



# **Fundamental Rights and Climate Change**

## **Exploring New Perspectives and Corresponding Remedies**

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**EDITED BY**

**Alicja Sikora-Kalèda • Inga Kawka**

**Krakow Jean Monnet  
Research Papers**



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**4**

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Alicja Sikora-Kalèda  
Jagiellonian University, Kraków, Poland  
ID <https://orcid.org/0009-0001-1204-7020>  
✉ [alicja.1.sikora@uj.edu.pl](mailto:alicja.1.sikora@uj.edu.pl)

Inga Kawka  
Jagiellonian University, Kraków, Poland  
ID <https://orcid.org/0000-0001-6909-5798>  
✉ [inga.kawka@uj.edu.pl](mailto:inga.kawka@uj.edu.pl)

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# INTRODUCTION

*The environment is where we all meet;  
where we all have a mutual interest;  
it is the one thing all of us share.*

Lady Bird Johnson

The monograph outlines the growing importance of fundamental rights in the European Union, particularly in the context of environmental protection and the fight against climate change. These rights have become a cornerstone in shaping policies that address ecological challenges while balancing economic and social aspects. The European Green Deal (EUGD), a landmark initiative, embodies the EU's commitment to transitioning into a climate-neutral, modern economy by 2050. This ambitious goal requires comprehensive legislative action and coherence in implementing policies across various sectors, ensuring that all measures align with and uphold fundamental rights as enshrined in the EU legal framework.

This monograph is the culmination of scholarly work inspired by discussions from the conference titled 'Fundamental Rights and Climate Change in EU Law and Beyond – Mapping Fundamental Rights, Nature's Rights, and Corresponding Legal Remedies,' organized in September 2023 as part of the Jean Monnet Module project, 'Sustainability and Climate Change in EU Law.' This academic event, hosted by the Chair of European Law at the Jagiellonian University, brought together experts from diverse fields to discuss and exchange perspectives on sustainability and the legal frameworks within the EU. The insights shared during the conference laid the foundation for the analyses presented in this book, highlighting the complex interplay between fundamental rights, environmental challenges, and legislative coherence.

The chapters of this book reflect a collective scholarly effort to explore diverse aspects of fundamental rights and their intersections with environmental law within the EU framework. The opening chapter, authored by Alicja Sikora-Kalèda investigates the limits of human rights as instruments to advocate for global climate action. It examines how climate litigation impacts human rights and evaluates the potential evolution of environmental rights in EU law. Ilona Przybojewska contributes with an analysis of how poor environmental conditions can lead to state liability, referencing a notable 2021 Polish Supreme Court resolution. Her work probes the extent to which environmental issues can be recognized as affecting personal rights and the broader implications of this recognition.

This monograph aims to serve as a comprehensive resource for legal practitioners, scholars, and policymakers, encouraging further dialogue on the integration of environmental and human rights within the EU legal system.

*Alicja Sikora-Kalèda*

*Inga Kawka*

ALICJA SIKORA-KALÈDA<sup>1</sup>

## RIGHTS IN THE ERA OF CLIMATE CHANGE

### CONTEMPLATING THE LIMITS OF HUMAN RIGHTS AS INSTRUMENTS OF PRESSURE FOR THE PLANETARY CAUSE

**ABSTRACT:** One of the ways to address a “triple planetary crisis” (climate change, biodiversity loss, toxic pollution) consists in challenging existing legal frameworks, principles and remedies. The aim of this chapter is first, to contemplate, against the background of normative, judicial and ethical developments, both the impact of climate litigation on human rights’ architecture and also possible ways forward in the process of development of rights as instruments of pressure in a global attitude to tackle climate change. Secondly, current developments in the environmental and climate field of the EU legal order from a constitutional perspective are addressed, including the impact of the ECtHR *Klimaseniorinnen* judgement on the EU legal framework. Whilst the EU Courts are under pressure of an irrefutable link between human rights and the climate, the limits of judicial creativity should trigger a new debate about the feasibility of environmental rights in the EU legal order at large.

**KEYWORDS:** fundamental rights, environmental human rights, climate change litigation, EU legal order, environmental law, climate change, climate rights

## 1. Environmental rights – contemplating a change

### 1.1. Introduction

One of the ways to address a “triple planetary crisis” (climate change, biodiversity loss, toxic pollution)<sup>2</sup> consists in challenging existing legal frameworks, principles

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<sup>1</sup> Dr hab. A. Sikora-Kalèda, Chair of European Law, Jagiellonian University, <https://orcid.org/0009-0001-1204-7020>

<sup>2</sup> E. Morgera, *International Environmental Law: A Case for Transformative Change through the Lens of Children’s Human Rights*, “Environmental Policy and Law” 2024, vol. 53, no. 5-6. For the concept

and remedies. Indeed, the temporal outline of environmental governance ‘is not just to value the future but also to respond and manage a changing future.’<sup>3</sup> In the context of a broadly understood environmental constitutionalism,<sup>4</sup> advocating the link between human rights and climate change<sup>5</sup> and the overall concept of environmental human rights<sup>6</sup> can be understood as a universal expression of a need for groundbreaking change given the magnitude of the climate change as a “polycentric issue.”<sup>7</sup> Challenging existing legal and philosophical *status quo* equally implies reinventing foundational reasoning underpinning rights in a broad sense including understanding their purpose, scope and feasibility. Indeed, the impact of climate change litigation on the architecture of human rights is undeniable. Human rights have been in recent years operationalised through the judicial debate and have gradually become an instrument of pressure on state actors echoing a need for change of the legal and economic framework in many jurisdictions around the globe. Indeed, the substantial focus on rights has shifted recently from the normative area to the judicial creativity sphere in a context of a climate change litigation in order to put pressure on govern-

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of a triple planetary crisis in the UN context, see Universal Rights Group, *Realising Human Rights as a Critical Contribution to Confronting the Triple Planetary Crisis*, 2024, <https://www.universal-rights.org/urg-policy-reports/human-rights-triple-planetary-crisis/>.

<sup>3</sup> B.J. Richardson, *Time and Environmental Law: Telling Nature's Time*, Cambridge 2017, p. 124.

<sup>4</sup> J.R. May, E. Daly, *Global Climate Constitutionalism and Justice in the Courts* [in:] *Research Handbook on Global Climate Constitutionalism*, J. Jaria-Manzano, S. Borrás (eds), Cheltenham–Northampton 2019, pp. 42–57; E. Daly, J.R. May, *Introduction: Implementing Environmental Constitutionalism* [in:] *Implementing Environmental Constitutionalism: Current Global Challenges*, E. Daly, J.R. May (eds), Cambridge 2018, pp. 1–12; J.R. May, *Constituting Fundamental Environmental Rights Worldwide*, “Pace Environmental Law Review” 2006, vol. 23, no. 1, pp. 113–182; J.R. May, *The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes*, “Cardozo Law Review” 2020, vol. 42, no. 3, p. 983; S.J. Turner et al. (eds), *Environmental Rights: The Development of Standards*, Cambridge 2019, pp. 383–400; J.C. Gellers, *The Global Emergence of Constitutional Environmental Rights*, London 2017; S. Bookman, *Demystifying Environmental Constitutionalism*, “Environmental Law” 2024, vol. 54, no. 1, pp. 1–77; A. Sikora, *Constitutionalisation of Environmental Protection in EU Law*, Zutphen 2020; E. Daly, M.A. Tigre, N. Urzola, *Common but Differentiated Constitutionalisms: Does ‘Environmental Constitutionalism’ Offer Realistic Policy Options for Improving UN Environmental Law and Governance? US and Latin American Perspectives* [in:] *Constitutionalism and Transnational Governance Failures*, E.-U. Petersmann, A. Steinbach (eds), Leiden–Boston 2024, pp. 172–205.

<sup>5</sup> C. Heri, *Climate Change before the European Court of Human Rights: Capturing Risk, Ill-Treatment and Vulnerability*, “European Journal of International Law” 2022, vol. 33, no. 3, pp. 925–951.

<sup>6</sup> For the purpose of this chapter the “environmental human rights” notion is used to denote the human rights jurisprudence on the application of human rights norms to environmental harm and climate change. See Environmental human rights (EHRs) (see J.R. May, E. Daly, *Global Environmental Constitutionalism*, Cambridge 2014).

<sup>7</sup> European Court of Human Rights, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, ECLI:CE:ECHR:2024:0409JUD005360020, para. 419.

ments and industrial players to reduce greenhouse gas emissions and to raise the level of ambition in the field of climate neutrality and thus amend the current legal framework.<sup>8</sup> Strategic litigation embodied in the climate change rationale is a new form of legal practice.<sup>9</sup> The aim of this chapter is thus to contemplate, in the first part, against the background of normative, judicial and ethical developments, possible ways forward in the process of construing environmental rights in tackling climate change. In the second part, current developments in the environmental and climate field of the EU legal order from a constitutional perspective are addressed, including a potential impact of the European Court of Human Rights (ECtHR) *Klimaseniorinnen* judgement on the attitude of the European Court of Justice (CJEU) in the field of environmental, climate rights. The centre of gravity in the modern debate about rights and environment should be precisely about “their underlying rationale, their necessity, feasibility, and use in international and national law and policy.”<sup>10</sup> It seems that existing normative and judicial expressions of greening human rights by deriving environmental rights from expressly recognised human rights are about to reach their limits. Thus, contemplating their philosophical foundations and possible legal avenues of construing a new generation of environmental rights adapted to the climate change reality, societal and technological challenges is worthwhile.

## 1.2. Normative and judicial expressions of environmental human rights

Constitutional entrenchment of environmental human rights has been viewed in the global context of a “growing global consciousness of environmentalism in tandem with increasing threats to social and environmental sustainability [which ] have

<sup>8</sup> M. Bönemann, M.A. Tigre (eds), *The Transformation of European Climate Litigation*, Berlin 2024; J. Setzer, C. Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot*, London 2024, <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf>; I. Alogna et al. (eds), *Climate Change Litigation in Europe: Regional, Comparative and Sectoral Perspectives*, Cambridge–Antwerp–Chicago 2023; C. Beauregard et al., *Climate Justice and Rights-Based Litigation in a Post-Paris World*, “Climate Policy” 2021, vol. 21, no. 5, pp. 652–665.

<sup>9</sup> J. Setzer, C. Higham, *Global Trends in Climate Change Litigation: 2021 Snapshot*, London 2021, [https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation\\_2021-snapshot.pdf](https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf); J. Peel, R. Markey-Towler, *Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases*, “German Law Journal” 2021, vol. 22, no. 8, pp. 1484–1498; Ch. Eckes, *Strategic Climate Litigation before National Courts: Can European Union Law Be Used as a Shield?*, “German Law Journal” 2024, vol. 25, no. 6, pp. 1022–1042.

<sup>10</sup> M. Scobie, *Framing Environmental Human Rights in the Anthropocene* [in:] *Environmental Human Rights in the Anthropocene: Concepts, Contexts, and Challenges*, W.F. Baber, J.R. May (eds), Cambridge 2023, pp. 9–30.

contributed to the greening of constitutions”<sup>11</sup> and considering “environmental quality as fundamentally related to human rights.”<sup>12</sup> As noted in the classical “*Environmental Constitutional Rights*” monograph by Hayward, constitutional recognition of environmental human rights, “entrenches a recognition of the importance of environmental protection; it offers a possibility of unifying principles for legislation and regulation; it secures these principles against the vicissitudes of routine politics, while at the same time enhancing possibilities of democratic participation in environmental decision-making processes.”<sup>13</sup> An initial question about the relationship between human rights law and global climate change has already been addressed by arguing that a “mutually exclusive relationship” between human rights law and general international law would counter the evolution of international environmental law as a whole and international human rights law.<sup>14</sup> A human rights-based approach to climate change remains a complex trend in national and international legal orders,<sup>15</sup> enhanced notably through the climate change litigation and judicial response of national and international courts,<sup>16</sup> both through the prism of a general link between climate and human rights<sup>17</sup> and intergenerational perspective of rights and responsibilities.<sup>18</sup> However, this effort, as noted by scholars, is paved with many hurdles, including primarily the absence of an explicit right to a healthy environment in the

<sup>11</sup> E. Daly, J.R. May, *Learning from Constitutional Environmental Rights* [in:] *The Human Right to a Healthy Environment*, J.H. Knox, R. Pejan (eds), Cambridge 2018, pp. 42–57.

<sup>12</sup> J.C. Gellers, *The Global...*, p. 2.

<sup>13</sup> T. Hayward, *Constitutional Environmental Rights*, New York 2005, p. 8.

<sup>14</sup> A. Boyle, *Human Rights and the Environment: Where Next?*, “European Journal of International Law” 2012, vol. 23, no. 3, pp. 613–642.

<sup>15</sup> Ex multis, B. Lewis, *Environmental Human Rights and Climate Change: Current Status and Future Prospects*, Brisbane 2018, p. 153ff.

<sup>16</sup> Ch. Eckes, *Constitutionalising Climate Mitigation Norms in Europe* [in:] *Constitutionalism and Transnational Governance Failures*, E.-U. Petersmann, A. Steinbach (eds), Leiden–Boston 2024, pp. 107–144.

<sup>17</sup> C. Heri, *Climate Change...*

<sup>18</sup> United Nations General Assembly, *The Pact for the Future (A/RES/79/1)* that includes a *Global Digital Compact* and a *Declaration on Future Generations*. Pact, Action 35, point e “Address the adverse impact of climate change and other environmental challenges that constitute threats to the ability of young persons to enjoy their human rights and a clean, healthy and sustainable environment.” See also, Bundesverfassungsgericht, *Neubauer et al. versus Germany*, order of 24 March 2021 – 1 BvR 2656/18, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, ECLI:DE:BVerfG:2021:rs 20210324.1bvr265618, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>, operative part, para. 2 “If there is scientific uncertainty regarding causal relationships of environmental relevance, a special duty of care imposed upon the legislator by Art. 20a of the Basic Law – also for the benefit of future generations – entails an obligation to take account of sufficiently reliable indications pointing to the possibility of serious or irreversible impairments.”

European Convention on Human Rights (ECHR).<sup>19</sup> More broadly, environmental human rights are anchored in various trends of environmental justice,<sup>20</sup> planetary justice and Earth system justice in the era of the Anthropocene.<sup>21</sup> Whilst climate change is “increasingly viewed as a human rights issue”, scholars equally emphasise that this is a relatively novel issue in the international fora which started globally to arise in the context of the claims of indigenous communities.<sup>22</sup> Since the 1900s, approximately one hundred States have adopted the right to a healthy environment “by writing anew or amending their constitutions to include substantive environmental human rights provisions.”<sup>23</sup> Scholars note that approximately half of the constitutions around the globe explicitly or implicitly provide for a substantive right to a clean or quality or healthy environment, and “about half of those also guarantee procedural rights to information, participation, or access to justice in environmental matters.”<sup>24</sup> However, global human rights treaties do not include such a substantive right to healthy environment. In 2008, the U.N. Human Rights Council adopted Council Resolution 7/23, which affirmed that “climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.”<sup>25</sup> The concept of environmental human rights has been further categorised among “new human rights” and prominently highlighted by the 2022 UN endorsement of “a right to a clean, healthy, and sustainable environment” in the UNGA Resolution 76/300.<sup>26</sup>

<sup>19</sup> C. Heri, *Climate Change...*

<sup>20</sup> L. Pellegrini et al., *International Investment Agreements, Human Rights, and Environmental Justice: The Texaco/Chevron Case from the Ecuadorian Amazon*, “Journal of International Economic Law” 2020, vol. 23, no. 2, pp. 455–468; M. Scobie, *Framing Environmental Human Rights...*

<sup>21</sup> J. Gupta et al., *Earth System Boundaries and Earth System Justice: Sharing the Ecospace*, “Environmental Politics” 2024, vol. 33, no. 7, pp. 1–20.

<sup>22</sup> B. Lewis, *Environmental Human...*, p. 153.

<sup>23</sup> Cf. <https://iucn.org/news/world-commission-environmental-law/202110/right-a-healthy-environment>, see also Ch. Jeffords, *On the Relationship between Constitutional Environmental Human Rights and Sustainable Development Outcomes*, “Ecological Economics” 2021, vol. 186. For the US perspective, see J.H. Knox, N. Tronolone, *Environmental Justice as Environmental Human Rights*, “Vanderbilt Journal of Transnational Law” 2023.

<sup>24</sup> E. Daly, J.R. May, *Learning from...*

<sup>25</sup> A/HRC/RES/7/23 Human Rights and Climate Change. For an outline of political and historical context of the UN debates, see M. Limon, *For People; For Planet: The Long and Winding Road to United Nations Recognition of the Universal Right to a Clean, Healthy, and Sustainable Environment*, <https://www.universal-rights.org/urg-policy-reports/for-people-for-planet-the-long-and-winding-road-to-united-nations-recognition-of-the-universal-right-to-a-clean-healthy-and-sustainable-environment/>.

<sup>26</sup> Cf. <https://documents.un.org/doc/undoc/gen/n22/442/77/pdf/n2244277.pdf>.



For many years legal thought and practice focused on the general concept of environmental rights as a legal tool meant to enforce the human right to a healthy and sustainable environment. Whilst there is an undeniable link between human rights and climate change, as illustrated notably by the global phenomenon of the climate change litigation, this monograph focuses on the growing role of potential, sectoral fundamental rights and tailored remedies available in the EU legal order in absence of a substantive fundamental right to a healthy environment in EU law. Against the background of the European Green Deal and its ambitious climate-neutrality goal by 2050, the book echoes the sustainability-based approach and its limits.

Contributors analyse two interrelated perspectives. On the one hand, authors explore the procedural dimension by discussing the climate litigation and the limits of the concept of human environmental rights, state liability for loss and damage caused to individuals as a result of breaches of EU law, national remedies available in case of bad condition of the environment as well as the limits of the public interest litigation and challenges related to climate claims against private actors in national law. On the other hand, contributors discuss substantive aspects from a global perspective of food insecurity, soil monitoring and resilience as well as digitalisation, green skills and climate-induced migration. With insights from leading experts, this work highlights the evolving tensions and expectations within the EU legal framework.

Essential for legal practitioners, policymakers, academics, and students of law and administration, this book offers a comprehensive exploration of the intersection between sustainability, climate action, and the protection of fundamental rights in EU law.



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