RETOOL

Strengthening Democratic Governance For Climate Transitions

Policy Brief

The Role of Courts in European Climate Governance

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Key Messages

- Climate litigation has become an established feature of climate governance in the EU.
- Climate litigation before national courts of EU Member States targets governments as well as corporate defendants.
- Corporations are the most active claimants in climate cases before the CJEU.
- Rights-based claims and civil society participation are growing across the EU.
- Climate litigation in the EU typically gives effect to democratically adopted law.
- The prospect of judicial scrutiny can encourage better climate planning and decision-making.
- Climate litigation's contribution to democratic governance depends on effective access to justice.

1. Introduction

This policy brief synthesises research conducted within the RETOOL project. The project aims to advance the understanding of how to address the twin challenges of responding to the climate imperative while strengthening democracy, by examining how various institutions contribute to the climate transition. One of the areas of research within the project concerns the role that courts play in European climate governance, which is set out in full in the accompanying report, *Courts and Climate Litigation*.

Over the past two decades, litigation has become an established feature of climate governance worldwide. Individuals, civil society organisations, businesses and public authorities increasingly rely on courts to challenge climate-related decisions, clarify legal obligations and enforce climate law. Existing research has focused on the growth of this phenomenon and its legal and constitutional implications. Less attention has been paid to the systematic analysis of such litigation across the EU, especially before the Court of Justice of the European Union (CJEU), and to its significance for democracy.

The RETOOL report examines the role of courts in democratic climate governance, and considers how courts contribute to accountability, implementation, transparency, institutional learning and the rule of law in the EU. It also explores how the CJEU and the courts of EU Member States interact with legislatures, governments, administrative agencies and civil society.

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This brief summarises the report's findings, which rely on three main sources of evidence:

1. an original dataset of 244 climate cases filed before the national courts of EU Member States between 2002 and 2024 (190 in the current Member States and 54 in the United Kingdom prior to its withdrawal from the EU);
2. an original dataset of 448 climate-related cases filed before the CJEU between 1990 and 2024;
3. an in-depth case study of Ireland based on an expert focus group and ten semi-structured interviews with judges, legal practitioners, civil society representatives, and academics.

The first two datasets map broader trends in climate litigation across the EU, while the Irish case study provides insights into how litigation affects decision-making processes, institutional behaviour, and stakeholder participation. Direct quotations from interviewees cited throughout this brief are drawn from the Irish case study. The analysis was also informed by studies prepared by members of the research team for the European Union Forum of Judges for the Environment (2022) and the Council of Europe (2026).

What is climate litigation?

Climate litigation is commonly described as judicial proceedings involving material issues of climate change science, law or policy. Although public debate frequently focuses on a small number of high-profile cases similar to *Urgenda v State of the Netherlands*, climate litigation in the EU comes in many forms. For example, many climate cases filed before the CJEU relate to the technical interpretation and application of EU environmental, energy and state aid legislation. This reflects the CJEU's distinct constitutional role within the EU legal order, the specific procedural pathways available to claimants, including the preliminary ruling procedure, and the market-based nature of much EU climate legislation. Conversely, cases before national courts frequently rely on constitutional principles, human rights, national framework climate legislation, and duties of care. These include cases seeking review of national climate policies, emission reduction pathways and statutory climate obligations, as well as challenges to individual planning and permitting decisions and environmental assessments.

2. Findings

Climate litigation in EU Member States

Climate litigation before national courts is largely concentrated in selected Member States. Germany accounts for by far the largest number of cases (68), followed by the United Kingdom (54, until January 2020 – when the UK officially withdrew from the EU), France (31), Spain (17) and the Netherlands (13). Eight Member States (Croatia, Cyprus, Greece, Latvia, Lithuania, Malta, Slovakia and Slovenia) have no recorded cases at all (Figure 1). Climate cases have been predominantly filed by civil society organisations and individuals, acting collectively or separately, who together account for 79% of cases filed in current Member States.

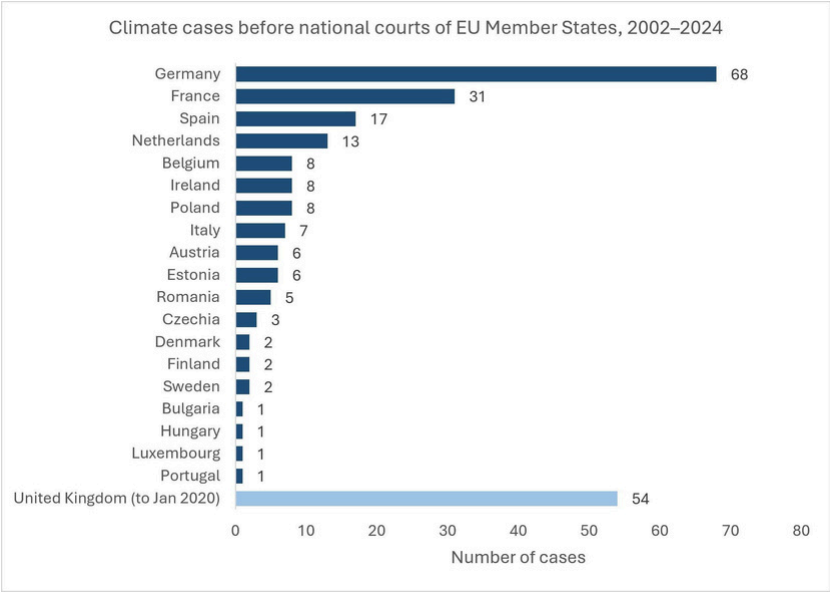


Figure 1: Total climate cases filed before the national courts of EU Member States (2002-2024). Cases are counted from each state's date of EU accession. Member States with no recorded cases are excluded. United Kingdom: cases filed until its withdrawal from the EU on 31 January 2020 only.

The most common cases are those challenging the adequacy of national climate policies or governments' compliance with existing statutory climate obligations. Such claims rely on a variety of grounds, including human rights, codified duties of care, and statutory obligations under national framework climate legislation. The claimants in *Associação Último Recurso and Others v Portugal*, for example, argued that the state had failed to comply with its obligations under the Portuguese

framework climate law and had breached constitutional and ECHR rights as a result. *Greenpeace Netherlands and 8 citizens of Bonaire v The Netherlands*, in contrast, was argued based on a duty of care under the Dutch civil code and human rights.

Another prevalent type of case filed against public actors comprises claims seeking the integration of climate considerations into administrative decision-making and sectoral policies, challenging planning approvals, environmental impact assessments, permitting decisions, and the like. For example, in *Coolglass Wind Farm Ltd v An Bord Pleanála*, a corporate applicant successfully sought judicial review of a planning authority decision that refused planning permission for a windfarm, on the ground that the authority had failed to adequately account for statutory climate obligations under national framework climate legislation. In *Coöperatie Mobilisation for the Environment UA and Others v Executive Board of Province of North Holland*, the applicants (unsuccessfully) challenged the permitting of a biomass facility based, among other factors, on the failure to account for the facility's CO2 emissions.

Climate-washing claims are the most prevalent form of climate litigation against corporations before national courts. These cases typically challenge inaccurate narratives by corporations on their contributions to the climate transition — for example, regarding a company's professed carbon neutrality ambitions (*Greenpeace France and Others v TotalEnergies*) or the advertising of 'sustainable' aviation (*FossielVrij NL v KLM*).

Through these cases, litigation is used as a mechanism enabling civil society to participate in climate governance by seeking to enhance the implementation and enforcement of climate law and ensure institutional accountability and legal compliance.

Accountability mechanisms are increasingly reaching beyond the public sector.

Public actors are the principal defendants in national climate cases, the majority of which challenge the lawfulness of acts by governments and national and subnational authorities. However, litigation against corporate defendants has risen sharply, from no more than four cases a year before 2021 to 18 in 2021 and 19 in 2022 (Figure 2). This reflects a growing recognition that responsibility for achieving climate objectives extends beyond governments to private economic actors whose activities have significant implications for greenhouse gas emissions and climate governance.

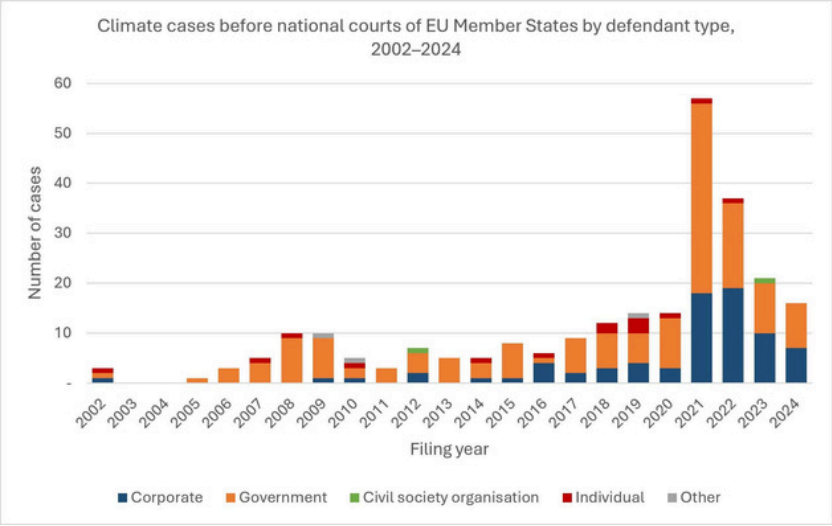


Figure 2: Climate cases before national courts of EU Member States by defendant type (2002-2024). A case with more than one type of defendant is counted in each applicable category.

Legal basis category	Relative prevalence in the dataset (descriptive, non-numerical)
Government-framework litigation (challenges to national climate strategies or statutory compliance)	Largest single category; the most frequently coded legal basis in the dataset
Integration of climate considerations into administrative decision-making	Second most common category
Human-rights-based claims	Growing steadily since Urgenda and KlimaSeniorinnen, though still less frequent than the first two categories
Climate-washing	Most prevalent form of corporate climate litigation
Polluter-pays / compensation claims	Still a small minority of cases; few have yet reached final judgment

Table 1. Relative prevalence of legal basis in climate litigation in EU Member States

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The range of actors engaging in climate litigation in Europe is becoming ever more diverse. Corporate actors increasingly appear not only as defendants but also as claimants, as illustrated by *Coolglass Wind Farm Ltd v An Bord Pleanála*. A rising number of corporate actors have challenged administrative decisions affecting renewable energy projects, planning authorisations and other regulatory measures, particularly those affecting the energy transition. These cases suggest that climate litigation serves not only as an instrument for countering climate inaction but also for resolving conflicts arising during the implementation of climate and energy policies. Some of these cases form part of what scholars have termed 'just transition litigation', which concerns how the costs and burdens of climate action are distributed. In this context, courts have become the institutional forum for balancing competing public and private interests within the climate transition.

Public law doctrines are increasingly translated into enforceable corporate climate obligations.

With the growing number of cases against corporations, courts have had to grapple with the enforceability of climate obligations against private actors. The trajectory of this litigation before national courts shows a close connection between public and private law doctrines. This is illustrated by the application of human rights standards in interpreting corporate duties of due care. In *Milieudefensie v Royal Dutch Shell*, the Dutch Court of Appeal affirmed that corporations bear a legal responsibility to combat climate change and contribute to achieving the Paris Agreement temperature goal, and that the social standard of care they owe is informed by human rights law, although it overturned the specific emissions reduction order imposed at first instance. Milieudefensie has appealed the decision, and the case is currently pending before the Dutch Supreme Court.

Climate litigation before the CJEU

CJEU climate litigation is characterised by questions of interpretation and implementation.

Climate cases before the CJEU centre on the interpretation, implementation, and enforcement of the EU's complex and technical climate framework. This is underscored, in particular, by the high proportion of requests for preliminary ruling. At 46%, these make up the largest group of climate cases before the CJEU, followed by actions for annulment (40%) and infringement proceedings (13%),

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with the remainder (1%) consisting of actions for damages, actions for failure to act and one opinion (Figure 3).

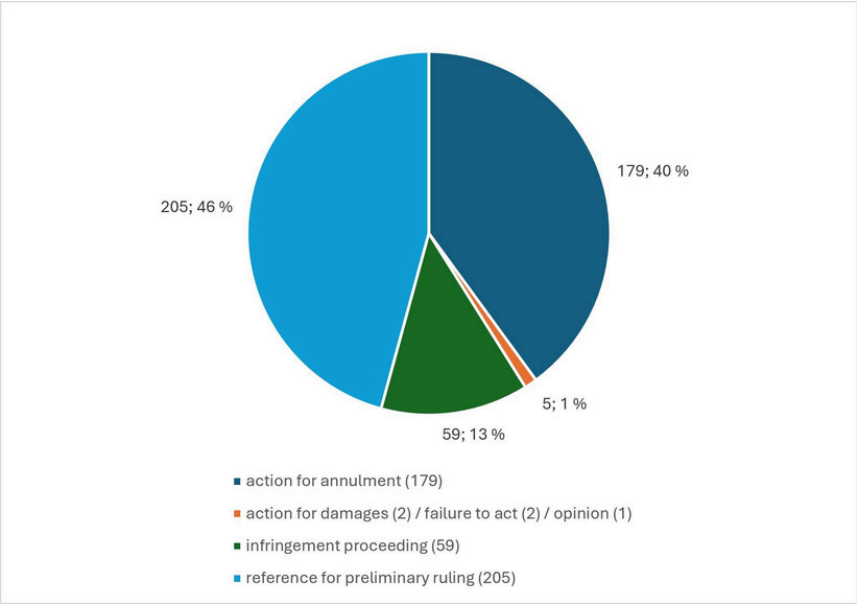


Figure 3: Proportion of proceedings, by type, in climate cases before the CJEU (1990–2024)

Many of these requests concern the implementation of EU climate-related obligations through national measures. In *Case C-122/05 Commission v Italy*, the Court of Justice found that Italy had failed to fulfil its obligations by not adopting, within the prescribed period, the national measures needed to transpose the EU Emissions Trading System Directive (Directive 2003/87/EC).

These cases illustrate the growing interaction between EU climate law, national legislative frameworks and international law. As issues originating in national climate cases make their way before the CJEU, the cross-jurisdictional influence of climate litigation is strengthened.

Corporations are the most active litigants in CJEU climate cases.

Unlike climate litigation before national courts, climate cases before the CJEU are most frequently filed by corporate and industry actors. Corporate actors account

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for 53% of claimants, significantly outnumbering EU institutions (15%), states (13%), individuals (9%) and civil society organisations (8%) (Figure 4).

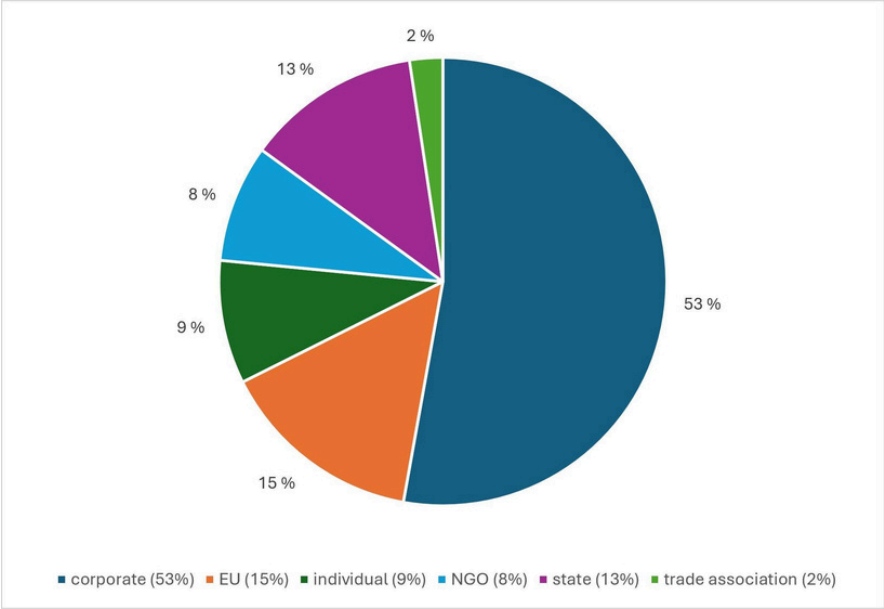


Figure 4: Proportion of claimants, by type, in climate cases before the CJEU (1990–2024). A case with more than one type of claimant is counted in each applicable category.

Changes in procedural avenues have enabled greater participation by civil society.

The number of direct actions brought by civil society organisations and individuals has increased over time: of 29 such cases, 27 were filed in or after 2010. The research indicates that the adoption of new procedural pathways giving effect to the Aarhus Convention — most saliently, the internal review mechanism under the Aarhus Regulation — have contributed to increasing civil society engagement before the EU courts despite the continuing constraints posed by the CJEU's restrictive interpretation of standing rules under Article 263 of the Treaty on the Functioning of the European Union (TFEU).

Fundamental rights have increasingly featured in EU climate litigation.

Early iterations of climate litigation before the CJEU focused almost exclusively on the technical implementation and enforcement of legislation, notably through

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infringement proceedings and direct actions relating to the EU Emissions Trading System. Over time, cases have increasingly featured fundamental rights and procedural guarantees — especially following the entry into force of the Charter of Fundamental Rights of the European Union and the implementation of the Aarhus Convention within the EU legal order. This evolution reflects developments in climate litigation globally, which also displays a growing reliance on human rights.

The role of courts in European climate governance

European climate litigation primarily plays an interpretative, enforcement, and implementation role, complementing democratic climate governance.

In addition to resolving individual disputes, climate litigation performs a broader institutional function supporting the implementation, interpretation, and enforcement of climate law. Climate litigation, for the most part, does not ask courts to make climate policy. Instead, it operates primarily as a mechanism through which existing democratically adopted laws and commitments are given practical effect. These themes emerged consistently in interviews conducted for the Irish case study. As one interviewee put it:

"[W]ithout litigation, the climate law is just paper." (Interviewee 9, legal practitioner)

As another interviewee noted, however:

"Litigation is a really critical tool […] for accountability but it's not going to deliver or unlock the transition on its own." (Interviewee 1, civil society)

The contribution of climate litigation extends beyond individual judgments but depends on effective access to justice.

Beyond individual case outcomes, the prospect of judicial scrutiny encourages public authorities to improve climate planning, strengthen administrative decision-making, and better integrate scientific evidence into policy processes.

In Ireland, for example, the Supreme Court's judgment in *Friends of the Irish Environment v Government of Ireland* (2020) quashed the National Mitigation Plan because it did not set out with sufficient specificity how statutory climate objectives would be achieved. The Court did not prescribe the content of climate policy, but it

reinforced the expectation that climate plans must be clear enough for the public to assess them. Similarly, interviewees reported that the *Coolglass* litigation prompted developers and their legal advisers to pay greater attention to climate assessments and statutory compliance in planning applications, although subsequent legislative amendments narrowing the relevant provision of national framework climate legislation have since weakened these incentives.

Interviewees in the Irish case study stressed that litigation can produce benefits regardless of its outcome:

"[T]here can conceivably be benefits even if you lose the ultimate judgment." (Interviewee 6, civil society)

In this way, climate litigation promotes institutional learning, transparency, and the rule of law, enhances accountability, and creates and protects opportunities for civil society to participate in climate-related decision-making. However, challenges in engaging judicial oversight persist, notably in the form of barriers to accessing justice, resource inequality — including monetary resources and access to legal and scientific expertise — and growing political resistance.

As one legal practitioner observed:

"[C]limate litigation is not accessible to the people who are impacted by climate change at all." (Interviewee 9, legal practitioner)

Judicial oversight can reinforce democratic governance only where individuals, communities, and representative organisations are able to invoke legal protections in practice. In addition, protecting citizens' ability to contest decision-making through legal review is crucial to ensuring the resilience and credibility of democratic governance.

Some interviewees nonetheless regarded public criticism of climate cases as a normal part of democratic life. As one legal practitioner put it:

"[H]ealthy debate around cases — about whether they should be brought, about whether they're valid, about what they mean in the long run — is always a good thing. […] I do see it as a sign of a healthy democracy that there are people that criticise what you're doing. But similarly, I have a right to take cases to court on behalf of my organisation — and if they are legally sound and there's legal merit to do so, then that's what I do." (Interviewee 3, legal practitioner)

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3. Conclusion

Climate litigation is not a fringe activity, but an established feature of climate governance across the EU. Courts have generally exercised restraint in adjudicating these cases, ensuring that governments comply with statutory, constitutional and administrative requirements while leaving policy choices to democratically elected institutions. Climate litigation contributes most effectively to democratic climate governance when it operates within a supportive legal and institutional environment. Policymakers, courts and civil society actors, including their legal counsel, can take practical measures to strengthen the accountability, effectiveness and legitimacy of climate governance in Europe, as set out in the recommendations below. In this way, courts can continue to support effective, accountable and democratic climate action across the EU.

4. Recommendations

4.1 Policymakers

- **Climate legislation and policy should be transparent and accompanied by clear institutional responsibilities**, robust monitoring arrangements, and well-reasoned administrative processes. Not only do these measures improve democratic accountability, but they also reduce the likelihood of avoidable litigation.
- **Effective access to justice should be safeguarded** by ensuring that procedural rules, standing requirements, and litigation costs do not create unnecessary barriers. This is particularly important in relation to individuals and civil society organisations seeking to protect the public interest.

4.2 Courts

- **Courts should continue to provide effective judicial oversight through clear and reasoned judgments** that promote legal certainty while respecting the institutional responsibilities of legislatures and governments, including by facilitating the appropriate use of scientific and technical expertise in resolving climate disputes.
- **Courts should ensure that remedies remain effective and proportionate**. Remedies should promote compliance with legal obligations while recognising the practical requirements of implementation.

4.3 Civil society and legal practitioners

- **Litigation is most effective when combined with broader forms of democratic engagement**. Civil society organisations should therefore continue to use litigation strategically alongside advocacy, public participation and engagement with legislative and administrative processes, rather than as a substitute for them.
- **Collaborative networks between representative organisations, lawyers, scientists and affected communities should be maintained and expanded.** Such networks strengthen the quality, legitimacy and effectiveness of climate litigation by ensuring that it remains responsive to the interests of those it seeks to represent.

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