



## FREQUENTLY ASKED QUESTIONS ABOUT THE PEOPLE'S CLIMATE CASE

- ***What is the case about?***

The People's Climate Case challenges the EU's climate target for 2030 because it is inadequate with respect to the real need to prevent dangerous climate change and not enough to protect the citizens and their fundamental rights of life, health, occupation and property.

In 2014, the EU has set a target for reducing EU domestic greenhouse gas emissions by at least 40 % from 1990 levels by 2030.

Aside from other measures such as financial support etc. the EU's 2030 climate target is meant to be implemented by 3 Greenhouse gas Emission Acts from the Union:

- Emissions Trading Directive which covers greenhouse gas emissions from energy and industry
- Effort Sharing Regulation which essentially sets reduction targets for the other sectors (such as energy efficiency in buildings and transport)
- LULUCF Regulation (Land use, land use change and forestry) which regulated the emissions from natural uses and how carbon can be kept stored in the soil and trees

These three Greenhouse gas Emission Acts (*the Emission Trading Scheme Directive, the Effort Sharing Regulation and the Land Use, Land Use Change and Forestry Regulation*) that have recently been approved by the European Parliament and the Council of the European Union. The action claims that the EU's 2030 target which will be implemented through these 3 legal acts is too low considering the requirements of higher rank EU and international law. The action is based (*inter alia*) on the Article 263 (4) and 340 Treaty on the Functioning of the EU (TFEU) and it will be taken to the European General Court.

The families also underline that the EU has the legal duty to not to cause harm and to protect fundamental rights. However, by allowing further emissions and by not doing its best according to its potential, EU is not protecting their fundamental rights. They ask the court to rule that climate change is a human rights issue, that the EU is responsible to protect their rights, also the rights of today's children and future generations.

- ***Who are 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.
- Saami 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.

- ***What happens when?***

The action is taken to the Court on 24 May 2018, after the three Greenhouse gas Emission Acts have been enacted and are into force. After the delivery of the application to the European General Court, the timing is entirely in the hands of the court, the whole process might take over a year or more.

- ***What happens if they win the case?***

If the case is won, it will be a historical leap forward.

The victory of this case would mean the recognition of the need for more ambitious climate policies in the EU. The existing three pieces of legislation (Trading Scheme (ETS), Effort Sharing Regulation (ESR) and Land Use, Land Use Change and Forestry Regulation (LULUCF)) should be revised by the EU lawmaker (the European Parliament and the Council of the European Union) to come up with stronger reduction efforts for the EU as a whole.

In order not to create a legal and political vacuum, the plaintiffs ask the Court to order that the three Acts shall be held in force until a specified term when improved versions of the Acts shall be enacted. Once, the EU would come up with higher targets, they will replace the existing targets. In principle, this can be done rather easily and quickly, as the existing framework of measures could simply be adapted to an increased level of ambition for all three acts: beyond -43% in the ETS; beyond -30% in the ESR and beyond 0% in LULUCF.



This would also mean that the court agrees with the plaintiffs that climate protection is a duty that is not determined by political discretion but an objective duty of care – that the EU must simply do what it can to avoid further harm.

This would also be an important step in recognition of climate protection as a human right. The victory would mean that the courts have agreed with the plaintiffs that fundamental rights are affected, and that the EU as a body is responsible just as much as each Member State.

Even if the substance of the argument is not won in all aspects, the simple fact that the families might be able to present their case would be an important step in gaining access to justice for impacted people.

- ***What are the chances for winning ? What happens if they lose the case?***

This case is novel on many different levels, and a legal victory is by no means certain. The plaintiffs might have to pass the admissibility hurdle. A case is admissible if the Court confirms that the plaintiffs have a right to sue, in other words, they have standing in relation to the case they have submitted to the court. In the European legal system, individuals can only challenge the legal acts if they are directly and individually affected by them. This is a serious hurdle because the European Courts interpret these criteria very narrowly.

In legal terms, if the case is not accepted admissible or not won, the EU might continue with its existing target of 40% GHG emission cuts by 2030, unless political decisions supersede this target.

- ***Why aren't the plaintiffs asking for damage compensation?***

The plaintiffs are not asking for financial compensation. Instead they would like the Court to order that the EU must prevent further damage by scaling up their mitigation action and increasing their targets for emission cuts. They find it more important to be protected from further climate change impacts than be compensated.

- ***Why do you bring the case before the European General Court (Court of Justice of the EU) but not the European Court of Human Rights ?***

The EU- as a legal entity - allocates emission rights and is bound by the UN Climate Convention, the Paris Agreement and the EU Charter on Fundamental Rights.

The European General Court (the Court of Justice) in its opinion on the accession of the EU to the European Convention of Human Rights (ECHR) argued that it itself is the best and only arbiter of EU



PEOPLE'S  
CLIMATE  
CASE

fundamental rights, rejecting an additional scrutiny of EU action by the European Court of Human Rights (ECHR).

If it takes this stance seriously it must accept actions submitted by right holders directly. For the plaintiffs in this case, it is the EU court system that can impose effective remedies directly, not the ECHR.

- ***This is a case challenging the EU institutions and how can plaintiffs from the Global South (Kenya and Fiji) be involved?***

Until now only the economic rights contained in EU primary law have been applied to foreign actors, such as in cases where foreign companies were sanctioned by the Commission for breaching competition rules and applied for legal protection. The People's Climate Case is the first to claim that individual persons living in Kenya and Fiji are entitled to invoke EU fundamental rights to health, occupation, property and equal treatment that are violated because of GHG emissions from EU territory.

- ***What is the emission reduction target that families are asking for 2030? What should be EU's emission reduction target to protect the plaintiff families and their human rights?***

The plaintiffs present evidence to show that the EU domestic greenhouse gas emissions reduction target of at least 40% by 2030, compared to 1990 emissions, is inadequate on many levels.

Based on a global carbon budget for scenarios that are in line with the Paris Agreement (well below 2° striving towards 1,5°) the plaintiffs' case will show that the EU can do substantially more to reduce its domestic greenhouse gas emissions.

However, the plaintiffs do not ask for a specific number or a specific target, but they ask to the EU lawmakers to define and implement a more adequate emission reduction target that represent the highest possible according to EU's potential and that is in line with its responsibilities under Paris Agreement.

- ***If other people from Europe or outside claim that they are also impacted by climate change, can they join to the People's Climate Case?***

They cannot be plaintiffs with but intervenors. The statute of the European Court of Justice allows for interventions, which essentially means that one person can join a claim brought by another person on the side of the applicant or the defendants. An intervener must bring his intervention within 6 weeks of the publication of the claim in the Official Journal. An intervener on the side of the applicant supports the case, but is not in the driver's seat.