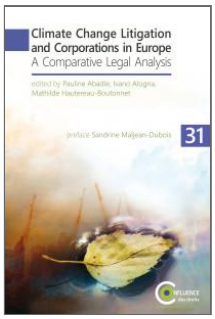

Under the direction of Pauline Abadie, Ivano Alogna and Mathilde Hautereau-Boutonnet

Climate Change Litigation and Corporations in Europe
A Comparative Legal Analysis

The Italian Way to Climate Litigation Against Private Companies

The Giusta Causa Case and the (New) Intergenerational Perspective

Attilio Pisanò

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The Italian Way to Climate Litigation Against Private Companies

The Giusta Causa Case and the (New) Intergenerational Perspective

Attilio Pisanò[1]

Abstract: The paper analyzes the emergence of climate change litigation in Italy, focusing on the two most important cases having climate change as the central issue: *Giudizio Universale* (against the State) and *Giusta Causa* (against the most important Oil&Gas Italian private company: ENI). Firstly, the paper focuses on the more general difficulties linked with the definition of the causal link described as a "climate chain." Then, the paper specifically focuses on the *Giusta Causa* case, poiting out the juridical reasons aimed at demonstrating ENI's co-responsibility in climate damage, using *soft law tools* as a due diligence parameter. Finally, the paper underlines how the outcomes of climate litigation in Italy are all to be written, both for the direct and indirect effects of the *KlimaSeniorinnen* ruling of the ECtHR, but also for the more recent amendments to the Italian Constitution (Art. 9 and 41) concerning the protection of environment e future generation.

Résumé *: L'article analyse l'émergence des litiges liés au changement climatique en Italie, en se concentrant sur les deux affaires les plus importantes qui ont le changement climatique comme thème central:* B *(contre l'État) et* Giusta Causa *(contre la plus importante société privée italienne de pétrole et de gaz : ENI). Dans un premier temps, l'article s'intéresse aux difficultés plus générales liées à la définition du lien de causalité décrit comme la «chaîne climatique.» Ensuite, l'article se concentre en particulier sur l'affaire* Giusta Causa*, illustrant les raisons juridiques visant à démontrer la coresponsabilité d'ENI dans les dommages climatiques, en utilisant les outils du* soft law *comme paramètre de due diligence. Enfin, le document souligne que les résultats des litiges climatiques en Italie sont tous à écrire, pour les effets directs et indirects de l'arrêt* KlimaSeniorinnen *de la Cour européenne des droits de l'homme, mais aussi pour les récentes modifications apportées à la Constitution italienne (articles 9 et 41) en termes d'environnement et de protection des générations futures.*

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Introduction

Climate Change is a particularly complex issue, both in definition and approach, especially because human behaviours naturally interfere (as they have always interfered) with the climate system,[2] progressively changing its equilibrium.

In the last few decades, the adverse effects of human-induced climate change and its impact on socio-economic systems, human health, and welfare have emerged with increasing clarity, so much so that climate change has been progressively described as a "climate emergency," "climate crisis," "climate urgency," and "climate disaster."

In the framework of international climate law, this paper first describes human-induced climate change from a juridical perspective, particularly concerning the link between greenhouse emissions and human rights violations (the s.c. "climate chain"). Furthermore, this paper highlights the role of human rights in the judicial fight against human-induced climate change, specifically in the context of European transnational climate litigation.

Finally, this paper focuses on the most important Italian litigation against private companies (Giusta Causa) with climate change as the central issue, pointing out some questions concerning the causal link.

I. The Climate Chain and the causal link between climate damage and human rights

As is well known, the United Nations Framework Convention on Climate Change describes climate change as that change of climate "which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods" (art. 1^2).

Having an 'unnatural' impact on the natural climate variability, human-induced climate change may have "adverse effects" on the "composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare" (art. 1^1).

The difference between climate change (art. 1^2) and its "adverse/deleterious effects" (art. 1^2) appears to be a good starting point for understanding the causal link between human behaviours (which cause climate change) and their final adverse/deleterious effects (caused by climate change).

2 The climate system is defined, by the art. 3^3 of the United Nations Framework Convention on Climate Change (UNFCCC), as the "totality of the atmosphere, hydrosphere, biosphere and geosphere and their interactions."

I.e.:

a. The emission of greenhouse gases, in a given period, causes long-term human-induced climate change (first level of causation).
b. Human-induced climate change has "deleterious effects" on the composition, resilience, or productivity of natural and managed ecosystems, the operation of socio-economic systems, or human health and welfare (second level of causation).
c. These adverse/deleterious effects may determine violations/threats on human security and human rights (third level of causation).

Following this pattern, the "climate crisis" can be effectively represented as a process, a kind of "climate chain." With this expression, we may describe the complex and articulated path triggered by human activities (greenhouse emissions and their consequence on climate variability, i.e. climate change), whose final step may be the violations/threats of human rights (the *focus* of this paper), determined by the adverse/deleterious effects on the socio-economic systems, human health, and welfare linked with climate change.[3]

3 The expression "climate chain" referred to the causal link in the context of climate change is also used by the European Court of Human Rights in the sentence "Verein KlimaSeniorinnen and others v. Switzerland" (2024). Specifically, according to the Court: "[416] In the context of climate change [compared to environmental cases] the key characteristics and circumstances are significantly different. First, there is no single or specific source of harm. GHG emissions arise from a multitude of sources. The harm derives from aggregate levels of such emissions. Secondly, CO2—the primary GHG—is not toxic per se at ordinary concentrations. The emissions produce harmful consequences as a result of a complex *chain* of effects. These emissions have no regard for national borders. [417]. Thirdly, that *chain* of effects is both complex and more unpredictable in terms of time and place than in the case of other emissions of specific toxic pollutants. Aggregate levels of CO2 give rise to global warming and climate change, which in turn cause incidents or periods of extreme weather; these in turn cause various harmful phenomena such as excessive heatwaves, droughts, excessive rainfall, strong winds and storms, which in turn give rise to disasters such as wildfires, floods, landslides and avalanches. The immediate danger to humans arises from those kinds of consequences in the given climate conditions. In the longer term, some of the consequences risk destroying the basis for human livelihoods and survival in the worst affected areas. Whole populations are, or will be, affected, albeit in varying ways, to varying degrees and with varying severity and imminence of consequences. [418]. Fourthly, the sources of GHG emissions are not limited to specific activities that could be labelled as dangerous. In many places, the major sources of GHG emissions are in fields such as industry, energy, transport, housing, construction and agriculture, and thus arise in the context of basic activities in human societies. Consequently, mitigation measures cannot generally be localised or limited to specific installations from which harmful effects emanate. The mitigation measures are necessarily a matter of comprehensive regulatory policies in various sectors of activity. Adaptation measures may to a greater extent depend on local action. However, without effective mitigation [. . .], adaptation measures cannot in themselves suffice to combat climate change [. . .]. [419]. Fifthly, combating climate change, and halting it, does not depend on the adoption of specific localised or single-sector measures. Climate change is a polycentric issue. Decarbonisation of the economies and ways of life can only be achieved through a comprehensive and profound transformation in various sectors. Such "green transitions" necessarily require a very complex and wide-ranging set of coordinated actions, policies and investments involving both the public and the private sectors. Individuals themselves will be called upon to assume a share of responsibilities and burdens as well. Therefore, policies to combat climate change inevitably involve issues of social accommodation and intergenerational burden sharing, both in regard to different generations of those currently living and in regard to future generations." On the subject, see: A. Savaresi, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland: Making climate change litigation history*, "RECIEL" 1, 34, 2025, pp. 279-287; M. Wewerinke-Singh, *Climate Protection Obligations under the European Convention on Human Rights: The KlimaSeniorinnen Judgement*, in "European Constitutional Law Review," 21, 2025, pp. 356-374; F. Gallarati, *L'obbligazione climatica davanti alla Corte europea dei diritti dell'uomo: la sentenza KlimaSeniorinnen e le sue ricadute comparate*, in "DPCE online," 2, 2024, pp. 1457-1478.

In other words, long-term anthropogenic gas emissions cause, at the global level, a "climate damage" specifically intended as the damage suffered by the climate system (the totality of the atmosphere, hydrosphere, biosphere, and geosphere and their interactions) due to the release of greenhouse gases into the atmosphere over a specific area and period of time (art. 1[4]).

Climate damage (the direct consequence of long-term anthropogenic greenhouse emissions) causes several related specific events (more severe and widespread wildfires, sea level rise, extreme weather events, drought, melting glaciers, floods, etc.) whose adverse/deleterious effects impact the local level, endangering human health, livelihoods, food security, water supply, human security, economic growth,[4] and human rights.

The climate chain describes the relationship between overall human activity and climate change-related adverse/deleterious effects:

– cause (local) / (global) effect
– (global) effect ⟶ (global) cause
– (global) cause / (local) effects

This means that anthropic greenhouse gases are emitted for an indefinite period of time, produced in different places (several local sources), and finally cause global damage, cumulatively altering the climate system (the totality of the atmosphere, hydrosphere, biosphere, and geosphere and their interactions).

This global damage, that is, climate damage (caused by anthropogenic greenhouse gas emissions), causes local related specific events whose adverse/deleterious effects affect human security and human rights.

Therefore, if we are looking for the accountability of a specific actor engaged in climate change (a carbon major or a single man/woman consuming energy produced by fossil fuels), who is at the origin of the "climate chain," we should find some elements helping us to establish its climate fingerprint, its specific contribution to climate change in a given period of time (its historical fingerprint), namely its specific engagement in climate damage (first level of causation). However, from a strictly juridical perspective, it is very difficult to find sufficient elements aimed at directly linking its specific historical fingerprint to climate change-related adverse/deleterious effects (second level of causation) which affect human rights (third level of causation).

4 See IPCC 2023, *Summary for Policymakers*, in "Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero, (eds.), IPCC, Geneva, Switzerland, pp. 1-34, doi: 10.59327/IPCC/AR6-9789291691647.001.

II. The climate obligation. Why there is no space for rights?

Although it has been thirty years since the approval of the UNFCCC, as far as climate law is concerned, the overall approach has so far been predominantly centred on the law, not on the rights.

In fact, if we consider the main international legal instruments concerned with climate change (the UNFCCC, the Kyoto Protocol and the Paris Agreement[5]) there are no references to the possibility of approaching climate change and its adverse/deleterious effects from a point of view centred on (human) rights.[6]

Therefore, from this perspective, it does not seem wrong to affirm that the original imprinting of climate law is state-centric, given that the main goal of the UNFCCC was the definition of a clear normative framework (what is climate change, why it is dangerous for humankind, what kind of measures should be undertaken by States to reduce/eliminate the climate-change related risks) within which the States (or regional organizations, such as the European Union), based on equity, in accordance with their common but differentiated responsibilities and respective capabilities (art. 3^{1} UNFCCC), should implement the necessary efforts aimed at preventing/reversing global human-induced climate change.

After the 2015 Paris Agreement, these efforts should be specifically focused on holding the increase in the global average temperature to well below 2 ℃ above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5 ℃ above pre-industrial levels (art. $2^{1, a}$) in the second half of this century (art. 4^{1}).

Although human rights are substantially marginalised within International Climate Change Law, the human rights perspective has become increasingly prominent in the last decade (not only in Europe). We are facing a veritable "Kantian revolution" (from the objective perspective to the subjective one), which appears inevitable.[7]

On the one hand, given the pervasive dimension of the normative language of rights,[8] it would have been weird if the human rights approach had stayed out of the discussion dealing with the adverse/deleterious effects of climate change on socio-economic systems, human health and welfare.

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5 D. Bodansky, J. Brunnée, L. Rajamani, *International Climate Change Law*, Oxford, Oxford University Press, 2017.

6 The only exception, albeit significant, is represented by the Preamble of the Paris Agreement which firstly reaffirms that climate change is a "common concern of mankind," the it acknowledges that the Parties of the Agreement, when "taking action to address climate change [they have to] respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity."

7 On this topic, see L. Nordlander, *Human Rights and Climate Change: The Law on Loss and Damage*, London/New York, Routledge, 2023; B. Lewis, *Environmental Human Rights and Climate Change*, Springer, 2018; S. Atapattu, *Human Rights Approaches to Climate Change: Challenges and Opportunities*, London/New York, Routledge, 2018.

8 G. Pino, *Il costituzionalismo dei diritti*, Bologna, il Mulino, 2017, p. 7.

On the other hand, the growing awareness that human-induced climate change is a political issue means that climate activists, civil society organizations, interest and/or pressure groups may naturally recur to human rights arguments to better reach their goals in the fight against climate change.[9]

In this scenario, it is important to observe that the United Nations not only defined the normative framework (what is climate change, why it is dangerous for humankind, what kind of measures should be undertaken by States to reduce/eliminate the climate-change related risks) dealing with the human-induced climate change as a global governance issue (UNFCCC, Kyoto Protocol and Paris Agreement) but also dealt with the human rights approach, as of the *Report on the Relationship between Climate Change and Human Rights*, issued in 2009 by the Office of the United Nations High Commissioner for Human Rights[10] (OHCHR).

Scientifically, based on the 2007 IPCC Fourth Assessment Report, without referring to the recognition of a specific human right to climate stability, the OHCHR Report evidences how the human rights perspective could be used as a normative tool in the political fight against human-induced climate change.

The Report was focused on the impact of climate change on international stability and internationally recognised human rights (right to life, to adequate food, to water, to health, to adequate housing, to self-determination, especially those of vulnerable people: women, children, indigenous peoples, displaced persons, migrants), pointing out that "while climate change has obvious implications for the enjoyment of human rights, it is less obvious whether, and to what extern, such effects can be qualified as human rights violations in a strict legal sense" (§ 70) because "qualifying the effects of climate change as human rights violations poses a series of difficulties."

Consequently, the OHCHR Report listed some difficulties specifically concerned with the general causation between human activity (as a source of greenhouse gas emissions) and the final adverse/deleterious effects of these emissions on human rights (§ 70).

Therefore, if such complex matter could be summed up, we may say, in a strict legal sense, that, given the specific nature of the climate chain, as described above, it is nearly impossible to establish that a human rights violation/threat concerned with human-induced climate change depends on the action/omission of a specific actor (State, single individual, corporates, carbon major, and so on), being that human rights violation/threat the result of cumulative contributions (most of them unintentional) of several actors in an indefinite period of time.

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9 V.E. Albanese, S. Fanetti, R. Minazzi, (eds.), *Social Mobilisation for Climate Change*, London, Routledge, 2024.

10 Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between Climate change and Human Rights*, A/HRC/10/6, 2009.

Although these evident difficulties, the OHCHR concluded that "irrespective of whether or not climate change effects can be construed as human rights violations, human rights obligations provide important protection to the individuals whose rights are affected by climate change or by measures taken to respond to climate change" (§ 71).

More recently, the United Nations has been paying strong attention to the relationship between climate change and human rights, not only from a strictly normative point of view, but also by highlighting the emerging role of human rights in climate litigation.

Indeed, in the last few years, the United Nations has progressively linked climate change and human rights in some resolutions concerning the human right to a safe, clean, healthy, and sustainable environment.

Therefore, the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (GA, A/73/188, July 2018) recognized a universal right to a safe, clean, healthy and sustainable environment and underlined, at the same time, "the present and future impacts of climate change on human well-being."

Along this road, the Human Rights Council affirmed that access to a healthy and sustainable environment is a universal right, (A/HRC/48/L.23/Rev.1), also recognizing that "the impact of climate change [. . .] interferes with the enjoyment of a safe, clean, healthy and sustainable environment, and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights."

Additionally, during the same period (2017-2023), the UNEP, in collaboration with the Sabin Center for Climate Change Law at Columbia University, issued three reports (2017, 2020, 2023) specifically focused on climate change litigation. The last one is the 2023 *The Status of Climate Change Litigation. A Global Review.*[11]

Specifically, the Report showed that people are increasingly turning to the courts to combat the climate crisis. As of December 2022, the report referred to 2,180 climate-related cases filed in 65 jurisdictions, including international and regional courts, tribunals, quasi-judicial bodies, and other adjudicatory bodies, such as Special Procedures at the United Nations and arbitration tribunals. This represents a steady increase from 884 cases in 2017 to 1,550 cases in 2020.

Among other things, the Report described new figures in the judicial fight against human-induced climate change: children, youth, women, local communities, and Indigenous Peoples, pointing out "that inclusive approaches to climate litigation that also address the human rights of the most vulnerable groups in society can contribute in meaningful ways to compel governments and corporate actors to pursue more ambitious climate change mitigation and adaptation goals" (p. XIV).

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11 United Nations Environment Programme (2023). *Global Climate Litigation Report: 2023 Status Review*. Nairobi.

III. The climate litigation and human rights. The European way

It is difficult to say whether there is a specific strategy behind this activity of the United Nations aimed at obtaining, through private litigation, the fulfilment of international obligations undertaken by States.

Certainly, the climate litigation field is where climate law meets human rights.[12] Actually, in the intertwining of climate law and human rights law, it is possible to find not only a way to condition the climate policies of the States, but also the chance to recognize a new human and/or fundamental right: the right to climate.[13]

In the European legal space, the furrow traced by the Urgenda ruling (2019) has been followed by other climate activists and, as a result, litigations have multiplied over the last decade with the aim of affecting states' mitigation targets, using the rights-argument to force decision-makers to take the climate emergency seriously by adopting the most appropriate measures to reduce greenhouse emissions.

Litigations against States, similar to the Urgenda case, have therefore been initiated in Belgium (Klimaatzaak), France (L'Affaire du siècle), Germany (Neubauer et al.), Spain (Greenpeace, Oxfam and Ecologistas en Acción), the Czech Republic (Klimatická žaloba), Italy (Giudizio Universale), also before the European Court of Human Rights (Duarte vs Portugal, KlimaSeniorinnen vs Switzerland), Sweden (Aurora Case), the United Kingdom (Plan B Earth).[14]

Despite some differences related to the strategic choices of climate activists, the specificity of individual states' counter-change choices or the diversity of domestic legal systems, these litigations can be read as a unitary cluster, because, in the wake of Urgenda case,[15] they share a common thread:

a. States contribute to global warming through climate-changing emissions;
b. Ratifying the UNFCCC and the Paris Agreement, the States have assumed legal climate obligations aimed at stabilising the global average temperature increase within 2℃ or preferably 1.5℃ (Paris Agreement).
c. The policies adopted by States, taken individually and collectively, are far from producing effects compatible with stabilising the temperature within 1.5℃;

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12 C. Rodriguez-Garavito, *Climate Change on Trial. Mobilizing Human Rights Litigation to Accelerate Climate Action*, Cambridge, Cambridge University Press, 2025; S. Ducyl, S. Jodoin, A. Johl, edited by, *Routledge Handbook of Human Rights and Climate Governance,* London, Routledge, 2018; M. Averill, "Linking Climate Litigation and Human Rights," in *Review of European Community & International Environmental Law*, 18, 2, 2009, pp. 139-147.

13 A. Pisanò, *Il diritto al clima. Il ruolo dei diritti nei contenziosi climatici europei*, Napoli, ESI, 2022.

14 W. Kahl, M.P. Weller (eds.), *Climate Change Litigation. A Handbook*, Munchen, Beck, 2021; I. Alogna, C. Bakker, J.P. Gauci (eds.), *Climate Change Litigation: Global Perspectives*, Leiden/Boston, Brill Nijhoff, 2020; Ch. Cournil (eds.), *Les grandes affaires climatiques*, Aix-en-Provence, DICE Éditions, 2020. [https://books.openedition.org/dice/10943].

15 C.W. Backes, G.A. Van Der Veen, "*Urgenda: the Final Judgment of the Dutch Supreme* Court," in *Journal for European Environmental & Planning Law*, 17, 2020, pp. 307-321.

d. as a result, it is concluded, each single state bears its own specific responsibility for not having fulfilled its positive obligation (and related duties) aimed at preventing the risks of infringement of the rights protected—at European level—by Articles 2 and 8 of the ECHR and therefore must be condemned to adopt the most appropriate restraining measures aimed at reducing and/or eliminating the increasingly concrete and current risks of infringement of the rights protected by Articles 2 and 8 of the European Convention on Human Rights (ECHR).

IV. The Italian way and the emerging role of the (new) intergenerational perspective. The Giudizio Universale case study

In Italy, the first litigation with climate change as a central issue is the *Giudizio Universale* case, promoted in June 2021, by *A Sud Association*, with the involvement of over two hundred plaintiffs, including further associations and several citizens (seventeen minors).[16]

Specifically, the plaintiffs sued the Italian State before the Civil Tribunal of Rome to ascertain and declare the non-contractual liability (*Tort Law*) of the State (ex articles 2043 and 2051 of the Civil Code) and, consequently, to condemn it (Article 2058, § 1 of the Civil Code) to adopt any necessary measure for the abatement, by 2030, of national emissions of carbon dioxide equivalent to the extent of 92% compared to the levels of 1990.

To reach this goal, the plaintiffs underlined the insufficiency and inadequacy of both the measures taken by the Italian State to fight climate change and the measures to be taken and planned with the *Integrated National Energy and Climate Plan* (PNIEC), drawn up in implementation of EU Regulation no. 2018/1999 and communicated to the European Commission at the beginning of 2020.

Particularly, the plaintiffs asked the Court to evaluate the efficacy of the measures against human-induced climate change planned by the Italian State, taking into consideration the mitigative objectives defined by the IPCC in its Special Report *Global Warming 1,5°* (2018),[17] in the more general legal framework of the Paris Agreement.

The plaintiffs based their claim on a report specifically commissioned by a German non-profit organization, *Climate Analytics* and issued in March 2021: *Italy's climate goals and policies in compliance with the Paris Agreement and Global Equity assessments.*[18]

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16 The documentation concerning the case *Giudizio Universale* is available on line at [https://giudiziouniversale.eu/la-causa-legale/].

17 IPCC, 2018, *Global Warming of 1.5℃. An IPCC Special Report on the impacts of global warming of 1.5℃ above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*, World Meteorological Organization, Geneve, Switzerland, 2019.

18 Available on line at [https://giudiziouniversale.eu/wp-content/uploads/2023/07/Executive-summary-Climate-Targets-and-Policies-Climate-Analytics-Report_Italy.pdf].

According to the Report, the measures programmed by the Italian government would have led to a reduction in greenhouse gases of 26% by 2030. This reduction would have reached 36% by 2030, as a result of the measures to be implemented in the near future according to the PNIEC.

The plaintiffs argued that the PNIEC was inadequate to fulfil the goals of the Paris Agreement because it was based on the 2017 National Energy Strategy and, consequently, did not consider the ultimate data contained in the 2018 IPCC Special Report *Global Warming 1,5°C*.

Simultaneously, however, the Climate Analytics *report* estimated that to limit the increase in the global average temperature to within the limit of 1.5°C, as envisaged by the Paris Agreement and based on the 2018 IPCC *Special Report*, Italy should have reduced its emissions by 92% by 2030, compared to 1990 levels (§ III.9-15, pp. 37-39).

A gap (36% vs. 92%) that not only proved the Italian non-compliance with the International and European climate obligations, but that would have generated intergenerational inequality (in the wake of what was decided by the German Constitutional Court in the Neubauer case), "making future generations bear unfair negative consequences in terms of impact and costs" (§ II.20, p. 29).

In this scenario, the "inertia" of the Italian State would have determined a violation of various rights because, according to the plaintiffs, without stabilization of the climate system, the essential core of any fundamental right would no longer be guaranteed being "progressively and irreversibly increasingly compromised" (§ V.5, p. 58).

Thus, the human right to climate begins to take shape, as the right "to demand the non-regression of his or her human development and the essential core of his or her rights, in the face of the dramatic urgency and climate emergency" (§ V.7, p. 59).

What the plaintiffs define as "the claim of non-regression" is a "human right to a stable and secure climate," a kind of "basic right" ("something more than just the right to life: it is the presupposition")[19] which must be recognized in order to avoid "a life in regression with respect to the existential quality of the present time and therefore worse for future generations" (§ V.8, p. 59).

Specifically, the human right to a stable and secure climate would consist of "the right, for every human being, that States take steps to remove the current climate emergency, to safeguard over time and forever the functionality of the climate system and safeguard its thermodynamic stability, courageously focusing on mitigation" (§ V.9, p. 60).

19 "Without climate stability," it continues, "the events or situations that mark the contents of any other present and future human right (from life to health, to the healthy environment, to family and private life) would be destined to irreversible decline in the degenerative processes of *the Global Tipping Points*, even more so in a context of climate *Hot Spots*, such as the Italian one" (§ V. 8, pp. 59-60).

A new human right would be based on art. 2 of the Italian Constitution, international law (articles 1 and 2 of the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966; 1989 United Nations Convention on the Rights of the Child), EU Treaties (in the precept of non-regression deriving from Article 191 of the Treaty on the Functioning of the European Union and EU Regulations no. 2020/852 and 2021/241), and the European Convention on Human Rights (Articles 2, 8, and 14 of the ECHR).

In particular, as per the established jurisprudence of the European Court of Human Rights in environmental matters, a living interpretation of Articles 2 and 8 of the ECHR would determine a positive obligation for the States to adopt appropriate, reasonable, and adequate measures to prevent the risk of violation of rights.

A positive obligation which would be triggered when the threat was real and known by the state, as in the case of the climate emergency. Hence, the concrete risk of a violation of the rights recognized by Articles 2 and 8 of the ECHR, to which is also added the possible violation of Art. 14 of the ECHR which, by sanctioning the prohibition of discrimination, should also be invoked with reference to climate change, by virtue of the disproportionate impacts that its effects would have on certain categories of people, *primarily* children and adolescents (§ V.17-67, pp. 63-67).

On these elements, the parties rooted the non-contractual liability of the Italian State (Article 2043) for not having adopted "actions, nor taken adequate measures to achieve climate stability through a reduction of anthropogenic CO2-eq emissions compatible with the objectives set out in international agreements" (§VI.1, p. 69).

Therefore, the plaintiffs requested that the State be condemned *pursuant* to Article 2058 to a *facere*, that is, to remove the dangerous situation caused by the urgent and potentially irreversible threat of damage to primary assets, through the immediate abatement (-92% by 2030) of anthropogenic climate-changing emissions (§ VI8a-e, pp. 74-77), underlining the responsibility of the individual State, even in a context of planetary emergency.[20]

The proceedings ended, at first instance, with the judgment of the Court of 26 February 2024 declaring the claims brought by the plaintiffs inadmissible due to the absolute lack of jurisdiction of the Court.[21]

20 A principle, read in terms of the co-responsibility of the State, deduced from Article 2055 of the Italian Civil Code in the part in which it affirms the joint liability of each co-author, "since several actions or omissions may well contribute to producing the same harmful fact, therefore in the subsequent circumscribing (relegating) the assessment of the *gravity* and *extent* of the individual conducts to any recourse, to which the injured parties remain extraneous." This principle is also incorporated by the *Principles of European Tort Law*, an expression of general European principles of civil law, at no. 3.105 according to which "in the case of multiple activities, when it is certain that none of them has caused the whole or any determinable part of the damage, all those that are likely to have contributed [even minimally] to causing the damage are presumed to have caused it to the same extent" (§ VI.10e, p. 83).

21 R. Cecchi, "Il Giudizio (o Silenzio?) Universale: una sentenza che non farà la storia," in *Diritti Comparati*, May 2024, available on line at [https://www.dirittocomparati.it/il-giudizio-o-silenzio-universale-una-sentenza-che-non-fara-la-storia/?print-posts=pdf]; M. Delsignore, "La sentenza nella causa Giudizio Universale: se il contenzioso non è la strada corretta, quali altre vie per fronteggiare il cambiamento climatico?," in *Rivista Giuridica dell'Ambiente*, 4, 2024, pp. 1301-1336.

The Tribunal of Rome, in fact, not considering the alleged violations of rights to be well-founded, held that the fulfilment of the climate obligation was not justiciable, being instead the exclusive prerogative of the Government and/or Parliament, according to the doctrine of separation of powers.

A Sud filed an appeal with the Court of Appeal of Rome in October 2024.

V. The case Giusta causa

A. The soft law as parameter of due diligence

If the *Giudizio Universale* case, based on the model of the Urgenda case, is the paradigmatic case of strategic litigation with climate change as the central issue promoted against the State, the *Giusta causa* case, based on the *Milieudefensie* model,[22] is the paradigmatic case of strategic litigation with climate change as the central issue promoted against a multinational company (the most important Italian Oil&Gas company, ENI, participated by the State).[23]

The claim was promoted before the Civil Tribunal of Rome (the same as in the *Giudizio Universale*) by two associations, *Greenpeace* and *Recommon*, and by some private citizens.

The main objective of the legal action was to declare ENI's co-responsibility in the violation of the rights of the plaintiffs, particularly the violation of Articles 2 and 8 of the ECHR, for failing to achieve the mitigating objectives set out in the Paris Agreement and better defined by the IPCC in the Special Report Global Warming 1.5° (2018).

On this basis, the plaintiffs requested that ENI's non-contractual liability be recognised (Articles 2043, 2050, and 2051 of the Civil Code) and that ENI be condemned—among other things—to reduce emissions by at least 45% by 2030 compared to 2020 or, alternatively, to adopt any necessary initiative that could ensure compliance with the Paris Agreement

Specifically, the Giusta Causa case aimed to ascertain ENI's contribution to "climate damage," (through arguments related to the science of climate attribution[24]) and, consequently, its contribution to the adverse effects of climate change on human rights.

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22 Milieudefensie. Friends of the Earth Netherlands, *How we defeat Shell. Mileudefensie et al. v. Royal Dutch Shell PLC – a peek behind the scenes*, Amsterdam 2021, available on line [https://www.foei.org/publication/how-we-defeated-shell-a-do-it-yourself-manual-for-climate-litigation/].

23 The documentation concerning the case *Giusta Causa* is available on line: [https://www.greenpeace.org/italy/rapporto/17711/lagiustacausa-leggi-tutti-i-documenti/].

24 It is worth to note that according to the UNEP *Global Climate Litigation Report. 2023 Status Review*, climate litigation pay increasing attention to the Scienze of Climate Attribution: "The science of climate attribution continues to be central to climate litigation, and as more cases are filed and reach the merits of the plaintiffs' claims, as was anticipated in the 2020 Litigation Report, there will be increased judicial attention on the matter." UNEP, Global Climate Litigation Report. 2023 Status Review, Nairobi, 2023, p. 65.

ENI, on the contrary, stated that its conduct could not be qualified as *contra jus* and that, in any case, the violations of the rights protected by the ECHR should be attributable solely and exclusively to the States and not to private companies.

The plaintiffs argued that the general responsibility to prevent human rights violations also lies with private and multinational companies. This argument was supported by a renewed interpretation of soft law legal instruments (including the *UN Guiding Principles on Business and Human Rights*) which, according to claimants, should have been considered a kind of "legal meter" to assess, in the framework of tort law, the liability of private companies for human rights violations (according to *due diligence* rules).

In contrast, ENI claimed that private companies have no legal obligation to reduce greenhouse emissions and underlined that despite this, ENI voluntarily supports the objectives of the Paris Agreement, having established an inner climate governance system since 2015.

B. What about the causal link?

In the *Giusta Causa* case, the question of the causal link is one of the most relevant.[25]

According to scientific databases cited by the applicants, ENI's cumulative CO2 and CH4 emissions in the period 1988-2015 amounted to 0.6% of global cumulative industrial emissions.

Conversely, Eni argued that neither *attribution science* nor *source attribution*[26] could determine whether, and to what extent, the effects of climate change could be attributed to Eni. Because of this impossibility, it is also impossible to precisely identify ENI's *contra jus* conduct. If this were not the case, ENI would be held liable for the sole fact of operating in the Oil & Gas sector (a form of strict liability). Indeed, ENI pointed out that *soft law* rules are of a purely programmatic nature and so general in scope that they cannot constitute the legal basis of a binding obligation whose breach gives rise to a *contra jus* conduct and, consequently, to tort law liability under Article 2043 of the Civil Code.

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25 For a detailed reconstruction of the elements concerning the causal link in the Giusta Causa case, see BIICL, *Global Perspectives on Corporate Climate Legal Tactics: Italy National Report*, ed. by A. Pisanò, February 2024, available on line [https://www.biicl.org/documents/12147_global_perspectives_on_corporate_climate_legal_tactics_-_italy_national_report_v1.pdf].

26 According to ENI, it should be distinguished between "Attribution Science" and "Source Science." Consequently, the plaintiffs erroneously referred to "Attribution Science" in support of their arguments. Actually, they referred to "Source Science" which, however, according to ENI, does not have sufficient scientific ground. Eni states that the actors recalled "in a vague and contextless way," the results that the so-called attribution science would have reached, i.e. the branch of climate science and engineering that encompasses a wide spectrum of issues relating to the relationship between the currently observable climate variations/changes and the anthropogenic causes that determine them; However, the counterparts actually refer to the so-called "Source Attribution," i.e. a subcategory of the aforementioned "Attribution Science" that deals with the identification of the relative contribution of different sectors, activities and entities to climate change. Well, the so-called "Source Attribution" has not been in any way "adopted" by the IPCC reports, as the plaintiffs claim in relation to the so-called "attribution science," and therefore its relevance for the purposes of attributing a causal link between Eni's conduct and the damages *ex adverso* complained of is excluded. Studies on source attribution, very recent and still immature, were born with the aim of quantifying the effect/responsibility of emissions produced by states on climate change phenomena, with the aim of proposing government climate mitigation actions, to rebalance the position of states with poorer economies. These are therefore studies with purely political purposes, not the attribution of responsibility to private subjects, neither from a material nor from a legal point of view." ENI, *State of Defense*, p. 98 available on line [https://www.eni.com/content/dam/enicom/documents/ita/media/causa-eni-greenpeace-recommon/Comparsa-di-costituzione-e-risposta-nellinteresse-di-Eni-SpA.pdf].

Instead, according to the claimants, Eni's decisive contribution to the damage event (the violation of individual and collective rights) should be assessed according to the so-called criterion of "prevailing probability" or "more probable than not," which is valid in ascertaining the causal link in civil liability (Civil Cassation Court, sentence no. 25884/2022).

In addition, the claimants argue that compensable damage should also include damage caused by the so-called "mediate causality," according to the rule whereby *causa causae est causa causati*. This would mean that "with respect to compensability of damage resulting from an unlawful act, the causal link must be understood in such a way as to include in the compensation also indirect and mediated damages which occur as a normal effect of the event, according to the principle of causal regularity" (p. 107).[27]

Finally, according to the claimants, the fact that climate change could also be caused by other factors (e.g. greenhouse emissions emitted by other carbon majors or public or private entities) is certainly not sufficient to exclude ENI's liability and its contribution to climate change. Concerning the causal link, according to Art. 41(3) of the Italian Criminal Code, the unlawful act of others, in which the pre-existing, simultaneous, or supervening cause may arise, does not exclude the causal relationship between the action or omission and the event.

However, it is important to highlight that, according to Article 2055 of the Civil Code, when the harmful event is attributable to more than one person, all are jointly and severally obliged to pay compensation for the damage. Therefore, according to the claimants, ENI would be civilly liable for the damage caused by climate change that it caused or contributed to causing.

With reference to the causal link, ENI further underscores that causation is interrupted when the defendant's conduct and the harmful event are separated by other conduct, of third parties or of the injured party itself. This conduct, inherently capable of producing a harmful event, deprives any defendant's unlawful conduct of causal efficiency and reduces it to a mere occasion; therefore, it is devoid of legal significance.

Moreover, ENI submits that when seeking compensation for damage manifested long after the alleged harmful conduct, the elapse of a considerable amount of time between that conduct and the resulting damage, while not excluding the causal link per se, considerably diminishes its probability and demands particularly accurate and more compelling evidence in establishing causation.

Furthermore, according to ENI, the examination of the causal link must always occur at a normative level, requiring the existence of a positive duty of conduct whose infringement has led, based on an adequate assessment of causation, to a harmful event.

27 "With regard to the possibility of refundability for damages resulting from unlawful acts (or from non-compliance, in the case of contractual liability), the causal link must be considered in such a way as to include in the refundability also indirect and mediated damages that occur as a normal effect according to the principle of the so-called causal regularity." Cass. Civ. Sent. n. 15274 del 04/07/2006.

This principle also applies in cases of omission, requiring the identification, in such instances, of a pre-existing legal obligation to act based on a statutory provision or contractually assumed obligation. According to ENI, private companies are not legally obligated to achieve the Paris goals.

In order to legitimize the judge's intervention, the plaintiffs cite Articles 9 and 41 of the Italian Constitution, as recently amended by Constitutional Law No. 1/2022.

The new Art. 9 of the Constitution provides that "(t)he Republic shall promote the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation. It protects the environment, biodiversity and ecosystems, also in the interest of future generations. State law regulates the ways and forms of animal protection."

The Reformed Art. 41 of the Constitution states that "private economic initiative is free. It may not be carried out in conflict with social utility or in such a way as to damage security, freedom, human dignity, health and the environment. The law shall determine appropriate programmes and controls so that public and private economic activity may be directed and coordinated for social and environmental purposes."

According to the claimants, the reform of the Constitution paves the way for rulings similar to that of the German Federal Constitutional Court of 2021 (Neubauer case), which ordered a more balanced review of the use of the German carbon budget in the period 2021-2030 and 2030-2050.

In the present case, according to the plaintiffs, ENI intends to increase, rather than decrease, its production of hydrocarbons (oil and gas) in the short term until peak production in 2026. This effectively means postponing emission cuts, in contrast to the indications of the scientific community on the urgency of reducing most greenhouse gas emissions in the current decade (by 2030), in violation of the interests of future generations protected by the new Article 9 of the Constitution.

According to the applicants, the new constitutional rules would pave the way for a broader judicial review of environmental/climate interests, including those of future generations.

Conclusion – Giudizio Universale vs Giusta Causa. Different paths, same destination?

As in the most important European cases, the human rights approach played a pivotal role in the *Giusta causa* case.

The counter-proof of the importance of the topic of rights in this type of strategic litigation (climate litigation) lies in the fact that the judgment in the *Giusta causa* case was suspended following an appeal to the Court of Cassation filed in June 2024 by Greenpeace and Recommon (Appeal for preventive regulation of jurisdiction, pursuant to Article 41 of the Code of Civil Procedure).

Through this appeal, Greenpeace and Recommon aimed to ask the Court of Cassation to declare the legal jurisdiction of the Tribunal of Rome.

This choice was motivated on the one hand by the precedent of the first-instance judgment, also of the Tribunal of Rome, in the *Giudizio Universale* case. Here, as we have seen, the judges of Rome (February 2024) declared the inadmissibility of the case due to lack of jurisdiction, not recognizing a possible violation of human and/or fundamental rights by the State and therefore considering the issues linked with the implementation of the Paris Agreement not justiciable.

However, contrary to what was established by the Tribunal of Rome in the *Giudizio Universale* case, in the appeal to the Court of Cassation, it was pointed out that, the European Court of Human Rights, in the *KlimaSeniorinnen* judgment (April 2024[28]) declared admissible and accepted (albeit in part) the claim brought by a Swiss association (*KlimaSeniorinnen*) recognizing that the insufficiency of the mitigating actions carried out by the Swiss government led to the violation of some recognized human rights by the European Convention (Articles 2 and 8).

Therefore, to prevent the Tribunal of Rome from declaring a lack of jurisdiction, Greenpeace, Re:Common, and the other plaintiffs asked for an immediate ruling from the Court of Cassation.

Finally, with ordinance n° 20381 (April 2025), the Court of Cassation excluded the absolute lack of its jurisdiction, recognizing the competence of the Civil Tribunal of Rome. Hence, the Court of Cassation highlighted the specificity of the case "Giusta Causa" compared to "Giudizio Universale." Specificity which lies on the different nature of the two judgments. According to the Court, the case "Giusta Causa" must be considered as a "common action for damages" against a private company (not against the State, as "Giudizio Universale) and therefore it should be judged by a civil court (the Tribunal of Rome).

At the same time, given the nature of the civil judgment, the ordinance excluded any form of invasion of the sphere of competence of the legislative power (central point in the case "Giudizio Universale"), specifically because in the case "Giusta Causa" the counterpart is not the State but a private company.

Consequently, with an important pronounce, the Court of Cassation recognized the jurisdiction of the Civil Tribunal of Rome in matter of damage deriving from climate-changing emissions and in particular damage caused by private companies, even if carried out outside the national territory.

In conclusion, in Italy, climate cases are still in their infancy.[29] Despite growing interest from scientific literature and social actors, the most important cases with climate change as central issue remain those brought against the Italian State (Giudizio Universale) and ENI (Giusta Causa).

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28 M. Carducci, *La sentenza* KlimaSeniorinnen *e il* Carbon Budget *come presidio materiale di sicurezza, quantitativa e temporale, contro il pericolo e come limite esterno alla discrezionalità del potere*, in "DPCE online," 2, 2024, available on line [https://www.dpceonline.it/index.php/dpceonline/article/view/2201/2496]; M. Carducci, *Le affinità "emissive." La giurisprudenza comparata destinata a incidere sul contenzioso climatico italiano*, in "Diritti Comparati. Comparare i diritti fondamentali in Europa," July 2024, available on line at [https://jimdo-storage.freetls.fastly.net/file/e9fb2175-03df-41ad-bcbf-bd888e78e950/Carducci%20Affinit%C3%A0%20emissive.pdf].

29 See the Italia National Report. Globale Perspective on Corporate Climate Legal Tactics. Sommario Esecutivo, BIICL, 2024, available on line at [https://www.biicl.org/documents/12400_global_perspectives_on_corporate_climate_legal_tactics_Y_italy_executive_summary.pdf].

Although the only sentence we have at the moment is that one of the Tribunal of Rome in the *Giudizio Universale* case, which does not recognise the impact of climate change on human rights, it is easy to predict that the Klimaseniorinnen ruling will impact future judgments.

Just as it cannot be overlooked that the recent amendment of the Constitution, with the introduction of the principle of inter-generational responsibility, will certainly have a weight.

It is indubitable that the cost of the climate crisis will be paid by future generations. At the same time, it is even more evident that the measures needed to combat human-induced climate change must be taken as soon as possible.

In this scenario, the game against human-induced climate change has yet to be completed.