



International Workshop on **Comparative Climate Litigation**

LSGL Research Group on 'Environmental Regulation'

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Call for Papers

KEYNOTE SPEAKER:

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Call for Papers

The growing concern with climate change and its pervasive impacts is visible in the varied and increasing litigation worldwide. Litigators often target States and public regulatory agencies on grounds of their lack of or unambitious climate policies that may guide our societies towards a carbon-neutral future. But since most of our GHG emissions are attributable to private entities, in other cases litigators target private companies directly, aiming to force them to reduce their emissions regardless of any State action to that end.

Although there is an increasing number of studies on both types of climate change litigation, it is still missing a truly comparative assessment of cases from different domestic and supranational bodies, namely to assess (1) what strategies work best before courts, and (2) what lessons may be exported from each jurisdiction.

In this framework, the purpose of the workshop is to resort to the expertise of the members of the Law Schools Global League and to provide a country-based and/or institution-based report on climate litigation against States and private companies alike.

Therefore, the organizers invite scholars and practitioners from members of the Law Schools Global League to submit, by 15 March 2023, a brief answer to the questionnaire attached to this call for papers. Answers should be focused on their country of origin or on the selected international institution (e.g. ECtHR, IACtHR, UNHRC). Submissions should be relatively short (thus, answering only to the relevant bulletpoints) and may focus on actions against States, private companies, or both.

The organization is also considering the publication of an e-book based on the reports submitted to the workshop.

Submission and Selection of Papers

Interested practitioners and scholars (including early career researchers and Ph.D. candidates) are invited to submit their replies to the questionnaire, in English, by 15 March 2023 at the latest, at the following email address:

[\[turinclimateconference@gmail.com\]](mailto:turinclimateconference@gmail.com)

Submissions should include a *curriculum vitae*, with email and institutional affiliation.

Selected participants will be informed by April 10th, 2023.

Confirmed participants will then provide a draft of their conference papers not later than 1 week before the conference.

Travel and accommodation expenses are **NOT** covered by the organization.

QUESTIONNAIRE

1. Who is the claimant or applicant?

a) A private individual; b) A non-governmental organization; c) A State.

2. What was the legal standing of the claimant(s)?

a) A group action; b) A public interest litigation; c) An *actio popularis*; d) A traditional private action; e) The claimant(s) had no legal standing.

3. Who is the defendant?

a) A private individual or entity (e.g., private law associations, business organizations, commercial law companies); b) A State; c) The European Union; d) An international institution; e) A regulatory agency.

4. What body decided?

a) A domestic court: a.1) Private law court; a.2) Public law court; b) A supranational body or court; c) An international body.

5. What is the geographic origin of that body?

a) Global North: a.1) North-America; a.2) Europe; b) Global South: b.1.) South-America; b.2) Africa; b.3) Asia; b.4) Australia and sub-regions.

6. What is the nature of the body?

a) A judicial court; b) An arbitral tribunal; c) Another non-judicial body: c.1) An *ad hoc* panel; c.2) A mediator/facilitator; c.3) An independent authority; c.4) Other

7. What was the court's "function" and its injunction?

a) To make pressure for regulation (strategic litigation); b) To identify regulatory gaps; c) To fill regulatory gaps; d) To establish a specific conduct; e) To condemn to pay compensation; f) To order the disclosure of information on operations or emissions; g) Other (please, specify).

8. What was the court's approach?

a) A duty-based approach: a.1) State's duty of care; a.2) Private entities' duty relating to corporate governance rules and/or corporate social responsibility; a.3) ESG standards; a.4) Duty to protect a healthy environment or a stable climate; a.5) Other; b) A rights-based (individuals' rights) approach; c) Other (please, specify).

9. What was the nature of the rights identified?

a) Fundamental or human right; b) Environmental right; c) Migration and/or refugee right; d) Participatory right; e) Other (please specify); f) No right was needed to identify.

10. What rights were identified?

a) Right to a clean environment; b) Right to a healthy atmosphere; c) Right to the future; d) Right to life; e) Right to health; f) Right to a domicile; g) Right to physical and mental integrity; h) Right to food and/or water access; i) Right to information; j) Consumers' rights; k) Other (please, specify).

11. What duties were identified?

Particularly important regarding private companies: what is the source of their obligation?

12. What was the (extra)territorial scope of the obligation or jurisdiction?

Could applicants from different jurisdictions successfully sue another State or another State's company? If so, what was the basis of such extraterritorial jurisdiction? Are the justifications for State's extraterritorial jurisdiction comparable with those for companies' extraterritorial liability?

13. Choice of law

Could/did the applicants cherry-pick the law applicable? How can we compare cherry-picking between domestic laws, within a domestic law, and within international law? Are there common strategies from a litigator perspective?

14. How did the court see the role of State as the orchestrator of private conduct?

Did the court dismiss State's responsibility for private conduct? Did the court acknowledge any indirect (*ex ante* or *ex post facto*) State responsibility for private emissions of GHG?

15. What did the court include in the "climate rule of law"?

Was international law and the UNFCCC legal complex used as a direct source? Or rather as a tool for the interpretation of domestic instruments? Or, finally, was it ignored by the court?

16. How do these variables interact?

E.g. are domestic courts more comfortable with filling regulatory gaps than international bodies? Are international bodies more concerned with making pressure for regulation and issuing symbolic decisions?

17. Causation links

How did the court establish a causation link between GHG emissions and a particular result or damage suffered by the applicant? Who held the burden of proof? How did the court step in to prove causation?

18. What was the role of science in the court's reasoning?

Was the IPCC used as proper science? Was it used to establish facts and causal links? Did the court pay more attention to facts and scientific findings provided by the State?

19. *Amicus curiae* participation

Did the court accept *amicus curiae* participation? Was it relevant to establish facts and to filter what is proper science?

20. Effectiveness of the remedies

Was the final decision of the adjudicative body accepted and voluntarily executed? Was there any enforcement mechanism available?

21. *Res judicata* effect of the decision

Did the decision have *erga omnes* effect? Or just *inter partes* effect? In this latter case, was the decision still quoted and used by other courts?

22. Shared responsibility

How did the court related State's responsibility and/or liability with other State's and other actor's contribution to GHG emissions?

23. Cross-regime interpretation and inter-systemic fertilization?

Did the court in question resort to the findings of courts or other bodies from a different system (i.e. domestic, supranational, or international)?

If yes, what was the function of that reference: i.e. to support its ruling and findings? To establish facts? To buttress its legal solution? To use its precedent-like authority?