewables</td>
<td>August 2020, Pending</td>
<td></td>
<td>Yes, on Greenpeace</td>
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<td>7</td>
<td>Shrestha v Office of the Prime Minister et al. Nepal</td>
<td>Nepal, Supreme court/UNFCCC -&gt; PA + Constitution</td>
<td>Seeking an order to compel the government of Nepal to enact an adequate climate change law</td>
<td>August 2017, Claim granted: Government has to enact a new climate change law to mitigate and adapt to the effects of CC; as well as due to the PA and constitutional obligations</td>
<td>2019: Government passed Environment Protection Act and Forest Act</td>
<td>No</td>
</tr>
<tr>
<td>8</td>
<td>(6 Portuguese) Youth for Climate Justice v Austria, et al. EU, Norway, Russia, Switzerland, Turkey, Ukraine and UK</td>
<td>European court of HR/European convention on HR</td>
<td>Youth filed human rights complaint against 33 governments at the European Court of HR alleging that defendants failed to take sufficient action on CC – referring to PA and Art. 2, 8, and 14 of ECHR; seeking more ambitious action</td>
<td>September 2020, Pending</td>
<td>Nov. 2020: ECHR accepted and fast-tracked the case</td>
<td>Yes, high attention</td>
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<tr>
<td>Case No</td>
<td>Parties</td>
<td>Court/Organisation</td>
<td>Key Issues</td>
<td>Date</td>
<td>Decision</td>
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<tr>
<td>1</td>
<td>Citizen of Kiribati (threatened by sea level rise) v Australia</td>
<td>Australia, Refugee review tribunal/ Migration act 1958</td>
<td>Applicant sought protection under Refugee Act due to sea level rise.</td>
<td>September 2009, Claim rejected: Production of carbon emissions isn’t sufficient to get refugee status under refugee convention; no evidence that persecution was occurring be of a membership to any particular group</td>
<td>X</td>
<td>No</td>
</tr>
<tr>
<td>10</td>
<td>Asociación Civil por la Justicia Ambiental v Province of Entre Ríos, et al.</td>
<td>Argentina, Supreme court/ Environmental law to control burning activities + UNFCCC -&gt; PA + General environmental law + Constitution + UNCRC</td>
<td>Class action asks Argentinian Supreme Court to recognize rights of the Paraná Delta. Government failure to protect environmentally sensitive wetlands.</td>
<td>July 2020, Pending</td>
<td>/</td>
<td>Yes</td>
</tr>
<tr>
<td>11</td>
<td>Neubauer, et al. v Germany</td>
<td>Germany, Federal constitutional court/ Constitution</td>
<td>Youth argued that Germany's GHG reduction goals violated human rights. “Bundesklimaschutzgesetz” not sufficient. Violation of constitutional human rights</td>
<td>February 2020, Pending</td>
<td>/</td>
<td>Yes/NO</td>
</tr>
<tr>
<td>12</td>
<td>Hearing on CC before the Inter-American Commission on HR</td>
<td>Inter-American Commission on HR/ Int. HR Law</td>
<td>Civil society groups asked IACHR to promote climate policies that protect human rights. Impacts of CC on HR of indigenous people, women, children, and rural communities.</td>
<td>September 2019, Pending</td>
<td>/</td>
<td>No</td>
</tr>
<tr>
<td>13</td>
<td>In re Court on its own motion v State of Himachal</td>
<td>India, National green tribunal/ Constitution +</td>
<td>Court on its own motion issued restrictions to curb black carbon emissions, Pollution checks, restricting transport in certain areas to</td>
<td>February 2014 (2013), Courts own claim therefore</td>
<td>No, but articles</td>
<td></td>
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<tr>
<td>Case</td>
<td>Description</td>
<td>Location</td>
<td>Issue</td>
<td>Court</td>
<td>Resolution</td>
<td>Conclusion</td>
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<tr>
<td>14</td>
<td>Greenpeace et al. v. Austria</td>
<td>Austria, Constitutional court</td>
<td>Greenpeace sued to invalidate tax credits on air travel, arguing that GHGs pose a threat to human rights. Tax exemptions exist on flights but not on trains</td>
<td>February 2020, Case dismissed: Inadmissible bc rail passengers don’t have standing to sue preferential tax treatment (given to air travel)</td>
<td>X</td>
<td>Yes, on Greenpeace + articles</td>
</tr>
<tr>
<td>15</td>
<td>Lho’imggin et al. v Her Majesty the Queen</td>
<td>Canada, Federal court</td>
<td>Indigenous groups alleged that Canada's climate policy and acceptance of GHG-emitting projects violate human and constitutional rights.</td>
<td>February 2020, Pending (Nov. 2020 Court found that the case was not justiciable bc it didn’t have a sufficient legal component to anchor the analysis) Dec. 2020 plaintiffs appealed to the Federal Court of Appeals</td>
<td>/</td>
<td>No</td>
</tr>
<tr>
<td>16</td>
<td>Ruling on Modification to Ethanol Fuel Rule</td>
<td>Mexico, Supreme court</td>
<td>Whether Mexico's rule of increasing the maximum ethanol fuel content is constitutional. Agency action: 10% ethanal instead of 5.8%</td>
<td>January 2020, Claim granted (courts own case): Agency action invalidated -&gt; Precautionary principle and right to a healthy environment + Ethanol contribution to GHG emissions</td>
<td>No, but articles</td>
<td>No, but articles</td>
</tr>
<tr>
<td>Case</td>
<td>Rights of Indigenous People in Addressing Climate-Forced Displacement</td>
<td>UN Special Rapporteurs/ Int. HR Law</td>
<td>U.S. tribes filed human rights complaint with UN, alleging U.S. government has failed to address climate-caused displacement.</td>
<td>2020, Pending</td>
<td>No, but several articles</td>
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<td>18</td>
<td>UN HR Committee Views Adopted on Teitiota Communication (v New Zealand)</td>
<td>UN HR Committee/ ICCPR</td>
<td>Kiribati citizen argued New Zealand's denial of refugee status violated international human rights.</td>
<td>September 2015, (sought asylum in New Zealand 2013; rejected bc impacts of CC on Kirabati didn’t qualify for refugee status + no persecution as stated in the Refugee Convention) 2020: Committee dismissed communication, it could only reverse a states determination that was clearly arbitrary, a manifest error or a denial of justice</td>
<td>2015: Supreme court sees the possibility “that environmental degradation resulting from climate change or other natural disasters could [] create a pathway into the Refugee Convention or protected person jurisdiction.” 2020: Committee recognized that environmental degradation and climate change constitute serious threats to the ability of present and future generations to enjoy the right to life.</td>
<td>No, but huge presence + important statement for further cases</td>
</tr>
<tr>
<td>19</td>
<td>La Rose v Her Majesty the Queen</td>
<td>Canada, Federal court + Federal court of appeal/ Canadian Charter of rights and freedoms + Constitution</td>
<td>Canadian youth sought declarations that Canada violated their rights by failing to take sufficient action on climate change, and an order requiring the government to implement a Climate Recovery Plan.</td>
<td>October 2019, Pending (Oct. 2020 dismissed on a pretrial motion to strike for failing to state a reasonable cause of action. Plaintiffs appealed case)</td>
<td>Yes, + articles and high attention</td>
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<tr>
<td>No.</td>
<td>Case Name</td>
<td>Court/Submissions</td>
<td>Claim</td>
<td>Decision</td>
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<td>20</td>
<td>Sacchi et al. v Argentina et al. (+ Brazil, France, Germany and Turkey)</td>
<td>UN Committee on the rights of the child/UNFCCC -&gt; PA + UNCRC</td>
<td>Whether respondents violated children’s rights under international law by making insufficient cuts to greenhouse gas emissions and failing to use available tools to protect children from carbon pollution by the world’s major emitters. They also failed to use their stand within in the G20.</td>
<td>2019, Pending</td>
<td></td>
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<tr>
<td>21</td>
<td>Maria Khan et al. v Federation of Pakistan et al.</td>
<td>Pakistan, Punjab -&gt; Lahore high court/Constitution + Renewable energy policy 2006</td>
<td>Whether the government of Pakistan's inaction on climate change violated the constitutional rights of women and future generations including the right to a healthy environment and a climate capable of supporting human life</td>
<td>Filed 2018/February 2019</td>
<td></td>
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<tr>
<td>22</td>
<td>Commune de Grande-Synthe v France</td>
<td>France, Council of state/UNFCCC -&gt; PA + French environmental code + French environmental charter + ECHR</td>
<td>Whether the French government’s failure to take further action to reduce greenhouse gas emissions violates domestic and international law</td>
<td>January 2019, Pending</td>
<td></td>
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<tr>
<td>23</td>
<td>EU Biomass Plaintiffs v European Union</td>
<td>EU, General court/EU Charter on HR + EU 2018 revised renewable energy directive</td>
<td>Whether the European Union’s 2018 revised Renewable Energy Directive (RED II) illegally treats forest biomass as a renewable fuel by not counting CO2 emissions from burning wood fuels</td>
<td>March 2019, Pending</td>
<td></td>
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</tbody>
</table>

**Decision Notes:**
- **X:** Case dismissed on standing grounds.
- **No, but a lot of attention:** Unclear to whom the emphasis is directed.
- **No:** Case not moved forward.
<table>
<thead>
<tr>
<th>Case</th>
<th>Facts</th>
<th>Questions</th>
<th>Decision</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friends of the Irish Environment v Ireland</td>
<td>Ireland, High court of Ireland/ Constitution + Climate action and low carbon development act 2015 + ECHR</td>
<td>Whether Ireland’s National Mitigation Plan violated statutory law, the Irish Constitution, and human rights obligations because it is not set to reduce greenhouse gas emissions sufficiently over the near-term.</td>
<td>2017, 2019: Claim rejected bc the act doesn’t require particular intermediate targets and can be seen as a first step. Nov. 2019: FEI appealed to the court of appeal &amp; submitted an application to go directly to the supreme court. February 2020: supreme court agreed July 2020: Court reversed the lower court decision and issued a ruling quashing plan bc the Act isn’t understandable for everyone. But the court says that FIE lacks standing under Constitution and ECHR. So, no HR violation.</td>
<td>Probably yes. No further investigation.</td>
</tr>
<tr>
<td>Notre Affaire à Tous and Others v France</td>
<td>France, Administrative court of Paris/ UNFCCC -&gt; PA + Constitution+ French environmental code + French environmental charter + ECHR</td>
<td>Whether the French government’s failure to take further action on climate change violates a statutory duty to act under domestic and international law</td>
<td>December 2018, February 2021 Claim granted: France’s inaction has caused ecological damage from CC; Plaintiffs got 1€ for moral prejudice. France could be Government has to show ambitious steps within 2 months. No compensation, bc plaintiffs didn’t showed that the gvt. isn’t able to repair the damage</td>
<td>Yes. High attention</td>
</tr>
<tr>
<td>No</td>
<td>Case Details</td>
<td>Court Details</td>
<td>Claim Details</td>
<td>Decision</td>
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<tr>
<td>26</td>
<td>Friends of the Earth Germany, Association of Solar Supporters, and Others v Germany</td>
<td>Germany, Federal constitutional court/Constitution</td>
<td>Whether the German government violated plaintiffs’ fundamental rights by failing to meet greenhouse gas emission reduction goals</td>
<td>November 2018 Filed</td>
</tr>
<tr>
<td>27</td>
<td>ENVironment JEUnesse v Canada</td>
<td>Canada, Quebec superior court/UNFCCC -&gt; PA + Canadian charter of rights and freedoms + Quebec charter of HR and freedoms</td>
<td>Whether the Canadian government violated fundamental rights of citizens aged 35 and under by failing to set a greenhouse gas emission reduction target and plan to avoid dangerous climate change impacts</td>
<td>2018 July 2019 Claim dismissed: Court says that it is a justiciable issue but the 35-year age cut-off was arbitrary and not objective. Decision appealed in August 2019.</td>
</tr>
<tr>
<td>28</td>
<td>Family Farmers and Greenpeace Germany v Germany</td>
<td>Germany, Berlin Administrative court/Constitution + EU Directives: Sharing decision (406/2009/EC)</td>
<td>Whether the German Federal Government violated plaintiffs constitutional rights and EU law through insufficient action to meet its 2020 greenhouse gas emissions reduction target</td>
<td>2018, 2021 Action dismissed: Court says that the government’s climate policy is judicially reviewable. But it dismissed the claim bc the target wasn’t legally enforceable.</td>
</tr>
<tr>
<td>29</td>
<td>Plan B Earth and Others v Secretary of State for Transport UK</td>
<td>UK, Supreme court + England and Wales Court of appeal/ EU directives 2001/42/EC + UNFCCC -&gt;</td>
<td>Whether an approval to expand Heathrow International Airport is illegal due to inadequate consideration of climate change commitments under the Paris Agreement and</td>
<td>August 2018, First granted but then overturned by the supreme court. Gvt sufficiently</td>
</tr>
<tr>
<td>Case Study</td>
<td>Parties</td>
<td>Relevant Laws</td>
<td>Claim</td>
<td>Outcome</td>
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<td>30</td>
<td>Armando Ferrao Carvalho and Others v The European Parliament and the Council</td>
<td>EU General court/ UNFCCC -&gt; PA + EU Treaty on the functioning of the EU Art. 263 + Art. 340 + EU directives 2003/87/EC</td>
<td>Action seeking an injunction to order the EU to enact more stringent greenhouse gas emissions reduction targets through existing programs</td>
<td>2018</td>
</tr>
<tr>
<td>3</td>
<td>A Request for an Advisory Opinion from the Inter-American Court of Human Rights Concerning the Interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights</td>
<td>Inter-American court of HR/ American convention on HR</td>
<td>In an advisory opinion, the Inter-American Court of Human Rights recognized the right to a healthy environment as a human right. Also, for transboundary and future harm.</td>
<td>2016</td>
</tr>
<tr>
<td>32</td>
<td>Future Generations v Ministry of the Environment and Others</td>
<td>Colombia, Supreme court/ Constitution</td>
<td>Youth plaintiffs seek to enforce fundamental rights to a healthy environment which they claim are threatened by climate change and deforestation.</td>
<td>2018</td>
</tr>
<tr>
<td>33</td>
<td>Plan B Earth and Others v The Secretary of State for Business, Energy, and Industrial Strategy</td>
<td>UK, Administrative court, Queen’s bench division + Court of appeal/ UK CC act 2008</td>
<td>Government’s alleged violation of the Climate Change Act 2008 for failure to revise its 2050 carbon emissions reduction target in light of the Paris Agreement and the latest science</td>
<td>December 2017, July 2018 High court found the claims were not arguable and denied permission for</td>
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<tr>
<td>Case Number</td>
<td>Description</td>
<td>Nature of Actions</td>
<td>Decision Date</td>
<td>Final Outcome</td>
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<tr>
<td>34 &lt; '15</td>
<td>Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada</td>
<td>Address effects of black carbon on the Athabaskan people via arctic warming</td>
<td>2013</td>
<td>Filed, not yet decided</td>
</tr>
<tr>
<td>35</td>
<td>Greenpeace Nordic Ass’n v Ministry of Petroleum and Energy Norway</td>
<td>Constitutionality of Norwegian government decision to license new blocks of Barents Sea for development of deep-sea oil and gas extraction</td>
<td>2016</td>
<td>December 2020: Supreme court rejected the appeal. Upholding the licenses for deep-sea extraction. Future emissions from exported oil are too uncertain to bar granting of petroleum exploration licenses.</td>
</tr>
<tr>
<td>36</td>
<td>Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others</td>
<td>Adequacy of Swiss government's climate change mitigation targets and implementation measures and possible infringement on human rights</td>
<td>2016</td>
<td>November 2018 case dismissed bc swiss women over 75 years aren’t the only population affected by CC</td>
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<tr>
<td>#</td>
<td>Case</td>
<td>Location</td>
<td>Description</td>
<td>Year</td>
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<tr>
<td>37</td>
<td>Urgenda Foundation v State of the Netherlands</td>
<td>Netherlands, The Hague Court of appeals + district court/ Constitution + ECHR</td>
<td>Seeking declaratory judgment and injunction to compel the Dutch government to reduce GHG emissions</td>
<td>2015</td>
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<tr>
<td>39</td>
<td>Ali v Federation of Pakistan</td>
<td>Punjab, Lahore high court/ Constitution + Public trust doctrine</td>
<td>Injunction against development of Thar Coalfield</td>
<td>2016 Judgment pending</td>
</tr>
<tr>
<td>41</td>
<td>Ioane Teitiota v The Chief Executive of the Ministry of Business, Innovation and Employment New Zealand</td>
<td>New Zealand, Supreme court/ Immigration act 2009</td>
<td>Refugee status sought, bc of CC impacts on Kirabati (rising ocean level)</td>
<td>2015, Denied: Appellant not subject to persecution. Therefore, no qualification for refugee status under int. HR law. Court noted gravity of CC, but Refugee Convention didn’t appropriately address the issue.</td>
</tr>
<tr>
<td>42</td>
<td>In re: AD Tuvalu</td>
<td>New Zealand, Immigration and protection tribunal/ Immigration act 2009</td>
<td>Resident visa sought</td>
<td>2014, Claim granted: “exceptional circumstances” on other factors, including the presence of the husband’s extended family in New Zealand, the family’s integration into the New Zealand Tribunal acknowledged that climate change impacts may affect enjoyment of human rights. But declined to reach the question of whether climate change provided a basis for granting</td>
</tr>
</tbody>
</table>

monitor gvt.’s progress. -> Jan. 2018 court noted that the priority actions from the framework have been implemented No, but reports. Yes on Amnesty No. But a lot of attention on Tuvalu in general
<table>
<thead>
<tr>
<th>#</th>
<th>Case Details</th>
<th>Location</th>
<th>Nature of Ruling</th>
<th>Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>44</td>
<td>VZW Klimaatzaak v Kingdom of Belgium &amp; Others</td>
<td>Belgium, Brussels Court of first instance/ Int. HR Law</td>
<td>Compel federal and regional governments to reduce greenhouse gas emissions. (Similar to Urgenda case)</td>
<td>2014, Pending March 2021 court case has begun</td>
</tr>
<tr>
<td>45</td>
<td>Petition To The Inter-American Commission on Human Rights Seeking Relief From Violations Resulting from Global Warming Caused By Acts and Omissions of the United States</td>
<td>Inter-American Commission on HR/ American Convention on HR</td>
<td>Petition from Inuk woman to the Commission seeking relief from human rights violations resulting from global warming caused by acts and omissions of the United States</td>
<td>2005, Petition denied: insufficient information provided whether the alleged facts would be a violation of rights protected by the Amer. Declaration</td>
</tr>
</tbody>
</table>


- 8/45 cases before the Paris Agreement 2015 ('15)
- 22/45 cases decided

**Explanation:**
- = Claim granted
- = Claim denied
- = Important
- = Amendment
2. Investigation Criteria (for the Analysis in Chapter 7)

<table>
<thead>
<tr>
<th>Assumption: Influence on lawsuits by social context and media</th>
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<tbody>
<tr>
<td><strong>Content to analyze</strong></td>
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<tr>
<td>General information</td>
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<tr>
<td>When and Where?</td>
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<tr>
<td>Why this case? /Peculiarity</td>
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<tr>
<td>Which circumstances led to the case?</td>
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<tr>
<td>Which consequences did the case have?</td>
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<tr>
<td>Jurisdiction</td>
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<tr>
<td>Who are the parties? (Plaintiff / Defendant)</td>
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<tr>
<td>Cause of action</td>
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<tr>
<td>Argumentation (both sides)</td>
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<tr>
<td>Timeline: Process (appeal, etc.)</td>
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<tr>
<td>Final judgement</td>
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<tr>
<td>Restrictions for the state/defendant</td>
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<tr>
<td>Social Context/ Media Attention</td>
</tr>
<tr>
<td>1. Natural circumstances</td>
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<td>2. Media</td>
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<td>3. Social context</td>
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<tr>
<td>Follow-up Action and Impact</td>
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<tr>
<td>Action</td>
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<tr>
<td>Impact</td>
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<td>4. Content of the plaintiffs</td>
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<tr>
<td>5. Strategy communicated/ evident?</td>
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<tr>
<td>Jurisdiction/requirements implemented/ complied with?</td>
</tr>
<tr>
<td>Concrete actions taken by the state to mitigate climate change/ to reduce GHG emissions?</td>
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<tr>
<td>Influence of jurisdiction on climate policy</td>
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<tr>
<td>Influence of the media on climate policy</td>
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