

	INSTITUTE
OF	STATE
AND	LAW

Centre for Climate Law
and Sustainability Studies
(CLASS)



Conference Human Rights and Climate Change

Friday 19th November 2021

9 – 17 CET

Programme

(version: 17 November 2021 – check for updates)

8:30	Registration
9:00	Opening of the conference
9:05	Welcome address: Pavel Zámyslický, Director of the Energy and Climate Protection Department, Ministry of the Environment
9:15	Human Rights and Climate Change: A Short Introduction Hana Müllerová
9:25-10:45	SESSION 1
9:25	Marc Limon (Universal Rights Group, Geneva) Why did the UN Human Rights Council join the fight against climate change and environmental degradation, why did it proceed along two separate tracks, and are those tracks complementary or contradictory?
9:45	Ivana Jelić (European Court of Human Rights) Climate Change and Protection of Related Human Rights: A Challenge for the ECtHR
10:05	Christina Voigt (University of Oslo) Climate Dimension of Human Rights Obligations
10:25	Discussion

10:45	Coffee break
11:00-12:40	SESSION 2
11:00	Sanja Bogojević (University of Oxford) Human Rights and Climate Change: What Lessons For Future Climate Action?
11:20	Eva Schulev-Steindl (Research Centre ClimLaw, University of Graz) The Austrian Perspective on Climate Lawsuits
11:40	Felix Ekardt (Research Unit Sustainability and Climate Policy, Leipzig) Paris Target, Freedom, Human Rights, and Climate Litigation
12:00	Milan Damohorský (Faculty of Law, Charles University Prague) Adaptation to the climate change from the European and Czech law perspective
12:20	Discussion
12:40-13:30	Lunch Break
13:30-15:10	SESSION 3
13:30	Pavel Šturma (Institute of State and Law, Czech Academy of Sciences) Climate Change Reflected in the Works of the International Law Commission
13:50	Klara Polackova Van der Ploeg (University of Nottingham) Climate Change and Business: Corporate Environmental and Human Rights Responsibilities?
14:10	Eva Balounová (Centre for Climate Law and Sustainability Studies, Institute of State and Law CAS) Climate Change, Aviation, and Human Rights
14:30	Larissa Houston (Research Centre ClimLaw, University of Graz) Go Green or Go Home: The Right to Energy Access within the Context of Climate Change
14:50	Discussion
15:10	Coffee Break
15:25-16:45	SESSION 4
15:25	Veronika Tomoszková & Maxim Tomoszek (Faculty of Law, Palacký University Olomouc) Human Needs-Based Interpretation of Human Rights: A Solution to Conflict of Current and Future Generations (and Much More)
15:45	Pasquale Viola (Faculty of Law, Charles University Prague) How Much Justice Is There within Litigation (and Vice Versa)? Climate Change, Human Rights, Scientific Data
16:05	Vojtěch Vomáčka (Faculty of Law, Masaryk University Brno) Advancing Gender Equality through Climate Action
16:25	Discussion
16:45	Closing of the conference

Abstracts

Marc Limon: Why did the UN Human Rights Council join the fight against climate change and environmental degradation, why did it proceed along two separate tracks, and are those tracks complementary or contradictory?

International efforts to draw attention to, understand, clarify, and leverage the relationship between human rights and the environment have made remarkable progress since the establishment of the UN Human Rights Council in 2006. Environmental concerns were entirely absent during UN discussions on the Universal Declaration of Human Rights and, by extension, during the negotiation of the two international human rights covenants. This can be explained by the fact that the instruments were negotiated before the advent of the modern environmental movement in the late 1960s. In the mid-1990s, a group of States led by Costa Rica, South Africa, and Switzerland tabled the first of three resolutions at the UN Commission on Human Rights, the predecessor to the Human Rights Council, on 'human rights and the environment.' However, from the very start, these States faced considerable opposition from some large UN members (developed and developing countries), with the result that the resolutions were relatively unambitious and were eventually discontinued.

This remained the situation until 2006, when the Commission was replaced by the Council, and a Small Island State, the Maldives, took it upon itself to revive international efforts to draw links between human rights and environmental harm. It acted first through two resolutions on human rights and climate change (7/11 and 10/4) designed to show the extreme negative impacts of climate change on internationally protected human rights, especially for people in already vulnerable situations (the Maldives argued that this amounted to a violation of individual rights), and to demonstrate that international human rights obligations and commitments should be leveraged to inform fairer and more effective climate policies. Despite continued political opposition, especially from major emitters, the initiative was remarkably successful. Then, in 2011, the Maldives suddenly changed tack, introducing annual resolutions on human rights and the environment, establishing a new Special Procedures mandate on the subject, and preparing the ground for eventual UN recognition of a new universal right to a clean, healthy and sustainable environment.

This paper will attempt to answer a number of questions critical to understanding these important developments for human rights, climate change and environmental protection, including: why did the Maldives, as a climate vulnerable State, choose to bring the issue of global warming to the Human Rights Council; what did it achieve; why, in 2011, did the Maldives suddenly change tack and pursue its objectives through a new Council initiative on human rights and environment - leading (in October 2021) to UN recognition of the right to a healthy environment; what happened to the initiative on human rights and climate change; and are the two parallel initiatives complementary or mutually-reinforcing?

Ivana Jelić: Climate Change and Protection of Related Human Rights: A Challenge for the ECtHR

Although the right to sound environment is not enshrined in the European Convention on Human Rights and the Protocols thereto, the Court's caselaw contains numerous examples of the protection of environment in connection with certain civil rights, in particular rights protected by articles 2 and 8 of the Convention. The concept of the Convention as a living instrument enables the Court to rule in accordance with the request of present day conditions, opening the avenue for the environmental aspect of certain human rights protection. Still, climate change as a factor for the protection of environment and related human rights nowadays, brings new challenges for the Court.

Under the present legal and institutional system established by the Convention, the request that the protection of human rights must be effective, concrete and real, not theoretical, abstract or illusory, faces the actual limits in terms of the protection of given rights in times of climate change. On one side, in the situation where the admissibility of the cases is conditioned by proving the victim status *in concreto*, there are certain legal limits due to which the cases stay out of the scope of the Court's competence. On the other side, the issue of positive obligations of the High Contracting Parties to the Convention to ensure enjoyment of the rights, triggers a dilemma on how to address the problem of human rights protection under climate change conditions where certain cases could be treated as the group rights with significant aspect of class action, which is not acceptable for the Court. These are focal issues that would be covered in the speech of the author, who would like to reserve the possibility to extend her thoughts in terms of comparative legal analysis and perspective solutions.

Eva Schulev-Steindl: Human Rights-Based Climate Litigation in Austria

Recognising that climate change violates or threatens to violate a whole range of fundamental rights has led to a large number of lawsuits. Such climate lawsuits against states challenge lacking or unambitious climate protection measures and draw public attention to the sensitive issue of climate change in order to increase pressure on decision-makers. Occasionally, such lawsuits have already achieved spectacular successes, such as in the cases of *Urgenda v. the Netherlands* (2019) and *Neubauer et al v. Germany* (2021).

Nevertheless, most of the lawsuits have not been successful. This also holds for the first Austrian climate lawsuit: in 2020, more than 8,000 individuals, supported by the NGO Greenpeace, had challenged tax regulations before the Austrian Constitutional Court that privilege air travel over rail travel and thus encourage climate-damaging behaviour. The applicants had argued greenhouse gas emissions from air travel were aggravating the climate crisis, which would threaten their right to life and health. However, the Constitutional Court did not enter into a substantive review but dismissed the application as inadmissible. Proceedings pending before the ECtHR are now to clarify whether the narrow admissibility criteria for such actions violate the right to an effective remedy under Article 13 ECHR.

Against this background - and in comparison with legal constellations underlying the *Urgenda* and *Neubauer* cases - legal hurdles for climate lawsuits in Austria will be identified and approaches for reforms pointed out, that would allow for effective legal protection against inadequate climate action within the Austrian legal system.

Felix Ekardt: Paris Target, Freedom, Human Rights, and Climate Litigation

The climate decision of the German Federal Constitutional Court is probably the most far-reaching climate verdict of a supreme court worldwide. At its core, it calls for a fair intertemporal balance with regard to people's freedom, and it demands concrete specifications precisely by parliament. In line with our constitutional complaint (and its underlying theoretical work since 2000, this involves fundamental further developments in the theory of the fundamental rights of freedom and the preconditions of freedom in interaction with the state goal of environmental protection. Human rights are accepted as intertemporal and transboundary. Furthermore, they are read in the light of the precautionary principle, and no longer limited in their validity to individual, singled-out affected persons. Furthermore, the 1.5 degrees limit of the Paris Agreement is recognized, at least under international law, as a binding requirement for climate policy. All this has far-reaching implications for legislation on nation state level. Likewise, necessary action at the EU level is also a desideratum. Furthermore, there are potentially far-reaching implications for other environmental problems which are often linked to climate change, such as biodiversity loss and disrupted nitrogen cycles. Civil lawsuits directly against large fossil fuel companies are now also a concrete option for the first time. Moreover, the verdict has broad implications in the interpretation of existing administrative law at the federal, regional and local levels.

Pavel Šturma: Climate Change reflected in the Works of the International Law Commission

Even though the UN International Law Commission, as a body of legal experts dealing with the progressive development of international law and its codification, is not particularly well-suited to address the issue of climate change as such, it has dealt with it indirectly during the past decade and up to now. The contribution will present three topics that are relevant to the subject of Human rights and climate change. They include Protection of persons in the event of disasters; Protection of the atmosphere; and Sea-level rise in relation to international law.

Dr Klara Polackova Van der Ploeg: Climate change and business: Corporate environmental and human rights responsibilities?

Abstract: While the contribution of fossil fuels, garment and other industries to climate change is well documented, global climate change initiatives have been primarily preoccupied with the regulation of governmental rather than corporate conduct. However, even against the resistance of significant corporate interests, recent developments both at international and domestic levels are changing the legal landscape. From the perspective of the business and human rights framework, and considering the latest developments in common law tort law, this paper (i) considers business responsibilities relating to climate change; (ii) asks whether corporations face serious litigation risk for their climate change contributions and (iii) critically analyses the limitations of the existing legal frameworks.

Eva Balounová: Climate Change, Aviation, and Human Rights

Plans for the expansions of airports and tax exemptions for the aviation industry were unsuccessfully challenged in the national courts in recent years, and the UN international legal regime was in some of these cases the reason for dismissal. This contribution will provide an overview of this regime and the relevant case law with a focus on the human rights perspective. Finally, the contribution will attempt to suggest some counterarguments, including the aspect that the aviation sector is connected with huge inequalities.

Larissa Houston: Go Green or Go Home: The Right to Energy Access within the context of Climate Change

In early 2021, the United Nations launched the High-Level Dialogue on Energy where 2021 was announced as the 'Year for Energy Action'. This has prompted States to give particular attention to energy by identifying, researching and finding solutions to various energy concerns. An element of energy concerns that is yet to be discussed in great detail is the human rights aspects of energy concerns, more specifically, **the right to energy access**. Although not commonly referenced, this right is practiced and protected in a number of countries around the world and it is often argued that this right should be considered a universal human right. Implementation of this right is achieved through direct recognition of a right to energy access or as a derived right through the implementation of other existing rights. In understanding how and when such a right is protected this will then assist in determining the place of such an energy right in the context of climate change and green growth, especially whether such a right relates to the use of clean energy. Based on the above, this paper seeks **to comparatively analyse the right to energy access in its various forms as both a direct and derived right**. The right to energy access is then conceptually considered through the lens of climate action to determine if it can be presently understood to include the right to clean and green energy access.

Veronika Tomoszková & Maxim Tomoszek: Human Needs-Based Interpretation of Human Rights: A Solution to Conflict of Current and Future Generations (and Much More)

Climate change is to a significant extent result of greed, or in other words accumulating wealth at the expense of others – other individuals, communities, environment, and future generations. Paradoxically, all this is enabled and even protected by flattened (indiscriminate) understanding of human rights. Current paradigm does not distinguish between needs and wants, i.e. between essential and non-essential content of human rights, and thus limits success of human rights-based climate change litigation. But what if the climate change is an indicator of insufficiency of our current paradigm of human rights, demonstrating that we must differentiate between essential (needs) and non-essential (wants) content of human rights?

After all, it makes perfect sense to apply stronger protection to essential components of certain rights compared to non-essential parts. Identifying and specifying essential content of human rights based on objective human needs would allow for much more precise balancing of conflicting rights and actually provide more exact criteria for the final step of proportionality review. Besides that, having more precisely defined content of human rights based on human needs would also allow us to conceptualize the inter-generational responsibility necessary to succeed in human-rights based climate change litigation.

Pasquale Viola: How Much Justice Is There within Litigation (and Vice Versa)?

The definition of climate justice lacks convergence and certainty in terms of meaning and practical applications. To this end, the legal, political and sociological literatures highlight – and even nurture – semantic issues. Looking through the climate and socio-ecological crisis the world is currently facing, human rights are affected in their whole spectrum (individual, collective, social, political, economic, etc.). Several recent decisions in climate litigation have been celebrated as innovative steps in pursuing a sense of justice through the recognition and protection of human rights, nevertheless it is debatable whether courts and tribunals' reasonings were actually projected towards an evolutionary achievement or they were simply moving within canonical legal patterns. In other words, even in those cases in which climate is a determining element, this does not mean by itself that the reasoning has been oriented towards the application of ethical and moral features of climate justice. Moving from these considerations, the presentation aims at addressing the critical issue already mentioned through four leading steps: 1) exposing the **common grounds of climate justice and climate litigation** to further elaborate upon the distinction between them; 2) postulating a list of climate justice's determining features according to the distributive approach; 3) providing an account of the human rights involved (and their narrative repertoires); 4) stipulating a dynamic classification of judicial

reasonings in cases involving state positive obligations (by means of human rights and scientific data as causal foundations), in order to distinguish a “climate justice case” from a mere “tactical exhibition” of climate litigation.

Vojtěch Vomáčka: Advancing Gender Equality through Climate Action

The contribution analyses the internal and external climate policy of the EU and the Czech Republic, which completely neglects gender needs. This is despite the fact that international legal requirements and expert studies in the field of climate protection stress the need for general and specific promotion of gender equality. Women cannot be seen as helpless victims of climate change, but their vulnerability to the impacts of climate change is increased compared to men. There is therefore no doubt that climate change is gendered and requires an adequate response at EU and national level.