

The Planet in Court

by Carola Klöck

The growing number of legal cases concerning climate inaction marks another step in the fight to protect the environment. What are these cases? Who are the accused? Are their effects only symbolic?

A review of Marta Torre-Schaub, *Justice Climatique : Procès et actions*, CNRS éditions, 64 pages, €8.

In France, the *Case of the Century*, in which a group of NGOs accused the French state of not doing enough to fight climate change, has made climate litigation front-page news. In February 2021, after two years of proceedings, the Administrative Court of Paris found the French state guilty of “failure to act [...] to combat global warming”. Although this was undoubtedly a landmark ruling, it is not the only climate litigation case, nor was it the first. In recent years, the number of legal cases relating to climate change has soared. It has now reached hundreds, with cases all over the world, from Pakistan to the Netherlands and from the United States to Australia.

In this short book, *Justice Climatique : Procès et actions*, Marta Torre-Schaub studies this phenomenon of the judicialization of the climate and of court-based activism. The author is director of research at the *Institut des sciences juridique et philosophique de la Sorbonne* (ISJPS, the Sorbonne Institute of Legal and Philosophical Sciences). She is also director and founder of the *Réseau Droit et Changement Climatique* (Law and Climate Change Network). She has already published several works on climate justice, case law and climate change.

According to Marta Torre-Schaub, using the law allows civil society and the climate justice movement to go beyond the framework of UN climate negotiations and to create wider public awareness about the issue. But what is climate litigation? In the absence of a precise definition, the work describes it as any legal action that raises “a question of fact or law concerning the substance or policy of the causes and impacts of climate change” (page 16). This definition includes legal disputes of a more symbolic nature like the *Case of the Century*, which aim to attract media attention and put pressure on decision-makers, as well as legal action seeking concrete results such as stopping environmentally damaging activities (like mining or airport construction). Finally, criminal proceedings can also fall within the category of climate litigation, as in the case of protesters removing portraits of Emmanuel Macron (see below).

The book briefly presents several of these cases, thereby demonstrating the great diversity of climate litigation, in terms of its objectives, its geographical reach, the rights it invokes and the accused parties. To reflect this diversity, the author proposes a typology of climate litigation, although she does not apply it systematically. In particular, she distinguishes between cases against public players and those against private players, between cases based on human or fundamental rights and those based on the rights of Nature, and finally between cases based on substantive law and those covered by criminal law.

Cases against the state: The *Urgenda* case

The discussion starts with the *Urgenda* case, because of its impact for the climate litigation movement in 2013. In this case, the NGO *Urgenda*, with the support of 900 plaintiffs, took the Dutch government to court, accusing it of failing to implement adequate greenhouse gas reduction policies and consequently exposing the population to the risks and dangers of climate change. There were two court decisions, in 2015 and 2018, both of which were contested by the government. In December 2019, the Dutch Supreme Court found that the government was responsible for its inaction and ordered it to reduce the country’s greenhouse gas emissions by at least 25% compared to 1990 levels. The parallels with the *Case of the Century* are obvious, with the *Urgenda* case considered “a model for climate justice” (page 17) that has inspired other NGOs and campaigns.

Whereas the plaintiffs in the *Urgenda* case partly relied on fundamental rights and human rights, other legal decisions are based on the rights of Nature. This is particularly the case in Latin America, where the Atrato River has been recognised as a legal person since 2016.¹ Shortly afterwards, in 2018, a decision recognised the Colombian Amazon as a “subject of rights”.

Cases against companies: Lliuya versus RWE

In addition to the state and the public authorities, climate litigation especially targets private companies, particularly large oil companies such as ExxonMobil, Royal Dutch Shell and Total. Although the legal cases brought against Total are probably better known in France, internationally, it is primarily the lawsuit against the German electricity company RWE that has received the most attention, although the author goes into very little detail on this dispute. In this case, a Peruvian farmer, Saúl Luciano Lliuya, supported by a German NGO, Germanwatch, asked RWE to repair the damage caused by climate change in his village in the Andes, claiming that RWE contributed to it via its substantial greenhouse gas emissions. Initially, the court considered the complaint inadmissible since it was impossible to attribute the effects of climate change to a specific polluter. Establishing causality is what makes climate litigation so difficult. Yet it is essential in climate change lawsuits, which is why so few climate justice cases have been successful so far. Nevertheless, judges seem increasingly inclined to dispense justice, despite the technical and scientific difficulties. In the RWE case, the court changed its mind and finally judged the complaint admissible in 2017. Although the book does not go into the causes of this U-turn, it seems likely that the increase in this kind of legal decisions played a role, marking a trend towards the admissibility of such cases. Moreover, some judges seem to be increasingly receptive to the climate cause. In particular, the author cites an Australian judge who believes that the court has a duty “to react and to do something in response to the government’s inaction and apathy” (page 20).

¹ There are other examples of this type of protection, for example the Whanganui River in New Zealand, but the work mentions only the case of the Atrato River.

Cases within criminal law: “Taking down Macron”

Finally, faced with this governmental inaction and apathy, people sometimes turn to illegal actions. One such example is the current “Décrochons Macron” (“Taking down Macron”) campaign. In this civil disobedience campaign, environmental activists have taken down over 130 portraits of the French president in town halls all over France. The activists displayed several of these portraits in Bayonne in 2019, to publicize both their cause and the legal proceedings against the activists. However, the Lyon Criminal Court acquitted the activists in 2019.

Despite the very diverse contexts, the importance of the media coverage and political discussion surrounding the legal debates is clear. This is one of the key elements of climate litigation: most of the cases aim above all to get media exposure, raise awareness, and encourage action. Torre-Schaub therefore concludes that these proceedings are “an extraordinary driving force for action and can lead our societies towards better climate governance and a true transition” (page 12).

As shown by the *Case of the Century*, the climate cause is now also being debated in the courts, and it is therefore appropriate to increase the general public's understanding and awareness about this subject. Thus, in 77 pages, Marta Torre-Schaub's little book provides a very interesting introduction to the matter. The book is accessible and shows not only the great diversity of legal cases relating to the climate, but also the common origins of the climate litigation movement and the links between the various cases. Sometimes, however, concision comes at the cost of precision. In several places, it would have been good to have more detail, or at least references and sources, of which there are too few. There are also occasional inaccuracies and inconsistencies. For example, the author laments “diplomats' lukewarm or even minimal” interest in the IPCC's 2018 special report (page 29) at the time of the Katowice Climate Change Conference, when it was actually Saudi Arabia that blocked the consideration of the report (and not all the diplomats as suggested). A list summarising all the legal cases mentioned in the book, with further sources and their current status, would also have been a valuable addition.

In France and around the world, climate litigation will become increasingly common. The verdict in the *Case of the Century* will undoubtedly encourage other initiatives to file complaints against polluters and regulators. The field of climate law remains a dynamic one. “*Justice Climatique : Procès et actions*” offers a very good starting

point for those who want to familiarise themselves with this area and improve their understanding of climate justice issues and the relevant laws.

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