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As New Class of Administrative Cases: Climate Change and the Issue of Legal Standing

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ABSTRACT

Coupled with the growing number of climate-related lawsuits worldwide and Turkiye's recent becoming a party to the Paris Climate Agreement, it is evident that the country will inevitably be confronted with an increased number of such cases in the years ahead. Considering that a significant proportion of climate-related cases arise from administrative authorities' failure to undertake the necessary regulatory and individual measures, it is reasonable to anticipate that the majority of these cases will be filed as annulment actions within the administrative court system. Administrative courts will face a host of challenges when reviewing these cases, encompassing both preliminary review requirements and substantive matters. One of the primary concerns during the preliminary review phase pertains to the legal standing of the applicants. Globally, these cases are often filed by younger generations and potential victims due to potential – uncertain harms that may occur in the future, regardless of the applicant's connection to the location. Acknowledging the relationship between the administrative action causing the violation and the interests of the plaintiffs is difficult, considering administrative case law. In Türkiye, it is not yet clear whether the necessary requirement of an interest violation for the acceptance of a climate case will be met. This study aims to examine the opportunities to address the issue of standing to sue, specifically violation interest in annulment actions related to climate change together with human rights issues. Therefore, claims that climate change litigation should make administrative justice more accessible to public interest cases and intergenerational justice will be discussed, considering the case law of administrative courts in environmental cases and the approaches of some national courts in climate cases.

Yeni Bir İdari Dava Türü Olarak İklim Değişikliği ve Menfaat İhlali Sorunu

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ÖZET

Dünya genelinde iklim davalarındaki artış, önümüzdeki yıllarda idare mahkemelerinin kaçınılmaz olarak bu davalarla daha fazla karşı karşıya kalacağını göstermektedir. İklim davalarının çoğunlukla idarenin düzenleyici ve birel işlemlerle gerekli önlemleri almaması sebebiyle açıldığı göz önüne alındığında, bu davaların çoğunun idare mahkemelerinde iptal davası olarak açılacağını söylemek yanlış olmaz. İdare mahkemeleri, öncelikle davayı ilk inceleme koşulları yönünden, daha sonra ise esas yönünden denetlerken bir dizi sorunu çözmek durumundadır. İlk inceleme aşamasındaki kilit konulardan biri, başvuranların dava ehliyetiyle ilgilidir. Bu davalar dünya genelinde çoğunlukla, genç nesiller ve potansiyel mağdurlar tarafından gelecekte gerçekleşmesi olası–belirsiz zararlar nedeniyle ve davacının bulunduğu yerle ilgisinden bağımsız olarak açılmaktadır. İhlale neden olacak idari işlem/eylem ile davacıların menfaatleri arasındaki ilişkiyi kabul etmek, idari yargı içtihatları göz önünde bulundurulduğunda zordur. Türkiye'de açılması muhtemel iklim davalarında,

davanın kabulü için gereken menfaat ihlali koşulunun sağlanıp sağlanamayacağı henüz net değildir. Bu çalışma, iklim değişikliğinin iptal davalarında menfaat ihlali konusunun insan hakları sorunlarıyla birlikte ele alma fırsatlarını irdelemeyi amaçlamaktadır. Bu sebeple iklim değişikliği davalarının idari yargı sisteminin kamu yararı davalarına ve nesiller arası adalete daha açık hale gelmesi gerektiği yönündeki savlar, idari yargının çevre davalarındaki içtihatlarıyla ve bazı ulusal mahkemelerin iklim davalarındaki yaklaşımlarıyla tartışmaya sunulacaktır.

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INTRODUCTION

The quantity of lawsuits targeting states on the grounds of climate change are on the rise across the globe.[1] This surge can be attributed to international and national regulations, a mounting global apprehension about climate change-related perils, and an increasing public consciousness, collectively culminating in the genesis of a fresh category of legal actions.[2] These lawsuits frequently encompass claims associated with the enforcement of climate change legislation and policies. These legislations and policies encompass aspects such as the specification of national contributions, the formulation and oversight of emission thresholds for particular facilities, adjustments in zoning to limit fossil fuel terminals, and obligations linked to the promotion of renewable energy sources.[3]

The primary judicial arena for addressing actions against state entities for non-compliance with both national and international climate regulations is the administrative justice system. Within this framework, lawsuits can be initiated in administrative courts, alleging that individual acts such as permitting processes have increased greenhouse gas emissions, hindered participation in regulatory processes, and failed to make decisions that encompass adaptation to climate change and emission reduction factors. For this new class of litigation that will impact carbon-intensive sectors such as energy production and infrastructure projects, one of the most crucial issues from the perspective of administrative law is whether the conditions for standing, particularly the requirement of an injury to a legal interest (legal capacity), can be met by the plaintiffs. The opportunity to discuss the merits of climate-related cases hinges on the acceptance of standing based on a interest violation.

Critical questions regarding the relevance of "violation of interest" conditions revolve around whether each of these conditions contributes effectively to the justification of climate-related cases. Consequently, when assessing the role of administrative justice in climate litigation, it is imperative to analyze the challenges encountered in climate cases worldwide within the framework of the legal interest conditions as influenced by the precedents established in administrative justice cases related to environmental matters. Notably, a rights-based perspective is adopted in these cases across Europe, where the sheer number and diverse profile of plaintiffs classify these lawsuits as public interest cases

[1] A report published by UNEP shows that climate litigation is becoming more common and more successful around the world. See Global Climate Litigation Report: 2020 Status Review, (Nairobi: United Nations Environment Programme (2020). https://wedocs.unep.org/handle/20.500.11822/34818; For current cases, see climatecasechart.com and https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2023-snapshot/.

[2] Tallat Hussain. "Climate change litigation: A new class of action", *White&Case*, November 2018, https://www.whitecase.com/insight-our-thinking/climate-change-litigation-new-class-action.

[3] See generally Aydınoğlu, Zeynep Nihal. *Türk Alman Hukukunda İdare Hukuku Boyutuyla Yenilenebilir Enerji Üretimi*, Seçkin Yayınları, Ankara, 2021.

(actio popularis). [4] In particular, future generations are acknowledged as potential victims of climate change.

In light of these challenges and considering administrative justice precedents and the global approach, it can be argued that there may be certain difficulties for plaintiffs in climate cases in Türkiye regarding the acceptability of standing based on the violation of legal interests and subsequent justifiability.

I. CLIMATE CHANGE ACTION AND VIOLATION OF INTEREST

The United Nations, in its comprehensive global climate litigation report[5], characterizes climate change litigation as encompassing cases that address significant legal and factual issues related to climate change mitigation, adaptation, or climate science. According to the report, climate change lawsuits frequently center around key terms such as "climate change," "global warming," "global change," "greenhouse gas," and "rising sea levels". Furthermore, climate change cases are cases in which legal and factual issues related to climate change are brought to the fore, even though these keywords are not clearly stated in the cases.[6]

These lawsuits encompass various cases related to climate change issues. Climate change cases can be broadly categorized into two main groups:

Public Law Cases: These cases involve arguments rooted in human rights, constitutional law, and administrative law. They typically challenge governments and public authorities for failing to meet their commitments related to climate change mitigation and adaptation. This can include issues such as not taking sufficient actions to keep fossil fuels and carbon sinks underground.

Private Law Cases: These cases fall within the domain of tort law, consumer protection, corporate obligations, and liability. They address issues such as false and misleading information regarding the effects of climate change, "greenwashing" practices (i.e., misrepresenting environmental efforts), and climate disclosures, where companies may be held accountable for not disclosing relevant climate-related information.[7]

Climate change litigations in the field of public law typically stem from government inaction or inadequacy in setting targets and taking measures in accordance with national and international regulations, resulting in actual or potential harm and violations of rights. The primary legal foundations for climate lawsuits filed across Europe and pending before the European Court of Human Rights (ECtHR) are the United Nations Framework Convention on Climate Change (UNFCCC)[8] and the Paris

[4] See Gökalp Alıca, Süheyla Suzan. "Çevrenin Korunmasına İlişkin İptal Davalarında Kişisel Menfaat Kavramı", *TBBD*, No. 139, 2018, p.169; Christian Schall. "Public Interest Litigation Concerning Environmental Matters before Human Rights Courts: A Promising Future Concept?", *J. Environ. Law*, *Vol. 20*, No. 3, 2008, p.417-447; Julie H. Albers. "Human Rights and Climate Change: Protecting the Right to Life of Individuals of Present and Future Generations", *Secur. Hum. Rights*, Vol. 28, 2017, p.133.

[5] *Global Climate Litigation Report*, at 6.

[6] *Global Climate Litigation Report*, at 6. Based on this definition, we can describe some cases filed in Turkey as climate cases. See *37 termik santrali kapatma davası görüldü: Avukatları 'Cumhurbaşkanının yetkisi yok' dedi (Cases for closing 37 thermal power plants were heard: Their lawyers said, 'there's lack of competence of the President's).*YEŞİL GAZETE, 17 March 2022. https://yesilgazete.org/37-termik-santrali-kapatma-davasi-goruldu-avukatlari-cumhurbaskaninin-yetkisi-yok-dedi/#:~:text=Dokuz%20C3%A7evre%20C3%B6rg%C3%BCt%C3%BC%20ve%20Adana,%C4%B0dare%20Mahkemesi'nde%20g%C3%B6r%C3%BCld%C3%BC.; "Gençlerden Cumhurbaşkanı Erdoğan'a ve Çevre, Şehircilik ve İklim Değişikliği Bakanlığı'na İklim Davası: 'Gelecek Hakkımızı Koruyun'" (Young People's Climate Lawsuit Against President Erdoğan and the Ministry of Environment, Urbanisation and Climate Change: 'Protect Our Right to Future'). İKLİM HABER, 9 May 2023. https://www.iklimhaber.org/genclerden-cumhurbaskani-erdogana-ve-cevre-sehircilik-ve-iklim-degisikligi-bakanligina-iklim-davasi-gelecek-hakkimizi-koruyun/

[7] See supra note 2; *Mallesons, Daisy/Sati Nagra. Climate Change Litigation - What is It and What to Expect?*, LEXOLOGY, *(February 27, 2020),* www.lexology.com*; Viola, Pasquale. Climate Constitutionalism Momentum: Adaptive Legal Systems, Springer, 2022; Orangias, Joseph. "Towards Global Public Trust Doctrines: an Analysis of The Transnationalisation of State Stewardship Duties", Transnatl. Leg. Theory*, Vol. 12, No. 4, 2021, p.*550; Global Climate Litigation Report*, 3 et seq. On the issue that only the application of administrative and civil law provisions is insufficient for these actions that harm the environment and that these actions should be the subject of criminal law, see Maviş, Volkan. *Türk Ceza Kanunu'nda Çevreye Karşı Suçlar,* Yetkin Yayınları, Ankara 2021, p.129-130.

[8] Law No. 4990, 16.10.2003, Official Gazette 21.10.2003/25266.

Agreement,[9] which aim to target greenhouse gas emissions.[10]

The purpose of climate change lawsuits is to compel administrative authorities responsible for the development and implementation of climate change legislation and policies to take preventive actions against the effects of climate change through legal means. The cases aimed at achieving this purpose in the administrative judiciary are annulment cases. An annulment action is an objective remedy aimed at rectifying a legal defect within the legal system and compelling the administration to adhere to the law. In these cases, the qualification of the plaintiff is of secondary importance, and instead, the focus is on establishing a violation of interest rather than a violation of rights. Due to the objective nature of annulment actions, the relationship between the violation of interest and the lawsuit is interpreted broadly to serve this purpose. [11]

Although annulment actions are a type of legal remedy aimed at ensuring that the administration acts in accordance with the law, there is a requirement for a sufficient legal interest connection between the plaintiff and the lawsuit for the action to be accepted.[12] To be a party to an annulment action, plaintiffs must establish the condition of violation of interest (subjective capacity).[13] While the concept of interest that defines the relationship between the administrative act and the person bringing the lawsuit can be interpreted differently in each case, judicial precedents generally require this interest to be *legitimate*, *personal*, and *actual* according to established principles.[14]

If the strict application of these judicial conditions for the violation of interest were to be applied in climate cases, it may render these cases unfeasible in administrative justice. Greenhouse gas emissions, which cause climate change, do not have immediate effects. The effects of climate change are not confined to a specific geographical area, and temporally, it is uncertain when they will occur and how long they will last. Despite numerous scientific studies on climate change, determining the effects of specific emissions and attributing them to a particular individual or group, time, event, harm, and geography remains a challenging task.

Climate change cases have a wide range of plaintiffs, including young generations, children, the elderly, migrants, indigenous populations, and NGOs. In such cases, plaintiffs may find it challenging to establish that their interests have been harmed and, therefore, struggle to initiate legal action. Indeed, establishing a direct connection between the actions and decisions of the administration and specific harms resulting from climate change is essential to satisfy the condition of violation of interest in annulment action.

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[9] The cases are based on the incompatibility and inadequacy of the goals set in these agreements with the country's goals. The basic norm on this issue is Article 2 of the Paris Agreement. The article sets out the goal of continuing efforts to "hold temperature increases well below 2 C^0" compared to pre-industrial levels and to "limit the temperature increases to 1.5 C^0."

[10] The basis of annulment actions in Türkiye will be international regulations, the United Nations Framework Convention on Climate Change and the Paris Climate Agreement, as well as some administrative regulations and law at the national level. Türkiye recently adopted the Paris Climate Agreement (see https://iklim.gov.tr/paris-anlasmasi-i-34, last visited 20.9.2023). After approval, Climate Change was added to the name of the Ministry of Environment and Urbanization. A Climate Change Directorate affiliated with the Ministry has been established (Official Gazette 24.05.2022/31845). Details of the Ministry's powers regarding the monitoring of greenhouse gas emissions, which are the leading cause of climate change, are regulated in the Regulation on the Monitoring of Greenhouse Gas Emissions. Similarly, the Regulation on the Prevention of Industrial Air Pollution aims to control emissions resulting from activities carried out in industry and energy production facilities.

[11] Council of State [Danıştay] General Assembly of the Council of State Administrative Case Chambers, May 5, 2000, E. 1999/390, K. 2000/761: "*(...)Because annulment cases enable it to be determined whether administrative acts are in compliance with the law, to ensure the rule of law, thus to determine the administration's adherence to the law, and ultimately to realize the principle of the rule of law, the relationship of interest in these cases must be interpreted in line with this purpose. (...)*"

[12] According to Article 14 of the Administrative Procedure Law (no 2577) [İdari Yargılama Usul Kanunu], at the first examination stage, it is evaluated whether the plaintiff meets the "legal capacity" condition. According to Article 15 of the Administrative Procedure Law, a decision must be made regarding the procedural rejection of the case of the plaintiff who is determined to not meet the qualification requirement in Article 14.

[13] The concept of subjective legal standing/capacity derives its basis from Article 2 of the Administrative Procedure Law. GÜNDAY uses the expression "special capacity to file a lawsuit" instead of subjective capacity. See Metin Günday. *İdari Yargılama Hukuku,* Turhan Kitabevi, Ankara, 2022, p.231.

[14] See Günday, at 231.

II. VIOLATION OF INTEREST IN CLIMATE CHANGE CASES

A. Legitimate Interest: Is a Right-Based Aprroach Required?

Legitimate interest is a benefit protected by the law. The harm to a protected interest is a prerequisite for meeting the "legitimacy" condition in bringing an annulment action in administrative justice. Legitimate interest is based on a general or specific legal situation derived from "the constitution, law, regulation, administrative custom, precedent, contract, or another administrative act."[15]

In environmental cases, the alleged violated interests often revolve around fundamental rights. There is an increasingly accepted notion that the environmental problems caused by climate change violate human rights. [16] The primary argument in climate change cases pertains to the violation of the right to life and the right to respect for private life. The *Urgenda* case is considered to have successfully demonstrated the link between climate change and fundamental rights.[17] In the *Urgenda* case, the Court of Appeal in The Hague found a violation of Article 2 (the right to life) and Article 8 (the right to respect for private and family life) of the European Convention on Human Rights (ECHR). Because the *Urgenda* ruling, the categories of violated rights have been expanding in new cases. The cases concluded in national courts and went before the ECtHR[18] were based on violations of different rights other than the right to life and the right to respect for private life. Climate change cases generally include grounds such as the prohibition of torture and inhuman and degrading treatment,[19] prohibition of discrimination,[20] fair trial and effective legal remedy,[21] right to property and right to work.[22]

This broader approach to human rights violations in climate change cases signifies a growing recognition of the multifaceted impacts of climate change on individuals and communities, beyond just the right to life and the right to privacy. It reflects the evolving nature of climate litigation and its role in holding governments and entities accountable for their climate-related actions and policies.

In applications made to both the Constitutional Court (CC) and the European Court of Human Rights (ECHR) regarding climate change, it is not necessary to establish a direct link between a human rights violation, especially those enshrined in the ECHR, and every issue that could be subject to administrative law in order to claim a violation. In lawsuits filed against administrative authorities for environmental problems arising from climate change, a rights-based approach is not a legal obligation in administrative law. In administrative justice, the violation of interest is sufficient for initiating legal

[15] Sıddık Sami Onar. *İdare Hukukunun Umumi Esasları, C. III*, İsmail Akgün Matbaası, İstanbul, 1966, p.1781. See Council of State [Danıştay] 10th Chamber, May 8, 2003, E. 2002/7519, K. 2003/1610; January 28, 2011, E. 2010/7285, K. 2011/215.

[16] See Clark, Paul/Gerry Liston/Ioannis Kalpouzos. "Climate change and the European Court of Human Rights: The Portuguese Youth Case", *EJIL:Talk*, https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-; Leijten, Ingrid. "Human Rights v. Insufficient Climate Action: The *Urgenda* case", *Netherlands Quarterly of Human Rights*, Vol. 37, No. 2, 2019, p.112.

[17] See Albers, at 113-144.

[18] Cases pending before the ECtHR: Müllner v. Austria, No: 18859/21; Greenpeace Nordic at al v. Norway, No: 34068/21. Decided cases: Duarte Agostinho at al v. Portugal and 32 other States, No: 39371/20, 09.04.2024; Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], No. 53600/20, 09.04.2024, Carême v. France (GC), No. 7189/21, 9.04.2024.

[19] In their application to the ECtHR, Portuguese young people claimed that 33 countries did not fulfill their responsibilities regarding climate change, as well as the right to life and respect for private life; They claim that it causes discrimination based on age, as they will be exposed to the increasing effects of climate change throughout their lives, and therefore Article 14 of the Convention and the principle of the best interests of the child (Article 3) of the UN Convention on the Rights of the Child are violated. To the reasons listed, the Court also added Article 3 of the ECHR (prohibition of torture) and the article on property rights in Additional Protocol No. 1. Duarte Agostinho at al v. Portugal supa note 18.

[20] See Greenpeace Nordic at al v. Norway, supra note 18. In its application to Greenpeace Nordic, it was requested that climate change be evaluated within the framework of the right not to be discriminated against (Art. 14) in terms of its effects on the culture, land, and resources of the indigenous Sami minority. For the application petition, see. http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2021/20210615_Application-no.-3406821_petition-1.pdf.

[21] See Greenpeace Nordic at al v. Norway supra not 18; Müllner v. Austria, No: 18859/21, supra note 18.

[22] In the Family Farmers and Greenpeace case filed by farmer families and an NGO in the Berlin Regional Administrative Court, the plaintiffs claimed that the changes caused by global warming violated their fundamental rights under the German Basic Law, namely the right to life, the right to work (freedom of occupation) and property rights. See Family Farmers and Greenpeace Germany v Germany, Online: climatecasechart.com (last visited September 9, 2023); In *Neubauer v. Germany*, the plaintiffs alleged that certain provisions of the Federal Climate Protection Act were unconstitutional (violation of the right to life, personal liberty, bodily integrity, property rights and a future consistent with human dignity and the associated duties to protect a minimum ecological standard of living).

action. The desire to live in a healthy, clean, safe, and adequate environment is sufficient to demonstrate the legitimacy of the interest. For a healthy environment, it will be enough for the plaintiffs to prove that a specific activity contributes to an unhealthy environment; there is no need to establish a connection with any fundamental human right.

As there is no separate protocol in the ECHR specifically recognizing the right to the environment or environmental rights, the ECHR and the CC indirectly protect the right to the environment within the framework of the relevant provisions of the ECHR (fundamental rights) and the Constitution in their individual application decisions. In cases that can be referenced for climate change, the ECtHR often renders judgments based on the failure to fulfill positive obligations under Article 2 and Article 8 of the ECHR. [23] Similarly, the CC evaluates individual applications related to the right to live in a healthy environment within the scope of a person's inviolability (Article 17 of the Constitution), the privacy and protection of private life (Articles 20 and 21 of the Constitution). The Court has stated that issues of environmental pollution should primarily be evaluated within the framework of the state's positive obligations.[24]

While establishing human rights violations as the basis for environmental issues stemming from climate change is not mandatory to substantiate the legitimacy of the claimed interest infringement, it can serve a functional purpose in advocating for the enforcement of constitutional duties and rights. A rights-based approach in climate change cases is also necessary in terms of the nature of the state's positive obligation[25] to protect and realize fundamental rights, the determination of the state's responsibility, and the possibility of these cases being the subject of constitutional complaints[26] and applications to the ECHR.

While the rights enshrined in the ECHR are commonly used as a basis in national climate-related cases in Europe and cases brought before the ECtHR and the CC, it is yet uncertain where climate cases to be filed in administrative justice will fit within the categories of rights. In contrast to the CC and the ECHR, in climate change cases to be filed in administrative justice, it is likely that the Danıştay (Council of State) may rely on the right to live in a healthy environment (Article 56 of the Constitution). Indeed, the Council of State has established a connection between the right to life and certain environmental cases, but it generally evaluates these cases based on the right to a healthy environment (Article 56 of

[23] Öneryıldız v. Turkey [GC], No: 48939/99, (ECtHR, 30 November 2004), § 110 et seq.; Taşkın at al v. Turkey, No: 46117/99, (ECtHR, 10 November 2004), § 126; Tatar v. Romania, No: 67021/01, (ECtHR, 27 January 2009); Cordella at al v. Italy, No: 54414/13 and 54264/15, 24/1/2019; Budayeva (Boudaïeva) at al v. Russia, No. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, (ECtHR, 20 March 2008, Final 29 September 2008), § 128 ff. For an evaluation of the ECHR's approach, see Maviş, at 77.

[24] See Const. Court [AYM], February 25, 2016, Mehmet Kurt, No: 2013/2552, § 46; April 21, 2016, Fevzi Kayacan (2), No: 2013/2513, § 39; March 24, 2016, Hüseyin Tunç Karlık and Zahide Şadan Karluk, No: 2013/6587, § 43; April 21, 2016, Ahmet İsmail Onat, No: 2013/6714, § 59.

[25] ECtHR determines the scope of protection by positive obligations. In this case, the rights allegedly violated could make a difference to the outcome of climate litigation. For example, in ECHR proceedings, the violation of property rights is less intense (see Fábián v. Hungary, No: 78117/13, (ECtHR 5 September 2017), §§ 84, 85); It supervises more intensively the cases involving violations of the right to life within the scope of Article 2 of the ECHR (See McCann at al v. the United Kingdom, U.N. 17/1994/464/545, (ECtHR, 5 September 1995), §§ 146-150; Gül v. Turkey, U.N. 22676/93, (ECtHR, 14 December 2000), §§ 77, 78). It can be said that the level of scrutiny the scope of 8 will be at more middle. See Keller, Helen/Heri, Corina. "The Future is Now: Climate Cases before the ECtHR", *Nord. J. Hum. Rights*, Vol. 40, No. 1, 2022, p.153, 170. See Janneke, Gerards. "Pluralism, Deference and the Margin of Appreciation Doctrine", *Eur. Law, J.*, Vol. 17, No. 1, 2021, 112-113; Rivers, Julian. "Proportionality and Variable Intensity of Review", *Cambridge L.J*, Vol. 65, No. 1, 2006, p.174, 182; Šušnjar, Davor. *Proportionality, Fundamental Rights and Balance of Powers*, Martinus Nijhoff, Leiden-Boston, 2010, p.122. Some authors argue that states do not have a margin of appreciation in the area of the right to life. See Arai-Takahashi, Yutaka. *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*, Intersentia, Antwerten-Newyork-Oxford, 2001; Zielonka, Sarabeth M. "The Universality of The Right to Life: Article 2 and The Margin of Appreciation in The Jurisprudence of The European Court of Human Rights", *N.Y.U. International Law and Politics*, Vol. 47, 2014, pp.245-277. The fact that the supervision carried out in terms of the right to life is more rigorous does not indicate that states do not have a margin of appreciation in this area. See also Finogenov at al v. Russia, No: 18299/03, 27311/03, (ECtHR, 20 December 2011).

[26] The Constitutional Court mostly examines individual applications regarding the violation of environmental rights within the framework of the right to a fair trial regulated in Article 36 of the Constitution, "protect and improve of corporeal and spiritual existence" regulated in Article 17 of the Constitution, "privacy of private life" regulated in Article 20 of the Constitution, "inviolability of the domicile" regulated in Article 21 of the Constitution not within the scope of Article 56 of Constitution. See Const. Court [AYM], March 24, 2016, Hüseyin Tunç Karlık and Zahide Şadan Karluk, No: 2013/6587, §§ 41 43, 69; Mehmet Kurt, No: 2013/2552, February 25, 2016, §§ 50-51; Binali Özkaradeniz at al, No: 2014/4686, February 1, 2018, § 45; Mehmet Bolat at al, No: 2013/5974, March 10, 2016, § 62.

the Constitution) without directly linking them to the right to life.[27] Under the evaluation within the scope of Article 56 of the Constitution, the Council of State may find violations of positive obligations concerning the right to a healthy environment.[28]

An assessment within this context may not be as rigorous as the evaluation conducted under the right to life and the right to respect for private and family life. Particularly when combined with rights other than the right to a healthy environment, a rights-based approach enhances the intensity and impact of judicial review. Therefore, it is no longer a question of whether there is a relationship between climate change and human rights, but rather how this relationship will be established and what its consequences will be that holds importance.[29]

B. Personal Interest: Does It Prevent Climate Cases from Being Public Actions?

Compelling the administration to adhere to the law necessitates individuals to resort to the court system. This requirement in administrative jurisprudence implies the personal nature of interest. The personal interest means that the administrative act is concretized in a specific individual.[30]

In cases involving climate change, especially in regulatory actions, the central issue revolves around the absence of personal interest, that is, the potential harm or violation that affects the entire society, and whether the right to initiate a lawsuit will be construed expansively or not. This relates to whether these cases will be classified as popular action (actio popularis) [31] or not. [32]

A public action is generally defined as a lawsuit aimed at the public interest and the protection of the public. [33] These cases, similar to climate change cases, often pertain to the future and involve idealistic demands. [34] Hence, the question of whether climate cases can be initiated by anyone is of fundamental importance for the future of climate litigation.

The personal interest in environmental cases is often considered in relation to a specific group of individuals who are located in a specific place and facing a particular risk. [35] Consequently, not every citizen possesses the right to file a lawsuit without establishing a direct link between themselves and the location where climate-related activities are transpiring. Although the Danıştay (Council of State) has acknowledged in certain instances that citizenship status alone can provide the element of personal

[27] In some environmental cases, the Danıştay [Council of State] makes its choice in favor of environmental protection by linking the public interest with the constitutional obligation to protect the environment and the right to life. Council of State [Danıştay] 6th Chamber, May 13, 1997, E. 1996/5477, K. 1997/2312. See also Council of State [Danıştay] 10th Chamber, April 28, 1992, E. 1990/278, K. 1992/1672; Council of State [Danıştay] 6th Chamber, May 13, 1997, E. 1996/5477, K. 1997/2312.

[28] As a social right, the environmental right is one of the rights that require positive action by the state. The Constitutional Court decided that environmental right is a positive status right and it imposes certain duties to the state in accordance with articles 56 and 63. *See* Const. Court [AYM], December 29, 2012, E. 2001/106, K. 2012/192, Official Gazette 02.04.2013/28606. In this case, the obligations and limitations foreseen for social rights may come into play. Positive obligations require actions that are costly in time, effort, and resources. Due to these costs, the administration is given discretionary power depending on the nature of the violated right. For this reason, the obligation to take reasonable and adequate precautions can be evaluated within the framework of Article of Constitution 65 (within the capacity of its financial resources). Despite this, the cost to the state of every obligation imposed by the environmental right is not the same. It is also accepted that the limitation of the capacity of the state's financial resources does not only cover the duties of protecting the environment and preventing pollution but also covers large projects that require huge expenditures and the environment needs to be improved. (See Kaboğlu, İbrahim Ö. *Çevre Hakkı,* İletişim, 1992, p.42). According to this; making the regulations required by the environmental right will not be subject to the limitations stipulated by Article 65 of the Constitution.

[29] David R Boyd/Marcos A Orellana, Third-party intervention in Duarte Agostinho and Others v Portugal and 32 Others, § 17. https://ln.sync.com/dl/383819540/pwjktn7x-uy5x8334-sib42xf2-pk8wkc9b/view/doc/ 5917189570010.

[30] Karahanoğulları, Onur. İ*dari Yargı: İdarenin Hukuka Zorlanması (Yargi Kararlarına Dayalı Bir İnceleme)*, Turhan Kitabevi, Ankara, 2019, p.351.

[31] "*In Latin, the literal meaning of the word is an action by the people*". See Grant, Evadne. "International Human Rights Courts and Environmental Human Rights: Re-Imagining Adjudicative Paradigms", *Journal of Human Rights and the Environment, Vol. 6,* No. 2, 2015, p.156-161.

[32] See Gökalp Alıca, at 165-220.

[33] Schall, at 419.

[34] See Albers, at 131.

[35] Danıştay (Council of State), considered the designations of 'citizenship' and 'residency within the city' to constitute essential criteria conferring legal standing. Council of State 10th Chamber, 28 May 2001, E. 2001/991, K. 2001/2008,

interest for standing to sue, this stance does not represent an established legal precedent. [36]

Nevertheless, the Danıştay does accept annulment actions brought by associations, foundations, and public-interest professional organizations engaged in the realm of environmental and urban planning[37] and it interprets the condition of personal interest broadly in such cases.[38/39]

The requirement of the personal interest in environmental cases is ensured through Article 56 of the Constitution and the provisions of the Environmental Law that recognize the right to participate. When the principle of participation is considered together with Article 56 of the Constitution and Articles 1, 3-a, and 30 of the Environmental Law, it can be said that every individual or organization has the right to apply to administrative justice to protect the environment.[40]

Article 56 of the Constitution explicitly affirms that "*everyone*" has the right to live in a healthy and balanced environment, and emphasize that contributing to the protection of such an environment is both the duty of the state and its citizens. If the sole qualification of the individual bringing the action is their status as a citizen, then their connection cab only be established with actions that are related to or affecting this status.[41] The fundamental values, principles, and rights protected in the Constitution represent the objective value system established by the Constitution. [42] Any action that contradicts this value system legitimizes the request for legal action by anyone who is a citizen. [43]

Article 3 of Law No. 2871 on Environmental Law, particularly in paragraphs (a) and (e), explicitly delineates that the responsibility for safeguarding the environment and averting environmental pollution lies with both natural and legal entities. Furthermore, Article 30 of the Environmental Law extends the right to request the necessary measures or the cessation of activities to anyone who encounters harm or has knowledge of an activity causing environmental pollution or degradation. In this context, not only individuals or entities 'confronted with injury' but also those 'who have any knowledge' regarding such activities that result in environmental pollution or deterioration can approach the relevant authorities for action.

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[36] As a rule, Danıştay [Council of State] does not consider the title of citizen to be sufficient in terms of the capacity to file a lawsuit. See Council of State [Danıştay] Administrative Case Chambers Board, January 25, 1974, E. 1972/586, K. 1974/80; Council of State [Danıştay] 10th Chamber, July 1, 1993, E. 1993/2258, K. 1993/2798, and November 17, 1998, E. 1993/4903, K. 1993/4528,. Cases in which the status of citizen was not considered sufficient to be a plaintiff were brought before the Constitutional Court on the grounds that the right to a fair trial was violated. The Constitutional Court ruled that there was a violation in the individual application made alleging that the court decision that the title of local government (province) resident does not provide the capacity to sue violated the right to access the court. Const. Court [AYM], September 8, 2020, Arif Ekim at al, No: 2016/9276, § 38. See also Const. Court [AYM], July 18, 2018, Levent Tütüncü, No: 2015/3690; March 5, 2020 Kemal Çakır at al [GK], No: 2016/13846; September 9, 2020, Ragıp Cumhur Velibeyoğlu, No: 2017/34720. For examples of applications made on the grounds of violation of the right to decision, which is another aspect of access to the court, see. Const. Court [AYM], September 15, 2020, Bayram Ali Devecioğlu, No: 2017/39387; September 15, 2020, Şenol Arslan, No: 2017/40261; March 3, 2020, Yılmaz Aksu, No: 2018/18444; December 2, 2020, Abdullatif Ucaman at al, No: 2018/1833. According to the decisions of the Constitutional Court, being a citizen is sufficient to be a party in environmental cases. Const. Court [AYM], March 5, 2020, Kemal Çakır at al [GC], No: 2016/13846, § 42.

[37] It can be asserted that the legal capacity of bar associations, which function as professional organizations with characteristics akin to public institutions in matters concerning the environment and zoning, has notably diminished subsequent to the rulings of the Council of State Administrative Case Chambers Board [Danıştay İDDK], September 28, 2017, E. 2013/605, K. 2015/105, February 23, 2015 and E. 2016/4786, K. 2017/2860). See also Gökalp Alıca, *supra* note at 183.

[38] See Conseil of State [Danıştay] 6th Chamber, June 13, 1994, E. 1994/2816, K. 1994/4393; December 17, 1992, E. 1992/2502, K. 1992/5000. In cases brought forth by non-governmental organizations, the court examines the statute of the respective plaintiff organization to assess whether it satisfies the requirement of having a standing to sue based on a breach of interest. Council of State [Danıştay] 8th Chamber], December 7, 1999, E. 1999/2477, K. 1999/7077. In the same direction, see Council of State [Danıştay] 10th Chamber, September 27, 2004, E. 2004/5645, K. 2004/6431,

[39] In the *Gökova* case, the headmen of four villages on the shores of the Gulf of Gökova and one village resident were involved; in the *Zaferpark* case, 41 employees working at the Council of State, located around the park were engaged; In the *Güvenpark* case, three citizens from Ankara, who are experts in environment, urbanism and planning, filed a lawsuit that was accepted. See respectively Council of State [Danıştay] 10th Chamber, June 24, 1986, E. 1985/2739, K. 1986/1451, AİD, *19*, no 3, 1986: 150-157; Council of State [Danıştay] 6th Chamber, December 16, 1986, E. 1986/1323, K. 1986/1135.

[40] See Güran, Sait. "Çevre Kanununun Otuzuncu Maddesi", *İdare Hukuku ve İlimleri Dergisi,* Vol. 9, No. 1-3, 1988, p.185, 189.

[41] Karahanoğulları, at 378.

[42] See Gören, Zafer. *Temel Hak Genel Teorisi.* 4. Baskı, Dokuz Eylül Üniversitesi Yayınları, İzmir, 2000, p.41; Belling, W. Detlev/Nurten İnce. "Türk-Alman Hukukunda Temel Hakların Özel Hukuk İlişkilerine Etkisi", *Legal Hukuk Dergisi,* Vol. 12, Issue 137, 2014, p. 54.

[43] In the cases in France, the plaintiffs filed a lawsuit directly on the grounds of violation of the principle of legality, without relying on any violation of rights. In these cases, the plaintiffs claimed illegality on the grounds that they did not comply with international and national law. Violation of the principle of legality is a violation of a constitutional value and concerns everyone. See *supra* note 59 and 61.

These regulations, indeed, establish a legal framework enabling participation in environmental decision-making processes for anyone, irrespective of whether they have suffered direct harm.[44] Nevertheless, it is worth noting that some hold the perspective that these regulations do not confer *actio popularis* status to environmental cases.[45] According to this viewpoint, even if an individual who is aware of an activity that pollutes or harms the environment is not directly affected by that activity, they are essentially defending their own interest because the environment is considered as the common asset of all citizens.[46] Additionally, they are fulfilling a duty under Article 3/a of the Environmental Law.

The ECtHR jurisprudence is not open to actio popularis.[47] Pursuant to Article 34 of the ECtHR, individual, civil society organizations, and group of individuals can make a request, but the applicant must be "personally affected by an alleged violation of a Convention right" [48] or there must be an imminent, serious and direct impact.[49]

Applicants who do not meet theses conditions see their cases dismissed under Article 34 of the Convention.[50] Applicants are required to furnish reasonable and compelling evidence of a likelihood of a violation that directly impacts them; mere suspicion or conjecture is insufficient.[51] Therefore, it can be asserted that cases before the ECtHR are not considered as actio popularis. As articulated by, *"Article 34 does not institute for individuals a kind of actio popularis for the interpretation of the Convention; it does not permit individuals to complain against a law in abstract simply because they feel that it contravenes the Convention."* [52]

The ECtHR maintains strict legal obligations in the climate change cases it has adjudicated. In recent judgments, the Court has tried(has sought) to prevent cases from becoming action-popularis by establishing high threshold criteria for individual applicants. For the applicant associations, the Court has emphasized that the cases were not action-popularis and decided that victim status would be accepted under certain conditions in climate cases.

In the Carême/France case, the Court considered the application made by the applicant, who was the mayor of Grande-Synthe, on behalf of the Grande-Synthe municipality and himself. The Court, in accordance with the decision of the national court (Conseil d'État), stated that accepting case of the applicant, who no longer resided in France from the date of the lawsuit, would lead to "actio popularis" which is not permitted in the Convention system. This would make it difficult to distinguish "a situation where an applicant needs urgent protection against the effects of climate change on the enjoyment of human rights" (§ 84) from other situations. Consequently, the Court concluded that the applicant could not claim victim status under Article 34 of the Convention (§ 83). Additionally, the Court noted that the applicant was no longer the mayor and thus could not apply on behalf of Grande-Synthe.[53]

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[44] Turgut, Nükhet. *Çevre Hukuku,* Savaş Yayınları, Ankara 1998, p. 292. See Erhürman, Tufan. "*Çevre Davalarında 'Menfaat İhlali'; Danıştay ve KKTC Yüksek İdare Mahkemesi Kararları Üzerine Karşılaştırmalı Bir İnceleme",* AÜFHD, Vol. 60, No. 3, 2011, p.447, 453; Güran, at 187; Kaboğlu, İbrahim Ö. *Çevre Hakkı,* İmge Yayınevi, İstanbul, 1996, p.121.

[45] Güran, at 188.

[46] See Karahanoğulları, at 362.

[47] See Segi at al & Gestoras Pro Amnistia at al v. 15 States of The European Union, No: 6422/02, 9916/02 (ECtHR, 23 May 2002); Caron at al v. France, No: 48629/08 (ECtHR, 29 June 2010).

[48] *Karner v. Avsturya,* No: 40016/98 (ECtHR, October 24, 2003), § 25.

[49] See Schall, at 421.

[50] The Court accepts that in order for a person to claim to be the victim of a violation, he or she must have been directly affected by the measure in question. (See Ireland v. United Kingdom, No: 5310/71 (ECtHR, 18 January 1978), §§ 239-240; Klass at al v. Germany, No: 502/71 (ECtHR, 6 September 1978) § 33). Therefore, the Convention does not allow for an actio-popularis regarding the interpretation of the rights it provides for, nor does it allow individuals to complain about any provision of domestic law, even though they are not directly affected by it, simply because it may be contrary to the Convention (see Norris v. Ireland, No: 10581/83 (ECtHR, 26 October 1988) § 31).

[51] Shortall at al v. Ireland, No: 50272/18 (ECtHR, 19 October 2021) §§ 58, 59.

[52] *Karner v. Avusturya,* No: 40016/98 (ECtHR, 24 October 2003), § 24.

[53] During the hearing, while answering the Court's questions, the applicant explained that he lived in Brussels as a Member of the European Parliament, not in Grande-Synthe. The applicant did not own property or rent in Grande-Synthe. He had family ties with the municipality because his brother lived there, and he planned to return there when his term in the European Parliament ended. However, he felt a strong connection to the municipality where he had served as mayor for many years. He also explained to the Court that he filed the complaint as the Mayor of Grande-Synthe and as a citizen and resident of Grande-Synthe. As an asthma patient, he stated that he was affected by the impacts

In its decision regarding the Klimaseniorinnen/Switzerland case,[54] the Court differentiated between individual applicants and associations. The ECtHR, referencing case-law on the Arhus Convention, held that the applicant association met the relevant criteria and therefore had the necessary legal status to act on behalf of its members in the case. While assessing the victim status of associations, the Court considered climate change as a "common concern of humanity" and emphasized the importance of promoting intergenerational burden-sharing in this context (§ 489). In these specific context, the Court accepted the victim status of associations by considering the Aarhus Convention and factors established by the Court's case-law (§§ § 499, 501, 502). The Court held that denying examination the merits of the applicant association's case, while limiting the right of access to a court, did not require Article 6 to guarantee access to a court for action-popularis complaints. Furthermore, given the special circumstances of climate change, the Court tied the requirement for individual applicants to demonstrate direct and personal impact by the impugned act through two stringent criteria: first, the applicant must be intensely exposed to the adverse effects of climate change, inticating significant risk from government's action or inaction; affecting the applicant must be significant; second, there must be a pressing nature pressing nature of their need for individual protection due to the absence or inadequacy of reasonable measures to mitigate the harm (§ 487-488).

In Duarte Agostinho and Others v. Portugal, the Court did not recognize the applicants' status as victims on the grounds that this application against other States was outside its jurisdiction and also that domestic remedies had not been exhausted (§ 230). The Court noted that there was a significant lack of clarity in determining victim status according to the criteria set out in Verein Klimaseniorinnen Schweiz and Others (§ 487-488- 229). However, it also concluded that the applicants did not have victim status on because this lack of clarity was linked to their failure to exhaust domestic remedies, an admissibility condition closely associated to the question of victim status, particularly in the case of involving general measures like those related to climate change (§ 230). The lack of clarity combined with the failure to exhaust domestic remedies was used as a criterion for determining the applicants' victim status.

Nevertheless, considering the number and qualifications of the plaintiffs, especially NGOs and citizens, in climate cases filed across Europe, it can be argued that climate cases have taken on the character of actio popularis.[55] The Urgenda case is indeed considered a classic example of an actio popularis.[56]

In the *Urgenda* case, the Dutch state was sued for failing to take sufficient measures to reduce CO2 emissions compared to 1990 levels, and it was argued that the state's actions were wrong and negligent. Urgenda, a small NGO, was granted standing in the case, and along with 886 other co-plaintiffs, it called for a reduction in greenhouse gas emissions of 25-40% by the end of 2020, rather than the initially planned 16%.[57] This case holds significant importance as it exemplifies how climate litigation can serve as a tool for holding governments accountable for their actions or inactions concerning climate matters. The widespread participation of NGOs and citizens in this case underscores the inherent public interest nature of climate litigation and its potential to drive policy changes aimed at effectively addressing climate change.

In France, various NGOs have been granted standing to sue in climate-related cases.[58] For instance, the French Council of State (Conseil d'État) accepted the standing to sue Grande Synthe

of climate change in Brussels as well (§ 68).
[54] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], supra not 18.
[55] See Schall, at 444.
[56] Albers, at 133.
[57] Albers, at 133.
[58] See Laurien Nijenhuis, *Climate change litigation in Europe*, REALAW.BLOG, (February 11, 2022, https://realaw.blog/?p=890; Lavrysen, Luc. "The French Climate Cases: Legal Basis and Broader Meaning", IUCN: WCEL, (2021), https://biblio.ugent.be/publication/8693381.

Municipality and several NGOs in the *Grande Synthe* case. [59] In this case, they contested the government's refusal to implement additional measures aimed at achieving a 40% reduction in emissions by 2030 compared to 1990 levels.[60] Similarly, in the "*L'affaire du siècle*"[61] (the case of the century), where four NGOs sought action to bring greenhouse gas emissions to a level consistent with international agreements and sought compensation for ecological harm, the court acknowledged that the conditions for standing under the relevant civil code provisions were met. These instances in France exemplify a growing trend where environmental and climate-focused NGOs are acknowledged as having legal standing in climate-related litigation. This recognition reflects the acknowledgment of the public interest in addressing climate change and holding governments accountable for their climate actions.

In the *Klimaatzaak v. Belgium* case, which was launched by a civil society organization and 58,000 citizens against the Belgian government and three regional authorities to petition for a reduction in greenhouse gas emissions, the Court found that citizens held a direct personal interest in matters related to climate change.[62]

In climate change cases with effects that transcend regional boundaries, the requirement of personal interest violation is not limited to a specific geographical area. The number of individuals potentially affected by climate change is much greater than those affected by pollution in a specific locality. Therefore, it is recognized that everyone, irrespective of their place of residence, possesses an interest in urging authorities to take action on climate-related issues. This interest can represent not only the individual interests of each person but also the interests of the public. The environment is considered a public matter, referred to as the "common concern" or "common heritage" of humanity, and its preservation serves the public interest. The public interest cannot be personalized and, therefore, carries a general character that concerns all members of society.

C. ***Actual Interest: Can Future Generations and Potential Victims be Plaintiffs?***

Actuality in legal terms focuses on the temporal impact of the alleged violation on the plaintiff. There should be a temporal connection between the plaintiff and the subject matter of the lawsuit. According to judicial precedent, that requirement is met when the violation has occurred at the time the lawsuit is filed and continues during the course of the lawsuit. In climate cases, the fact that the interest in question has not yet been violated or that the violation is not actual can hinder the establishment of a connection of interest. Greenhouse gas emissions, which are responsible for climate change, do not have immediate effects. Therefore, most climate cases involve claims of uncertain and abstract harm or violation. Particularly when abstract and future climate risks are litigated, harmful effects on potential victims and future generations (including children and youth) are discussed.

In the legal context, the concept of actuality pertains to the temporal impact of an alleged violation on the plaintiff. There must exist a temporal nexus between the plaintiff and the subject matter of the lawsuit. Judicial precedent dictates that this criterion is met when the violation has transpired at the time the lawsuit is initiated and continues throughout the legal proceedings. In climate-related cases, the challenge arises when the interest in question has not yet been violated or when the violation lacks actuality, thereby impeding the establishment of an interest connection. Greenhouse gas emissions, the primary drivers of climate change, do not yield immediate consequences. Consequently, the majority of climate cases revolve around claims of uncertain and abstract harm or violation. Particularly in instances

[59] *Commune de Grande-Synthe v. France*, see https://climatecasechart.com (last visited Sebt. 9, 2023).
[60] https://www.conseil-etat.fr/site/Pages-internationales/english/news/greenhouse-gas-emissions-the-conseil-d-etat-annuls-the-government-s-refusal-to-take-additional-measures-and-orders-it-to-take-these-measures-befor (last visited Sebt. 10, 2023).
[61] Tribunal Administratif de Paris, 3 février 2021, N° 1904967, 1904972, 1904976/4-1. See Lavrysen, supra note 58.
[62] See http://climatecasechart.com (last visited Sebt. 10, 2023).

involving litigation of abstract and future climate-related risks, discussions often revolve around the detrimental impacts on potential victims and future generations, including children and youth. In such cases, determining whether an interest violation has occurred or is likely to occur in the near future due to unrealized or imminent uncertain harm is the second most critical factor in determining the future of climate change cases.

The response to this inquiry is also anticipated in cases currently awaiting resolution before the ECtHR. On September 3, 2020, a group of six young Portuguese individuals, including children, submitted an application to the ECtHR concerning claims of damages stemming from forest fires in Portugal, including those attributed to climate change, encompassing both past and anticipated future harm.[63] In the case of *Müllner v. Austria* before the Court, the applicant, who had specific medical conditions, asserted that elevated temperatures would subject them to health-related issues.[64] In a similar vein, in *Klimaseniorinnen v. Switzerland*[65] case, the applicants, who elderly women, initiated a legal proceedings contending that they could directly face adverse health effects resulting from heat waves induced by climate change, including heightened risks, including death. In the *Greenpeace v. Norway*[66] case before the ECtHR, two non-governmental organizations and six young climate activists alleged that they qualified as potential victims under the purview of Article 2 and Article 8 of the ECHR, considering the foreseeable impact on Norwegians and future generations. The application posited that the apprehension and distress of future generations concerning their lives and livelihoods due to climate change constituted direct effects, thereby asserting their standing as individuals directly impacted by climate change. [67]

In the aforementioned cases have gone before the ECtHR, the applicants, in various forms, have asserted that they face the risk of suffering harm in the future. In essence, all the mentioned cases revolve around present and, predominantly, prospective violations of human rights. Therefore, the applicants could have been characterized as potential victims of human rights infringements. However, while the Court ruled in the precedent-setting Swiss case that the fight against climate change is a situation of general impact, it does not consider that the case-law on 'potential' victims, where victim status can be claimed by a 'class of persons' with a 'legitimate personal interest', is applicable here (§ 485). In the context of climate change, however, this could cover almost everyone and would therefore not work as a limiting criterion. Everyone is concerned in different ways and to different degrees with present and future risks and can claim to have a legitimate personal interest in seeing those risks disappear.

In Klimaseniorinnen v. Switzerland, having assessed, in respect of the individual applicants, 'the nature and scope of their complaints, the material submitted by the applicants and the circumstances, such as the degree of probability and/or likelihood of the adverse effects of climate change over time, the specific impact on the life, health or well-being of each applicant, the magnitude and duration of the harmful effects, the extent of the risk (local or general) and the nature of the applicants' vulnerability", the Court held that the four individual applicants did not meet the criteria for victim status under Article 34. In particular, while the Court recognised that the applicants had formed a group against the effects of climate change, it held that it was not clear from the available information that they had suffered, or were at risk of suffering at any point in the future, the adverse effects of climate change to such an extent as to give rise to an urgent need to ensure their individual protection. Nor, in the Court's view, could it

[63] The applicants are six people, four children and two adults, aged 21, 20, 17, 15, 12 and 8 years old. The application was made against a total of 33 states, including 27 EU member states and 6 non-EU member states that are parties to the ECtHR. Duarte Agostinho at al v. Portugal and 32 Other Member States, supra not 18.
[64] Müllner v. Austria, supra note 18, see also www.michaelakroemer.com/wp-content/uploads/2021/04/rechtsanwaeltin-michaela-kroemer-klimaklage-petition.pdf (last visited Sebt. 12, 2023) , § 7.
[65] Verein KlimaSeniorinnen Schweiz and Others v. Switzerland [GC], supra not 18.
[66] Greenpeace Nordic at al v. Norway, supra note 18.
[67] For the petition see http://climatecasechart.com (last visited Sebt. 9, 2013).

be said that the applicants suffered from any critical medical condition, which could not be alleviated by reasonable personal adaptation measures. Victim status in relation to future risk was only exceptionally recognised by the Court. The applicants also failed to show that exceptional circumstances had arisen for victim status in relation to future risk. For one applicant, who suffers from asthma, the Court was unable to establish a link between his illness and the complaints before it (§ 530 et seq).

In the Klimaseniorinnen v. Switzerland judgment, which set as a precedent for other cases, it can be said that the Court did not consider possible future damages and risk I the acceptance of victium status. However, the Court addressed its concern about the intergenerational effects of climate change in the opening paragraph of its assessment, emphasizing its awareness that "the damaging effects of climate change raise an issue of intergenerational burden-sharing and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities" (§ 410). The Court also recognized that, for various reasons, "in the context of climate change, the key characteristics and circumstances are significantly different" (§ 416). In doing so, it noted that 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" (§ 419). The Court thus identified "future generations" as people who do not yet exist, not as a category potentially including current rights-holders such as children. The judgment made it clear that the obligations arising for States under the Convention extend to "individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party" (§ 420). In sum, the Court explicitly recognizes that climate change affects future generations but emphasizes the claims cannot be brought for damages expected to occur in the future.

Instances from various cases across Europe serve as illustrative evidence of future generations being acknowledged as victims in the context of climate litigation. In the *Urgenda* case in the Netherlands, the plaintiffs contended that the government's emission targets breached its due diligence obligations under Article 2 and Article 8 of the European Convention on Human Rights with regard to future generations. The Court of Appeal recognized that the young plaintiffs would be compelled to grapple with the adverse impacts of climate change for the entirety of their lives should greenhouse gas emissions not be adequately reduced (as stated in paragraph 37 of the judgment).[68] According to the Court, *Urgenda* met the requirement of establishing an interest violation by providing sufficient evidence that climate change not only represents a current threat but also constitutes a genuine imminent threat in the near future (as indicated in para. 38). [69]

In the *Urgenda* case, in conformity with the state's affirmative obligations, if such an interest (as defined by the rights under Article 2 and Article 8 of the European Convention on Human Rights) is at risk due to an action, activity, or a natural event, even if it has not yet been directly affected, it is acknowledged that one or more of these interests will be infringed upon in the future (as stated in para. 41).[70]

In the *Neubauer* case brought before the Federal Constitutional Court of Germany by several organizations, the court imposed an obligation on governments to consider the fundamental rights of future generations in climate change policy.[71] Similarly, in the *Klimaatzaak* case[72] filed in Belgium

[68] Atalay, Serde. "Urgenda İklim Değişikliği Davası İstinaf Çevirisi", in *Urgenda İklim Değişikliği Davası,* (Eds. Axel Gosseries/Refia Kadayıfçı, 11-36), Ekoloji Kolektifi, 2019), p.24-25.
[69] Atalay, at 25.
[70] Atalay, at 25-26.
[71] Nijenhuis, *supra* note 58. The plaintiffs stated that the Federal Climate Change Act is incompatible with fundamental rights. According to the Federal Constitutional Court, the reduction targets specified in Germany's Federal Climate Change Act are incompatible with Article 20/a of the Constitution, which includes the obligation to take measures for climate change. Neubauer et al. v Germany, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20–German. See https://www.acrisl.org/casenotes/m2ll8m8skjpglk8-83mk2-k5yza-dcafy-x5ztr-bjfxk-c9y55-5ryfp.
[72] See VZW Klimaatzaak v. Kingdom of Belgium&Others, see https://www.klimaatzaak.eu/en and http://climatecasechart.com (last seen Sebt.

against the federal state and three regional governments, the court acknowledged that climate change posed a direct threat to the daily lives of both present and future generations.[73]

Upon examining Turkish administrative jurisprudence, it is difficult to predict that a broad interpretation of an interest violation will be applied in annulment action filed due to demands for regulatory measures in compliance with climate-related international agreements or claims that the existing regulations and measures are insufficient. "In general, a potential violation, even if there is regulatory action in place, [74] does not meet the requirement of actuality."[75]

Nevertheless, the failure of the administration to enact necessary regulations or the insufficiency of the regulations it has enacted signifies a "deficiency in the legal structure of the administration," which affects rights and interests. Such regulatory rules not only provide actual interest when applied but also have an ongoing impact.[76] The rules contained in regulatory proceedings are effective at any time, although they do not apply to the individuals concerned.

The same conclusion is applicable to administrative negligence or inaction. In cases where a regulatory action concerning climate change is insufficient or when the administration fails to regulate a specific domain, it indicate that the violation is ongoing due to the persistent repercussions and the inability to curtail the impacts of climate change. Furthermore, if there is a definite or even a potential likelihood of a harmful administrative action (such as granting a permit to a facility that would escalate emissions despite restrictions on greenhouse gas emissions) the nexus of interest is regarded as having a current nature.

Nevertheless, Article 1 of Environmental Law establishes the legal basis for the actual interest in environmental cases. The terms “sustainable environment” and “sustainable development”[77] in Article 1 of the Environmental Law are defined in a manner that encompasses both the present and future generations.[78] Anyone who is aware of an activity that poses harm to the environment, even if they themselves are not directly affected by that activity, can assert the relevance of the violated interest. This is because the environment is regarded as a shared asset of all living beings, inclusive of future generations. In this context, any action or inaction by the administration pertaining to the regulation and restriction of greenhouse gases, which are the primary culprits of climate change, may be subject to legal action.

CONCLUSION

The existing legal and judicial framework offers a mechanism for bringing claims related to the right to a healthy environment before the court. In the realm of administrative justice, the initiation of legal proceedings hinges on the condition of interest violation rather than the infringement of rights. In this context, administrative justice serves as an instrument that guides governmental bodies toward

20, 2023).

[73] See https://riskandcompliance.freshfields.com/post/102h0y8/belgiums-climate-case-court-finds-belgian-state-at-fault-but-offers-no-guidan.

[74] The Council of State did not find the violation of a benefit that is certain to occur in the future, based on a regulatory action, sufficient to file an annulment action. See Council of State [Danıştay] 10th Chamber, November 13, 1997 E. 1997/1548, K. 1997/4387.

[75] Council of State [Danıştay] 5th Chamber, June 28, 2003, E. 2003/2079, K. 2003/3335; Council of State [Danıştay] 6th Chamber, April 20, 2005, E. 2004/6309, K. 2005/2411.

[76] Karahanoğulları, at 352.

[77] It is worth noting that the phrase “*sustainable development*” is problematic. See Sharachchandara M. LéLé. “Sustainable Development: A Critical Review”, World Development, Vol. 19, No. 6, 1991, pp. 607-621.

[78] See Kaboğlu, İbrahim Ö. “Çevre Hakkı Üzerine (Bir Danıştay Kararının Düşündürdükleri)”, *İnsan Hakları Yıllığı,* Vol. 10-11, 1988-1989, p.123. Article 1 of the Environmental Law states that the purpose of the Law is to ensure the protection of the environment, which is the common existence of all living things, in line with the principles of sustainable environment and sustainable development: *"The objective of this Law is to protect and improve the environment which is the common asset of all citizens; make better use of, and preserve land and natural resources in rural and urban areas; prevent water, land and air pollution; by preserving the country's vegetative and livestock assets and natural and historical richness, organize all arrangements and precautions for improving and securing health, civilization and life conditions of present and future generations in conformity with economical and social development objectives, and based on certain legal and technical principles."*

compliance with the law. Additionally, the constraining precedents set by administrative justice are not aligned with the provisions in legal regulations, including constitutional and environmental law. These legislations provide an opportunity for a more expansive interpretation of the concept of interest violation.

Acknowledging that cases pertaining to climate change primarily affect the individuals directly impacted and waiting for the full consequences of climate-related issues to materialize may lead to these cases being disregarded in administrative justice, thereby leaving rights violations unaddressed. In order to ensure the realization of human rights and in line with the aim of annulment actions, there is a need to relax the criteria for establishing interest violation within the administrative justice system in favor of climate-related cases. Rejecting cases due to their failure to meet the requirement of interest violation could result in other rights being infringed upon, including the right to a healthy environment, both for the present generation and future generations. The deterioration of the climate and the environment unquestionably impacts rights such as the right to privacy, adequate housing, livelihood, and freedom of movement, among others. If the adverse effects of climate change are not mitigated, numerous individuals will be unable to enjoy their fundamental rights. Waiting for these adversities to fully manifest would imply permitting irreversible damage, including preventable loss of life to some extent. To avert the violation of positive obligations in safeguarding human rights from the threats of climate change, states must adopt comprehensive, reasonable, and effective measures at the highest level. Positive obligations delineate the extent to which a wide array of human rights, encompassing civil and political rights, socio-economic rights, and environmental rights, are realized. In this context, a rights-based approach can expand the scope and boundaries of positive obligations.

A judicial approach aligned with the collective nature of human rights cases related to the environment would empower non-governmental organizations (NGOs) to hold governments accountable and enhance the agency of affected individuals. Rather than excluding climate cases from the legal system due to the personal and immediate interest of individual plaintiffs, establishing a precedent recognizing climate protection as a matter of public interest or actio-popularis presents an opportunity for the safeguarding of fundamental rights. National jurisprudence may embrace the doctrine of dynamic interpretation, evolving toward the protection of the rights of future generations. Acknowledging that climate cases constitute action-popularis, particularly in addressing the state's deficiencies concerning climate change, aligns with the inherent nature of annulment lawsuits as an effective instrument for the protection of public interests and the instigation of transformative legal changes. NGOs, in particular, possess better access to resources and can engage more deeply with this issue.

Hence, permitting NGOs to serve as plaintiffs in climate-related cases contributes to the visibility of objective cases and bolsters the rule of law concerning environmental and human rights matters. In this context, there is no impediment to treating these cases as actio-popularis and interpreting the concept of interest violation broadly, irrespective of the number of plaintiffs or their status as citizens or NGOs. The decisions handed down by national courts in this regard hold promise. The interpretation of interest violations in climate cases can benefit from a mutually reinforcing relationship between national and international law, as well as between national and international courts. This approach has the potential to provide a resolution to the challenge of admitting climate change cases.

Çıkar Çatışması

Çıkar çatışması bulunmamaktadır.

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