



FREQUENTLY ASKED QUESTIONS ABOUT PEOPLE'S CLIMATE CASE

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

The People's Climate Case challenges the EU's 2030 climate target because of its inadequacy to prevent dangerous climate change and insufficiency 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*) have been approved by the European Parliament and the Council of the European Union in 2018. 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 from Europe and outside and the Saami youth association from Sweden. The lives, livelihoods and fundamental rights of plaintiffs are impacted / at risk of being impacted by climate change. In order to read/ listen their stories, please check here (click the logos on the map):

<https://peoplesclimatecase.caneurope.org/who-we-are/>

- ***Where we are in the proceedings of the People's Climate Case?***

On 24 May 2018, the pleading is submitted to the European General Court, after the three Greenhouse gas Emission Acts have been enacted and are into force.



On 13 August 2018, the European General Court has published the case in the Official Journal of the European Union and the proceeding of the case has officially started.

On 24 September, CAN Europe, Wemove.eu and the German Small Farmers Association (Arbeitsgemeinschaft bäuerlicher Landwirtschaft e.V.) has applied to court to intervene in the People's Climate Case.

During the week of 15 October, the first written defence from the European Parliament and the Council has been submitted to the Court. Both defendants challenged the admissibility of the case.

On 10 December 2018, the answer of the plaintiffs have been submitted to court and the written procedure has been concluded.

The European General Court will soon decide on the admissibility of the case. This might mean that the Court dismisses the case or defines a written/ oral procedure to define the admissibility of the case.

- ***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.

- ***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°C, striving towards 1,5°C) the plaintiffs 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 the requirements of science and its responsibilities under Paris Agreement.

- ***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.

- ***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 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.

- ***Why are they targeting European Institutions (The European Parliament and the Council of the European Union) but not Member States individually?***

The EU is an entity, a “supranational body”, which influences our daily lives, but also the decision making in every Member State. In order to have a coherent EU climate policy, it is crucial to have an adequate climate target at the EU level.

- ***Why are you targeting EU but not other countries who have weaker climate policies like US, Japan?***

The EU is responsible for climate protection together with the Member States. Until now, it has also emitted about 10% of global greenhouse gas emissions. Towards EU citizens, the EU has a direct obligation to do what it can to stop climate change which already affects the plaintiff families.

The plaintiffs rely on this legal duty and the EU court system which is there to protect the citizens and to control the EU decision makers. Why should they go elsewhere?

In the US, there are many cases which are similar to this taken in the EU, both on state and the federal level (Please see: www.ourchildrenstrust.org). In other countries, such as Pakistan, Colombia and New Zealand, the citizens are challenging their governments in their legal systems to ask for more ambitious climate actions.

- ***How this case will impact the other national climate litigation actions in the EU Member States?***

The case targets and engages different legal bodies than any of the national cases seeking stronger targets or protection measures, such as in the Netherlands or Belgium (or outside the EU: in Switzerland). It addresses EU institutions and takes place in the EU courts.

It has no direct legal bearing on the national cases, as the EU and the Member States have distinct legal systems that protect the climate as well as Human Rights at varying degrees. Legally and on the factual level however, this case will make it clear to any national judge that the EU climate target for 2030 and the three Greenhouse gas Emission Acts essentially implementing it, are not sufficient and not in line with higher ranking law. This will strengthen the argument in national cases, where, most likely, Member States will raise compliance with any EU targets as a defense against more ambitious targets.

The argument will be the same or similar in national courts: you must do what you can to reduce emissions and protect our fundamental rights.



- ***How did the idea of a European Climate Case emerge?***

People in Europe and outside are already feeling the impacts of climate change. More and more citizens are exposed to heatwaves, droughts, forest fires, sea level rise and devastating hurricanes which endanger their lives, livelihoods, health, and human rights.

The existing climate policies and legislations in Europe are not enough to protect its citizens and their fundamental rights from these worsening climate impacts. Families and communities from Europe and outside got together to scrutinise the European Courts to ask for better climate protection and policies. With the support of a broad coalition of activists, NGOs, lawyers, and researchers, they initiated a legal action to urge the EU to develop more ambitious climate policies to protect their fundamental human rights.

The main objective of this legal action is to establish that the EU's existing 2030 climate target to reduce domestic greenhouse gas emissions by 40% by 2030, as compared to 1990 levels, is insufficient with respect to the real need to prevent dangerous climate change. The EU must protect fundamental rights of life, health, occupation and property.

- ***How did the People's Climate Case start? Who initiated?***

Dorothea Sick-Thies, founder of Protect the Planet, initiated the development of a EU wide climate change litigation together with Dr. Maiken Winter (WissenLeben e.V.), Prof. Dr. Gerd Winter (University of Bremen) and Christoph Bals (Germanwatch e.V.).

In 2017, Protect the Planet, organised a workshop to present the project of a lawsuit about the EU's 2030 climate target to different campaign groups, and gathered support from similar litigations as well as environmental NGOs. Christoph Bals and his team from Germanwatch became important players and involved other stakeholders to join this process. CAN Europe has mobilised its members and partners to gather NGO and citizen support for the case across Europe. This unique coalition of scientists, lawyers, and NGOs, joined forces with the plaintiffs to further develop the legal case and an accompanying communication campaign.

- ***Who is involved now?***

The plaintiffs and their families are supported by a broad range of citizens, international NGOs, and scientists who firmly believe that the EU can and must be more ambitious regarding its 2030 climate target. The ten plaintiff families and a Saami youth association from Sweden, who are represented by the university law professor Prof. Dr. Gerd Winter, the lawyer Dr. Roda Verheyen and the barrister Hugo Leith, are leading the People's Climate Case.

Climate Action Network, Europe's largest NGO coalition working on climate and energy issues, with over 150 member organisations in more than 30 European countries, representing over 1700 NGOs, is also supporting this courageous action of the plaintiffs, and recognises the urgency to act for protecting these fundamental rights.



The scientists from the scientific think tank Climate Analytics provide interdisciplinary scientific background to the People's Climate Case. They collected clear scientific evidence which shows how the plaintiffs are impacted by climate change and to indicate what is doable to further reduce emissions beyond the EU's current climate target.

Protect the Planet is playing a key role in the coordination and engagement of different stakeholders. The NGO involves its network, contributes with strategy development, and provides various other resources for the People's Climate Case. In addition, they are responsible for the relations with the plaintiffs and other partner organisations, especially with those from Italy, Kenya, Fiji and Sweden.