UDC 341.161:349.6(4-67EU)
DOI https://doi.org/10.24144/2788-6018.2025.06.3.57

CLIMATE LITIGATION AS LEGAL DIALOGUE IN AND BEYOND THE EUROPEAN UNION

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Yedeliev R.S. Climate litigation as legal dialogue in and beyond the European Union.

The article examines the evolution of legal mechanisms for addressing climate change at the domestic, regional, and international levels, with particular focus on the jurisprudence of European courts and the 2025 advisory opinion of the International Court of Justice. The purpose of the study is to identify the role of judicial practice in strengthening climate governance and to analyze how climate litigation generates a broader legal dialogue that links EU law, international human rights law, and general international law. Methodologically, the research relies on doctrinal and comparative analysis of treaty law, case law of national courts and the European Court of Human Rights, recent advisory opinions of the ICJ, ITLOS and the Inter-American Court of Human Rights, as well as reports of international organizations and specialized academic literature.

The research demonstrates that landmark European cases such as *Urgenda*, *Neubauer*, *Klimaatzaak* and *KlimaSeniorinnen* have transformed climate change from a predominantly political issue into a justiciable matter of rights and duties. They articulate positive obligations of states to adopt effective mitigation measures, link inadequate climate action to violations of rights to life and private life, and introduce a forward-looking, intergenerational dimension to the protection of fundamental rights. On this basis, climate governance increasingly acquires the features of a legalised regime in which courts can effectively compel states to adjust their climate policies. Building on this domestic and regional practice, the 2025 ICJ advisory opinion, initiated by the European Union together with vulnerable states, consolidates emerging trends by characterizing certain climate-related obligations as *erga omnes* duties owed to the international community as a whole, and by integrating elements of treaty law, customary law, human rights standards and the law of the sea. Importantly, the Court also affirms that persons displaced by climate change cannot be returned to conditions that endanger their life, dignity or fundamental rights, which de facto extends the rationale of the non-refoulement principle to climate-displaced persons.

Overall, the article argues that climate litigation in and beyond the EU functions as a form of legal dialogue that gradually reduces fragmentation between different regimes of international law and strengthens the normative basis of global climate governance. The practical significance of the study is that this emerging body of case law not only clarifies the scope and legal character of climate-related duties but also enhances the negotiating position of vulnerable and EU member states in multilateral climate processes and provides a more robust foundation for future strategic litigation.

Key words: climate litigation, climate change, international law, international litigation, international environmental law, climate law, EU law, EU climate policy, human rights.

Єделєв Р.С. Кліматичне судочинство як правовий діалог в Європейському Союзі та за його межами.

У статті досліджується еволюція правових механізмів реагування на зміну клімату на національному, регіональному та міжнародному рівнях з особливим акцентом на практиці європейських судів і Консультативному висновку Міжнародного Суду ООН 2025 року. Метою дослідження є з'ясування ролі судової практики у зміцненні кліматичного врядування та аналіз того, яким чином кліматичні позови формують ширший правовий діалог, що поєднує право ЄС, міжнародне право прав людини та загальне міжнародне право. Методологічну основу становлять доктринальний і порівняльно-правовий аналіз договірних норм, рішень національних судів і Європейського суду з прав людини, новітніх консультативних висновків Міжнародного Суду ООН, Міжнародного трибуналу з морського права та Міжамериканського суду з прав людини, а також доповідей міжнародних організацій і спеціалізованої наукової літератури.

Показано, що знакові європейські справи, зокрема *Urgenda*, *Neubauer*, *Klimaatzaak* та *KlimaSeniorinnen*, трансформували зміну клімату з переважно політичного питання у сферу

судового контролю як питання прав і обов'язків. У цих рішеннях сформульовано позитивні зобов'язання держав щодо вжиття ефективних заходів зі скорочення викидів, встановлено зв'язок між неналежною кліматичною політикою та порушенням права на життя й повагу до приватного життя, а також запроваджено перспективний, міжпоколінний вимір захисту основоположних прав. На цій основі кліматичне врядування дедалі більше набуває рис юридизованого режиму, в межах якого суди можуть ефективно спонукати держави коригувати свої кліматичні стратегії. Спираючись на цю національну та регіональну практику, Консультативний висновок Міжнародного Суду ООН 2025 року, ініційований Європейським Союзом разом з уразливими державами, консолідує окреслені тенденції, кваліфікуючи окремі кліматичні зобов'язання як зобов'язання erga omnes, тобто зобов'язання перед міжнародною спільнотою в цілому, та інтегруючи елементи договірного й звичаєвого права, стандартів прав людини та права моря. Суд також наголошує, що осіб, переміщених унаслідок зміни клімату, не можна повертати до умов, які ставлять під загрозу їхнє життя, гідність або основоположні права, що де-факто поширює логіку принципу невислання (non-refoulement) на кліматично переміщених осіб.

Загалом у статті обґрунтовується теза, що кліматичні позови в межах ЄС та поза ним функціонують як форма правового діалогу, яка поступово зменшує фрагментацію між різними режимами міжнародного права та зміцнює нормативні засади глобального кліматичного врядування. Практичне значення дослідження полягає в тому, що ця сукупність судової практики не лише уточнює обсяг і юридичну природу кліматичних зобов'язань, а й посилює переговорні позиції уразливих держав та держав – членів ЄС у багатосторонніх кліматичних процесах і створює більш надійну основу для майбутніх стратегічних позовів у сфері клімату.

Ключові слова: кліматичне судочинство, зміна клімату, міжнародне право, міжнародне судочинство, міжнародне право навколишнього середовища, кліматичне право, право ЄС, кліматична політика ЄС, права людини.

Statement of the problem. Climate change has become one of the most pressing challenges of the twenty-first century, requiring not only political agreements but also clear legal accountability of states. The adoption of the Paris Agreement in 2015 marked a significant milestone in global climate policy, yet its mechanisms remained limited and largely based on voluntary compliance. In the absence of effective enforcement mechanisms, greenhouse gas emissions persisted at elevated levels, while the adoption of ambitious mitigation measures was deferred.

This gap in international regulation led to the growing role of judicial bodies. European courts began to play a pioneering role in recognizing that state inaction on climate issues may violate both human rights and the duty of care. Landmark cases in the Netherlands, Germany, and Belgium, as well as the judgment of the European Court of Human Rights in *KlimaSeniorinnen*, demonstrated that judicial practice can directly influence the development of new standards in climate governance.

The next stage was initiated by small island states, which, facing existential threats, demanded global legal clarification of states' responsibilities. The campaign of Pacific Island students and the diplomatic efforts of Vanuatu resulted in the United Nations General Assembly requesting an advisory opinion from the International Court of Justice. In July 2025, the Court delivered an advisory opinion in which it combined elements of treaty commitments, customary international norms, human rights standards, law of the sea, and the principle of fairness between generations, concluding that climate duties are universal in scope and owed collectively to the international community.

The significance of this advisory opinion lies not only in reinforcing states' obligations but also in its acknowledgment that climate change has a direct impact on human rights, particularly with regard to safeguarding individuals displaced as a result of climate-induced disasters. In this way, international climate law is gradually developing into a comprehensive framework in which judicial practice becomes a key mechanism for ensuring accountability and intergenerational justice.

Recent international initiatives – including the complaint submitted by youth activists to the UN Committee on the Rights of the Child, the advisory opinion delivered by the International Tribunal for the Law of the Sea, and the increasing participation of EU member states in global climate litigation – reflect the rise of a wider international legal dialogue on climate responsibilities.

The purpose of the research is to assess how judicial practice at different levels, with a focus on the European Union and its member states, contributes to the legal consolidation of climate governance, and to evaluate the significance of the 2025 ICJ advisory opinion in reinforcing state obligations and clarifying human rights aspects, including those linked to climate-related displacement.

Status of work on the issue. The study reviewed the works of Daniel Bodansky, Christina Voigt, Jacqueline Peel, Hari Osofsky, Annalisa Savaresi, and Joana Setzer, who analyze the evolution of international and domestic climate law and the role of courts in shaping state obligations. It also

examined the contributions of Jane McAdam, who explores the intersection of climate change, forced migration, and international law, Frank Biermann and Ingrid Boas, who propose governance approaches to protect people displaced by climate change, as well as Bonnie Docherty and Tyler Giannini, who argue for the adoption of a dedicated convention on climate change refugees. In addition, key international instruments such as the Paris Agreement and the European Convention on Human Rights were analyzed, along with recent reports of the United Nations Environment Programme and studies on global trends in climate litigation.

Presentation of the main material. The adoption of the Paris Agreement in 2015 marked a watershed in international climate governance, establishing binding obligations for all Parties to submit nationally determined contributions (NDCs) and to undertake measures ensuring that global warming remains "well below 2 °C" [1]. Yet, despite its universal scope, the Paris framework left enforcement mechanisms relatively weak, relying heavily on transparency and peer review rather than hard sanctions [2]. This institutional design, combined with the persistent inability of states to act swiftly and decisively, has contributed to sustained high emission levels while many governments postponed robust mitigation policies [3].

In this context, climate litigation has become an important mechanism for enhancing accountability. Landmark judgments such as *Urgenda Foundation v. Netherlands (2019), Neubauer et al. v. Germany (2021),* and *VZW Klimaatzaak v. Belgium (2023)* signaled that domestic courts increasingly recognize governments' legal duties to protect citizens from the impacts of climate change [4]. Although jurisdictionally limited, these rulings created a precedent that resonates beyond national boundaries.

In *Urgenda Foundation v. Netherlands (2019)*, the Dutch NGO together with hundreds of citizens claimed that inadequate climate action violated both national law and the European Convention on Human Rights [5]. In its final ruling, the Dutch Supreme Court required the government to achieve a 25% decrease in greenhouse gas emissions relative to 1990 levels by the year 2020. This decision was the first in which a supreme court mandated a government to pursue more ambitious climate action, establishing a precedent for linking climate inaction with human rights violations [6].

In *Neubauer et al. v. Germany (2021)*, a group of young plaintiffs challenged the Federal Climate Change Act of 2019, arguing that its emission reduction targets were inadequate to meet Germany's obligations under the Paris Agreement and to safeguard constitutional rights. The Federal Constitutional Court of Germany ruled that while the Act was not wholly unconstitutional, its provisions beyond 2030 lacked sufficient specificity, thereby imposing disproportionate burdens on younger generations [7]. The Court emphasized intergenerational equity, holding that climate policy must distribute mitigation efforts fairly across present and future populations. This decision was the first constitutional ruling to link insufficient climate legislation directly to the violation of fundamental rights [4].

In *VZW Klimaatzaak v. Belgium (2023)*, the Belgian non-governmental organization VZW Klimaatzaak, together with more than 60,000 citizens, initiated proceedings against the federal and regional authorities, alleging that the state's climate policies were insufficient to meet international and domestic obligations. The Brussels Court of Appeal acknowledged these claims and found that the inadequacy of Belgium's climate action breached the duty of care under Belgian civil law and conflicted with the safeguarding of the rights to life and respect for private life as enshrined in the European Convention on Human Rights [8]. Although the Court refrained from imposing a fixed emissions reduction pathway, it ordered the authorities to intensify their measures. This judgment confirmed that governmental inaction on climate change can generate legal responsibility, thereby strengthening the role of courts in addressing systemic environmental risks [9; 4].

A further landmark development is the litigation brought by the association Verein KlimaSeniorinnen Schweiz ("Senior Women for Climate Protection Switzerland") together with individual applicants against the Swiss government. At the national level, the Swiss Federal Supreme Court dismissed the claim, holding that the applicants lacked standing and that climate change measures fell within the discretion of the political branches [10]. While the Swiss Federal Supreme Court rejected the applicants' claims, the European Court of Human Rights in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (2024)* recognized the applicants' victim status under Article 34 and determined that Switzerland's insufficient climate policy constituted a breach of Article 8 of the Convention [11]. This judgment was the first from an international human rights tribunal to explicitly establish that insufficient government action on climate change can constitute a breach of the European Convention on Human Rights, thus extending the reasoning of earlier domestic cases such as *Urgenda* and *Neubauer* into the international sphere [12].

The growing body of national and regional climate litigation, exemplified by cases such as *Urgenda, Neubauer, Klimaatzaak,* and *KlimaSeniorinnen,* underscored both the potential and the limits of judicial intervention at domestic and regional levels. These decisions highlighted that courts can recognize

climate inaction as a breach of international legal obligations, yet enforcement often remained confined to national jurisdictions. Against this background, a coalition of actors sought to elevate the issue to the international plane.

In parallel, the United Nations General Assembly broadened the normative foundation of climate justice by formally recognizing the human right to a clean, healthy, and sustainable environment in Resolution 76/300 of 2022. This recognition elevated the moral and legal expectations placed upon states, intensifying global pressure to align climate action with international human rights and environmental law.

Responding to a petition from the Commission of Small Island States on Climate Change, the International Tribunal for the Law of the Sea delivered its first advisory opinion on climate change in 2024. While the Tribunal did not address human rights directly, it clarified that under the United Nations Convention on the Law of the Sea (1982) states bear responsibility to make certain that emissions within their jurisdiction do not generate transboundary damage or move into regions beyond their sovereign competence [13, p. 148]. This interpretation has direct legal implications for the European Union and its member states, since the EU is a party to UNCLOS, and therefore its climate policy must also reflect these obligations [14].

In 2019, the student-led movement 'Pacific Islands Students Fighting Climate Change' launched a campaign urging the international community to seek an authoritative pronouncement on states' climate obligations [15]. Building on this initiative, the government of Vanuatu spearheaded a diplomatic effort in 2021–2022, rallying support from states most vulnerable to rising sea levels and extreme weather events [16]. This culminated in the adoption of United Nations General Assembly Resolution A/RES/77/276 of 29 March 2023, which formally requested an advisory opinion from the International Court of Justice concerning states' responsibilities in addressing climate change. The European Union and its member states played a crucial role as co-sponsors and advocates, ensuring broad diplomatic backing for the initiative and reinforcing the link between climate governance and international law [17; 18].

The motivation for this request lay in several interrelated factors: the lack of effective enforcement mechanisms under the Paris Agreement, the existential threat faced by small island developing states, and the need to establish a solid legal foundation for future litigation and potential claims for reparations [3; 16]. By seeking guidance from the ICJ, states and civil society actors aimed to clarify the scope of international legal duties in relation to climate change and to strengthen accountability within the multilateral system.

The International Court of Justice, on 23 July 2025, released an advisory opinion clarifying states' duties concerning climate change [19]. The proceedings drew an exceptional level of engagement: ninety-six states and eleven international organizations submitted written or oral statements, underlining the issue's global significance and the expectation of authoritative legal guidance.

In developing its reasoning, the Court relied on a broad set of legal foundations. It emphasized that climate obligations stem not only from the Paris Agreement but also from customary international law, including the duty to prevent significant transboundary environmental harm. Drawing on human rights law, the law of the sea and the principle of intergenerational equity, the Court underlined that access to a safe, clean and sustainable environment is a precondition for the effective enjoyment of fundamental rights and that climate change therefore cuts across multiple areas of international law.

In its 2025 advisory opinion on climate obligations, the International Court of Justice underlined that states must take into account the human rights implications of climate-induced displacement [19]. The Court emphasized that persons forced to leave their homes due to climate change impacts cannot be returned to conditions that endanger their life, dignity, or fundamental rights, thereby broadening the scope of the non-refoulement principle to include individuals displaced by environmental factors. This clarification represents an important step in recognizing that climate change has direct consequences for human mobility and state obligations under international law. At the same time, the Court refrained from establishing a new legal category of "climate refugees," since its mandate is confined to the interpretation and clarification of existing international law. The authority to create new binding legal categories remains with states through treaty-making processes. Scholarly consensus confirms that the 1951 Refugee Convention does not extend to displacement caused solely by environmental factors [20]. Instead, terms such as "climate-displaced persons" or "environmentally displaced persons" are increasingly used in academic and policy debates to capture this protection gap [21]. Without reform of international refugee law or the adoption of new binding instruments, these individuals remain outside the formal refugee protection regime, relying instead on human rights law, soft-law frameworks, and domestic practices [22].

The advisory opinion also reflected the growing influence of domestic and regional climate litigation, including *Urgenda, Neubauer, Klimaatzaak*, and *KlimaSeniorinnen*. Yet, the ICJ went further by elevating

these developments to the international level. It highlighted that duties related to climate change are *erga omnes* in nature, directed not merely to particular states but to the international community collectively, extending to current and future generations alike [18]. In this way, the Court transformed what had often been regarded as primarily political undertakings into duties situated firmly within international law.

At the same time, the Court pursued a politically careful but legally firm course. Rather than identifying particular states as violators, it articulated general principles designed to guide state conduct and strengthen accountability. This approach preserved international consensus while raising the standard of legal expectations regarding climate action [23].

Although advisory opinions do not carry the binding force of contentious judgments, the ICJ's pronouncement has significant normative and practical consequences. It provides authoritative clarification that insufficient climate policies may constitute internationally wrongful acts. It also supplies persuasive authority for domestic and regional courts adjudicating rights-based climate claims. Moreover, it enhances the bargaining power of vulnerable states in international negotiations, particularly on adaptation finance, loss and damage, and potential reparations. Over time, consistent reference to this advisory opinion could contribute to the crystallization of new customary norms, reinforcing the development of international climate law [3; 18].

Within the framework of UN treaty bodies, the concept of *locus standi* – the procedural capacity of an individual or group to bring a claim before an international body – has been further developed. A key example is *Sacchi et al. v. Argentina, Brazil, France, Germany, and Turkey (*Committee on the Rights of the Child, 2019*)*. In this case, a group of children, including Greta Thunberg, brought a complaint against states for insufficient climate action, arguing that it violated the Convention on the Rights of the Child. Although the communication was declared inadmissible *ratione loci* due to non-exhaustion of domestic remedies, the Committee confirmed that states may bear responsibility for the extraterritorial effects of their emissions. This finding is particularly relevant for the European Union, as two of the respondent states – France and Germany – are EU member states, underscoring the Union's involvement in global debates on climate accountability [17].

In May 2025, the Inter-American Court of Human Rights issued Advisory Opinion AO-32/25, requested by Chile and Colombia, on climate emergency and human rights. The Court recognized that climate change directly threatens rights such as life, health, food, and housing, and confirmed that states have both positive and extraterritorial obligations to prevent and mitigate climate-related harm. Rather than altering legal definitions, the opinion reinforces the international legal framework that connects climate change with human rights. This development contributes to the consolidation of global climate governance and influences the legal environment in which the European Union and its member states develop their climate policies [24].

Conclusions. The analysis demonstrates that climate governance has undergone a profound transformation, evolving from primarily political commitments to increasingly judicially recognized obligations. The Paris Agreement established a universal framework, but its weak enforcement mechanisms left significant gaps in accountability. These gaps prompted a wave of litigation, with courts in Europe playing a pioneering role in establishing that insufficient climate action violates both duties of care and fundamental rights. Landmark decisions in the Netherlands, Germany, and Belgium, together with the ruling of the European Court of Human Rights in *KlimaSeniorinnen*, illustrated that judicial practice can effectively compel states to adopt stronger climate measures.

The initiative of the European Union, supported by vulnerable states, elevated this process to the global level by seeking clarification from the International Court of Justice. In its 2025 advisory opinion, the Court combined treaty law, customary international norms, human rights law, maritime law, and the principle of intergenerational equity It affirmed that duties arising from climate change are *erga omnes*, imposed collectively toward the global community and extending to the protection of future generations. The Court deliberately refrained from naming individual violators, opting instead to formulate universal legal principles that strengthen accountability while preserving political consensus.

Importantly, the opinion also addressed the status of persons displaced by climate change. The Court emphasized that such individuals cannot be forcibly returned to conditions that threaten their life, dignity, and fundamental rights. This acknowledgment incorporates climate-related displacement into the domain of international law, broadening the reach of protection across national boundaries.

Overall, the findings confirm that judicial bodies, from national courts to the ICJ, play a decisive role in shaping climate governance. The advisory opinion requested by the UN General Assembly not only consolidates states' obligations but also provides normative leverage for litigation, negotiations, and the crystallization of new customary norms. It strengthens the legal foundation of international climate

law and affirms that climate protection, including the safeguarding of climate-displaced persons, is a collective responsibility of the international community.

Recent advisory opinions of international courts indicate a global shift toward treating climate change as a matter of binding international obligations. ITLOS (2024) emphasized the duty to prevent transboundary harm from emissions, the ICJ (2025) recognized climate obligations as *erga omnes* linked to human rights and intergenerational equity, and the IACtHR (2025) recognized that these obligations directly affect fundamental rights and extend extraterritorially. Although the European Union was not directly involved in these proceedings, the convergence of judicial approaches in different legal regimes strengthens the regulatory framework of EU climate policy. By aligning its domestic legal framework with the new jurisprudence, the EU is strengthening both its legitimacy and influence in international negotiations.

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