HAUSFELD
FOR THE CHALLENGE

CLIMATE IMPACT NEWSLETTER
YEAR IN REVIEW 2024

2024 was another important year in the development of climate litigation, with an increased number and diversity of cases across many jurisdictions. Internationally, important decisions concerning the intersection of human rights and climate change litigation were handed down in *KlimaSeniorinnen v Switzerland* and *Milieudefensie v Shell*. The UK Supreme Court's seminal decision in Finch, applied by the High Court very shortly after in Whitehaven, has confirmed the planning challenges that new fossil fuel-emitting projects will face, while the novel *Roberts* claim awaits certification at the Competition Appeal Tribunal.

In contrast to previous years, however, the direction of travel on climate litigation is not one-way. This year saw a number of challenges to the incorporation of climate risk in financial decision-making and "SLAPP" suits against NGOs and shareholder activists, in 'non-aligned' climate cases. As the impact of the climate crisis continues to grow, now, more than ever, the importance of climate litigation – a vital mechanism for climate action – should not be understated.

COP29

COP29 was marred with controversy from the outset. Environmental campaigners questioned the choice of host nation Azerbaijan, an oil and gas rich state for whom the hydrocarbon sector contributes over 90% of its exports and one-third of its GDP. Azerbaijan's president, Ilham Aliyev, told delegates that oil and gas were a "gift of god", whilst there were reports that senior COP29 officials, including the chief executive of Azerbaijan's COP29 team, were using the conference as a pretext for discussing fossil fuel deals.

At the conference it was agreed that developing countries would receive $300bn per year in climate finance by 2035, a significant increase on the current contribution of $100bn per year, but far below the early proposal put forward by the African Group and the Like-Minded Developing Countries group which had called for $1.3tn per year. Neither did it alleviate concerns around the effectiveness of the conference, with developing countries, scientists, and environmental campaigners decrying the figure as vastly inadequate; the United Nation's (UN) Adaptation Gap Report 2022 estimated that the cost of "climate adaptation" alone for developing nations will be between $160bn and $340bn each year by 2030.

The latest iteration of the International Energy Agency's (IEA) World Energy Outlook stated that for the world to meet the Paris-aligned 1.5C warming target, annual investment in renewable energy sources needs to triple by 2030 to $4.2tn, and that over $1.8tn of this would need to be invested in emerging and developing countries.

Overall, questions relating to the efficacy of the COP process remain after the events of COP29. Much needs to be done in future years to convince that the relative consensus on the need to take urgent climate action, present at past COPs, remains.

HUMAN RIGHTS IN THE CLIMATE CONTEXT

The centrality of human rights law and practice in shaping climate change litigation was highlighted in a number of important developments this year.

In August, the UN, building on its 2022 resolution declaring a universal right to a healthy environment and calling for states to ensure that right is protected, published a report detailing the links between loss and damage caused by climate change and human rights. The UN's report highlights the judgment of the European Court of Human Rights (ECtHR) in *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*, which found that Switzerland had breached its obligations under Article 6.1 (the right to fair trial and access to the court) and Article 8 (the right to respect for private and family life) of the European Convention of Human Rights (ECHR) by not taking action to sufficiently mitigate the effects of climate change. In respect of Article 8, the ECtHR held that:

- Article 8 encompasses "a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life"
- States must therefore adopt and apply relevant measures to mitigate the effects of climate change which – particularly in light of international commitments such as the Paris Agreement – included measures aimed at preventing greenhouse gas emissions; and
- Switzerland had not instituted a sufficient domestic framework (such as the inception of carbon budgets) and had previously missed emissions targets, and this constituted a breach of Article 8.

The ECtHR's decision – the first time a country's failure to combat climate change constitutes a violation of human rights under the ECHR – sets a historic precedent which is binding on all contracting states, meaning they must also consider adopting stronger climate policies to avoid falling foul of the convention.

The decision in *KlimaSeniorinnen* will have far-reaching implications. We think it is likely to prompt a surge in litigation challenging the approach taken by signatory states and public bodies to mitigate against the effects of climate change. The ECHR is enshrined in UK legislation, so its courts are bound to consider judgments by the ECtHR when addressing issues concerning ECHR rights. The ECHR does not apply directly to the private sector, but the decision in *KlimaSeniorinnen* will also bolster arguments being brought in national courts around the scope of corporate climate obligations.

In a linked decision, the ECtHR ruled that the high profile case of *Duarte Agostinho and Others v Portugal and 32 Others* was inadmissible on the basis that the applicants had failed to exhaust their domestic remedies before appealing to the ECtHR. The claim was brought by six young Portuguese individuals against all Council of Europe states (excluding Ukraine) for failing to take sufficient action against climate change, in breach of their human rights. Hausfeld acted on a pro-bono basis for Save the Children in filing a third-party intervention in this claim which spoke to the particular impact of climate change on children and on their right to safety and a prosperous future.

Hausfeld is also supporting Friends of the Earth UK in its Application to the ECtHR against the UK, challenging restrictions on fundamental rights of freedom of expression associated with the controversial criminal sentencing of so called 'climate activists' in recent months. The application follows a UK Supreme Court case in November 2023 that ruled on the issue of anti-protest injunctions in the UK. These injunctions are taken out against unknown and unidentifiable defendants ("persons unknown") instead of named defendants, thereby maximising the range of people who can be caught by their terms, even if they do not know about them. Those targeted by the injunctions face potential imprisonment, asset seizure and exorbitant cost consequences if they are found in breach. The Supreme Court ruled that procedural safeguards that might apply in other contexts do not apply to anti-protest injunctions: Friends of the Earth argue that this infringes fundamental rights of the European Convention of Human Rights such as, the right to a fair trial (Article 6) and freedom of expression (Articles 10 and 11).

PUBLIC LAW

In June 2024 the Supreme Court handed down its judgment in *R (Finch on behalf of the Weald Action Group) v Surrey County Council and others*.

- By a 3-2 majority, the Court held that the downstream, "Scope 3" emissions associated with expanding oil production at a site in Surrey should have been taken into account by the local council when considering planning permission for the project.
- The approval granted to the site was therefore unlawful.

- The Court's ruling means that proposed fossil fuel extraction projects in the UK will now have to undergo more rigorous and detailed energy impact assessments (EIAs) and may be refused planning permission on that basis.

The importance of *Finch* has become clear in subsequent decisions related to a proposed coal mine in Cumbria, and an oil field near Scunthorpe.

- In September 2024, the English High Court quashed planning permission for a new coal mine in Whitehaven, Cumbria, ruling that the government's 2022 approval was "legally flawed" in a number of respects, including in accepting West Cumbria Mining's claims that the mine would be net-zero and in deciding that downstream emissions from burning Whitehaven coal were not a significant effect of the proposed development. The Court stated that the "scale and significance" of those emissions meant they were an "obviously material consideration" which should have been taken into account. Importantly, the court was also unequivocal in rejecting the contention of West Cumbria Mining that its coal extraction would not have an impact on global emissions as it would replace coal extracted elsewhere (the so-called "substitution" defence).

- In November 2024, planning permission at the Wressle oil field near Scunthorpe was rescinded in light of *Finch*, because North Lincolnshire Council had not considered the Scope 3 emissions when it granted planning permission.

In another important public law case heard before national courts, in March 2024 in the landmark judgment *MK Ranjitsinh v Union of India* the Supreme Court of India, for the first time, recognised the right of Indian citizens to a clean environment and to be free from the adverse effects of climate change. Notably, this case concerned a conflict between safeguarding the endangered Great Indian Bustard and promoting renewable energy production.

Other "government framework" cases, which challenge the scope and scale of government climate policy, continue to be a key focus of climate litigation. In May 2024, ClientEarth, Good Law Project and Friends of the Earth were successful in bringing a judicial review against the UK Government's Carbon Budget Delivery Plan (CBDP) for being in breach of s13 of the Climate Change Act 2008. In a November 2022 briefing to the Secretary of State, UK government officials stated that they had "very low confidence" or "low confidence" in UK government policies to achieve even half the reductions needed to meet the UK's carbon reduction pledges.

Meanwhile, in January 2024, the Oslo District Court in Norway handed down a historic judgment quashing approval for three oil and gas fields, on the grounds that they violate Norway's obligations under the Norwegian Constitution, EEA law and Norway's international human rights commitments. Greenpeace Nordic and youth group Natur og Ungdom also argued that the Norwegian government had failed to consider the UN Convention on the Rights of the Child during the approval of the sites. The claim was that Norway's energy ministry had failed to fully assess the Scope 3 emissions of the fields in permitting their development. In October 2024, however, a Norwegian appeals court ruled in favour of the government, stating in its ruling that,

"the concrete decisions to deal with the climate crisis, including a possible shutdown of petroleum activities, must primarily be made by parliament and the government."

In an important development in the marine context, in May 2024, the International Tribunal for the Law of the Sea (ITLOS) published its long-awaited Advisory Opinion on climate change and international law, following a request at the end of 2022 by the Commission of Small Island States. ITLOS concluded that all parties to the UN Convention on the Law of the Sea (UNCLOS) "have specific obligations under article 194 of UNCLOS to take all necessary measures to prevent, reduce, and control marine pollution from anthropogenic GHG emissions and to endeavour to harmonize their policies in this connection." This was the first time a climate change case was managed by an international judicial body.

CORPORATE CLIMATE RESPONSIBILITY

The compliance of public and private companies with their legal and regulatory obligations to address climate change continues to gain focus for climate-based litigation. In a significant ruling in the Netherlands, the Hague Court of Appeal partially reversed prescriptive elements of a landmark climate change decision against Shell *(Milieudefensie and others v Royal Dutch Shell*).

By way of background, in 2019, Milieudefensie (Friends of the Earth Netherlands), alongside six other environmental associations and over 17,000 thousand individual claimants, filed a novel claim alleging that Shell's contributions to climate change violated Dutch law and international human rights law obligations. In 2021, the Court issued a landmark judgment finding that as a matter of Dutch law, Shell had a legally binding duty to reduce its carbon emissions, mandating a 45% reduction by 2030 compared to 2019 levels, in line with the Paris Agreement. Notably, this applied to Shell's entire carbon footprint, including its Scope 3 emissions.

In its ruling of November this year, the Hague Court of Appeal:

- Found that in respect of Shell's Scope 1 and 2 emissions, Shell was committed to – and was on track to achieve – a compliant 50% reduction from 2016 levels by 2030.
- Found that in respect of Shell's Scope 3 emissions, which represent 95% of Shell's reported emissions, the Court refused to apply the average global reduction standard as a general and binding standard for Shell, reasoning that Shell's unique business profile and absence from certain sectors, such as coal, made a universal standard inappropriate.
- Controversially, questioned whether mandating a reduction of Scope 3 emissions would effectively reduce emissions, querying whether other businesses might simply fill the market gap. This 'substitution' argument echoes the position expressly rejected by the UK courts this year in *Whitehaven*.

However, whilst the Hague Court of Appeal rejected the requirement that Shell reduce CO2 emissions by 45% by 2030, its ruling confirms four principles with far reaching implications for climate litigation:

- Drawing on precedents like *KlimaSeniorinnen*, the ruling affirmed climate protection as a fundamental human right.
- Whilst primary climate obligations rest with states, companies – especially large emitters – share responsibility to mitigate climate risks. The ruling cited the UNGP and OECD guidelines as defining the corporate standard of care in this respect, regardless of whether specific (public law) obligations are laid down for companies in domestic law.
- Existing and upcoming EU climate legislation (including emissions trading systems and corporate sustainability directives) do not prevent courts from imposing further obligations on companies, though courts may not impose absolute emissions reductions on companies.
- The ruling indicated that oil and gas companies must consider climate impact when investing in new fossil fuel production. It observed that Shell's planned investments in new oil and gas fields may conflict with this principle.

As a result, despite rejecting specific emissions targets, this ruling strengthens the legal foundation for corporate climate accountability.

Lastly, "greenwashing" or "climate washing" remains a focus for claims against corporates. In March 2024, the Amsterdam District Court found that national airline KLM was guilty of misleading consumers with adverts intending to promote its environmental credentials. The case follows other similar claims against airlines, including Delta and Qantas. Comparable claims continue to develop in the financial services and capital markets sectors, allied with developing regulation under the auspices of the Financial Conduct Authority in the UK, and other financial regulators beyond.

'Manchester Ship Canal' and *'Roberts':*

The discharge of sewage into public waterways continued to seep into the UK's public consciousness throughout the course of 2024, as the courts saw notable cases being brought against water companies in relation to this issue.

In July 2024, the Supreme Court handed down its much-anticipated decision in *The Manchester Ship Canal Company Ltd (Appellant) v United Utilities Water Ltd (Respondent) (No 2)*. The Supreme Court was asked to decide whether the owner of the beds and banks of the canal, the Manchester Ship Canal Company Ltd, could bring a claim in nuisance or trespass when the canal is polluted by sewage discharges from outfalls maintained by United Utilities. The Court was not asked to rule on the merits of the claim but instead on whether the claim was barred by the existence of the statutory scheme for regulating sewerage, established by the Water Industry Act 1991.

At both first instance and on appeal, the Court ruled that the existence of the Water Industry Act 1991 barred the owner of a canal (or other body of water) from bringing a claim based on nuisance or trespass against a statutory sewage company. The Supreme Court unanimously allowed the Manchester Ship Canal Company's appeal. It held that the 1991 Act does not prevent bringing a claim in nuisance or trespass where the canal is polluted by discharges of foul water from a statutory sewage company, even if there has been no negligence or deliberate misconduct. The implications are potentially far reaching, and the case illustrates the growing scrutiny of the causes of the UK's deteriorating water quality. Most obviously, owners of waterways will be able to claim against statutory sewerage companies in respect of water pollution from outfalls.

Hausfeld was instructed by the Environmental Law Foundation as an intervener. For more info.

Separately, but in a related context, in September 2024 the CAT held a certification hearing for Professor Carolyn Roberts' collective claim on behalf of over twenty million household customers against six statutory water companies. Widely dubbed the first "environmental" collective action under the collective proceedings regime, the claim centres on compliance with environmental laws and regulatory reporting responsibilities. Professor Roberts' alleges that:

- The water companies committed (and continue to commit) an abuse of dominant position in breach of s18 of the Competition Act 1998 (the 'Chapter II Prohibition') by providing misleading information to the Environment Agency and Ofwat regarding the number of times they cause pollution incidents.
- The effect of their conduct is that the water companies are able to charge higher prices for services related to the collection, treatment and disposal of household sewage than they would otherwise be allowed to by the regulators.
- The water companies are natural monopolies with statutory status; as a result of this, there is no possibility of rivals entering the market in response to supra-competitive prices or incumbent inefficiency.
- The sewage that is released, untreated, causes significant environmental harm and negatively impacts water quality in rivers, seas and watercourses, which raises public policy concerns.

We await the outcome of the certification process. Whilst Professor Roberts has stressed that her claim is an orthodox competition claim, the widespread public concern as to the state of rivers and seas in England and the environmental damage caused by the release of untreated sewage means that the outcome will be keenly watched by environmental observers.

MASS TORT AND ENVIRONMENTAL LITIGATION

In October 2024, the highly anticipated trial in *Município de Mariana & Ors v BHP Group (UK) Limited & Anor* got underway in the High Court. This is the largest mass lawsuit in English legal history, with over 620,000 alleged victims of one of Brazil's worst environmental disasters bringing a mass tort claim against Australian mining company BHP and its partner in the

Samarco Minderacao SA joint venture, Vale, for damages arising out of the collapse of the Fundão Dam in November 2015. In 2018, this mass claim began against BHP in the English High Court. In 2020, the Court rejected jurisdiction on grounds that the vast number of claimants meant the claim would be unmanageable and would risk having "a very significantly deleterious impact indeed upon the scarce resources of the English courts". In 2022, this decision was overturned by the Court of Appeal and permission to appeal was rejected by the UK Supreme Court, demonstrating the willingness of the English courts to assert jurisdiction over mass proceedings relating to environmental disasters in other jurisdictions. BHP and Vale reached a cost-sharing agreement in 2024 for any damages arising out of the claim.

Another similar ongoing case relates to the group claims against Shell regarding oil contamination in the Niger Delta. The usual course in this type of group litigation is to identify "lead" claimants and the litigation progresses from there. In November 2023, the English High Court ruled that the claims had to proceed as "global" claims rather than "events-based" claims, unless the claimants were able to plead causation in more detail, including which oil spills caused each claimant's loss. "Global" claims, which derive from construction cases, are regarded as difficult to prove and unattractive to claimants. The Claimants appealed this point to the Court of Appeal and in October 2024 the Court of Appeal announced it was allowing the appeal.

The Court's full written judgment is to follow, but it is now clear that the claims in this case will not be proceeding as "global" claims, significantly reducing the burden of proof on the claimants.

REGULATORY DEVELOPMENTS

Environmental corporate due diligence obligations remain high on the agenda. In July 2024, the European Union's (EU) Corporate Sustainability Due Diligence Directive (CSDDD) came into force and Member States have two years to comply. The CSDDD imposes mandatory human rights and environmental due diligence requirements on a range of corporate actors, which is a change from earlier voluntary regimes. The CSDDD applies to non-EU companies as well as EU companies if that company reaches the turnover threshold within the EU. The new regime requires companies to identify, mitigate, prevent, and rectify practices which have adverse human rights and environmental impacts. The CSDDD requires in-scope companies to conduct due diligence on their "chain of activities", which applies to both their upstream and downstream business partners. In-scope companies are also required to prepare and execute climate change transition plans compliant with the Paris Agreement climate targets for both 2030 and 2050. This includes downstream Scope 3 emissions.

Ensuring high standards of human rights and environmental protection throughout supply chains is a crucial, yet complex, matter and such detailed and comprehensive requirements in this area are welcome. In-scope companies that fail to satisfy their obligations under the CSDDD will face significant scrutiny, including in the courts.

Whilst Member States have two years to put in place laws and regulations to ensure compliance with the CSDDD, they do not have that time to implement the EU's Corporate Sustainability Reporting Directive (CSRD). In September 2024, the EU took the significant step of initiating infringement proceedings against 17 Member States for failing to do so. The CSRD expands the number of companies required to disclose sustainability information from approximately 12,000 to over 50,000 and introduces stringent reporting requirements on in-scope companies' environment impact, human rights, and social standards, as well as sustainability-related risks. Potential legal action against the offending Member States in the ECJ could follow.

'ANTI-CLIMATE' LITIGATION

Whilst the majority of cases making headlines are those which seek to hold governments and companies accountable for their failure to take adequate measures to address the climate crisis, in 2024 we saw an increasing number of cases brought to advance agendas which seek to undermine such efforts. In June 2024, the LSE's Grantham Institute's "Global trends in climate change litigation: 2024 snapshot" reported that non-aligned cases constituted 21% of all climate-related cases filed in 2023. Key types of non-aligned cases include ESG backlash cases, which challenge companies incorporating climate risk into financial decision-making and so-called "SLAPP" suits – strategic litigation against public participation – against shareholder activists, NGOs, and charities.

In *Wong v New York City Employees' Retirement System*, the plaintiffs alleged that fund managers prioritised climate change considerations over financial incentives when making investment decisions.

In November 2023, Shell launched proceedings against Greenpeace UK and Greenpeace International, seeking £1.7m in damages after environmental protesters occupied the White Marlin ship, which was transporting one of Shell's floating platforms. Greenpeace declared Shell's lawsuit to be a "SLAPP" (strategic litigation against public participation) and one of the "biggest legal threats" in Greenpeace's 50-year history. The case has drawn public attention, with the pressure group The UK Anti-SLAPP coalition issuing a statement in support of Greenpeace. The proceedings remained ongoing through 2024.

Lastly, 2024 saw fast-moving developments in respect of the Energy Charter Treaty ("ECT"). The ECT is a legal framework for investment in energy-related infrastructure, which provides certain guarantees to private companies investing in signatory states. However, the ECT has been criticised for being an obstacle for governments looking to enact national policies to combat climate change. Its critics claim that companies have used the ECT to launch arbitral proceedings which slow or halt attempts to move away from fossil fuel production or mining practices causing environmental harm. On the other hand, the ECT has also been a forum for launching claims by investors in renewable energy; since 2013, over fifty cases have been brought by investors against Spain related to the elimination of subsidies for renewable energy post-2008 (the so-called "Spanish renewables" cases).

In July 2023, the European Commission formally proposed legislation for both the Union and Member States to withdraw from the ECT. In February 2024, the UK announced plans to

withdraw from the treaty, citing the “failure of efforts to align it with net zero”. The ECT contains a 20 year-sunset clause, so investors will have a significant period of time to initiate proceedings.

LOOKING FORWARD TO 2025

The last year saw key concepts within environmental law and policy debated in the courts and ruled upon. Whilst the picture was not always uncomplicated, there were important rulings which provide learnings for climate-based litigation moving forward.

In 2025, human rights litigation and the obligation on states regarding the climate crisis will continue to develop rapidly. A robust reading of the relevant international treaties and the rights they give rise to in favour of claimants, and of climate action more broadly, could result in significant changes to government policies globally. In the UK, the decision of the Competition Appeal Tribunal on whether to certify the *Roberts* water claims will lay down an important marker on how the collective proceedings regime can be used as a pathway for environmental claims.

Stricter regulatory and disclosure requirements, alongside growing investor pressure, are likely to offer up new opportunities for climate-conscious investors and shareholders to hold directors and fund managers to account, including by litigation. However, the direction of travel is not decidedly one-way. Important decisions in non-aligned cases will also be handed down in the coming year.

This Year in Review has been authored by Simon Bishop, David Lawne, Ingrid Gubbay, Alex Cooper and Kazi Elias with the excellent assistance from Myrto Damaskou.

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