



Climate Change in Human Rights Courts: Overcoming Procedural Hurdles

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Fires in Spain and the Mediterranean Area



Photograph: analogicus / pixabay

Floods in Germany and several other countries



Photograph: Brais Lorenzo/EPA



Overview

- I. Climate litigation
- II. Pending applications before the ECtHR
- III. The way forward

Climate litigation

1. Effects on human rights
2. Weak national climate protection laws
3. Only soft law standards in many areas



no International Climate Court

Critiques of climate litigation

1. No democratic legitimacy
2. Human rights \neq climate protection rights
3. Many competing interests
4. Complexity of the cases
5. Power of the legislative branch



Pending cases before the ECtHR



*Duarte Agostinho and Others
v. Portugal and 32 Other States*



*Verein KlimaSeniorinnen and Others
v. Switzerland*

Admissibility requirements



Formal Criteria	Court's Jurisdiction	Concerning the subject
Four-month time-limit	Ratione temporis	Not manifestly ill-founded
Not anonymous	Ratione loci	Significant harm
Not substantially the same	Victim Status	
No abuse of right of	Ratione materiae	
Exhaustion of domestic remedies		





1. Exhaustion of domestic remedies

Exceptions are possible according to the Court's case-law, if

1. the national authorities remain passive, or
2. the national practice is incompatible with the Convention



1. Preliminary conclusion and question

Exhaustion of the domestic remedies is a significant hurdle in climate litigation cases with a transnational dimension.

Should the Court adapt its case-law?





2. Victim status

Is the applicant negatively affected?

- Individual applicants - more affected than others?
- Legal persons / NGOs - *actio popularis*?

2. Victim status

Gorraiz Lizarraga and Others v. Spain



Photograph: EL PAÍS



Photograph: iAqua



2. Victim status

Gorraiz Lizarraga and Others v. Spain

§ 38: «(...) in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively (...).»



2. Preliminary conclusion and question

Victim status is a real hurdle for both individuals and organisations in climate cases.

Should the Court adapt its case-law?





3. Significant disadvantage

Is the alleged violation severe enough?

Challenge: future harm

3. Significant disadvantage

1. Previous case law from Turkey

Taskin and others v. Turkey



Öneryıldız v. Turkey



2. Respect for human rights requires an examination on the merits

3. Preliminary conclusion

The requirement of significant disadvantage might be a real hurdle for climate cases about future harm, but the Court should be able to handle this on the basis of the existing case-law.





A look ahead

- Challenge for the admissibility criteria
- Once resolved, many questions remain:
 - Future generations?
 - Common but differentiated responsibilities?
 - Extraterritorial application?