

Procedural problems in the consideration of climate protection cases

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Abstract. The number of disputes initiated by organisations, public associations and citizens trying to fight for climate justice and carbon neutrality is growing every year in the world. In order to successfully fight, it is necessary to remove a number of obstacles arising in the consideration, adoption and monitoring of the implementation of decisions on climate disputes. The analyses made it possible to draw the necessary conclusions and recommendations aimed at improving the efficiency of resolving such cases. The purpose of this study is to form an idea of effective ways in the field of climate protection by analyzing procedural problems related to the consideration of climate protection cases in foreign countries and scientific sources. The analysis is based on cases that have been decided as well as cases before the courts. Procedural problems of climate protection cases over the last decade were revealed. Methods: empirical methods of comparison, description, interpretation; theoretical methods of formal and dialectical logic. Private-scientific methods were applied: legal-dogmatic and method of interpretation of legal norms. The obtained result showed that litigation and arbitration disputes aimed at climate protection have become an effective tool to ensure compliance or strengthening of climate commitments. Keywords: Climate protection, climate disputes, carbon neutrality, procedural issues, access to justice, rules of evidence, admissibility of evidence, climate pollution, air emissions.

1 Introduction

There has been an increase in filing and litigation activity in climate protection cases in recent years. However, at all stages of the trial, procedural problems arise related to climate litigation.

The first issue involves access to justice. Many climate complaints are dismissed by the courts because the applicant cannot prove a direct link between global warming and extractive corporations. A clearer interpretation of the law is needed to determine the range of persons of interest who may be prosecuted in such cases.

The second aspect is the complexity of the climate protection case itself. Some lawyers are looking into possible changes to the rules of evidence in private law disputes over climate protection. Therefore, consideration should also be given to ways to improve the

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effectiveness of documentation and judicial decisions in order to expedite this process. Therefore, to address these difficulties and create a more effective legislative system for climate protection, more in-depth study, discussion, and resolution of these procedural issues are needed.

The article looks at the main aspects of the resolution procedure and suggests possible solutions to achieve climate protection outcomes.

2 The main problems of the procedural side of the conduct of court cases

Climate change is one of the key global challenges of our time. It is of great concern to governments, experts and the public around the world. In light of this, effective mechanisms must be put in place to protect the climate and prevent further deterioration.

One such mechanism is the use of legal instruments to address climate change. Legal opportunities are extremely useful in cases where a strict regulatory framework and a systematic approach to solving complex problems are required.

However, despite significant interest in the legal aspects of climate protection, procedural challenges arise in dealing with such cases. These problems have a negative impact on the effectiveness and effectiveness of legal instruments and create obstacles to achieving fair solutions.

The issue of jurisdiction is one of the main procedural issues arising in climate protection cases. The process of determining jurisdiction in such cases is complex and contentious. This is especially true in cases where different parties have interests or contradict legal norms. The existence of ambiguity in the definition of the competent authority delays the consideration of the case or can even lead to its rejection.

In cases involving climate change, access to information is a key sign on which courts accept rejection. However, it is often difficult to obtain complete and reliable information from stakeholders or government agencies. This, in turn, makes it difficult to conduct an objective analysis of facts and complicates the process of making fair decisions.

The issue of representation of interests is another common procedural issue. The responsibility for climate change lies with states, and there is often the question of who should represent the interests of society or a group of individuals suffering from the effects of climate change. Often such cases require collective action on the part of many participants, which makes it difficult to form a united front and exercise effective legal protection.

Time frame for cases. In cases involving climate change, the need for immediate action and rapid outcomes is key. However, the legal process can be very long, delayed for several years or even decades due to its complexity and volume. Such a delay could severely damage the effectiveness of legal tools in combating climate change.

Procedural challenges in dealing with cases related to climate protection are a major barrier to the effective use of legal tools. Solving these problems requires efforts by the international community and states to develop uniform standards and procedures. Only in this way can fair solutions be achieved in the task of preventing further climate change and preserving the environment for future generations.

3 Analysis of the causes of procedural problems in the consideration of court cases

The modern world faces the urgent challenge of fighting climate change. As a result, there is a growing debate about climate protection aimed at governments and corporations. The

fossil fuel sector will remain the primary target of lawsuits, but it is possible that the list of defendants could become more diversified over time, especially if other high-emission sectors are not seen as taking significant action to reduce emissions or move towards net zero [1]. However, the consideration of such cases presents its own features and causes certain procedural problems.

1). Failure of national legislation. One of the main obstacles in the consideration of climate protection cases is the failure of national legislation in the field of ecology and climate change. The courts recognize the importance of climate change, but due to the lack of judicial practice in national legislation in this area, there is a need to reform judicial procedures and rules of evidence. In this regard, in February 2020, the International Bar Association (IBA) adopted the "Model Statute for Proceedings on Challenging Government Inaction in Connection with Climate Change," which is designed to clarify the work of judges, lawyers and other subjects of legal relations. Most countries lack clear norms that establish responsibility for environmental violations and steps to prevent further climate degradation. This creates uncertainty for courts in their decision-making and makes it difficult to obtain adequate compensation for injured parties. The statute contains a number of articles according to which citizens have the right to access government information on greenhouse gas emissions into the atmosphere and their impact on the climate (Article 11,12,13).

2). Access to justice. The second challenge of handling climate protection cases involves access to justice. Often governments and corporations refuse to provide the necessary data and documents that may be key to resolving disputes or establishing guilt. Such practices make it difficult for courts to operate and can lead to poor decision-making. Many people or organizations whose interests are disrupted by climate change do not have sufficient resources or capacity to go to court. This may be due to a lack of financial resources for advocacy or ignorance of procedural law.

In addition, it is often more difficult to identify stakeholders in cases of climate change. Eligible representatives of a group of individuals may be limited or absent. This creates additional problems in determining the right to go to court. Using the example of the cases "Swiss Elderly Women" (2023), the cases "Carvalho v. EU" (2018), etc., some legal systems still require the plaintiffs to have legal capacity.

In some legal systems, it is still required that the plaintiff prove that the act or omission of the company causes him damage other than that of other people by the act or omission of the defendant.

An example is *Juliana v. United States*. As environmental security and climate change issues have gained increasing public attention in recent years. One of the key points of this discourse has been the case of *Juliana v. United States*, which has had a significant impact on the international legal field, particularly in the context of environmental law.

Juliana v. United States was filed back in 2015, when a group of young people filed a lawsuit against the US federal government, claiming that its actions and inactions on climate change violated their constitutional rights to life, liberty and happy living. This lawsuit is not only a fight for the environment, but is an indication of how young people around the world are holding their governments accountable.

The main arguments of the parties in the case. The activists who filed the lawsuit accused the U.S. government of violating their constitutional rights due to failed climate policies. They claimed that government inaction resulted in a threat to their lives, health and well-being.

The defence party (the government) denied the allegations, citing that it had no constitutional obligation to control greenhouse gas emissions. They also argued that the issue of climate change should be dealt with through the legislative and executive bodies and not through the judicial system.

Thus, the parties' main arguments were: on the plaintiffs' side, the government's violation of its constitutional obligation to protect the lives of citizens; on the defendant's side, the lack of a legal basis for the claims and the impropriety of using the judicial system to resolve political issues.

"Juliana v. United States" should rightly be considered a landmark lawsuit filed by a group of young people against the U.S. government. The plaintiffs allege that the federal government violated their constitutional rights to life, liberty and property by failing to provide adequate protection from climate change. The case has become widely known as the "climate lawsuit." It is based on the fairly new legal theory of "public trust," which suggests that the government has an obligation to protect natural resources for future generations.

In November 2016, a U.S. District Court in Oregon found that the U.S. government could be held liable for ineffective climate action. This was a landmark decision as it recognized for the first time the possibility of government legal liability for climate change. However, in January 2020, a federal appeals court dismissed *Juliana v. United States*, stating that it is the job of the legislative and executive branches of government, not the judiciary, to adjust climate policy. The decision has caused upset among eco-activists.

In this case, the U.S. government has taken a unique position. In court, they face 21 young plaintiffs who accuse the government of not doing enough to combat climate change. The U.S. government denies the allegations, saying that they are not violating the plaintiffs' constitutional rights to life, liberty, and property. They also argue that climate change is a political issue that should be decided by the legislative or executive branch, not the judiciary. The case calls into question the boundaries of government responsibility in the face of the global environmental crisis.

The *Juliana v. United States* case, which began in 2015, has had a significant impact on environmental activism not only in the United States, but around the world. The case has become an example of young people raising their voices against injustice and fighting for their future. *Juliana v. United States* has increased public attention to climate change and the need for urgent action. The case has increased public dialogue about the right of younger generations to a healthy environment and increased the number of environmental lawsuits around the world.

The case has generated significant public attention to the issue of climate change and state responsibility to address it, providing a powerful impetus to intensify the debate on global warming at all levels, from federal to local. The legal basis for the lawsuit was based on the argument that the U.S. government, by failing to take sufficient action to combat climate change, was violating the constitutional rights of current and future generations to life, liberty, and property. Although the case is still in court, its broad echoes could be the starting point for major legislative changes in the environmental field.

Questions about the fairness and effectiveness of *Juliana v. United States* cast doubt on the case's prospects. Critics argue that the judicial system is not the right one to deal with global environmental issues such as climate change. They believe that these are issues of political responsibility and should be addressed legislatively. On the other hand, supporters of the case see it as an opportunity to force the government to take action on climate change. Either way, the outcome of the case will have long-term implications for U.S. climate policy and could set a precedent for future environmental legal disputes. *Juliana v. United States* is a precedent-setting case in American jurisprudence raising questions about government responsibility for climate change. In 2015, 21 young people filed a lawsuit against the US federal government demanding action to combat global warming. The plaintiffs argued that insufficient action on climate change violated their constitutional rights to life, liberty and property. The lawsuit was the first case in American practice to consider climate change as a potential violation of citizens' constitutional rights.

According to these cases, if climate change is likely to cause all sorts of effects affecting virtually all people, then no plaintiff will be able to prove that he or she has been affected differently than other people.

According to these cases, if climate change can cause all sorts of consequences affecting virtually all people, then none of the plaintiffs will be able to prove that it suffered differently from other people.

This approach represents a significant barrier to citizens seeking climate action and climate justice [2].

3). Competence issues. A third procedural issue arising from the handling of climate protection cases relates to the determination of competent authorities to resolve such disputes. In many cases, there are two main alternatives: going to national courts or using international legal instances. Both of these paths have advantages and disadvantages, which can create difficulties in choosing the most effective approach.

4). Problems of admissibility of evidence. The fourth aspect of procedural difficulties in cases of climate protection is to obtain reliable expert information and the admissibility of evidence about the causal links between specific actions of persons or organizations and climate degradation. For example, the most famous case in the European Union, "Armando Carvalho" and the case "EU Biomass" (2019), were rejected by the court precisely for this reason, referring to Article 263 (4) of the Treaty on the Functioning of the European Union (DFEU), which is one of the key laws ensuring environmental protection obligations. It is sometimes difficult for courts to determine who is responsible for climate change, as the phenomenon is driven by many factors and long time.

5). Unpredictability of court decisions and ambiguity of legal arguments. Due to the complexity of such cases and the differences in the legal systems of different countries, each decision may be individual and not legally reversible. This creates legal uncertainty for the parties to the dispute and makes it difficult to achieve a unified approach to tackling climate change.

In the process of handling climate protection cases, legal arguments often arise that are unpredictable or ambiguous. This is due to difficulties in applying legal norms to new and complex problems of climate change. In such cases, different parties may come to different conclusions, which further complicates the decision-making process.

6). Discrepancy between national and international norms. Another problem that may arise when considering climate protection cases is the discrepancy between national and international norms. Some countries or regions have differences in approaches to climate change, which can cause conflicts and difficulties in determining the legal status of various policies and programs.

Procedural challenges in handling climate protection cases pose a major threat to the effectiveness of climate action. They restrict access to justice, create delays in the process of hearing cases, contribute to the emergence of legal arguments of an uncertain nature and cause a discrepancy between national and international norms. Addressing these challenges requires improving the availability of legal aid, improving the effectiveness of the judiciary, and strengthening international cooperation on climate change.

4 Ways to improve the handling of climate court cases

Dealing with climate protection cases is becoming an increasingly urgent task in modern society. In light of the global challenges posed by climate change, effective procedures must be developed to deal with such cases. This subsection proposes a number of measures and proposals to improve procedures in the handling of climate protection cases that will achieve a fairer and more effective outcome.

1). Increased access to justice

One of the main challenges in handling climate protection cases is the lack of access to justice for potential plaintiffs. Often, individuals or groups who try to go to court to protect the environment from negative impacts on the climate face difficulties in obtaining legal aid.

To improve this situation, legal support and consultation programs need to be developed for potential plaintiffs in climate protection cases. This will increase the level of awareness of plaintiffs about rights and opportunities, as well as help them overcome difficulties in judicial procedures.

2). Strengthening the interdisciplinary approach

The challenges of climate change are complex and need to be addressed comprehensively. Therefore, in order to effectively resolve climate protection cases, it is necessary to strengthen the interdisciplinary approach in the consideration of such cases.

As part of this approach, methodological guidelines for judges should be developed to allow them to take more fully into account scientific evidence and expertise on climate change issues in decision-making. It is also worth providing for the possibility of appointing independent climate experts to draw up conclusions in the framework of climate protection cases.

3). Establishment of clear criteria of responsibility

There is often the problem of determining responsibility for climate change and its effects. To achieve greater clarity and fairness in the process of handling climate protection cases, clear criteria should be developed to determine the liability of plaintiffs and defendants.

Such criteria should be based on scientific evidence, international agreements and environmental ethics. They will allow courts to make better decisions and consider environmental interests when dealing with climate protection cases.

4). Improvement of evidence procedures

An important aspect in the handling of climate protection cases is the evidence-based procedure. Due to the complexity of this topic, it is necessary to improve the procedures for collecting, presenting and assessing evidence regarding climate change.

To do this, it is necessary to conduct special training programs for lawyers and judges on issues related to climate change. It is also worth considering the possibility of appointing independent climate experts to draw up conclusions on the facts of climate change.

Improving procedures in handling climate protection cases is an important task to achieve a fair and effective outcome. The proposed measures to strengthen access to justice, use a multidisciplinary approach, establish clear criteria and improve evidence procedures will more effectively protect the interests of the environment and ensure fairness in the consideration of climate protection cases.

To solve the above problems, appropriate mechanisms and tools must be proposed.

Firstly, it is necessary to develop a generally recognized definition of the concept of "climate justice," which takes into account the interests of all countries and society as a whole. This will help create uniform standards and criteria for handling climate protection cases.

Second, international coordination on climate protection needs to be strengthened. International organizations and courts should work together to develop uniform principles and rules that will explain the competence of the court in climate cases.

Finally, the third measure is to improve the availability of scientific expertise and empirical evidence to confirm the causal links between greenhouse gas emissions and climate change. This will require further investment in scientific research, as well as cooperation between scientific communities and lawyers [3].

Conclusions: Environmental litigation activity is increasing more and more as citizens and non-governmental organisations resort to justice to protect their rights to a healthy environment.

Such cases can serve as important tools to pressure states and corporations to take the necessary steps to reduce greenhouse gas emissions. However, they also highlight potential problems, including the difficulty of proving a causal link between emissions and specific climate impacts.

Dutch lawyer C. Eskes and French academic J. Nedevska see climate litigation as an important tool to counter global warming. C. Eskes emphasises the need to consider the effects of corporate activities that affect climate change, while Nedevska highlights the role of public opinion and argues that climate litigation is becoming increasingly popular outside professional legal circles.

Janeta Nedevska, a prominent European environmental lawyer, emphasised the importance of climate litigation in the fight against global warming. In her view, they represent a kind of "third way" to complement the political and scientific debate. Nedevska points to a number of key precedents that have helped draw public attention to climate change and forced governments to take stronger action to address it. She argues that litigation has become an important tool for those seeking climate justice [4].

Christina Eckes argues that the judicial system has an important function of protecting individual autonomy as a much needed element.

In drawing conclusions, it is worth noting that legal processes are an important tool to compel states to fulfil their environmental obligations. Without strict control by the courts, the possibility of unfair treatment of environmental problems increases, which can lead to global consequences for all of humanity.

Such processes shift responsibility for combating climate change to the legal system, diverting attention from the need for a political solution to the problem and arguing that criticising government climate policy is the key to progress. However, he recognises that legal action can be an additional tool for those involved in the climate justice movement. In turn, the use of legal methods to fight climate change points to successful examples of such cases in Europe and the US.

However, it is worthwhile to involve more people in the discussion of this issue and emphasise the need for a global solution to the problem. At the same time, the existing complexities and challenges of this process related to the evidence base and interpretation of legislation under international law need to be addressed. That is why further study of this area is needed in order to form effective strategies for its application.

References

1. Armando Ferrao Carvalho and Others v. The European Parliament and the Council // Climate Change Laws of the World. (2022). https://climate-laws.org/geographies/european-union/litigation_cases/armando-ferrao-carvalhoand-others-v-the-european-parliament-and-the-council-51a1fc07-ccad-4c1b-bdd8-09e8ff2ec1a1.
2. E.P. Ermakova, RUDN Journal of Law. **26 (1)**, 192—209 (2022). <https://doi.org/10.22363/2313-2337-2022-26-1-192-209>.
3. E. P. Ermakova, E. E. Frolova, Modern Global Economic System: Evolutional Development vs. Revolutionary Leap : Institute of Scientific Communications Conference **198**, 1794-1806 (2021). DOI 10.1007/978-3-030-69415-9_198
4. J. Nedevska, Sustainability **13**, 8335 (2021) <https://doi.org/10.3390/su13158335>