



## LEGAL SUMMARY OF THE PEOPLE'S CLIMATE CASE

An action is brought before the EU General Court by families, including young children, whose livelihood have been and will be put at risk by climate change. They claim that the EU's existing 2030 climate target to reduce domestic greenhouse gas emissions by 40% by 2030, as compared to 1990 levels, is inadequate with respect to the real need to prevent dangerous climate change and not enough to protect their fundamental rights of life, health, occupation and property. With the existing 2030 climate target, the EU still allows 60% of emissions compared to 1990 to be allocated to industry and Member States - these emissions will further violate the fundamental rights of the plaintiffs.

They are asking the European General Court to mandate the EU law-making institutions (the European Parliament and the Council of European Union) to take more stringent measures of climate protection to protect their fundamental rights as well as the global environment.

Ten families from Portugal, Germany, France, Italy, Romania, Kenya, Fiji and the Swedish Sami Youth Association Sáminuorra, are the plaintiffs of the People's Climate Case.

The application of the People's Climate Case has 2 parts: nullification and a claim for an injunction based on non- contractual liability.

The nullification action is challenging three EU legal acts:

- the Directive on emissions from large power generation installations (the Emissions Trading System Regulation - ETS)
- the Regulation on emissions from industry, transport, buildings, agriculture etc. (the Effort Sharing Regulation or Climate Action Regulation implementing the Paris Agreement" (CAR)
- the Regulation on emissions from and removals by land use, land use change and forestry (the LULUCF Regulation)

The application asks the Court to declare the three Acts null and void insofar as they allow for too many emissions by 2030, since they violate the plaintiff's rights and are not in line with higher ranking law. In order not to create a vacuum the Court is to order that the three Acts shall be kept in force until a stronger version of them has been enacted. This part of the action is based procedurally on Art 263 of the Treaty on the Functioning of the EU (TFEU).

The application also argues non- contractual liability. The claim underlines that since damage to property and income, as well as health are already occurring due to climate change, the EU must prevent greenhouse gas emissions as much as it can in order to prevent additional damage to be caused. This part of the action is based on Art. 340 of the TFEU.



The pleading is around one hundred pages long with annexes of several hundred pages, including a detailed account of the concern and damage of each plaintiff family.

It goes through the factual context about climate change effects on the applicants, then argues admissibility on the basis of Art 263 para. 4 TFEU and challenges the incompatibility of the three GHG Emissions Acts with the Charter on Fundamental Rights, EU primary law and the higher ranking law. Essentially it is argued that the EU is legally obliged to do what it can to reduce emissions (*do the best according to its potential*) to protect the rights of the plaintiff families, and that the current legal acts do not fulfil this benchmark. Also, it argues that on the basis of the Paris Agreement and regardless of how a remaining global emission budget is allocated, the 40% target does not suffice.

The injunction on the basis of Art 340 essentially relies on the same argument, as part of the requirement of showing a breach of the law as well as damage. The plaintiffs do not seek monetary compensation, but climate protection.

For more details, please see pages 3 – 7.



## DETAILED LEGAL BACKGROUND

### The plaintiffs

The plaintiffs are families whose living conditions represent major hotspots of climate change effects.

They are:

- children and their parents living on small islands off the German North Sea coast whose health, property and occupational opportunities (such as farming and tourism services) are and will be harmed by sea level rise and storm surges which reach higher areas on land due to the higher sea levels
- children and their parents living in Southern France and Southern Portugal whose health, property and occupational opportunities (such as farming) are and will be harmed by heat waves and droughts
- children and their parents living in the Italian Alps whose property and occupational opportunities (such as touristic services) suffer from the absence of snow and ice
- children and their parents living in the Romanian Carpatians whose occupation and livelihood is impacted by the temperature increase and lack of water
- children and their parents living in Northern Kenya whose health and education is harmed by heat waves and drought
- children and their parents living in Fiji who are similarly threatened, in particular also due to current changes in the marine environment (coral bleaching) and an increase in frequency and intensity of storm events.
- Sami Youth Association in Sweden, Sáminuorra, who already observes how the reindeer are negatively affected by warmer winters and summers. If the reindeer is lost, the whole of the Sami culture will be at risk for these youth.

### The object and application of the action

The action has two parts: Nullification and non-contractual liability.

#### Nullification

The action challenges three EU legal acts (hereafter called greenhouse gas (GHG) Emissions Acts):

- the Directive on emissions from large power generation installations (the Emissions Trading System Regulation Directive- ETS)



- the Regulation on emissions from industry, transport, buildings, agriculture etc. (the Effort Sharing Regulation)
- the Regulation on emissions from and removals by land use, land use change and forestry (the LULUCF Regulation)

The overall target set by the greenhouse gas emissions Acts is an at least 40% reduction of emissions compared to 1990 that shall be reached by 2030. This essentially means that the EU allocates 60% of 1990 level emissions to be allowed – these Gigatonnes of Co2 and other GHG can be legally emitted into the atmosphere.

The action claims that the reduction target at least -40% is too low (or the allowed emissions budget up to +60% is too high), considering the requirements of higher rank EU and international law. It argues that – depending on the methods used – any acceptable amount of reduction must be substantially higher than 40% by 2030. The main argument the plaintiffs are using refers to the EU's potential: the EU must do what it reasonably can to protect the families and their fundamental rights.

The action further claims that the target will even not be reached due to a wide range of flexible mechanisms that allow to circumvent it so that in fact the less than 40% emission reduction (or an emissions budget of much more than 60 %) will finally result.

The application therefore is that the Court declare the three EU greenhouse gas Emissions Acts null and void for not meeting the requirements of higher rank law. In order not to create a vacuum the Court is applied to order that the three Acts shall be held in force until a specified term when improved versions of the Acts shall be enacted.

This part of the action is based procedurally on Art 263 of the Treaty on the Functioning of the EU (TFEU).

#### **Non-contractual liability:**

The application also argues that since damage to property and income as well as health are already occurring due to climate change, the EU must prevent greenhouse gas emissions in order to prevent additional damage to be caused. This part of the application argues that the EU is infringing a right by setting a reduction target too low for the future, but has already been in breach of climate protection duties in the past, both with respect to the time period starting in 2009 (after the first burden sharing decision) and the time period starting in 1992 (after the signature of the UNFCCC). This part of the action is based procedurally on Art 340 of the Treaty on the Functioning of the EU.



## Substance of the action

The case seeks to activate the courts of the EU to the fact that while climate change has been recognised as a problem since 1992 by the EU, it still fails to take adequate action to protect the plaintiff's fundamental rights, which are already violated due to the impacts of climate change.

The application is founded because together, the three legal acts violate higher ranking legal obligations contained in the EU treaties (called EU primary law), the Charter of Fundamental Rights (also EU Law) and international law.

## What is the applicable EU primary and international law?

The applicable primary EU law is enshrined in the:

- EU Charter of Fundamental Rights (ChFR),

The pertinent fundamental rights from the ChFR include the **right to health** and life, the rights of children to such protection and care as is necessary for their well-being and **education**, the right to engage in **work** and to pursue a freely chosen or accepted **occupation**, the right to own, use, dispose of and bequeath his or her lawfully acquired possessions (**property**), and the right of **equal treatment**.

- The Treaty on the Functioning of the European Union (TFEU),

The obligations of the EU under TFEU include the duty to protect human health and the environment.

And the applicable international law includes:

- International Treaties including the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

Obligations based on the UNFCCC and the Paris Agreement and customary international law include the duty to protect human health and the environment, , the duty to common but differentiated responsibilities and respective capability

Taken together the relevant primary EU and international law stipulates:

1)

-on the basis of a human or fundamental rights approach, all emissions would essentially have to halt now, since damage is already being done – regardless of stipulations in the Paris Agreement on temperature goals;



-no significant further damage should be caused to the livelihood of human beings and the environment, and the EU is bound by this even if it only contributes in part to the cause;

-and that consequently the EU must do what it can to prevent further damage on the basis of its potential – “do what it can” (bottom- up)

By allocating emission rights the EU is responsible for the emissions from its territory. In doing so the EU causes harm to the livelihood of the applicants and encroaches on their fundamental rights. This entails a duty to prevent any further damage; in other words the EU is required to radically prohibit any further greenhouse gas emissions as a first step, this is then qualified by proportionality or capability. It is obvious that the at least 40% emission reduction (or the 60% of the 1990 emissions allowed) by the three greenhouse gas emissions acts do not meet his demand and therefore violates the duty to prevent harm and to protect the fundamental rights.

2)

-taking the Paris Agreement, the UNFCCC and international law as a basis for the obligation to prevent harm, and even if the human rights approach should not hold, the responsibility of the EU in preventing such damage is determined by the EU's share in the global greenhouse gas emissions budget projected to be still available as of 2021 at the least and using the Paris Agreement's temperature target for the allowable budget calculation (below 2°C and 1.5°C)

-this share must take into account the principle of common but differentiated responsibility and respective capability, and more particularly be derived from the subprinciples that the EU must

- equally treat all human beings in industrialized and developing countries
- equally treat younger and older present generations
- realize its technological and economic capability
- take responsibility for having caused damage in the past (top-down)

Taken together, and based on two scientific or forensic approaches

- bottom up, i.e. looking at what is possible in terms of technical and economic possibility of the EU and
- top down, i.e. looking at the carbon budget as available when the allocation starts in 2021

The application shows that an EU wide 40% reduction by 2030 is much too low, with some not radical approaches based on 1.5° C scenarios, much more can be done. It also shows that, based on a per capita



approach starting in 2021, annual reductions must be much higher than what is currently enshrined in the greenhouse gas Acts, i.e. 2% annual reduction of greenhouse gas emissions.

### **The budget approach in the application**

The carbon budget is a method for determining the remaining overall budget for emitting greenhouse gases.

As the IPCC has demonstrated, the relationship between CO<sub>2</sub> emissions and warming is nearly linear. Every unit of CO<sub>2</sub> emitted contributes equally to warming, regardless of when or where it is emitted. This linear relationship between CO<sub>2</sub> emissions and warming has the effect that each level of warming can be associated with a certain amount of cumulative CO<sub>2</sub> emissions. This is also referred to as the carbon budget. Naturally, there are caveats and uncertainties to this concept, but it helps to determine whether a 40% reduction target by 2030 for the EU can at all be lawful.

This global budget must be shared by all states. Different criteria can be derived from the applicable primary EU and international law, as well as the Paris Agreement, that determine the shares of states, including the EU. The application does not have as a purpose the forward allocation of an existing budget under the Paris Agreement, but it shows that under each of these criteria, the greenhouse gas Emissions Acts are insufficient. Given that this action is based on human rights approaches, the most important criteria are equal treatment per capita, and the equal treatment of generations.

### **Non contractual Liability (Art 340 TFEU)**

Under Article 340 of the TFEU an injunction can be claimed under conditions similar to national nuisance or tort law.

- (i) there must be an unlawful act by the EU institution(s),
- (ii) the unlawful act must be a sufficiently serious breach of a rule of law intended to confer rights upon individuals, and
- (iii) there must be a sufficient causal link between the breach and the damage complained of.

Each of these conditions is satisfied in this case. The breach in question with regard to emissions in the future is the excess allowance discussed already above. The application also shows a breach in the past (both for the period of 1992-2009 and 2009-2018). The relief sought is not monetary damage but essentially an injunction not to allocate 60% and more of 1990-emissions until 2030.

This means essentially that the GHG acts must be revised to implement an EU's 2030 climate target by much more than 40% reduction by 2030, as compared to 1990 emissions.

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