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WRITTEN BY

MEAVE BUCHIGNANI &
MARTA CERAFOGLI

EDITED BY

MANFRED SINTORN

SUPERVISED BY

SYUZANNA KIRAKOSYAN

Introduction

The effects of climate change have become a solid reality that cannot be ignored for human life on Earth. Europe's shifting climate landscape sees a surge in legal battles, highlighting the deepening understanding of the link between environmental well-being and human rights. This paper analyses the legal framework of so-called climate litigation, where organisations and interest groups litigate a lack of climate action on the part of governments, and its implications for and application to the Defence and Security sector. Indeed, due to the increasing number of legal challenges against governments and institutions for their inaction on climate change, there has been a growing awareness of their role in protecting citizens from increasingly frequent climate events. This awareness has impacted all areas of public governance, including defence. In fact, even the defence sector, faced with this worrying reality, has had to change itself and its practices to comply with the legal framework, which is composed not only of laws but also of judgments that are increasingly openly determining how the state and institutions have a duty to protect their citizens, through comprehensive action, from the reality of climate change.

1. Climate Litigation: analysis of the legal framework

Climate change litigation refers to legal action addressing climate change-related issues. According to the Sabin Center, which develops and promulgates legal techniques to address climate change, "climate change litigation" refers to cases that raise material issues of law or fact relating to climate change mitigation, adaptation, or the science of climate change (Golghanari et al., 2021). Through climate litigation, plaintiffs can confront governments and the private sector alike for insufficient actions in addressing their impact on the climate crisis.

Typically, such litigation centres on alleged rights violations that include the right to life, health, food, water, liberty, family life, and a healthy environment (UNEP, 2023). While the rights to life, self-determination, an adequate standard of living, food, and adequate housing have all been recognised as human rights since the Universal Declaration of Human Rights, the right to a healthy environment was only recognised by the UN General Assembly until 2022 following a 2021 Human Rights Council resolution (UNDP, 2023).

In addressing human rights violations related to the effects of climate change, citizens of the European Union have brought cases before the European Court of Human Rights (ECtHR) relying on Articles 2 and 8 of the European Convention on Human Rights (ECHR), a treaty adopted by the Council of Europe in 1950 which serves as a foundational document for the protection of human rights across Europe.

According to Article 2 of the ECHR, "everyone's right to life shall be protected by law" (ECHR, 1950, p. 6). Indeed, climate change may lead to extreme weather events, displacement of populations, and health risks incurred from temperature and air quality changes that can significantly affect an individual's life and consequently violate their right to life (Vlachos, 2020).

Further, Article 8 of the ECHR establishes that everyone has the right to respect for their private and family life, home, and correspondence, under which legal action can be taken should the environment directly and significantly impact the aforementioned rights (Vlachos, 2020).

Climate litigation has also become possible in the EU's courts via the "European Climate Law", a Regulation that establishes the framework for achieving climate neutrality and is part of the European Green Deal (Regulation 2021/1119). The regulation and its relation to climate litigation will be expanded upon in a later section.

2. The Green Deal and the European Defence

The core objective of the European Green Deal, a package of EU policy initiatives and regulations, is to achieve climate neutrality by 2050 (European Council, n.d.). The EU Climate Law, Regulation (EU) 2021/1119, is a key component of said Deal. It provides the legal framework necessary to underpin the EU's climate objectives and commitments, including the target of achieving climate neutrality by 2050 (Regulation 2021/1119).

The European Climate Law, adopted in June 2021, provides a legally binding foundation for the EU's efforts to combat climate change and transition to a sustainable, low-carbon economy.

Key provisions of the European Climate Law include not only setting the long-term goal of achieving climate neutrality by 2050, but also includes intermediate targets, such as setting a collective EU target to reduce greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels (European Commission, March 2020). Furthermore, the law emphasises the importance of enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change, in alignment with Article 7 of the Paris Agreement (Article 5, Regulation 2021/1119).

In a 2023 joint communication addressing the impact of climate change and environmental degradation on peace, security and defence, the European Commission, Parliament, and the Council emphasise the need to align the European External Action Service (EEAS) and European Defence Agency (EDA) actions with the energy transition and the Green Deal's objectives (European Commission, 2023). There are two relevant documents here: the 2020 Climate and Defence Roadmap and the 2022 Strategic Compass on Security and Defence (Waleij, 2023). Nonetheless, translating such broad objectives (such as the building of Green Alliances with partner countries, promoting green investments and reduce the European global ecological footprint) into concrete actions in defence poses several challenges similar to those faced by other defence-minded international organisations (Koch & Niels, 2021).

The Climate and Defence Roadmap identifies measures in the short term (2020-2021) and medium term (2022-2024), but does not identify any measures in the longer term (2025 and beyond).

The Roadmap seeks to integrate climate considerations throughout EU decision-making, encompassing areas like defence research and development, industrial and technological development, infrastructure planning and the Common Security and Defence Policy more broadly (European External Action Service, henceforth EEAS, 2022).

The EU's strategic plan toward climate neutrality consists of three intertwined dimensions. The 'Operational Dimension' refers to situational awareness, capability for early warning and integration of climate change and environmental aspects in mission planning. The 'Capability Dimension' focuses on new challenges, including energy efficiency and procurement of defence materials resistant to extreme weather conditions. The last, 'Strengthening Multilateralism and Partnerships Dimension', encourages partnership with other international organisations such as NATO and the UN (Waleij, 2023).

The Strategic Compass delineates the EU's grand strategy in security and defence until 2030. The Compass puts forward a unified view of the EU's current security landscape, highlighting future and current threats and challenges while also outlining policy proposals with implementation timelines. The Compass' purpose is to enhance the EU's ability to respond decisively to crises and safeguard the security of the Union itself, its member states, and its citizens. Encompassing all aspects of security and defence, the Strategic Compass relies on four key pillars: acting swiftly, investing in capabilities, fostering partnerships, and ensuring security (EEAS, 2024).

To comply with the Climate Change and Defence Roadmap, the Compass recommends measures to address the climate-defence nexus and urges member states to develop national strategies that prepare armed forces for the challenges of climate change by 2023. This coordinated approach marks a significant step forward: it unifies planning efforts, creates synergies, and fosters collaborative projects. Ultimately, these strategies will enable armed forces to adapt to the changing environment and improve how they equip, train, and deploy personnel. In response to these multifaceted challenges, EDA collaborated with the European Commission and the ministries of defence. A cornerstone of this collaboration is the 2023 research study on enhancing the resilience of defence-related critical energy infrastructure against hybrid threats to foster civil-military collaboration and raise awareness (Hadjisawas, 2023; EDA, 2023).

In the 2024 Annual Progress Report presented to the Council by the High Representative of the Union for Foreign Affairs and Security Policy (HR/VP), the EEAS has swiftly implemented many of the goals set in the Strategic Compass. Russia's war of aggression against Ukraine has stressed the urgency of efforts to make the EU a stronger and more credible actor in security and defence. The report points to stronger and more adaptable crisis management tools and responses that have been developed, such as the recently launched EU maritime operation ASPIDES, which provides means of surveillance to the growing threat against maritime security in the Red Sea and the Gulf region. In addition, new strategies and policies like the updated EU Maritime Security Strategy, the EU Policy on Cyber Defence, the Action Plan on Military Mobility 2.0 or the first EU Space Strategy for Security and Defence have been elaborated and launched (EEAS, 2024 March).

3. Comparative approach in European legal systems

Climate cases have been recorded in twenty European countries over the last 30 years. Of said cases, around 75% have been filed against governmental actors, such as national and subnational governments and other public institutions (Setzer et al., 2022). This section will focus on three different cases: the Dutch Urgenda case, the Portuguese Youth Climate case v. 32 European countries before the ECtHR and the Verein KlimaSeniorinnen Schweiz and Others v. Switzerland case before the ECtHR.

3. 1. The Urgenda case

In 2013, the Urgenda Foundation and 900 Dutch citizens sued the Dutch government to demand stronger actions to mitigate global climate change, particularly by reducing greenhouse gas emissions. On 24 June 2015, the District Court of The Hague issued its judgement ordering the Dutch State to lower emissions by at least 25% before 2020 compared to 1990 levels. In the decision, the Dutch Constitution, the ECHR, and the sustainability principle embodied in the UN Framework Convention on Climate Change were cited (The Hague District Court, 2015).

The Dutch government appealed, arguing that Urgenda could not directly invoke Article 2 and Article 8 of the ECHR. This appeal failed, however, as the Hague Court of Appeal upheld the previous ruling, and determined that the Dutch government's failure to reduce greenhouse gas emissions by a minimum of 25% by the end of 2020 constituted unlawful conduct and a breach of its duty of care as outlined in Articles 2 and 8 of the ECHR (The Hague Court of Appeal, 2018). The Dutch government also appealed the second ruling, and the Supreme Court of the Netherlands upheld the verdict based on Articles 2 and 8 of the ECHR on 20 December 2019 (Supreme Court of the Netherlands, 2019). The Supreme Court's decision marked the conclusion of the first case in which a national court mandated a government to decrease greenhouse gas (GHG) emissions, explicitly citing human rights.

3. 2. The Portuguese Youth Climate case v. 32 European countries before the ECtHR

During 2020, Southern Europe, Portugal included, witnessed life-threatening natural events and catastrophes aggravated by climate change, such as devastating forest fires and dreadful heatwaves (Schleussner & alt., 2020). On 3 September 2020, following extreme weather events, six Portuguese citizens between the ages of 11 and 24 launched an unprecedented judicial case against over 30 European governments (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Denmark, Spain, Estonia, Finland, France, Greece, Croatia, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom) before the ECtHR (Global Legal Action Network, henceforth GLAN, 2024).

The European Commission was accepted as a third-party intervener and requested to provide the Court with information to assist it in reaching its decision (Climate Action Network, henceforth CAN, 2023).

Pushed by unprecedented heatwaves scorching Europe in the Summer of 2023, the case brought by the "youth applicants" reached a critical juncture on 27 September. The landmark hearing was presided over by a panel of 22 judges, attended by 86 government lawyers, and garnered significant global attention with over 6,000 press mentions documented across 71 countries. The case underscored the urgency of the climate crisis and was straightforwardly presented by the plaintiffs: European governments have failed to fulfil their legal obligations by not enacting concrete measures to reduce greenhouse gas emissions; therefore, the governments' inaction violates their human rights and discriminates against young people (GLAN, 2024).

The defendants asserted that the plaintiffs had not provided sufficient evidence that there is a "direct causal link" between their climate policies and the harm suffered by the plaintiffs. The defendants went on to state that no sufficient medical evidence has been presented to demonstrate damage to the plaintiffs' physical and mental health (Gwyn Jones & Marques da Silva, 2023).

On 9 April 2024, the ECtHR unanimously declared the application inadmissible for several reasons. First, the applicants failed to utilise any legal channels within Portugal to address their complaints, a requirement known as the exhaustion of domestic remedies. Secondly, the Court found the plaintiffs' circumstances unclear, making it impossible to determine if they met the necessary criteria to be considered victims (ECHR, 2024).

3. 3. The Verein KlimaSeniorinnen Schweiz and Others v. Switzerland case before the ECtHR: a historic victory

In 2016, KlimaSeniorinnen Schweiz, a senior women's organisation, filed a suit against the Swiss Federal Council, Federal Department of the Environment Transport, Energy and Communications (DETEC), Federal Office for the Environment, and Federal Office for Energy (Verein KlimaSeniorinnen Schweiz et al. v. Federal Council et al., 2016). They claimed that the defendants had breached their duties under the Swiss Constitution and the ECHR by neglecting to guide Switzerland toward emissions reductions in line with the objective of limiting global temperature increase to well below 2°C above pre-industrial levels (Association of Swiss Senior Women for Climate Protection v. DETEC et al., 2016).

Having exhausted all national legal remedies, the Association KlimaSeniorinnen Schweiz filed an application to the ECtHR stating that Switzerland violated several of the rights guaranteed by the ECHR on 26 November 2020 on three grounds. They claimed that Swiss climate policy violated their rights to life and to health as stipulated in Articles 2 and 8 of the ECHR, and alleged that the Swiss Federal Supreme Court had arbitrarily dismissed their case, which violates their right to a fair trial under Article 6 of the ECHR.

Finally, the petitioners also claimed that Swiss authorities and courts had failed to address the substance of their grievances, infringing on their right to an effective remedy outlined in Article 13 ECHR (*Klimaseniorinnen v Switzerland*, 2020).

On April 9, 2024, the ECtHR ruled that government inaction regarding climate change constitutes a violation of fundamental human rights (*Frost and Limb*, 2024). The Court found that Article 8 ECHR recognises the right to effective protection from the serious adverse effects of climate change by State authorities, and Switzerland has failed to fulfil its obligations under the convention. Specifically, there were significant gaps in the Swiss state's domestic regulatory framework, and past GHG emission reduction targets had not been met (*Verein Klimaseniorinnen Schweiz and others v. Switzerland*, 2024).

4. Conclusions

The paper proposed an analysis of the matter of climate change implications and its referred application to the sector of Defence and Security. In recent years, the EU, in general, and the EEAS have significantly enhanced their capabilities and preparedness in security and defence. The war in Ukraine and the immense challenges that have come with it have served as a catalyst for Europe to revise its strategy and actions. The European Union's commitment to climate action is evident in legislative initiatives like the European Green Deal, and the mainstreaming of climate action is evident in defence through strategic frameworks such as the Climate and Defence Roadmap and the Strategic Compass.

In this evolving landscape, the increase in climate change litigation cases in Europe reflects a growing recognition of the interplay between environmental protection and human rights. Through landmark cases such as *Urgenda v. Netherlands* and *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, courts have affirmed that government inaction on climate change can constitute a violation of fundamental human rights. In this context, climate litigation emphasises the indispensable role of the law in addressing one of the most pressing challenges of our time. In conclusion, climate change-related cases' jurisprudence and the integration of climate considerations into EU security and defence policies constitute proactive and forward-thinking approaches to addressing climate change's multifaceted impact.

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