



FREQUENTLY ASKED QUESTIONS ABOUT THE APPEAL OF THE PEOPLE'S CLIMATE CASE

What does direct and individual concern criterion mean?

According to Article 263 of the Treaty of Functioning of the EU, only citizens (1) **directly** and (2) **individually** concerned by a certain European Union legislative act are entitled to challenge that legislative acts before the European Courts. These terms are not defined any further by law, but has been interpreted by the Courts as follows:

(1) **Direct concern** exists when an EU's legislative act itself leads to a foreseeable impairment of the plaintiff's interests - as in the case where there is no need for further national transposition of EU-law. In other words: EU Courts grant legal protection only if the European Union's is directly responsible for the citizen's concern.

2) **Individual concern** exists when an EU's legislative act "affects [the plaintiffs] by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons". However, this understanding leads to a paradoxical situation: the more people concerned, the less likely it is that legal protection will be granted before European Courts. This is particularly unfair and not in line with principles of human rights protections in view of the global climate crisis and large number of people affected. Therefore, the plaintiffs of the People's Climate Case have argued that in the context of climate change, not exclusivity or uniqueness but rather the intensity of the impacts must be considered for individual concern.

How the appeal process looks like?

The plaintiffs should appeal to the European Court of Justice (ECJ) within two months. The appeal will solely focus on the question of admissibility, no new facts can be submitted. A decision on merits (i.e. on the necessity of raising climate ambition until 2030) will not be taken by the ECJ. The appeal procedure is generally divided into a written part (i.e. the application is followed by the defendant's response, which in turn is followed by a so-called reply of the plaintiffs and a subsequent rejoinder of the defendant) and an optional oral part – an oral hearing could be ordered, but not necessarily.

If the ECJ agrees with the findings of the European General Court and denies admissibility, the entire lawsuit will come to an end.



If the ECJ disagrees with the findings of the GC, the dispute can either be referred back to the GC or the ECJ will rule on the issue of admissibility itself, and refer back to the GC afterwards. In both cases, the proceedings would then finally focus on climate change and the measures that need to be taken to protect the plaintiff's human rights.

What are the chances for winning before the European Court of Justice (ECJ)?

The PCC is novel on many different levels, and a legal victory - also with respect to an appeal - is by no means certain. In the European legal system, individuals can only challenge 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 - as seen in the European General Court's Order. [In the context of executive decisions, this practice has already been extensively criticised as a breach in international law by the Aarhus Convention's compliance body.](#)

In this regard, the General Court's Order is not entirely surprising, as lower instances rarely deviate from settled case law. The higher and final instance court, i.e. the ECJ has leeway to interpret the law differently and thus initiate further legal development. As the decision of the General Court is only briefly reasoned and furthermore "invents" a new requirement on standing which is not present in the Treaty, there are definitive grounds for appeal.

What has happened to those who applied for become interveners in time?

Climate Action Network (CAN) Europe, Wemove.eu and the German Small Farmers Association (Arbeitsgemeinschaft bäuerliche Landwirtschaft) applied for leave to intervene in support of the plaintiffs in September 2018. The European Commission applied for leave to intervene in support of the European Parliament and the Council of the European Union in October 2018.

With the Court's recent decision to dismiss the plaintiffs' claim on technical points, the intervention request became devoid of purpose.

However, this issue will automatically be reconsidered if the plaintiffs' appeal to the European Court of Justice is successful.

Can people impacted by climate change still join the People's Climate Case?

Unfortunately, the intervention application deadline has expired in October 2018 and interested people can no longer join the People's Climate Case as interveners.



Can other people impacted by climate change still file a similar lawsuit before the European General Court?

Other people than the parties of the People's Climate Case are not bound by the findings of the Court. However, in order to avoid the risk of suspension of their case until the European General Court takes its decision on this similar case, it might make sense to await the outcome of the People's Climate Case appeal.

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