

## The Climate Show

This podcast features leading experts' insights on current climate change research.

[Episode 3. Annalisa Savaresi: Trends in human rights and climate change litigation](#)

### Content of the podcast

--- intro music ---

*Linnéa Nordlander* 00:00:03

Hi and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

*Beatriz Martinez Romera* 00:00:16

Hi, we are Beatriz Martinez, Linnéa Nordlander and Alessandro Monti, and we are your hosts at The Climate Show.

In our last episode, we spoke to Jeff Colgan about how domestic politics can prevent the states from taking the action needed to prevent climate change and limit global warming. Domestic inaction has led to public reaction, including through widespread protests such as the Fridays for Future movement.

*Alessandro Monti* 00:00:41

But beyond that, people are also increasingly turning to the courts, asking them to hold States and, increasingly also companies, accountable for their inadequate mitigation policies.

*Linnéa Nordlander* 00:00:51

And in particular, people are claiming that climate change is violating and will continue to violate their human rights. And since we have a project on that theme called 'Enhancing Climate Action through International Law', which we call 'EnAct', funded by the Danish Research Council, we thought that it would be nice to focus a few episodes on rights based climate litigation. So in the next three episodes, we will explore trends in human rights and climate change litigation, with Professor Annalisa Savaresi, litigation at the European level with Professor Jacques Hartmann, and then we'll hone in on one of the cases pending before the European Court of Human Rights with Professor Andreas Müller.

Enjoy the show!

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*Linnéa Nordlander* 00:01:35

We're here with Annalisa Savaresi, who is Associate Professor of international environmental law at the Centre for Climate Change, Energy Environmental Law at the University of Eastern Finland. She is also the director for Europe for the Global Network of Human Rights and the Environment and is an associate editor of the review of European, Comparative and International Environmental Law. She is a renowned expert on the relationship between human rights and climate change. Hi Annalisa, thank you so much for joining us on the show. It is great to have you here and also to have you on board as a scientific advisor to our project, Enhancing Climate Action through International Law. So welcome to The Climate Show!

*Annalisa Savaresi* 00:02:15

Thanks for having me.

*Linnéa Nordlander* 00:02:18

So let's dive straight into it. For those who aren't familiar with this area of law, could you explain what a human rights perspective can add to the legal climate change debate?

*Annalisa Savaresi* 00:02:27

So, human rights law and climate change law don't exist in isolation, and they intersect like many other areas of law. What is interesting for our perspective here is that there are accountability and enforcement gaps in climate change law presently, that human rights law is being used to address, and I guess we'll have a chance to talk a little bit about this in this podcast.

*Linnéa Nordlander* 00:02:52

Great, so we're going to turn straight to your recent article, which is called 'Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers', which you have recently published in the Journal of Human Rights and the Environment. In that, you and your co-author Joana Setzer provide an in depth analysis of current trends in rights based climate change litigation. So can you give us an overall or sort of an overview of the overall trends that you find in your article?

*Annalisa Savaresi* 00:03:22

So in the piece we wrote with Joanna, we processed the data in climate change litigation databases and tried to unpick what is going on in terms of human rights based litigation. And what we found is that right space litigation is on the rise everywhere, especially in Europe, and that a lot of this litigation remains pending at the time when we wrote our paper. Nevertheless, it was possible to tell that largely rights based litigation concerns mitigation, targets States, and that largely it provides avenues to push for greater ambition in climate laws. Comparing success rates between climate cases isn't easy and we didn't necessarily find that rights-based litigation is more successful than other climate litigation. At the same time, we did notice some trends associated with the use of specific rights and this is what we did really, to try and understand which kind of arguments have been made in climate cases that rely on human rights.

*Linnéa Nordlander 00:04:32*

That's really interesting. So, you said that most rights based litigation that aligns with climate objectives, concerns mitigation, and also that you were looking at some of the arguments that the litigants are using. Could you maybe unpack what types of human rights arguments litigants use when it comes to mitigation, and especially if we look at that notion of 'systemic mitigation' litigation, which of course Lucy Maxwell and others sort of have termed it?

*Annalisa Savaresi 00:04:56*

By far, human rights based climate cases argue that human rights law requires states to adopt more ambitious climate action, and cases like Urgenda or Neubauer really demonstrate how litigants argue that under human rights law, under the obligations associated with right to life or the right to respect for privacy and family life, states already have obligations to develop more ambitious climate laws. And this has, in turn, meant that courts have ordered governments to adopt or develop more ambitious climate policies, and in the case of the Netherlands and Germany, at least is resulting in the adoption of new climate laws. So, it's been a domino effect, if you like. The litigants relied on case law from European, in this case European, key of human rights based environmental litigation and these same kind of arguments have been used effectively before national courts that have embraced, if you like, the rights-based approach, to push governments to do what was required by the applicants in this case to develop more ambitious climate laws.

The concept of systemic mitigation really concerns the idea that applicants are relying on similar arguments across the board in different countries to obtain similar results and this is a very interesting development that we have observed in our work with Joana: the fact that there is a network of practitioners that really talk to one another in different countries and really strategically pick both fora for litigation and arguments posed to court in order to obtain similar results. So Joana, in their work has counted at least 37 cases that rely exactly on the same arguments that were made in Urgenda, that are of course, tailored and adapted to the national courts and the national legal system.

*Linnéa Nordlander 00:07:15*

A lot of the cases that you've mentioned now are at the domestic level, but we're also seeing those types of systemic mitigation claims playing out at the regional level. Could you talk a little bit about what those cases are sort of seeking?

*Annalisa Savaresi* 00:07:29

Regional human rights bodies like the European Court of Human Rights or the Inter-American Court of Human Rights are increasingly being called to hear climate related complaints. There is very few of these complaints for now, but we can certainly expect more, and most recently the Grand Chamber of the European Court of Human Rights has announced that it will hear its first climate case. This is really important because what these courts do is to develop the law and the interpretation of human rights obligations within the region and typically the decisions that they adopt are followed by national courts. So this is really big actually, because decisions like *Urgenda* have persuaded other courts to follow the lead of a Dutch court, but there was no bindingness in this precedent for others, and the same may be said about the European Court of Human Rights or the Inter-American Court. At the same time, the authoritative and persuasive power of this judgement is well recognised and proven in the practise. So, if you look at the Manual on Human Rights and the Environment, you can see how much of the European Court of Human Rights or how much of its case-law has influenced the interpretation of national laws over the decades. So, if we start to see this in relation to climate change, this is actually quite big and important for the consistency with which this kind of reasoning that we have seen in *Neuvauer* and *Urgenda* can influence other courts all over the region.

*Linnéa Nordlander* 00:09:10

OK so those cases could end up having a very important and decisive role to play in other words. But let's turn now away from those specific cases because not all mitigation-oriented cases focus on greenhouse gas emissions reductions directly, right? So, some are more focused on particular projects or particular policies that are inconsistent with climate objectives. And an example there is the *Greenpeace v Norway* case. How do the arguments that litigants put forward in that type of case differ from the more systemic mitigation style cases?

*Annalisa Savaresi* 00:09:42

OK, so this is you're quite right, this is a completely different type of human rights based litigation. This is about specific activity, specific projects and what the applicants typically argue in these cases is that a given activity breaches the state's obligation not to cause harm. At the systemic level, you can imagine that many of these cases may end up producing similar results. At the same time, what they do is very different. So, it's important that we do keep things separated and this is one of the things that we do with Joana: we try to identify the various ways in which human rights can be used in climate litigation. So, the Arctic case is a very good example of how a negative obligation of the state not to cause harm has been used unsuccessfully, as it happens, by the applicants to stop a large scale set of activities that would cause climate harm. We can certainly expect to see many more of these cases going forward, and I think this is part of the mainstreaming of climate concerns across areas. This is a macro-

planning exercise. You know, the licencing of oil and gas is a typical activity that is very much part of a physiology of functioning of a legal system, and in this specific case we will have, hopefully, better awareness of climate concerns in the process of licencing activities such as these.

*Linnéa Nordlander* 00:11:20

All of the cases that we've talked about until now have looked at the role of the state and the responsibility of the state. And you note in the article and you've mentioned now as well, that the vast majority of human rights and climate change cases target States and not corporate actors. But why is that? And what are the implications of that?

*Annalisa Savaresi* 00:11:36

Human rights law, by far or large, concerns the obligations of states. However, it is true that human rights law itself is in the process of evolving to better encapsulate the responsibility of corporate actors. So, we are seeing a small but increasingly large number of cases that targets corporate actors and this is a symptomatic again of the role of human rights law in filling gaps in the climate architecture. So, it's not perfect, and human rights law itself is not well crafted yet to address corporate responsibilities. At the same time, we're seeing important developments with due diligence legislation being adopted. For example, all over the Western world. And this legislation is already being used in private litigation against corporate actors to demand that they too take greater action to address climate change. So loads is happening.

*Linnéa Nordlander* 00:12:42

Yes, so we are seeing a lot happening in that respect, right? And one of the sort of big cases or big wins that we've seen recently, is the Milieudedefensie case in the Netherlands, which you also note in your article is a pathbreaking judgment. So why is a judgment like that, or that particular judgment, so important?

*Annalisa Savaresi* 00:13:00

Milieudedefensie is massively important for a number of reasons. First of all, it is the first case where a court of law ordered a corporate actor to reduce its emissions to align with a set of international obligations embedded, amongst others, in human rights law. What is interesting in this judgement is exactly that under the law of the Netherlands it was not really taken for granted that corporate actors had such obligations. So the court really made a huge leap in this judgment and we have to see if this judgment holds on appeal. But even if it doesn't, it has definitely set in motion a very interesting process, whereby other applicants elsewhere are using similar arguments, relying also on human rights, but also onto diligence legislation in order to argue for the same kind of outcome. So if Milieudedefensie is what Urgenda has been towards corporate actors, we were going to see a landslide of cases against corporate actors that rely amongst others on human rights and this is really big.

*Linnéa Nordlander* 00:14:20

Great and so a nice positive sort of outlook to end on. Before we wrap up, is there anything else that you would like to mention today?

*Annalisa Savaresi* 00:14:29

Well, I would like to commend you on your initiative to do this podcast, I think it's a very nice and attractive way to convey messages that are complex and I think you should get going! Well done.

*Linnéa Nordlander* 00:14:42

Wonderful thank you so much for that, Annalisa and thank you for coming on the show today!

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*Linnéa Nordlander* 00:14:50

Thank you for listening to this episode. If you are interested in learning more about Annalisa's work, check out the article she co-authored with Joana Setzer, entitled 'Rights-based litigation in the climate emergency: mapping the landscape and new knowledge frontiers'. You can find the link in the show notes. Stay tuned for our next episode!