

## FIGHTING THE CLIMATE CRISIS WITHIN THE LAW (JUDICIAL) AXIS

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Hukuk (Yargı) Ekseninde İklim Kriziyle Mücadele



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### ABSTRACT

The The climate crisis increases the risk of threats to both our individual and social existence day by day. However, this threat is far from the attention and solution it deserves. For this reason, states (governments) that are responsible for protecting both the present and the future of humanity refrain from fulfilling this duty or taking on the role of making an effort. The increase in both emissions and global average temperatures from past to present shows that the fight against the climate crisis is only on paper or in rhetoric. This study examines the legal (judicial) solution that the public sees as a way out of the helplessness created by the climate crisis caused by the international system and governments. As a result, as citizens seek more rights and the judiciary decides in favor of the climate crisis, governments will strive for more solutions in tackling the climate crisis. Although this does not hold great promise in terms of the climate crisis, it will be beneficial for progress and awareness.

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### ÖZ

İklim krizi, gerek bireysel gerekse toplumsal varlığımız üzerindeki tehdit riskini her geçen gün daha da artırmaktadır. Ancak bu tehdit gereken ilgi ve çözümden uzaktır. Bu sebeple, insanlığın hem bugünü hem de geleceğini korumakla yükümlü devletler (hükümetler) bu görevinin gereğini yerine getirmekten imtina etmekte ya da çaba sarf ediyorum rolüne bürünmektedirler. Bu rolü geçmişten günümüze gelinen noktada gerek emisyonların gerekse küresel ortalama sıcaklıkların artışı iklim kriziyle mücadelenin yalnızca kâğıt üzerinde veya sözde olduğunu genel olarak göstermektedir. Bu çalışma halkın uluslararası sistemin ve hükümetlerin sebep olduğu iklim krizi çözümsüzlüğüne karşı çıkış yolu olarak gördükleri hukuksal (yargısal) çözüm yolunu incelemektedir. Sonuç olarak, vatandaşların daha fazla hak araması ve yargının iklim krizi lehine verdiği kararlar artıkça iklim kriziyle mücadelede hükümetler daha fazla çözüm yolu için çaba göstereceklerdir. Bu durum ise iklim krizi açısından tek başına büyük bir umut vaat etmese de bir ilerleme ve bilinçlenme sağlanmasına yararlı olacaktır.

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## 1. Introduction

The political, economic and legal order established today supports individuals, institutions and organizations that harm the climate system to continue their actions. Therefore, although the owners of the action (governments or institutions) cause the climate crisis, their actions seem legitimate. However, the fact that governments allow greenhouse gas emissions that cause the climate crisis shows that they are actually violating their obligations, which is their most basic duty to maintain the constitutional order. Therefore, all the steps taken towards climate protection are against the interests of the illegal and unstable world order. In addition, the fact that all the steps taken since the 1990s have not reached the desired level of success is an indication that the current world order is the biggest obstacle in the fight against the climate crisis.

Although the climate crisis is seen as a priority by 195 countries (Jang et al., 2019; Spash, 2016) within the framework of the Paris Agreement, it is an ongoing global problem. In the face of this unprecedented global crisis, governments do not act in a way that produces solutions. They are waiving their public trust obligations to protect the climate for future generations. Because the future generations that the climate crisis will really affect are in danger. Especially as long as the current climate policies continue, problems such as hurricanes, floods, heat waves, forest fires, diseases, problems in the food supply, drought, and difficulties in accessing clean water resources will affect people's lives more. This will trigger massive human migrations and cause many deaths. Greenhouse gases are the main cause of the climate crisis and if the determined limit values (2oC-1,5oC) are exceeded the fight against the climate crisis will probably get out of control (Watson, 2022). Therefore, the law (judiciary) emerges as an important weapon in the hands of the people to remind the role of governments in reducing greenhouse gas emissions and to maintain public confidence in tackling the climate crisis.

The climate crisis is a persistent, pervasive and harmful problem. Therefore, it profoundly affects the enjoyment of human rights worldwide. However, the world is on the way to miss the temperature increase target set under the Paris Agreement for the reduction of anthropogenic greenhouse gases (by limiting the global average temperature to 2°C and if possible 1.5°C compared to the pre-industrial period) (IPCC, 2022). Therefore, every branch of government, including the judiciary, has a role to play in tackling the climate crisis. Undoubtedly, as long as governments continue to fall into the hands of the neoliberal system, the judiciary has important duties in this regard. As practitioners of the law, courts can make a meaningful contribution to tackling the

climate crisis by ensuring equal access to justice, identifying climate crisis demands, promoting the rule of law, and ensuring that the executive, legislature and private sector take the climate crisis seriously. Assisting in the progressive and principled development of climate crisis law, and policy and making reasoned and evidence-based decisions.

The state is responsible for the duty of representation to the citizen who has the right of usufruct (Fortmann, 1990). In international law, elements such as space, atmosphere or high seas are considered as the common property of all humanity (Pečujlić, 2021). For this reason, it is the natural right of the citizen to demand that measures be taken against the changes in the structure of the atmosphere, which is the main reason for the climate crisis. On the other hand, it is the duty of the governments, both individually and as a whole, to fulfill these wishes of the citizens.

Observing that governments do not make sufficient efforts in the fight against the climate crisis, and living in person, the people force governments to do their duty on behalf of their own future through judicial decisions. Especially in recent years, there has been a rapid increase in climate lawsuits. This shows that efforts to address the climate crisis in courtrooms are becoming increasingly widespread and public trust in governments is declining. According to the Global Climate Litigation Report: 2020 published by the United Nations Environment Program (UNEP), the number of lawsuits filed due to the climate crisis has almost doubled in recent years, and this situation forces both governments and institutions to fulfill their climate commitments. It also mentions that UNEP climate lawsuits are more common and successful around the world. While 884 climate cases were filed in 24 countries in 2017, this number increased to at least 1550 cases in 39 countries (including the European Union) in 2020. Pointing out that climate lawsuits are especially concentrated in high-income countries, UNEP states that the latest lawsuits have been filed in countries such as Colombia, India, Pakistan, Peru, Philippines and South Africa (UNEP, 2020). In the study conducted by Setzer and Vanhala (2019), this search for rights was examined. 130 articles published by the authors in English between 2000 and 2018 covering law and social sciences are discussed. Specifically, the research focused on four main themes: the relationship between litigation and governance, time and scale in climate litigation, the role of science, and the human rights turn in climate change litigation. As a result, the importance of research that is not limited to legal research is emphasized in order to evaluate both the regulatory and non-regulatory impact of climate lawsuits and to create a wider jurisdiction. It was also emphasized that addressing these issues would contribute to the formation of a more permanent idea that would strengthen or weaken climate lawsuits. The human-induced climate crisis is rapidly showing its negative

effects from a broad perspective. The biggest responsibility for the increase of these effects falls on countries and companies. The research conducted by Ganguly, Setzer and Heyvaert (2018) discusses the past and future of lawsuits covering the impact and responsibilities of companies on the climate crisis. Although there are unsuccessful litigation results, it has been mentioned that when taken as a whole, both the increase in cases and the revealing of the climate crisis with more scientific evidence may pose a risk to companies in financial and legal terms. He stated that this situation can guide the judiciary sensitive to the climate crisis in the long run.

This study reveals that in the fight against the climate crisis, responsible governments on behalf of the citizens have the right to self-determination, as well as the right to defend themselves against the climate crisis, due to the failure to achieve the desired goals. It also mentions the importance of court decisions regarding themselves and their future in the fight against the climate crisis. In other words, it is argued that the inadequate efforts of governments can be replaced by lawsuits filed by citizens and the consequences of these lawsuits.

## **2. Method**

This study especially discusses the policies brought about by the legal dimension of the climate crisis. For this reason, both the basic foundations of the climate crisis in terms of international law and the national climate law of certain countries have been examined. Afterwards, the lawsuits filed on this legal basis and the contents of the lawsuits are included and the citizens' claiming rights and their attempts to find solutions in terms of the climate crisis on all these legal grounds are discussed in depth on the political plane.

## **3. International Law in Combating the Climate Crisis**

International conventions form the basis of nation states in the context of international law. For this reason, the main texts that enable the climate crisis to be handled as an international problem in terms of international law and to establish a legal and binding struggle ground in terms of international law will be discussed in this section. First of all, the United Nations Framework Convention on Climate Change (UNFCCC), which was signed in 1992 and is the fundamental constitution in the fight against the climate crisis, followed by the Kyoto Protocol signed in 1997 and containing more specific commitments, and the Paris Agreement signed in 2015, the current guide, will be discussed in the fight against the climate crisis.

### 3.1. United Nations Framework Convention on Climate Change (UNFCCC)

The UNFCCC lays out the basic legal framework and principles for international cooperation to stabilize greenhouse gas concentrations in the atmosphere to prevent dangerous anthropogenic interference with the climate system. It is seen as the first important step taken in terms of the climate crisis. The convention, signed in Rio in 1992, entered into force in 1994 (Ashe et al., 1999). In addition, the convention acts in accordance with the principle of common and differentiated responsibilities, taking into account the development priorities and special conditions of the countries in terms of greenhouse gas reduction in accordance with the articles it contains. This principle is based on the fact that some countries have to take more responsibility in reducing their greenhouse gas emissions as they have released more greenhouse gases than others after the industrial revolution. In other words, the burden of each party varies according to their level of development and their historical responsibilities for greenhouse gas emissions (McManus, 2009; United Nations, 1992). To this end, states parties are divided into the following categories according to their responsibilities:

1. Annex I countries: The Convention obliges them to report their greenhouse gas emissions data and the measures they take to reduce their greenhouse gas emissions, protect and improve sinks, and prevent climate change. This category consists of 42 countries and the European Union (EU).

2. Annex II countries: These countries, in addition to their other responsibilities as Annex I countries, are obliged to take all necessary steps to promote, facilitate and finance environmentally friendly technologies, especially in developing countries, and to promote access to these technologies. This category consists of 23 countries and the EU.

3. Non-annex countries: They are supported to reduce greenhouse gas emissions, to protect sinks by cooperating in research and technology, but they do not have obligations like other party countries. Most of the participating countries are in this category (Gürçam, 2022: 8).

Some basic principles have been determined in the implementation of the contract that was put into practice for the reduction of anthropogenic greenhouse gases in the climate crisis and in doing the necessary. The basic principles determined are:

a) Developed countries, which have the largest share in greenhouse gas emissions that cause climate change, should lead the steps taken to protect the climate system against the harmful effects of climate change for today and tomorrow.

b) Regarding the reduction of greenhouse gases, attention should be paid to the special circumstances of the developing countries, which may be exposed to harmful effects due to climate change and which are placed under excessive burden from the developing countries that are party to the convention.

c) Necessary preventive measures to be taken by the parties against the harmful effects of climate change should be carried out in cooperation with studies that cover all socio-economic areas, all greenhouse gas deposits, reservoirs and sinks and that can prevent human-induced and harmful effects on climate change.

d) The measures taken against climate change, integrated into the national development programs of the Parties, should be such that they do not hinder economic development according to the specific conditions of the countries. Sustainable development is a right of the parties and this right should be supported by the parties.

e) By supporting sustainable development and economic growth in developing countries, a more effective environment for combating the harmful effects of climate change should be created and it should be done without any arbitrary discrimination that would harm international trade (United Nations, 1992).

### 3.2. Kyoto Protocol

With the adoption of the UNFCCC in 1994, a great step forward has been taken in tackling the climate crisis. However, as greenhouse gases continue to increase, member states have started negotiations on a protocol that will give more permanent results. Based on the UNFCCC, the Kyoto Protocol, which was agreed upon at the third meeting of the Conference of the Parties (COP/3), was adopted in Kyoto, Japan, on 11 December 1997. Since the protocol signed in 1997 is required to be realized only with the approval, acceptance and approval of at least 55 party countries, which corresponds to 55 percent of the total carbon dioxide emission rates of Annex-I party countries in 1990 (Bohringer, 2003; United Nations, 1998: 18), the protocol came into force on February 16, 2005, only after Russia, which accounted for 16.4 percent of 1990 carbon emissions, ratified the agreement. While the countries listed in Annex-B include 36 industrially developed countries and the EU, these countries and the EU have quantitative greenhouse gas reduction targets. The Kyoto protocol covers the 2008-2012 and 2012-2020 commitment periods for GHG reduction. Annex B countries have quantified emission reduction obligations. The protocol covers 6 basic gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulphur hexafluoride (SF<sub>6</sub>) (United Nations, 1998: 19). Some of the main issues to be implemented by the protocol are:



a) Between 2008 and 2012, Annex 1 countries should reduce their greenhouse gas emissions by an average of 5% from 1990 levels (for many EU member states, this is 15% below the expected greenhouse gas emissions for 2008). Although the average emission reduction is set at 5%, it ranges from the 8% reduction determined by the EU member states to the 10% increase targeted by Iceland (Bhatti et al., 2010).

b) Within the framework of the obligations of the Parties, changes in greenhouse gas sinks in afforestation, afforestation and deforestation studies will be presented accurately and clearly in every reporting period since 1990.

c) At the first meeting to be held after the signing of the Protocol as a meeting of the Parties, Annex-I parties will submit the data for the year 1990 to the Scientific and Technical Advisory Assistant Organization for the determination and determination of greenhouse gas stock levels make forecasts to be confident about greenhouse gas stock levels and future changes in stocks.

d) This article of the Kyoto Protocol states that the parties involved in the Transition to Market Economy Process specified in Annex-I of the United Nations Framework Convention on Climate Change can show a certain tolerance in fulfilling the specified obligations (United Nations, 1998: 3-4).

e) The Protocol has established three market-based mechanisms for countries to achieve their goals: International Emissions Trading, Clean Development Mechanism (CDM) and Joint Implementation (JI) (Gupta, 2016;United Nations,1998).

### **3.3. Paris Agreement**

The Paris Agreement was approved in 2015 at the 21st (COP21) meeting of the Conference of the Parties held in Paris, the capital of France, within the framework of the UNFCCC and entered into force in 2016. The agreement, which was signed by 195 countries, which corresponds to almost all of the greenhouse gas emissions, is an accepted roadmap to determine how the order to combat the climate crisis will be after the Kyoto Protocol, which will expire in 2020. During the period from the Kyoto Protocol signed in 1997 to the Paris Agreement, while efforts were made to establish a global order after the Kyoto Protocol, it was not easy to maintain a balance between the developed countries that emit greenhouse gas emissions and the developing countries (Gürçam, 2021). For this reason, in order to leave a livable climate system to future generations in all respects, both developed countries and developing countries had to take responsibility. The Paris agreement is a comprehensive agreement emphasizing that both developed and developing countries should provide greenhouse gas reductions

in order to reduce the harmful effects of climate change (Horowitz, 2016). Some of the important items in terms of the climate crisis determined by the Paris Agreement are as follows:

a) In order to reduce the harmful effects of climate change, strive to keep global temperatures below 2oC as before the Industrial Revolution and to limit it to 1.5oC if possible,

b) To provide the necessary financial flow by carrying out strengthening works commensurate with the ability to adapt to the harmful effects of climate change, resistant and low-emission growth in a way that will not harm food production (United Nations, 2015: 3),

c) In light of the most productive scientific studies, it is aimed to start mitigation activities as soon as possible to ensure the ratio between the release of anthropogenic greenhouse gases and their removal by sinks and to work fairly and sustainably.

d) In order to achieve the targets they have determined, the Parties will regularly prepare, communicate and maintain the necessary national contribution studies within their own responsibility and will implement national mitigation studies.

e) In order to achieve the determined emission reduction targets, the developed party countries should maintain their leading positions; the developing party countries should continue their emission reduction efforts by strengthening and strive to spread their emission reduction efforts to all areas of the economy.

f) It should be taken into account that providing the necessary support to developing countries will also increase the incentives for emission reduction activities (United Nations, 2015: 4–5).

#### **4.National Law in Combating the Climate Crisis**

In this section, some legal articles that are included in domestic law but are not fulfilled, including the environmental right of individuals in countries, that will contribute to a better understanding of the responsibilities of governments in the fight against the climate crisis are included. For example, the constitution of Afghanistan states that everyone living in the country has the right to an unspoiled environment and life, while the constitution of France states that everyone has the right to live in a balanced and healthy environment, the constitution of Angola states that every citizen has the right to live in a healthy and unpolluted environment, and in the constitution of Azerbaijan, everyone has the right to live in a healthy environment. The Bulgarian constitution states that all citizens have the right to live in a healthy and suitable



environment, the Chad constitution states that every individual has the right to live in a healthy environment, the Chilean constitution states that everyone has the right to live in a healthy and suitable environment. While the Serbian constitution states that everyone has the right to live in a healthy environment, the Spanish Constitution states that everyone has the right to live in an environment suitable for their own development, while the Norwegian constitution states that everyone has the right to an environment that is beneficial to the natural environment where their health, productivity and diversity will be protected. While these issues are included in the constitutional texts of countries as the basis of the individual's right to the environment (May & Daly, 2014; UNEP, 2019), there are also direct laws covering the climate crisis in some countries. Some of these countries are listed below by most climate lawsuits filed (LSE, 2022).

#### **4.1. United States (USA)**

**Clean Air Act:**The law, which was adopted in 1963, was revised in 2011 and 2021. It is a legal text prepared to control air pollution at the national level. It entrusts the Environmental Protection Agency (EPA) with the task of preventing the public's exposure to air pollutants that pose a danger to their general health and well-being and making regulations in this direction. In 2011, for the first time, EPA started to regulate greenhouse gases that cause air pollution. The EPA has set standards against factors that cause greenhouse gases (power plants, aircraft, cars, etc.). While the measures regarding methane emissions were suspended in 2020 under President Trump, this suspension was lifted during President Biden's period in 2021(United States Congress, 1990).

**Energy Independence and Security Act:** This law includes reducing dependence on fossil fuels (oil) for the USA, ensuring energy security and taking measures regarding the climate crisis. The law provides incentives for fuel producers to develop renewable technologies (solar, wind, geothermal, ocean, biomass or landfill gas). It also includes provisions for financing hydrogen technologies and fuel capture and storage(United States Congress, 2007).

**Consolidated Appropriations Act:** The law, approved in 2020, promotes the reduction of greenhouse gases and the transition to renewable energy sources. It also includes reducing the production and consumption of hydrofluorocarbon gases. By law, the EPA has signed a statement to phase out HFCs (United States Congress,2021).

## 4.2. Australia

Renewable Energy (Electricity) Law: This act established the Climate Change Agency, which is authorized to conduct research on both renewable energy and the climate crisis. This institution is economically efficient, environmentally efficient, fair, upholding the public interest, responding to global responses to the climate crisis, etc. It is obliged to take all kinds of measures to combat the climate crisis within the framework of the principles (LSE, 2011).

Carbon Farming Initiative Amendment Act: This law, enacted in 2014, is for the preparation of offset projects for emission reduction and the use of carbon credits (LSE, 2014).

## 4.3. England

Climate Change Act: The law provides a long-term framework to improve carbon management, assist the transition to a low-carbon economy, encourage investment in low-carbon goods, and provide an international signal. It has also set a legally binding target for the country to reach net zero emissions by 2050. It also authorizes by law to implement local emissions trading schemes faster and easier (LSE, 2008).

Environmental Law: Its main purpose is to improve water and air quality, combat waste, increase recycling, halt species decline and improve making the country's natural environment to more resilient to climate shocks (LSE, 2021b).

## 4.4. Canada

Canadian Environmental Protection Act: It has determined a legal framework for the management and control of toxic substances (chlorofluorocarbon, methane, nitrous oxide, hydrofluorocarbons and sulfur hexafluoride, etc.) arising from economic activities. Within the scope of this law, the Passenger and Light Truck Greenhouse Gas Emissions Regulation (2010), which sets the greenhouse gas emission standards for cars and light trucks, and the new Passenger and Light Trucks Greenhouse Gas Emissions Regulation (2012), which sets the greenhouse gas emissions, have been published. The Regulation on Reducing Carbon Dioxide Emissions from Coal-Fired Electricity Generation (2012), which also sets the performance standards for carbon dioxide emissions from coal-fired power generation units, and the Renewable Fuels Regulation (2013), which requires 5% renewable fuel in gasoline use and 2% in diesel use, have been approved (LSE, 2000).

Canadian Net-Zero Emissions Liability Act: While the law sets Canada's emission reduction targets, it also provides mechanisms for monitoring the way these targets are achieved. For this reason, long-term targets have been set for net zero emissions by 2050 (LSE, 2021a).

## 5. Climate Crisis Cases

Disasters that develop over time, together with the disasters that visibly affect our lives by the climate crisis, damage vital environmental elements such as air, water, biodiversity and soil, which are essential for human life. For this reason, both the protection of human rights and the protection of people against the climate crisis, which is the main emphasis in the mixing of these vital rights, are of great importance. While this point expresses the right of both today and future generations to live in a healthier, cleaner and safer world, it also necessitates both individual and collective solidarity. This issue, which is also expressed as the right to the environment, is the world ecosystem, which is the common value of all humanity. This value, on the other hand, is completely based on equality and is the right that everyone is obliged to protect for everyone (Mehta et al., 2014). This situation is the starting point of the idea put forward in the study. In other words, it necessitates that individuals should play a role in the fight against the climate crisis affecting their own living spaces and in decision-making processes. In this section, two cases that are considered by individuals as a solution in the fight against the climate crisis and are considered more important than the top ten globally ranked by ClientEarth (2022) are discussed.

### 5.1. Netherlands: Urgenda Foundation Climate Case

The case is an important lawsuit brought by the Urgenda Foundation, an environmental group in the Netherlands (a foundation established under Dutch law to promote and accelerate the transition to a sustainable society), for the Dutch government to do more to combat the climate crisis. In the first lawsuit filed in 2012, Urgenda asked the Dutch government to commit to reducing greenhouse gas emissions by 40% from 1990 levels by 2020, but this request was denied. Following this decision, the Urgenda Foundation took the case to The Hague District Court as its representative and 886 citizens (Meguro, 2020;Çobanoğlu &İğci, 2021). The court ruled that the Dutch state must reduce its greenhouse gas emissions by 25% by 2020 from 1990 levels. While making this decision, the court paid attention to the seriousness of the consequences of the climate crisis and the great risk of the emergence of the climate crisis. With this idea, he decided that the rate promised by the Dutch state was

insufficient for a fair fight. For these reasons, he drew attention to the responsibility of the state to take measures to reduce the climate crisis. While making this decision, he referred to Article 21 of the Dutch Constitution, Articles 2 and 8 of the European Convention on Human Rights, the principle of harmlessness in international law, the principle of justice, precaution and sustainability in the UNFCCC, and the principle of prevention in the European climate policy. However, the court did not mention how the government would fulfill its duty in the decision, but suggested that it should take emissions trading or tax measures against the climate crisis. The point that makes this case important in terms of the climate crisis and provides inspiration and precedent for future cases; It is the first decision in the world to order states to limit their greenhouse gas emissions for reasons other than their legal obligations. The court mentioned that the fight against the climate crisis cannot be solved with the measures taken by a single state and that measures should be taken by the society, but also mentioned that this does not mean that the Dutch state will not take responsibility individually (Sabin Center for Climate Change Law, 2022b; Spier, 2020).

## 5.2. Germany: Neubauer Climate Case

The German Federal Climate Act came into effect in 2019. This law is Germany's first federal law with comprehensive content on reducing greenhouse gas emissions in the fight against the climate crisis. Alongside the Paris Agreement's commitment to limit global warming to well below 2°C and, if possible, 1.5°C above pre-industrial levels, Germany's long-term goals are to reduce by 55% from 1990 levels by 2030 and be carbon neutral by 2050 based on a commitment to provide. However, in 2020, a group of German youth objected to the law, claiming that the 55% greenhouse gas emission reduction determined by the Federal Climate Law by 2030 is insufficient compared to the 1990 level, and that there is no specification for after, and this violates the human rights protected by the Constitution (Kotzé, 2021: 2; Sabin Center for Climate Change Law, 2022a). It also mentions that Germany did not take into account the obligation of the European Union to keep global average temperatures below 2°C under the Paris Agreement. According to German youth, Germany must reduce its emissions by 70% by 2030 in order to do its part under the Paris Agreement. Within the framework of these issues, the German Federal Constitutional Court annulled the parts of the Federal Climate Law, which did not contain adequate emission reduction provisions from 2030, on 29 April 2021, which were incompatible with fundamental rights (Climate Change Laws of the World, 2022; Sabin Center for Climate Change Law, 2022a). The Court stated that the duty of the state to protect people's life and bodily integrity also includes protecting natural life and health against environmental

risks caused by the climate crisis. He also stated that the current provisions will create a clear burden on future generations(Sabin Center for Climate Change Law, 2022a).

## 6. Discussion

The climate crisis has become one of the most important and urgent problems of our age. However, despite this situation, individuals are in unrest due to the reluctant and inadequate behavior of the governments. For this reason, they have turned to the courts to make decisions in order to protect both their own future and the future of future generations. In other words, the welfare of the people is not less important than the short-term profits of companies or the ambitions of governments or politicians; on the contrary, it is much more valuable.

From the global struggle period that started with the UNFCCC signed in 1992 with the climate crisis to the Paris Agreement, we are still living in a period that is included in the texts such as reducing emissions and keeping global temperatures below 2oC, but not implemented. Because the countries that are obliged to the contract are evading these obligations and endanger both the present and the future of the people. The clearest evidence of this can be seen in greenhouse gas concentrations, which continue to rise, and in the increase in global average temperature. Countries that go to the so-called adaptation or struggle structure within the framework of these conventions enact laws to combat the climate crisis, but this, like international conventions, remains only on paper. Because, as in the majority of countries, emission increases continue to increase exponentially. In fact, not only is international conventions not being enforced, but they themselves are a great mystery. Because when we look at the contracts, they contain inequalities that are far from struggle. For example, China, one of the developing countries granted privileges in the UNFCCC agreement, has now become the country with the highest greenhouse gas emissions. Another example shows itself in the Kyoto Protocol. The protocol opened a new curtain in the fight against emissions and opened the doors to emissions trading. In fact, the protocol opened a new door to the neoliberal economic system that caused emissions instead of fighting emissions, introduced paid emissions and ushered in an era where air was truly sold for money. No effort was made to reach the targets set in the Paris Agreement (2oC-1.5oC), and even today, 100 billion USD (Timperley, 2021) could not be accumulated for the climate fund established to achieve the determined targets.

Regardless of the distinction between developed, developing, or underdeveloped countries, almost all of them emphasize the right of individuals to live in a healthier environment in their constitution. However, this emphasis remains in words and is not

valid in practice. Because companies pollute the air, land and nature depending on the permission of the states. All these situations attract the attention of people, especially those who are environmentally sensitive. However, when the public saw that the governments did not take sufficient steps to protect their current future and the future of future generations, attempts to seek their rights through law began to increase exponentially. As seen in the cases discussed, governments act unaware of their duty to protect the public or actually hide behind the ratios that will save the day under the obligations they will contribute individually. As in the Urgenda and Neubauer cases, the plaintiff parties did not consider the emission reduction rates taken by the states to combat the climate crisis sufficient and filed a lawsuit. The court also found that the plaintiff's application was justified according to the existing laws and scientific evidence, and it announced its decision to increase the emission reduction rates that it had announced to the governments and to protect the public against the risks posed by the climate crisis. These cases have shown that the public can protect themselves against all environmental problems, especially the climate crisis. However, although some courts decide in a positive way, it is the courts that decide in a negative way. It is at this point that it is crucial for the courts (judges) to consider the seriousness of the climate crisis and the available evidence at the current legal level. In particular, making decisions impartially and in the interest of society is very important in terms of both individual and social struggle. This issue is even more important in terms of setting a precedent for other lawsuits to be opened and encouraging the public. Considering the fact that the international system is based on a relationship of interest, and considering that their governments are in this network of interests and even in all organs of international organizations that draw the solution to the fight against the climate crisis, it is seen that individuals have no choice but to draw their own path. The law (courts) emerges as a shelter for the people's conscience, as a tool to save the future. This situation will increase further considering that the climate crisis will deepen in the future.

## 7. Conclusion and Recommendations

There is a mutual interest relationship between companies and governments. In other words, companies are the most profitable and effective sustainable development tools of states. As long as cheap fossil fuels can be harnessed and companies fill the state's coffers by doing so, there is little incentive for governments to force companies to curtail their socio-ecological destructive activities, shift their focus to renewables, and take responsibility for climate injustices. Unsurprisingly, none of the global climate agreements from past to present regulate the environmentally harmful activities of



companies. This is where climate lawsuits play a key role, especially today, in engaging governments and companies in the fight against climate change. It is also a powerful tool to hold them accountable for producing inadequate and unsuccessful policies. By avoiding international and international law in society, it can equalize the power imbalances created by governments through law (judiciary) and strengthen the rule of law. It can even help to seek more rights by contributing to the awareness of the society. Protecting the climate is a human right; constitutions must be interpreted fairly by the courts for all generations. Climate change is real and governments should not oppose it, or even support it with ordinary force. Because protecting the climate system is part of protecting fundamental rights.

The task before humanity or the path it will follow is clear: The international system or governments should not only make commitments and promises, but also take quick steps in the fight against the climate crisis. Words must turn into action and struggle must increase ambition. The climate crisis should not be thought of as a single crisis (a network affecting people, nature and the entire ecosystem) and efforts to combat it should be strengthened. Or, based on the existing roadmap (Paris Agreement), their legal frameworks should be reviewed to make it appropriate for countries to meet their commitments under the Paris Agreement. Good framework legislation will help establish the right institutions. This will enable more stable and ambitious goals to be achieved. But many people will hesitate to do the right thing, including those with the wealth and power to turn the planet upside down. When we look back on history, this is clearly seen even today. Law is the force of goodness that shapes and corrects this behavior. The rule of law will not only save us from climate disaster, it will also help us achieve a world where we have more equal, fair and green jobs, care for people and protect nature by making our lives better.

As a result, it is not possible to protect the future of nature and naturally humanity without the right laws and strong sanctions in today's system.

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