CLIMATE JUSTICE AND THE PROTECTION OF FUTURE GENERATIONS

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Abstract*:*
Changes in climate caused by global warming resulting from greenhouse gas emissions increasingly threaten our present and our future, and therefore our ability to react to protect the climate, biodiversity, and human health is at stake. The effects of climate change are complex and long-lasting for future generations, wich has led to increased international concern regarding environmental protection, the reduction of greenhouse gas emissions, and the development of legal and institutional mechanisms capable of holding states and economic actors accountable for environmental degradation.
In this context, climate change has contributed to the emergence and development of the concept of "climate justice". Climate justice is a recognition of the fact that climate change has far-reaching effects, the effects of the climate crisis being felt differently, as the UN notes, between rich and poor, women and men, older and younger generations.
The introduction of the concept of "climate justice" aimed to encourage the connection and collaboration between the climate movement and the international environmental community.
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On July 23,2025, the International Court of Justice in The Hague unanimously adopted an advisory opinion on the obligations of states on climate change. The Court ruled that climate change is ,,an existential problem of planetary proportions, which endangers all forms of life and very health of our planet.”[1]

Faced with the reality that human responsibility for global warming is ,,unequivocal” [2], and the time to keep global warming below 1,5°C is rapiddly shortening, the law has had to transform. Climate decision are being made today, but the effects of these decisions will fall disproportionately on future generations. From a legal perspective, a paradigm shift is needed to give law its rightful place in this reality of today’s society.

Climate justice seeks to align environmental protection with the principles of equity, human rights and social responsibilities, requiring that parties that have contributed significantly to climate change bear a proportionate share of the costs and remediation obligations.

Climate justice has crossed the threshold of aspirational morality and has become a justiciable legal obligation. This hypothesis is supported both at the doctrinal level [3]

and at the jurisprudential level, the last five years having contributed profoundly, through a number of decisions, to the relationship between political power and judicial control in climate matters.

The advisory opinion of the International Court of Justice in July 2025 transformed climate justice into a matter of general international law. Thus, the number of climate disputes has become impressive.According to the annual report published by the Grantham Research Institute on Climate Change and the Environment [4], by mid-2024, over 2600 climate cases werw registered globally, including the Ugenda ruling issued by the Suprem Court of the Netherlands in December 2019 and the Neubauer decision of the Federal Constitutional Court of Germany in March 2021. In Romania, the case of Declic Association v. Government of Romania, pending before the Cluj Court of Appeal, represents the first systemic climate action in our country and opened the space for doctrinal reflections on the adequacy of national legal instruments.

1. Climate Justice and Intergenerational Equity. Conceptual Foundations

Climate justice is a concept that addresses the fair and equitable sharing and distribution of the benefits and burdens of climate change and the responsibilities to address climate change. The term ,,climate justice" which emerged in the 1990s, does not refer to a single concept. Rather, it covers three different ways of understanding what is unfair when we talk about climate [5]. ,,Justice", ,,fairness" and ,,equity" are not entirely identical, but they are part of the same family of related terms and are often used interchangeably in negations and politics. The three dimensions of climate justice are: the distributive dimension, the procedural dimension and the corrective dimension.

The distributive dimension of climate justice focuses on who bears both the costs of climate change and the actions taken to address it. It is a well-know fact that high-emission countries have prospered economically over the past two centuries, while small island states, which have contributed almost nothing to emissions, are at risk of disappearing physically under water. At the individual level, the situation is similar, with the poorest producing the least emissions but suffering the worst consequences. In this sense, climate justice means a fair distribution of costs and benefits.

The procedural dimension focuses on how climate decisions are made – who is consulted, who has access to information, who can go to court. The reference instrument within this dimension is the Aarhus Convention (1998), ratified by Romania by Law no.86/2000, which established information, in the right to participate in decision-making and the right to bring an action before a court.

The corrective dimension concerns the repair of damage already caused. At the international level, this dimension was materialized in the ,,loss and damage" mechanism, recognized as the third pillar of global climate policy, along with emission reduction and adaptation, at the Conference of the Parties in Sharm el-Sheikh (2022).

The three dimensions of climate justice are complementary, having a temporal dimension, since they all raise, sooner or later, the question of future generations.

The idea that the present generation owes something to future generations is not new, it has appeared since antiquity, in philosophical reflections. What is new, however, is its transposition into law..

The american jurist Edith Brown Weiss[6] proposed a simple contruction, that of thinking about the relationship between generations by analogy with a fideicomis. As a ,,trustee" he is obliged to preserve the diversity of options of the planet, to preserve the quality of ecosystems and the maintain equitable access to resources.

The international community quickly took up this construction, the way being opened by the definition of sustainable development as development ,,that meets the needs of the present without compromising the aility of future generations to meet their own needs", in Brundtland Report (1987) [7]. In 1992, this principle entered into positive law through the United Nation Framework Convention on Climate Cange. Article 3 paragraph (1) requires states to protect the climate system ,,for the benefit of present and future generations of mankind, on the basis of equity and in accordance with their common but differentiated responsibilities".

Thus, the idea that future generations have a distinct legal status has been enshrined in a major multilateral convention.

This normative enshrinement has been criticized from the beginning, most notably by the british philosopher Derek Parfit. He argues that future generations, being unborn, cannot have rights of their own, since their existence and identity are closely linked to the

decisions we make today. It is therefore difficult to say whether a future person can be harmed by a decision without which they might not have existed [8].

The legal answer to this problem was that future generations do not need to be current holders of rights for the state to be bound by them. The state is obliged to protect fundamental interests such as life, health, the environment even now, regardless of who the people of the future will be. In practice, this idea has led to the emergence of institutions to represent future generations. A well-know example is the Commissioner for Future Generations in Wales, created by the Well-being of Future Generations Act 2015 [9]. Its role is to analyse the long-term effects of public decisions. Similar institutions have also existed in Hungary, the idea being recently supported by the UN Declaration on Future Generations, adopted in 2024.

In national doctrine, the concern for equity between generations has developed especially in recent years. Mircea Duțu, in his work Dreptul climei (2021), shows that climate change has created a distinct legal field, different from environmental law, with its own principles and instruments, and that a new right should be recognized – the right to a stable climate. This right is seen as part of the right to a healthy environment, but it also has its own content directly related to climate protection and the effects of climate change [3].

This doctrinal proposal provides an important theoretical framework for analyzing the relationship between environmental protection, climate change and responsibility towards future generations.

2. The normative framework

Climate justice can be understood more easily if we first analyze the set of rules and principles that define it. They operate on three closely related and mutually influencing levels: international, European and national.

The starting point of climate regulations at the international level is the United Nations Framework Convention on Climate Change. This document introduces, for the first time, at the international level, the idea of intergenerational equity. At the same time, the Convention defines climate change as a ,,common concern legal importance, as it

shows that the climate problem does not concern each individual state exclusively, but implies a shared responsibility at the global level''.

A decisive moment for climate regulations was the adoption of the Paris Agreement [10], ratified by Romania by Law no. 57/2017, which sets a concrete objective, namely to limit the increase in global temperature to well below 2°C and, as far as possible, to a maximum of 1,5°C compared to the pre-industrial period. To achieve this objective, states must develop nationally determined contributions (NDCs), their own plans to reduce greenhouse gas emissions. Even though each contry sets its own targets, the agreement requires them to be periodically reviewed, in the direction of more ambitious measures [10]. This mechanism, apparently flexible, has begun to be interpreted more strictly by the courts..

In September 2024, the United Nations General Assembly adopted the Pact for the Future, along with the Declatation on Future Generations. It is the first ONU document explicitly dedicated to protecting the interests of the future generations. Although it has no legally binding force, the declaration consolidates an international political consensus, which can influence the interpretation of existing obligations.

At the European Union level, climate policy is based primarily on two key instruments. The first is the European Climate Law (Regulation (EU) 2021/1119), which sets two binding targets for all Member States: achieving climate neutrality by 2050 and reducing greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels. The second instrument is the European Green Deal, together with the “Fit for 55” legislative package, which translates these general objectives into concrete measures applicable to various sectors, such as energy, transportation, and the energy efficiency of buildings.

This legal framework is supplemented by the Charter of Fundamental Rights of the European Union, which, in Article 37, establishes the obligation to protect the environment and promote sustainable development. It should be noted, however, that the Court’s practice regarding climate change has so far remained quite restrictive. In *the Carvalho case* (2019), the General Court dismissed the action brought by ten families affected by climate change, finding that they were not affected “directly” and “individually” [11]. The

judgment, which was upheld on appeal, highlights the gap between the Union's lofty legislative ambitions and the limited access to climate justice before the European courts.

The European Court of Human Rights has also gradually developed significant case law in the field of environmental protection. The starting point was the case of *Lopez Ostra v. Spain*, in which the Court held that severe pollution may violate the right to private and family life, as protected by Article 8 of the Convention [12]. For Romania, an important milestone is the case of *Tătar v. Romania* [13]. In this case, the Court applied the precautionary principle and affirmed the state's obligation to assess and control environmental risks. The case remains an important precedent, with direct implications for current climate-related litigation.

In Romanian law, the foundation of environmental protection is represented by Article 35 of the Romanian Constitution [14], which guarantees the right of every person to a healthy and ecologically balanced environment. At the same time, the state has the obligation to create the necessary legislative framework to protect this right. Even if the constitutional text does not explicitly mention future generations, its wording allows for a broad interpretation, including in this direction.

The main regulation in this area is Government Emergency Ordinance no 195/2005, which enshrines principles such as prevention, precaution and the „polluter pays". Unlike other European countries, Romania does not yet have a climate framework law similar to the Climate Change Act. Currently, domestic climate regulations mainly stem from the transposition of European Union legislation and from national strategies or plans of a programmatic nature. These documents establish directions for action, but do not always create direct legal obligations but do not always create direct legal obligations that can be verified in court.

3. Case law – a benchmark for climate justice

According to the Grantham Research Institute's annual report, there were over 2,600 climate-related lawsuits worldwide as of mid-2024. Four of these rulings have had a major impact on the development of climate justice. Analyzing them is important both for the rulings themselves and for how they have strengthened the protection of future generations.

Urgenda Foundation v. State of the Netherlands was the first decision by which a supreme court obliged a state to reduce its greenhouse gas emissions. The court held that climate change threatens the right to life and privacy, protected by the European Convention on Human Rights. The decision opened the way for judicial rewiew of climate policies [15].

In the case *Neubauer v. Germany,* the Federal Constitutional Court of Germany ruled that German climate law was incomplete because it shifted the burden of reducing emissions onto future generations. The Court stated that fundamental rights must also be protected in the long term, enshrining the idea of „intertemporal guarantees of freedom" [16].

In the judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* the ECHR established that states have an obligation to protect the population against the serious effects of climate change. The Court recognized the role of associations in climate disputes, emphasizing the collective and intergenerational dimension of the problem, directly invoking the need for a fair distribution of burdens between generations. The effects of the judgment extend beyond Switzerland. According to the mechanism of the Convention, the judgment has an authority that covers all member states of the council, including Romania.

The most recent development is *the advisory opinion of the International Court of Justice* dated July 23, 2025. The Court affirmed that the goal of limiting global warming to 1.5°C is binding and that states must adopt much more ambitious climate measures. The Court explicitly enshrined the principle of intergenerational equity and the obligation of states to protect the interests of future generations.

These decisions outlined a common doctrine of climate justice, based on four main ideas: the use of scientific consensus, the evolutionary interpretation of human rights, the responsibility of states for the long-term effects of their policies, and the recognition of acces to justice for vulnerable groups and representative organizations.

4. România in the climate justice ladscape

In Romania, environmental law has developed steadily since 1990, through the contributions of established authors [17]. An important role in the development of climate

law was played by Mircea Duțu [3], who supported the idea that climate law represents a distinct legal field and proposed the recognition of a new fundamental right, the right to a stable climate.

Article 35 of the Romanian Constitution guarantees the right to a healthy environment and establishes obligations for both the state and citizens. In its decisions, the Court has generally retained the pragmatic nature of the right to a healthy environment, dependent on the intervention of the legislator [18], but with the influence of German jurisprudence the interpretation has expanded to include concrete climate obligations for the benefit of future generations.

In 2023, the Declic Association filed Romania's first systemic climate lawsuit, calling for more ambitious measures to reduce emissions and accelerate climate neutrality. The lawsuit invoked several fundamental rights, including the concept of a right to a dignified future for future generations [19]. The case raises the issue of the Romanian legal system's capacity to address new climate-related litigation.

Romania should align its domestic climate policies with the recent findings of the International Court of Justice regarding states' obligation to adopt the most ambitious climate measures possible.

5. Conclusions

Climate justice is no longer merely a moral ideal, but a legal obligation recognized by international and European courts. It entails not only combating climate change, but also the equitable distribution of the costs and benefits of the green transition among states, generations, and social groups. In this context, environmental protection is increasingly linked to the protection of fundamental rights, such as the right to life, health, property, or a healthy environment.

At the same time, climate justice highlights the increased responsibility of states and economic actors for the long-term effects of public policies and polluting activities.

Recent developments in international case law show that courts are increasingly willing to review the adequacy of climate measures adopted by states and to sanction climate inaction.

In this context, the Romanian legal system must keep pace with the transformations occurring in international and European climate law, both by developing the regulatory framework and by strengthening judicial protection mechanisms.

The future direction will depend not only on Romanian courts and legislative action but also on the capacity of public institutions and civil society to integrate the protection of future generations into current decision-making processes.

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