CAN THE '*LAST JUDGEMENT*' BE SIMPLY AVERTED?

An Analysis of The Court Dismissal of the First Climate Litigation Case Against the Italian Government 'A Sud et al. v. Italy'.

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Report
submitted in partial fulfilment of the requirements for the degree
of M.Sc. in Sustainable Development in partnership with UN SDSN

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Dedication

To my beloved Arthur, Victoria and David
for supporting me in this adventure

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To all the professors and colleagues who have shared profound insights and fascinating exchanges, expanding my knowledge and allowing for analysis from a broad range of perspectives.

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TABLE OF CONTENTS

Lists of Abbreviations and Acronyms iv

Summary v

Introduction 1

Methodology 3

1. Climate Change Litigation: State of the Art and Main Challenges 5

2. European Systemic Cases and Strategies to Justiciability 12

3. The State's Role in Climate Change Mitigation: the Climate Obligation 15

4. Relevant Aspects of Italy's Climate Regulatory Framework 18

5. The First Italian Climate Litigation Case: 'Urgenda-style' Claim with Unique Traits 22

The Crucial Deference to a Shared Terminology Regarding Climate Change 24

The Recognition of Climate Change as a Climate Emergency 25

A Cogent Logical-Argumentative Line of Reasoning 26

5.1 Cause of action, Main Claims and Legal Grounds 26

5.2 Factual Evidence of the Urgency: Duty of Knowledge and '*Riserva di Scienza*' 27

5.3 Duty Means Acting: The State's Responsibility for Inaction in Addressing the Climate Emergency Infringes *Neminem Laedere* and Human Rights 29

From Duty Arises Action 29

Ensuring Non-Regression: Fulfilling the Human Right to a Stable and Safe Climate 31

5.4 The Request for a *Facere* in Line with *Riserva di Scienza* and Fair Share. 33

6. The Dismissal, a Questionable Failure to Address the Matter 34

6.1 Neglecting Climate Obligations in the Name of Separation of Powers: Political Discretion Ignoring Human Rights 37

6.2 International Commitments Do Not Bind the State to Citizen Claims 41

6.3 The Court's Lack of Knowledge vs Scientific Reserve in Addressing Climate Change 43

6.4 Avoiding Evaluation and Deferring Effective Mitigation 45

7. The Court's Role for Human Rights Protection in the Climate Emergency 46

8. Anticipated Judicial Scenarios: Legal Grounds Backed by the ECtHR 52

9. Conclusions 56

References 58

Lists of Abbreviations and Acronyms

Aarhus Convention	United Nations Economic Commission for Europe Convention on access to information, public participation in decision-making and access to justice in environmental matters
A Sud	A Sud Ecologia e Cooperazione OdV
CJEU	Court of Justice of the European Union
Climate Case Ireland	Friends of the Irish Environment CLG v. The Government of Ireland
CLN	Climate Litigation Network
CO_2	Carbon dioxide
COP	UNFCCC Conference of the Parties
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPA	Environmental Protection Agency
GHG(s)	Greenhouse gas(es)
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
KlimaSeniorinnen	Verein KlimaSeniorinnen Schweiz and Others v. Switzerland
NDC	Nationally determined contribution
Neubauer case	Neubauer, et al. v. Germany
NGO	Non-governmental organization
OECD	Organisation for Economic Co-operation and Development
Plaumann Case	Plaumann & Co v Commission (1963) Case 25/62 ECR 9
PNIEC	Piano Nazionale Integrato Energia e Clima (Integrated National Energy and Climate Plan 2030)
SDG	Sustainable Development Goals
TFEU	The Treaty on the Functioning of the European Union
Vienna Convention	The Vienna Convention on the Law of Treaties
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
Urgenda	Urgenda Foundation v. State of the Netherlands (2015)

Summary

This paper investigates the climate litigation case *Giudizio Universale,* focusing on how the Rome court's ruling diverges from other systemic climate cases and highlighting the evolving judicial role in climate litigation.

The present work is based on doctrinal analysis of court documents, including writs and judgments, and interviews with plaintiffs' lawyers, climate experts, and international lawyers. It examines legal frameworks, case law, and procedural aspects, referencing climate treaties and relevant legislation.

The analysis concludes that the Rome court avoided a substantive examination of the plaintiffs' claims, opting for a debatable legal interpretation mainly focused on the division of powers to justify the non-justiciability of climate policies that ignores the urgency of climate action. This contrasts with global trends recognizing the judicial role in advancing Sustainable Development Goals and human rights.

The study highlights the need for a paradigm shift in the education of judges and lawyers to incorporate climate science and ethics, enabling them to effectively protect human rights and the environment.

The expectation is that appellate judges will overturn the Rome court's ruling, potentially making the *Giudizio Universale* case a pivotal moment in climate litigation and compelling the Italian State to fulfil its climate obligations.

Introduction

The name '*Giudizio Universale'* (Last Judgement), given to Italy's first systemic climate litigation case, alludes, with its Biblical reference, to the end of a liveable world caused by climate change. However, it also evokes the prospect of a final and fair evaluation of human actions. A judgment that, despite deferment, is inevitable. Indeed, the 'Last Judgement' ruling was a dismissal[1] of the case in the first instance which will be appealed.

This paper demonstrates how the Rome court's decisional criteria diverge from the evolving rulings and role of courts in climate litigation in other jurisdictions.

Despite the UN's recognition of climate litigation's importance in advancing Sustainable Development Goals (SDGs)[1], global and European climate case law increasingly acknowledging climate obligations and the right to a healthy environment, the Rome court opted for a more traditional possibly short-sighted interpretation that failed to evaluate the case on its merits.

The first part of the paper analyses the context of systemic climate litigation and addresses the specificities of the Italian legal system. The core of the project work is an analysis of the case, with insights being provided by interviews with academics and practitioners in environmental and constitutional law. They highlighted nuances and complexities underlying the legal grounds of the claim.

[1] While *Giudizio Universale* is the name given by the organizing NGO and main claimant, based on the name of the campaign supporting it, '*A Sud et al. v Italy'* is the name in the international record of the Sabin Center Climate Litigation Database. For the purpose of this paper, it will be used *Giudizio Universale*; the ruling in Italian: Canonaco A, *Sentenza A Sud Ecologia e Cooperazione Odv et al. vs Presidenza del Consiglio dei ministri*, Tribunale Ordinario di Roma Sezione Seconda Civile, 26-02-2024, no. 39415 and the case file available in Italian https://giudiziouniversale.eu/la-causa-legale/ : partially available in English in Sabin Center for Climate Change Law as *A Sud et al. v Italy'* at the link: https://climatecasechart.com/non-us-case/a-sud-et-al-v-italy/.

The ruling of 'inadmissibility for lack of jurisdiction' is reviewed, highlighting how several elements seem to reflect the intention to avoid judgement and perhaps a disregard for the duties and commitments inherent to the role of civil judges. In the Author's opinion, the court contradicts the duty of the judge as guarantor of the access to justice, of the rule of law and, of human rights.

Methodology

This work centres on a doctrinal analysis of the climate litigation case 'A Sud et al. v. Italy'[2] (or named *Giudizio Universale*) based on primary sources of the trial and on interviews with subject matter experts.

The study encompasses primary sources from court documents, such as writ of summons, plaintiffs' briefs, the defendant's rebuttals, and the judgment, highlighting differences with the legal reasoning of relevant European 'systemic' climate cases. Additionally, it addresses aspects of the Italian domestic legal framework, case law, and civil court procedures that guided the writ of summons and the ruling.

To obtain internal and expert views on the claim, semi-structured interviews were conducted with Luca Saltalamacchia[3], the plaintiffs' lawyer; and Professor Michele Carducci[4] their legal theorist, Attorney Filippo Fantozzi[5]; a climate litigation expert and part of the team supporting in the landmark Dutch case *Urgenda*[6]; and Katie Redford[7] alawyer with extensive experience in international cases involving human rights and climate change.

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[2] *A Sud et al. vs Italy*, Tribunale di Roma Sezione II Civile, (2024) RG 39415/21, (n 1)

[3] Luca Saltalamacchia, Civil and environmental lawyer, human rights and environment defender. Founder of 'Rete Legalità per il Clima'. Plaintiff's lawyer of Giudizio Universale and member of the Bar of the Italian Supreme Court, personal profile: https://studiolegalesaltalamacchia.com/chi-siamo/

[4] Michele Carducci, Full Professor of Comparative Constitutional and Climate Law at Unisalento, UN Human Rights Defender, and Earth Protector for the rights of nature and climate justice, amicus curiae for Giudizio Universale, personal profile: https://www.unisalento.it/scheda-utente/-/people/michele.carducci

[5] Filippo Fantozzi, Legal Associate - Climate Litigation Network - Urgenda, juridical consulting on climate cases such as *Notre Affaire à Tous;* personal profile: linkedin.com/in/filippo-p-fantozzi.

[6] *Urgenda Foundation v. The State of the Netherlands* (2019) Dutch Supreme Court, The Hague ECLI:NL:HR:2019:2007.

[7] Katie Redford, Lawyer with international expertise in human rights and climate change and cofounder of Earth Rights International, member of the Bar of the Supreme Court of the USA. personal profile: https://earthrights.org/about/team/katie-redford/

As Turley suggests[8], such dialogues provided content, analysis, and insights related to the legal case that are not publicly available and which could then be connected to existing literature and theoretical frameworks.

Climate change litigation involves various and heterogeneous scientific and legal disciplines, so my research included different direct sources, such as legislation, juridical or procedural codes, and law cases, in addition to diverse academic articles on environmental law, international and comparative law, constitutional law, civil law and administrative law.

[8] Turley SL, ''*To See Between': Interviewing as a Legal Research Tool'* (2023) 7 Journal of the Association of Legal Writing Directors https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1650167 accessed 19 July 2024.

1. Climate Change Litigation: State of the Art and Main Challenges

The 6th IPCC Report warns that climate change[9] is 'a grave and mounting threat to our wellbeing and a healthy planet' which requires urgent action[10]. The UNEP[11] and IPCC[12] agree that the threshold increase of surface average temperature of 1.5°C, beyond which grave anthropogenic damage will be unavoidable, may have already been exceeded.

Despite scientific understanding and public awareness, international legal frameworks are lagging. Furthermore, although the 2015 Paris Agreement[13] aimed to limit global temperature rise to 'well below 2°C', with efforts to keep it at 1.5°C, and the 2021 Glasgow Climate Pact set a mandatory temperature rise ceiling to 1.5°C[14], the UNFCCC's Global Stocktake in 2023[15] revealed that we are not on track, and that the window for effective mitigation is quickly closing[16].

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[9] Defined by the UNFCCC: '*Climate change is a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods*, in: United Nations Framework Convention on Climate Change, Art.2. https://unfccc.int/resource/docs/convkp/conveng.pdf

[10] Intergovernmental Panel on Climate Change (IPCC) , 'Synthesis Report of the IPCC Sixth Assessment Report (AR6) Summary for Policymakers' (IPCC 2023) https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf accessed 21 June 2024.

[11] UN Environment Programme, 'Emissions Gap Report 2023: Broken Record – Temperatures Hit New Highs, yet World Fails to Cut Emissions (Again)' (2023) https://doi.org/10.59117/20.500.11822/43922 accessed 22 July 2024.

[12] 'The IPCC's [UN] mandate is to assess the state of the scientific literature on all aspects of climate change, its impacts and society's options for responding to it'. In IPCC, 'IPCC Statement: Clarifying the Role of the IPCC in the Context of 1.5°C — IPCC' (IPCC 2024) https://www.ipcc.ch/2017/09/21/ipcc-statement-clarifying-the-role-of-the-ipcc-in-the-context-of-1-5oc/ accessed 24 July 2024. Basic elements of scientific knowledge underlying climate system sciences are gathered in the IPCC glossary, which is continuously updated and annexed to the reports: https://apps.ipcc.ch/glossary/.

[13] Paris Agreement (2015) United Nations Framework Convention on Climate Change – TREATIES Chapter XXVII 7.d. ; See also regarding the concept of 'endgame': Kemp L and others, 'Climate Endgame: Exploring Catastrophic Climate Change Scenarios' (2022) 119 Proceedings of the National Academy of Sciences https://www.pnas.org/doi/full/10.1073/pnas.2108146119 accessed 26 June 2024.

[14] UNFCCC, Decision 1/CMA.3 Glasgow Climate Pact, (2021) FCCC/PA/CMA/2021/10/Add.12 par. 21.

[15] UNFCCC, Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA) UN Climate Change Conference - (2024) United Arab Emirates Nov/Dec 2023, 1/CMA.5 'Outcome of the first global stocktake' FCCC/PA/CMA/2023/16/Add.1, https://unfccc.int/topics/global-stocktake

[16] The IPCC 'Special Report on Global Warming of 1.5°C' (2018) defines 1.5°C as the temperature safe ceiling to avoid severe impacts on ecosystems and human societies: IPCC , '*IPCC, 2018: Global Warming of 1.5°C.*' (VP Masson-Delmotte and others eds, Cambridge University Press 2018) https://doi.org/%2010.1017/9781009157940. accessed 12 July 2024; See also: IPCC, 'Climate Change

Responding to insufficient government mitigation action, climate activists and NGOs have turned to the law, asserting their right to fill the gap in legislation and enforcement by pursuing climate justice[17] in national and international courts.

Rapidly growing and evolving, climate change litigation is a multifaceted, interdisciplinary field characterized by debated designations and classifications reflected in an expanding interdisciplinary literature[18]. The UN Environment Programme (UNEP) describes climate change litigation as encompassing cases addressing legal or factual issues related to climate change mitigation, adaptation, or climate science[19].

Climate change litigation, classified by Peel and Osofsky in a concentric hierarchy from political action to climate change as a peripheral element of the case[20], addresses core elements which include recognizing anthropogenic greenhouse gas emissions as the primary cause of climate change, identifying it as an urgent threat with inequitable impacts and responsibilities, affirming its scientific validity and legal relevance[21],

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2021 – The Physical Science Basis – Summary for Policymakers: Working Group I Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (2021) 4-9 https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf accessed 3 January 2022, 18.

[17] The term 'climate justice' broadly refers to legal and policy strategies developed in the late 20th century in the U.S. to address climate change by recognizing the deep connection between justice issues and climate change. Recently, the term is mainly used, also by climate movements, to address environmental vulnerabilities due to the fossil fuel industry and against the unfair distribution of climate impacts, with historically high CO_2 emitters in the North and vulnerable low emitters in the South.
On the difference between climate justice and climate litigation see: Baldin S and Viola P, 'L' obbligazione Climatica nelle Aule Giudiziarie' (2019) 3/2021 Dir. Pubbl. Comp. Eur. 597 https://www.rivisteweb.it/doi/10.17394/101926; IDLO, International Development Law Organization, 'Climate Justice: A Rule Of Law Approach For Transformative Climate Action Creating A Culture Of Justice International Development Law Organization' (2021).

[18] See Carducci M, 'La Ricerca Dei Caratteri Differenziali Della 'Giustizia Climatica', (2019) 43 DPCE Online, [S.l.] https://www.dpceonline.it/index.php/dpceonline/article/view/965 accessed 10 June 2024.

[19] UNEP, 'Global Climate Litigation Report: 2020 Status Review', Nairobi, 2020, 6, 10.

[20] In Peel J, Osofsky H.M., Climate Change Litigation, in Annual Rev. L. & Soc. Sc., (2020), no. 16, 21 <https://doi.org/10.1017/CBO9781139565851> accessed 24 January 2024, 21-38, the climate litigation is here classified in concentric circles: 'Litigation with climate change as the central issue'; 'Litigation with climate change as a peripheral issue'; 'Litigation with climate change as one motivation but not raised as an issue, (…)', 'Litigation with no specific climate change framing but with implications for mitigation or adaptation'.

[21] On how climate change science produces legal effects, see: Carducci M, 'Cambiamento Climatico (Diritto Costituzionale)' in Sacco R (ed), *Digesto delle Discipline Pubblicistiche* (Wolters Kluwer I. Srl 2021)

emphasizing the need for immediate mitigation measures, and critiquing the inadequacy of governmental actions and laws. It advocates for individuals' rights to demand state-led, science-based mitigation efforts in a bid to seek justice and accountability for human rights violations - a strategy applied successfully before the European Court of Human Rights (ECtHR)[22].

The importance of climate litigation in advancing UN SDGs - particularly SDG 13 on Climate Action - is widely acknowledged[23]. Since 2017, UNEP has reported on the influence of climate litigation on policy and achievement of environmental and developmental objectives through a bottom-up process of law enhancement and creation, raising domestic mitigation ambitions[24]. The 2023 Report[25] confirmed the expansion of climate litigation in case law, jurisdiction and geographic spread, with a

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https://s4ea656208d9e68b9.jimcontent.com/download/version/1616144104/module/14503221023/name/Carducci%202021%20Camb.clim%20%28dir.cost.%29.pdf accessed 29 June 2024, 52.

[22] Savaresi A, 'Human Rights and the Impacts of Climate Change: Revisiting the Assumptions' (2020) 11 Oñati Socio-Legal Series 231 https://dspace.stir.ac.uk/bitstream/1893/32011/1/1195-7185-1-PB.pdf accessed 25 June 2024; Vilchez de and Savaresi A, 'The Right to a Healthy Environment and Climate Litigation: A Game Changer?' (2021) 32 Yearbook of International Environmental Law 3 <https://ucd.idm.oclc.org/login?url=https://www.proquest.com/scholarly-journals/right-healthy-environment-climate-litigation-game/docview/2823865160/se-2?accountid=14507>; Kotzé LJ, 'Governing Prometheans in the Anthropocene: Three Proposals to Reform International Environmental Law, Reimagining The Human-Environment Relationship' (2022) https://collections.unu.edu/eserv/unu:8841/UNUUNEP_Kotze_RHER.pdf 11 July 2024 accessed 11 July 2024; 32 Yearbook of International Environmental Law 3 https://ucd.idm.oclc.org/login?url=https://www.proquest.com/scholarly-journals/right-healthy-environment-climate-litigation-game/docview/2823865160/se-2?accountid=14507 , accessed 11 July 2024; See also: *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, (ECtHR Communicated Case, 17 March 2021, relinquishment to the Grand Chamber on 26 April 2022), no53600/20, https://prd-echr.coe.int/web/echr/w/grand-chamber-rulings-in-the-climate-change-cases accessed 11 July 2024.

[23] Both the United Nations Human Rights Council (October 2021 A/HRC/RES/47/13) and the United Nations General Assembly (on 26 July 2022 of Resolution A/76/L.75) have emphasized the negative impact of climate change on human rights and have now recognized the right to a clean, healthy and sustainable environment.

[24] Inger Andersen, Executive Director United Nations Environment Programme, in: UNEP, Global Climate Litigation Report 2020 Status Review' (Sabin Center for Climate Change Law¸ Columbia Law School & United Nations Environment Programme - 2020) https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf> accessed 17 June 2024 Foreword.

[25] UNEP, 'Global Climate Litigation Report: 2023 Status Review (Sabin Center for Climate Change Law, Columbia Law School & United Nations Environment Programme, 2023)' (2023) https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1203&context=sabin_climate_change accessed 20 May 2024, 3.

growing range of legal grounds and approaches that demonstrate the link between SDGs, human rights protection and climate mitigation[26].

Although a 'global turn to courts' has enhanced climate action[27], several jurists have opined that access to justice and the role of the courts are essential to overcome the shortcomings of international law in ensuring binding mitigation action[28] by enforcing internationally determined rule of law in national courts[29].

Nevertheless, there is no universally accepted definition of states' climate obligations arising from international law[30]. There is, however, wider consensus on primary

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[26] According to the database of Sabin Center for Climate Change Law, mid-June 2023 there were a total of 3.330 cases filed in ever broader jurisdictions and range. This included 2.279 in the US and 1.051 outside the USA. This means in the 2017-2023 timeframe, substantially the number of climate disputes tripled (884 vs. 3330- Author's calculation), source of data: Sabin Center for Climate Change Law, 'Global Climate Change Litigation' (*Climate Change Litigation*2024) https://climatecasechart.com/non-us-climate-change-litigation/ accessed 17 June 2024.

[27] Voigt C, 'The Power of the Paris Agreement in International Climate Litigation' (2023) 32 RECIEL 237 https://doi.org/10.1111/reel.12514 accessed 21 June 2024, 238.

[28] Stankovic T, Hovi J and Skodvin T, 'The Paris Agreement's Inherent Tension between Ambition and Compliance' (2023) 10 Humanities and Soc.Sciences Communications 1 https://doi.org/10.1057/s41599-023-02054-6 accessed 18 June 2024; Ghinelli G, 'Le Condizioni dell'azione Nel Contenzioso Climatico: C'è un Giudice per il Clima?' Anno LXXV Fasc. 4 - 2021 Rivista trimestrale di diritto e procedura civile 1272-1297, 1278; Mayer B, 'The "Highest Possible Ambition" On Climate Change Mitigation as a Legal Standard' (2024) 73 ICLQ 285317 https://doi.org/10.1017/S0020589324000010; Mai L, 'Navigating Transformations: Climate Change and International Law' (2024) Leiden JoIL 122 https://doi.org/10.1017/S0922156524000062 ; Maxwell L, Mead S and Berkel van, 'Standards for Adjudicating the next Generation of Urgenda-Style Climate Cases' (2021) 13 Journal of Human Rights and the Environment 35 https://doi.org/10.4337/jhre.2022.01.02 accessed 14 May 2024.

[29] The general assessment of the strength or weakness of the climate obligations deriving from the UNFCCC and its implementation instruments is analysed e.g. in: Smith DC, 'Courts Must Provide Climate Change Leadership in the Absence of Lawmaking Progress' (2021) 39 Journal of Energy & Natural Resources Law 385 https://doi.org/10.1080/02646811.2021.1982172; Carducci, (2019), (n 18);

[30] The need of clarity is proven also by the advisory opinion requested by the UN General Assembly from the
International Court of Justice (ICJ) in April 2023 on what are the obligations of States under international law to ensure the protection of the climate system sources cited as obligation: the UN Charter, key human rights treaties, the UNFCCC and the Paris Agreement, and the UN Convention of the Law of the Sea (UNCLOS): UNGA, A/RES/77/276 Resolution On , 29 March 2023, 'Request for an Advisory Opinion of the International Court of Justice on the Obligations of States in Respect of Climate Change' (*Undocs.org*2024);
See also Lamm V, 'The Obligations of the States in Respect of Climate Change before the International Court of Justice' (2023) 36 Journal of Environmental Law, 117 https://doi.org/10.1093/jel/eqad033 accessed 17 April 2024.

international sources for climate obligations[31] to prevent climate change, i.e. the UNFCCC[32] and its integrative treaties: the Kyoto Protocol[33] and the 2015 Paris Agreement[34].

The UNFCCC's Preamble and Article 2 express the determination of its parties to protect the climate and contain anthropogenic greenhouse gas (GHG) concentrations. They establish principles and obligations while setting objectives through Conferences of the Parties (COPs)[35]. The goal is to reduce GHG emissions; whereas the Kyoto Protocol provides for binding targets for industrial nations; the Paris Agreement also engages developing countries using a 'bottom-up approach' allowing States to establish their own 'Nationally Determined Contributions' (NDCs)[36].

Although legally binding, the Paris Agreement lacks coercive enforcement mechanisms, relying on self-commitments, due diligence, and on political will - often insufficient for substantiating domestic legal action against States[37]. Even so, according to Carducci, the UNFCCC and the Paris Agreement are crucial in establishing a causal link between

[31] An extensive analysis of these documents is not in the primary aim of this paper, yet their principles will be considered throughout the analysis. For a definition of 'climate policy', see Woerdman E, Roggenkamp M and Holwerda M, 'Essential EU Climate Law' (2022 2nd edition), Edward Elgar Publishing 2021), 12.
[32] United Nations Framework Convention on Climate Change (UNFCCC) (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (FCCC).
[33] Kyoto Protocol to the United Nations Framework Convention on Climate Change (adopted 10 December 1997, entered into force 16 February 2005), 2303 UNTS 162 (Kyoto Protocol).
[34] Paris Agreement (n 13).
[35] The forum represented by the COPs has a mandate for the 'governance of climate questions': Pisanò A, *Il Diritto al Clima. Il Ruolo Dei Diritti Nei Contenziosi Climatici Europei* (Edizioni Scientifiche Italiane 2022), 122.
[36] Procedural requirements defined in the Paris Agreement Art. 4, See: UNFCCC, 'Nationally Determined Contributions (NDCs)' (*United Nations Climate Change*) https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs/nationally-determined-contributions-ndcs accessed 21 June 2024.
[37] Bodansky D, 'The Legal Character of the Paris Agreement' (2016) Review of European, Comparative, and International Environmental Law, Forthcoming https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2735252 accessed 23 June 2024; Stankovic T, Hovi J and Skodvin T, 'The Paris Agreement. Inherent Tension between Ambition and Compliance' (2023) 10 Humanities and Social Sciences Communications 1 https://doi.org/10.1057/s41599-023-02054-6 accessed 18 June 2024.

climate change and GHG emitters, and in defining absolute temperature targets as quantitative limits on emissions[38].

Access to justice is crucial for climate litigation, enabling citizens to file against States and ensuring judicial protection. This principle is rooted in the European Convention on Human Rights - Articles 6 and 13[39]-, and via the Charter[40], in Article 47, which establishes the right to a fair trial and effective remedy. Furthermore, the 1998 Aarhus Convention[41] guarantees access to information, public participation, and the right to challenge governmental actions or omissions on environmental matters[42]. Effectiveness of domestic enforcement of the Aarhus Convention is widely debated[43] and may provide a ground for appealing the *Giudizio Universale* ruling, as its denial of judgement on merit indicates that the Convention is insufficiently enforced in Italy.

In general, effective access to a fair judgment can be jeopardized in climate cases by procedural and substantive challenges due to the diffuse, systemic and dynamic nature

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[38]Carducci M, (n 21), 54.

[39] Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (European Convention on Human Rights, as amended) (adopted 4 November 1950, entered into force 3 September 1953) ETS.

[40] Charter of Fundamental Rights of the European Union (2012) OJ C326/391.

[41] 13. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Aarhus, Denmark, 25 June 1998.

[42] Article 9 of the Aarhus Convention outlines protections states must adopt, but its third part is limited in its European enhancement by Article 263.4 TFEU, which restricts in the rigid interpretation of the ‘Plaumann case’ (Plaumann & Co v Commission (1963) Case 25/62 ECR 9) - the ‘locus standi’ to individuals with direct and individual damage, excluding environmental NGOs and groups; it is, however, a very important tool for strategic climate litigation. Is used in the alternative claim in the case of Last Judgment. See: Hornkohl L, ‘The CJEU Dismissed the People’s Climate Case as Inadmissible: The Limit of Plaumann Is Plaumann’ (*European Law Blog*6 April 2021) https://europeanlawblog.eu/2021/04/06/the-cjeu-dismissed-the-peoples-climate-case-as-inadmissible-the-limit-of-plaumann-is-plaumann/ accessed 19 August 2024.

[43] The efficacity of the enhancement of the Convention as far as access to Justice is debated in Italy: Saccucci A and De Marziis C, ‘Aarhus Committee: Italy under Scrutiny on Access to Environmental Justice’ (*Saccucci & Partners*21 September 2023) https://www.saccuccipartners.com/2023/09/21/aarhus-committee-italy-under-scrutiny-on-access-to-environmental-justice/ accessed 24 July 2024; while on the relation between Article 47 of the Charter establishing the right to an effective remedy and to a fair trial and the Arhus Convention see also: van Zeben, ‘The Role of the EU Charter of Fundamental Rights in Climate Litigation’ (2021) 22 German Law Journal 1499 <https://doi.org/10.1017/glj.2021.78> accessed 11 July 2024, 1505.

of climate change, disrupting traditional legal criteria such as temporal linear concatenation and spatial limitation, and entangles issues of jurisdiction, standing, causation and burden of proof[44].

The causal chain of climate change is complex and non-linear, with delayed effects spanning generations[45]. It transcends jurisdictional borders, involving the planetary climate system, and often clashes with procedural and interpretative limitations[46]. Finally, the nature of harm[47] being 'essentially collective' and 'trans-subjective' in climate claims clashes with the need to identify subjects 'more legitimately entitled' to file a claim[48], a requirement for access to justice in environmental law[49].

The Italian State applied a conventional view in its rebuttal, arguing that plaintiffs lacked standing due to the absence of a 'qualified or differentiated' interest even if Italian civil

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[44] Carducci highlights that the climatic system is based on feedback loops 'a cycle in which an action, even human, activates causations with retroaction and interaction between all the earth special-temporal variables', therefore causation 'cannot be framed within the mere linear before/after chain presupposed by most disciplines of damage liability, in: Carducci, (n 21), 53,67; Giabardo further explains the difficulty of the 'translatability' of climate change into the typical categories of private law (subjective right, harm, fault, causal link) and, consequently, of civil procedural law (active and passive standing, evidence, means of enforcing behaviour), in: Giabardo CV, 'Qualche Annotazione Comparata sulla Pronuncia di Inammissibilità per Difetto Assoluto di Giurisdizione nel Primo Caso di Climate Change Litigation in Italia' (2024) Giustizia Insieme https://www.giustiziainsieme.it/it/diritto-civile/3125-climate-change-litigation-carlo-vittorio-giabardo accessed 13 June 2024.

[45] Recently confirmed by ECtHR Judgment of *KlimaSeniorinnen v Switzerland* stating: the 'chain of effects is both complex and more unpredictable in terms of time and place than in the case of other emissions of specific toxic emissions', *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, (n 22), 417.

[46] Carducci M, 'Climate Change and Legal Theory' in Gianfranco Pellegrino and Marcello Di Paola (eds), *Handbook of the Philosophy of Climate Change* (Springer International Publishing 2023), 307-333. https://link.springer.com/referenceworkentry/10.1007/978-3-031-07002-0_22 accessed 22 July 2024, 317-318.

[47] Recently confirmed by ECtHR Judgment, *KlimaSeniorinnen,* (n 22).

[48] Conte V, 'Per Una Teoria Civilistica Del Danno Climatico. Interessi Non Appropriativi, Tecniche Processuali per Diritti Trans-Soggettivi, Dimensione Intergenerazionale Dei Diritti Fondamentali' (2023) 58 DPCE Online 669 https://www.dpceonline.it/index.php/dpceonline/article/view/1912/1919 accessed 24 June 2024, 678.

[49] Plaumann case, (n 42).

law merely requires proof of general 'interest to the claim' [50]. This issue will be addressed on appeal, as it pertains to the merits.

2. European Systemic Cases and Strategies to Justiciability

While strategic climate cases aim to advance climate policy, raise awareness and transform behaviour, high-profile cases address broader issues in legal and governance frameworks[51]. Such 'systemic mitigation' or 'Urgenda-style'[52] cases, coordinated across jurisdictions, aim to reform regulatory, economic and policy systems, thus transforming institutions and frameworks for climate mitigation and adaptation, often exceeding international legal frameworks[53].

[50] In the Rebuttal (noted also in the Ruling) the State reasons that individual citizens and associations lack the standing to sue as they are acting solely on a simple and factual interest that (is not qualified or differentiated) does not differ from that of the general public: *Comparsa di Costituzione e Risposta della Presidenza del Consiglio dei Ministri RG 39415/21 - Ud 14/12/2021 – GU Canonaco* (Tribunale di Roma Sezione II Civile, RG 39415/21), Author's translation; conversely, Saltalamacchia underlined in the interview that the 'locus standi' in the claims before the civil court is not subject to the restrictions of the Plaumann case (see: n 42). The 'interest' is generally defined in the relevant Article 100 of the Civil Procedure Code, see: Brocardi, 'Banca Dati Normativa' (2003), https://www.brocardi.it/codice-di-procedura-civile/libro-primo/titolo-iv/art100.html, accessed 19 July 2024.

[51] UNEP (2023) confirms that strategic climate litigation impacts environmental policy (n 25).

[52] Named after the pioneering Dutch case, *Urgenda*, (n 6).

[53] See Jackson A, 'Ireland's Climate Action and Low Carbon Development Act 2015: Symbolic Legislation, Systemic Litigation, Stepping Stone?' (2020) 11/2020 UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 11/2020 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3680002 accessed 19 June 2024; Peel J and Markey-Towler R, 'Recipe for Success?: Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases' (2021) 22 German Law Journal 1484; Setzer J and Higham C, 'Global Trends in Climate Change Litigation: 2021 Snapshot Policy Report' (Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, 2021) https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trends-in-climate-change-litigation_2021-snapshot.pdf accessed 19 June 2024, 23; the definition of the Urgenda-style systemic mitigation cases by the Climate Litigation Network states: 'they challenge the overall effort of a State or its organs (hereinafter, the State) to mitigate dangerous climate change, as measured by the pace and extent of its greenhouse gas (GHG) emissions reduction', Maxwell et al. (n 28).

This author concurs with various jurists[54] who state that systemic cases, connected by a common thread of cross-referenced international best practices and supported by a substratum of activists involved directly or indirectly in the cases, represent an important forum for bottom-up democratic climate activism[55].

The lack of standards to judge a State's mitigation efforts[56] and the difficulty for claims to be found justiciable, are addressed by the Climate Litigation Network (CLN), an international network of lawyers founded by the NGO Urgenda[57], which works towards developing and executing successful litigation strategies [58]. Interviewees for the project work[59] underlined CLN's importance in preparing *Giudizio Universale*.

[54] A number of jurists endorse 'climate activism' in courts, eg: Otto FEL and others, 'Law, Justice and the Role of Courts in Changing the Social Superstructure Narrative in Climate Litigation' (2023) Global Policy; Smith DC, 'Courts Must Provide Climate Change Leadership in the Absence of Lawmaking Progress' (2021) 39 Journal of Energy & Natural Resources Law 385 https://doi.org/10.1080/02646811.2021.1982172; Carlarne CP, 'The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis' in Benoit Mayer, Alexander Zahar and Cinnamon Piñon Carlarne (eds), *Debating Climate Law* (Cambridge University Press 2021) https://www.cambridge.org/core/product/D244A98AD71078EA12F6B170CFBD4D57 accessed 19 July 2024; others are sceptical regarding a progressive approach to climate litigation, cf: F. Thornton, 'The Absurdity of Relying on Human Rights Law to Go After Emitters', in Mayer and Zahar, supra note 1, at 159; B. Wegener, 'Urgenda' – World Rescue by Court Order? The 'Climate Justice' Movement Tests the Limits of Legal Protection', (2019) 16(2) Journal for European Environmental & Planning Law 125; Punev A., Climate Litigation vs. Legislation: Avoiding Excessive Judicial Activism in the EU, Volume 21, Issue 1 https://doi.org/10.1177/17816858221086723; Meli, M 'Piove. Governo ladro! Cambiamenti climatici e nuove istanze di tutela - It's raining. Thieving Government! Climate change and new demand for justice' DOI: 10.7413/19705476031. (2021) TCRS Centro Studi Catania 87, https://www.iris.unict.it/retrieve/dfe4d22e-8f74-bb0a-e053-d805fe0a78d9/1021-Article%20Text-2046-1-10-20210304.pdf accessed 10 July 2024.
[55] Pisanò (n 35), 204.
[56] Maxwell et al. (n 28), 4.
[57] The NGO Urgenda named after the concept of the 'urgent agenda' for climate change action defines it as follows: 'The Climate Litigation Network is an international project of the Urgenda Foundation. We support organisations, communities and individuals to use litigation to compel national governments to ramp up their climate mitigation ambition'- online: https://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/ accessed 19 June 2024.
[58] Maxwell et al. (n 28). Other activist lawyers' organisations include the Global Litigation Network and Rete Legalità per il Clima.
[59] Interview with Luca Saltalamacchia - Rete Legalità per il Clima - A Sud Legal Team, 'Can the Last Judgment Be Simply Averted?' Zoom Video Call (15 May 2024); and Interview with Fantozzi P., Climate Litigation Network Associate Lawyer, 'Can the Last Judgment Be Simply Averted? Zoom Video Call' (15 May 2024).

CLN identified three strategic case types depending on the selected jurisdiction: 'rights based', 'tort-based' or 'under public law'[60]. The most widespread 'rights-based' approach aims to enforce international or regional climate change law by leveraging constitutionally protected individual rights[61], as underlined by a vast literature[62]. Of note is the German *Neubauer* case[63], which defined the State's obligation to safeguard fundamental rights through 'protection of the natural foundations of life and animals'[64], including the protection of life and health from climate change risks.

Claims centred on 'tort law', such as *Urgenda*[65], focus on the duty of public authorities to exercise reasonable 'care' to prevent or mitigate foreseeable risks of serious harm to life, property, environment and other protected rights.

Finally, the 'public law approach' aims at enforcing a State's compliance with its own legislation[66]. In 2017, prior to the Urgenda final ruling, 'Climate Case Ireland'[67]

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[60] Maxwell et al. (n.28), 38.

[61] UNEP, (n 25).

[62] Peel J, Markey-Towler R. Recipe for Success? Lessons for Strategic Climate Litigation from the Sharma, Neubauer, and Shell Cases. *German Law Journal*. 2021;22(8):1484-1498. doi:10.1017/glj.2021.83, 1484; Peel J and Osofsky HM, (n 20); see also: May JR, The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes. (2021)42 Cardozo Law Review 983, https://ucd.idm.oclc.org/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=152197892&site=ehostlive&scope=site accessed 19 December 2023.

[63] *Neubauer, et al. v. Germany*, BVerfG, Order of the First Senate, 1 BvR 2656/18, 29 April 2021.

[64] Claims are 'tort-based' when they define as legal ground the State's duty (in common law or under civil law) to safeguard persons or things against risk of harm (in Italy called *neminem laedere*)
Claims under public law when they enforce State's compliance with its own laws (climate change framework) In Maxwell et al. (n 28), 4.

[65] The '*Urgenda'* ruling recognized that national courts could order States to comply with international legal obligations and ensure legal protection against rights violations under the ECHR due to climate change. The Dutch court rejected the government's argument of non-interference due to separation of powers, asserting that the judiciary must introduce appropriate measures when human rights are violated, see: *Urgenda Foundation v. The State of the Netherlands* ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands, 20. December 2019). 19/00135 Hoge Raad. See also; http://climatecasechart.com/climate-change-litigation/non-us-case/urgenda-foundation-v-kingdom-of-thenetherlands/)

[66] Maxwell et al. (n 28).

[67] *Friends of the Irish Environment CLG v. The Government of Ireland*, Ireland and the Attorney General, Appeal No: 205/19, 31 July (2020) IESC 49; See also: https://climatecasechart.com/non-us-case/friends-of-the-irish-environment-v-ireland/, also known as 'Climate Case Ireland', it set a significant precedent by holding governments accountable for the adequacy of their climate policies. The court emphasized protecting the rights of current and future generations, highlighting the principle of intergenerational equity. It underscored the need for actionable, transparent policies for substantial emissions reductions,

challenged Ireland's national mitigation plan, claiming that the government had an obligation to take effective action on climate change to protect human rights, may be read as implementing both human rights and public law approaches.

The existence of a binding climate law or legal framework, not always a given, is essential for public law-based litigation. Although several precedent cases were cited in the summons to enhance its legal grounding, *Giudizio Universale* could not rely on the enforcement of binding domestic climate law, leading to different legal arguments. According to CLN lawyer Fantozzi[68], Italy's absence of binding national climate legislation makes *Giudizio Universale* a stand-out case, highlighting the complexity of challenging government inaction under international law in a dualistic system[69].

3. The State's Role in Climate Change Mitigation: the Climate Obligation

International climate law is primarily 'state-centric'[70], intended to be enforced by the normative framework in which States determine their mitigation efforts, as defined by NDCs, towards the collective temperature target of the Paris Agreement[71].

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demonstrating that civil society can successfully challenge governmental actions or inactions on climate change.

[68] Interview with Fantozzi P. (n 59).

[69] The relationship between international law and domestic law in Italy is defined as 'dualistic'. While monistic systems regard them as integrated components of a single, unified legal framework, dualism views international and domestic law as entirely separate entities requiring an intermediate legislative step for the enhancement. See Kolb R and Milanov M, 'Dualism / Monism' https://oxcon.ouplaw.com/display/10.1093/law-mpeccol/law-mpeccol-248?rskey=I8UCWJ&result=1&prd=MPECCOL accessed 27 June 2024.

[70] Pisanò A, 'Diritto al Clima' in Sgreccia E. and Tarantino A (eds), *Enciclopedia di bioetica e di scienza giuridica. Aggiornamento*, vol. 1 (Edizioni Scientifiche Italiane 2022).

[71] According to the procedural obligations, these have to be pledged and reported (in Global Stocktakes) regarding progress every five years, (n 15).

Unfortunately, sovereignty, often exercised as ‘selfish sovereignty’, may justify avoidance of compliance with international environmental and climate obligations[72].

The Paris Agreement sets principles of ‘highest possible ambition’ and ‘no regression’, requires improvement of NDCs, and establishes a ‘transparency framework’ for monitoring results[73], leaving State actors excessive leeway, leading to disappointing results[74]. The Paris Agreement’s power to generate a climate obligation for single signee States is debated in court and in academia[75]. Paris obligations do not bind States to national targets consistent with the shared global temperature goal, leaving an ample margin implied in the concept of ‘national determination’[76].

Only by ‘’complementing’’ prescriptions created by international law through recourse to domestic law, or by deriving its *ratio iuris* from the need to protect human rights, can

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[72] ‘S*ovranismo egoistico*’ in: Romeo G and Sassi S, ‘I Modelli Di Costituzionalismo Ambientale Tra Formante Legislativo, Giurisprudenziale E Culturale’ (2021) Sp-2/2023 DPCE online 803 <https://www.dpceonline.it/index.php/dpceonline/article/download/1919/1926/> accessed 10 June 2024, 804.

[73] The ‘no regression provision’ is a principle established in Article 4, which emphasizes the progression of nationally determined contributions (NDCs) over time, meaning each successive NDC should be more ambitious than the previous one. The ‘transparency framework’ is detailed in Article 13 of the Paris Agreement. This framework establishes an enhanced transparency system to monitor and report on the progress of each country’s efforts to reduce greenhouse gas emissions, UNFCCC, (n 32).

[74] Established by the first Global Stocktake, (n 15) and by UN Environment Programme, Emissions Gap Report 2022: The Closing Window (UN Environment Programme 2022).

[75] This was also assessed in a study by the European Union, the results of which are summarized in this statement. ‘This study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs at the request of the JURI Committee, investigates the normative status of legal commitments of States in the field of international climate law. It concludes that the ‘due diligence obligations of States to realize their NDCs qualifies as a norm of general international law, but at the moment not as a peremptory norm. It concludes that the legal impact of this norm currently lies in the sphere of interpretation and harmonization of existing international law rather than invalidation of conflicting rules.’ In: Brus M, De Hoogh A and Merkouris P, ‘The Normative Status of Climate Change Obligations under International Law ‘Yesterday’s Good Enough Has Become Today’s Unacceptable’ Study requested by the JURI Committee Policy Department for Citizens’ Rights and Constitutional Affairs Directorate-General for Internal Policies PE’ (EP 2023) https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU(2023)749395_EN.pdf accessed 21 June 2024.

[76] I.e. aiming to allow a more equitable distribution of reduction efforts considering historic emissions.

the ‘’flexibility’’ of existing international obligations be compensated and climate obligations rendered effective at domestic level[77].

Carducci underscores that the Italian State has a climate obligation since, along with sovereignty over national territory and its resources, it has the duty of protection and custody over ecosystems and therefore of protecting the climate system[78].

Voigt[79] suggests that at domestic level, the Paris Agreement orients the interpretation of climate legislation, of due diligence norms, and of obligations deriving from human rights. As previously stated, the recognition of climate obligations in domestic jurisprudence could derive from a ‘*positivizzazione*’ (positisation) of human rights formally recognized and enforceable through existing legal frameworks[80]. This interpretation was used extensively, including in *Giudizio Universale*[81]

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[77] Contaldi Gi, ‘Aspetti Problematici Della Giustizia Climatica’ (2023) 3/2023 Ordine internazionale e diritti umani https://www.rivistaoidu.net/wp-content/uploads/2023/07/Contaldi_.pdf accessed 20 June 2024, 576.

[78] Carducci M, (2023) (n 46) 314-315.

[79] Although Articles 2(1) and 4(1) are not binding in themselves, the collective commitment expressed in them guides the conduct expected of parties; ‘Article 4(2), which merely requires of parties the intention to achieve, and in the second sentence of Article 4(2), which provides that ‘Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such NDCs’, 52.
This provision has been interpreted as not establishing an obligation of result on each party to implement or achieve its NDC’; in: Voigt (n 27), 240, 242.

[80] Mitriotti A. explains following: ‘in domestic jurisprudence has gradually generated over time a form of internal positivisation within individual states of the human rights protection underlying the fulfilment of the climate obligation): Mitrotti A, ‘L’obbligazione Climatica e La Natura del PNIEC nella Repubblica Italiana: Sono Eretiche le Pretese di un Legittimo Adempimento?’ (2024) https://www.ambientediritto.it/wp-content/uploads/2024/06/LOBBLIGAZIONE-CLIMATICA-E-LA-NATURA-DEL-PNIEC._Mitrotti.pdf accessed 21 June 2024. (P.4)

[81] The universally shared ambition of the Paris Agreement to keep temperature rise limited to preferably 1.5°C, is not a legal obligation as such, but is essential for the determination of compliance with the relevant climate norms, Brus M, De Hoogh A and Merkouris P (n 74) 9; See also: Peel J and Osofsky HM, (n 20).

4. Relevant Aspects of Italy's Climate Regulatory Framework

A domestic legal framework provides, in climate litigation, the legal basis and procedural rules for acceptance and judgment of a claim against a State.[82] Unlike other European nations[83], Italy lacks a climate law[84], limiting private citizens' ability to enforce climate obligations. The State argues that international law does not create internal obligations towards citizens but only sanctions between States[85]. Conversely, Greco asserts that State ratification of the UNFCCC gives rise to internal obligations, and efforts to protect citizens' rights would be in vain if not challengeable by citizens[86].

The system of international climate jurisprudence acquires e*ffet utile*[87] for inclusion in European law, widely acknowledged to drive domestic public obligations. This 'Europeanization' of international climate obligations[88] reinforces and should not limit

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[82] Ghinelli G, 'Le Condizioni Dell'azione nel Contenzioso Climatico: C'è un Giudice per Il Clima?' (2020) Anno LXXV Fasc. 4 - 2021 Rivista trimestrale di diritto e procedura civile 1272.

[83] Various European countries, such as Sweden, France and Germany, already have a legally binding climate mitigation law. Germany's Klimaschutzgesetz (Climate Protection Law) of 2019, which sets emission reduction targets for various sectors of the German economy, was recently amended after the *Neubauer* case. Other countries include the Netherlands with The Dutch Climate Act (2019), and Ireland with its Climate Action and Low Carbon Development Act (2015), which was amended in 2021 and improved in the mitigation effort thanks to the climate litigation case '*Climate Case Ireland*' (n 66).

[84] The Italian mitigation plan (PNIEC) is not binding, simply a planning document. Ministero dello Sviluppo Economico, 'Piano Nazionale Integrato per l'Energia E Il Clima' (2020) https://www.mase.gov.it/sites/default/files/archivio/pniec_finale_17012020.pdf accessed 16 July 2024.

[85] Point included in the Vienna Convention on the Law of Treaties 1969, 1155 UNTS 331.

[86] Greco G, 'Contenzioso Climatico Verso Lo Stato Nell'Emergenza Climatica E Separazione Dei Poteri - Schemi Esplicativi per l'Uso Della Comparazione Giudiziale Working Paper per Il 'Festival Dello Sviluppo Sostenibile' 2021 Di ASVIS' (Cedeuam UniSalento-UniFor 2021) https://www.cedeuam.it/app/download/14636634123/Greco%20ContenziosoClim-SeparPot.pdf?t=1642873284 accessed 25 May 2024.

[87] Key concept of European constitutional law based on the proportional implementation of EU policies and making decisions at the most suitable level. See: Kingston S, EU Environmental Law (Cambridge University Press 2017), 42.

[88] The relevance of the '*europeizzazione*' ('Europeanization') of climate obligations is analysed by Carducci, Pisanò and other constitutionalists: Carducci M, 'Stato Di Diritto, Art. 28 Cost. e Precedenti di Contenzioso Climatico nello Spazio della UE' (2023) Diritti Comparati https://www.diritticomparati.it/stato-di-diritto-art-28-cost-e-precedenti-di-contenzioso-climatico-nello-spazio-della-ue/ accessed 28 June 2024; Pisanò, (n 35); Ruggeri A, 'Interpretazione Conforme E Tutela Dei Diritti Fondamentali, tra Internazionalizzazione (Ed 'Europeizzazione') della Costituzione e Costituzionalizzazione del Diritto Internazionale e del Diritto Eurounitario' (2008) Rivista dell'Associazione Italiana dei Costituzionalisti - N.00 del 02.07.2010 https://www.astrid-online.it/static/upload/protected/Rugg/Ruggeri_AIC_02_07_10.pdf accessed 15 July 2024;

the localization of international obligations that aim to effectively fulfil the Paris Agreement, as established by Articles 114 and 193 of TFEU[89].

Article 117[90] of Italy's Constitution states that domestic legislation must align with international obligations. According to many jurists and recent constitutional interpretations[91], international norms, though lacking direct application, are 'interposed norms'[92] and superior to other primary sources[93]. This argument is used by the plaintiffs in *Giudizio Universale*.

Carducci[94] underlines that several precedent-setting decisions by the Council of State[95] and the Court of Cassation[96] acknowledge climate change as a fact with severe impacts

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[89] As far as the role of the European norms for the case *Giudizio Universale*, having chosen the path of civil law, the Italian application of European laws is not directly challenged. However, the role of European norms, which are directly applicable in each of the Member States (Art. 288(2) TFEU), is significant within the presented legal framework as the '(…) warp of constraints [defined by international sources of climate obligations] to be fulfilled in good faith is now further detailed by specific derivative sources of EU law' in: Atto di citazione (Writ of Summons translation by A Sud), *A Sud vs Italy*, Tribunale di Roma Sezione II Civile, RG 39415/21, https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210605_14016_na.pdf, accessed 16 July 2024, par. IV.2, 43. Original: A Sud, 'Atto Di Citazione' (2020) <https://giudiziouniversale.eu/wp-content/uploads/2023/07/Atto-di-citazione-A-Sud-VS-Stato-Italiano-2021.pdf> accessed 21 June 2024.

[90] Art.117 First Paragraph introduced by the constitutional reform of 2001 regulates the relationship between national discipline and international norms Constitution of the Italian Republic (1947 aggiornato alla Legge Costituzionale 11 febbraio 2022, no. 1) https://www.senato.it/sites/default/files/media-documents/Costituzione.pdf accessed 13 July 2024.

[91] Nevola R (ed), 'Diritti Umani E Libertà Fondamentali: La Relazione Fra Cataloghi Sovranazionali, Internazionali E Nazionali Nel XXI Secolo', *Corte costituzionale Servizio Studi* (2021) https://www.cortecostituzionale.it/documenti/convegni_seminari/stu_320_questionario_praga_ita_20210331172249.pdf accessed 15 July 2024.

[92] 'Interposed' since they have a subordinate rank to the Constitution, but intermediate between it and ordinary law. See Nevola ibid, 4.

[93] For further details see: Greco, (n 86); Mitrotti A, 'L'obbligazione Climatica e la Natura del Pniec nella Repubblica Italiana: Sono Eretiche le Pretese di un Legittimo Adempimento?' (2024) https://www.ambientediritto.it/wp-content/uploads/2024/06/LOBBLIGAZIONE-CLIMATICA-E-LA-NATURA-DEL-PNIEC._Mitrotti.pdf accessed 21 June 2024.

[94] Interview with Carducci M., Climate Litigation Network Associate Lawyer, 'Can the Last Judgment Be Simply Averted? Zoom Video Call' (23 June 2024).

[95] Jurisdictional body and the highest special administrative judge.

[96] The Court of Cassation is the ultimate court of last resort in Italy's ordinary (criminal and civil) jurisdiction system.

on human rights and establish the overriding interest of the State in combating climate change.

A significant development was the 2022 amendment of Articles 9 and 41 of the Constitution[97], which introduced fundamental principles such as environmental protection and intergenerational responsibility. Despite criticism on its effectiveness[98], it is broadly acknowledged that the recognition of a constitutional right that protects the environment in relation to human rights may help enforce environmental claims and encourage legislatures to adopt more effective provisions to address climate change[99]. This argument was the basis of *Urgenda* and *Neubauer* cases, while the Rome court offered differing interpretations on applicability for climate litigation[100].

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[97] 'Gazzetta Ufficiale, 'Legge Costituzionale 11 febbraio 2022, no. 1 Modifiche agli Articoli 9 e 41 Della Costituzione in Materia di Tutela dell'Ambiente. (22G00019) (GU N.44 Del 22-2-2022)' (*www.gazzettaufficiale.it*2022) https://www.gazzettaufficiale.it/eli/id/2022/02/22/22G00019/sg accessed 16 July 2024.

[98] Some critics argue that the reform lacks substantial impact because it only codified what was already established in previous Italian judicial rulings with no crucial innovations: G. Di Plinio, 'L'insostenibile evanescenza della costituzionalizzazione dell'ambiente', in *www.federalismi.it*, *1° 2021*, 1-8; E. Mostacci, 'Proficuo, inutile o dannoso? Alcune riflessioni a partire dal nuovo testo dell'art. 41', in *DPCE online*, 2, 2022, 1123-1133; G. Vivoli, 'La modifica degli artt. 9 e 41 della Costituzione', in *Queste Istituzioni*, 1, 2022, 8-43.

[99] Stronger constitutional protections arise when a substantive right to a healthy environment elevates environmental protection, serving as a foundation for more robust laws and policies, as seen in Costa Rica, France and Spain. OHCHR *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment* A/73/188 (2018), 40; May JR, The Case for Environmental Human Rights: Recognition, Implementation, and Outcomes. (2021)42 Cardozo Law Review 983, https://ucd.idm.oclc.org/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=152197892&site=ehostlive&scope=site accessed 19 December 2023;
Luporini R, Fermeglia M and Tigre MA, 'Climate Law Blog' Blog Archive Guest Commentary: New Italian Constitutional Reform: What It Means for Environmental Protection, Future Generations & Climate Litigation' (*Climate Law a Sabin Center Blog* 2022) https://blogs.law.columbia.edu/climatechange/2022/04/08/guest-commentary-new-italian-constitutional-reform-what-it-means-for-environmental-protection-future-generations-climate-litigation/ accessed 27 June 2024.

[100] Issue date of the official Interpretation by Italy's Constitutional Court (*Corte Costituzionale*), Sentenza 105/2024 (ECLI:IT:COST:2024:105) explained later in this paper.

Carducci, in the dialogue with this Author[101], highlighted how the Italian Constitutional Court ruling 2024/105[102], subsequent to the dismissal of *Giudizio Universale,* will henceforth govern the interpretation of articles 9 and 41 of the constitution, affirming the 'double mandate' involving a duty to preserve the environment for future generations and prevent harm by considering time factors and setting limits on public and private activities. This aligns with the State's 'duty of care' and '*neminem laedere'* principles, legal grounds in the Italian case[103].

A further legal ground in *Giudizio Universale* is the European Convention on Human Rights (ECHR)[104], which serves as an 'intermediary parameter of constitutional legitimacy'[105] to interpret Italian domestic law and supports the plaintiffs' claims as 'infringed rights', as later addressed in this paper.

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[101]Interview with Carducci M (n 94).

[102] Corte Costituzionale, 'Sentenza 105/2024 (ECLI:IT:COST:2024:105) Giudizio Di Legittimità Costituzionale In Via Incidentale - Norme Impugnate: Art. 104 Bis, C. 1° Bis.1, Delle Norme Di Attuazione Del Codice Di Procedura Penale, Come Introdotto Dall'art. 6 Del Decreto-Legge 05/01/2023, no. 2, Convertito, Con Modificazioni, Nella Legge 03/03/2023, N. 17.' (*www.cortecostituzionale.it* 2024) <https://www.cortecostituzionale.it/actionSchedaPronuncia.do?param_ecli=ECLI:IT:COST:2024:105> accessed 27 June 2024.

[103] Developments in the interpretation of the ruling are the emphasis on intergenerational preservation and non-detriment, in line with the *neminem laedere* concept that imposes a duty of environmental preservation for the present and the future. In this way, the interpretation is aligned with the State's 'Primary Duty' of preservation for future generations, according to Art. 8 ECHR in: Carducci M, 'Il Duplice 'Mandato' Ambientale Tra Costituzionalizzazione Della Preservazione Intergenerazionale, Neminem Laedere Preventivo e Fattore Tempo. Una Prima Lettura Della Sentenza Della Corte costituzionale N. 105 Del 13 giugno 2024' (2024) Aggiornamenti Osservatorio sul Costituzionalismo Ambientale (OCA) https://www.dpceonline.it/index.php/dpceonline/announcement/view/271 accessed 27 June 2024.

[104]European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (1950, ETS No 5).

[105] Constitutional Court rulings nos. 348 and 349 of 2007 have recognized the ECHR as an intermediary norm in the constitutional legitimacy review under Article 117, paragraph 1, of the Italian Constitution, granting the European Court of Human Rights a 'prominent role' in interpreting Convention law, further information in: Masala P, 'Strasburgo Vista Da Roma: Il Valore Della Giurisprudenza Della Corte Europea Dei Diritti Dell'uomo Nell'ordinamento Italiano' (2023) 1/2023 104-154 Federalismi.it , <https://www.federalismi.it/nv14/articolo-documento.cfm?artid=48256> accessed 26 August 2024

Finally, the Aarhus Convention[106] is invoked in the petitioners' filings as it is relevant to grant '*climate truth'*[107] and the value of access to justice. The full application of the Convention in Italy is under discussion in a recently accepted claim for insufficient transparency in the rules which grant legal standing solely to certain NGOs in environmental litigation[108].

5. The First Italian Climate Litigation Case: 'Urgenda-style' Claim with Unique Traits

Stemming from a homonymous 2019 publicity campaign by 'A Sud'[109], *Giudizio Universale* unites 24 NGOs and 163 individuals, including 16 minors[110]. Saltalamacchia, the plaintiffs' lead lawyer[111], described the case as an 'act of civic activism'[112].

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[106] Ministero della Transizione Ecologica, ' Quinto Aggiornamento Del Rapporto Nazionale per l'Attuazione Della Convenzione Di Aarhus In Italia 2021' (2021), https://aarhusclearinghouse.unece.org/sites/default/files/2022-02/2021_NIR_Italy_clean_IT.pdf accessed 24 June 2024.

[107] Carducci M, 'Il Diritto alla Verità Climatica Michele Carducci' (2023) BioLaw Journal – Rivista di BioDiritto, N. 2/2023, 357.

[108] In environmental litigation, Article 18(5) of Law No. 349/1986 grants the right to challenge unlawful acts only to associations recognized under Article 13, and only specifically before administrative courts and for annulment for illegitimacy of such act. Saccucci A and De Marziis C, (n 43).

[109] Among the claimants are NGO A Sud Ecologia e Cooperazione ODV, and other 24 associations, 163 individuals and 16 minors. The NGO coordinates the various movements, associations and citizens to promoting environmental issues.

[110] Saltalamacchia L, 'Giudizio Universale, La Prima Causa Di Giustizia Climatica in Italia - Avvocato Napoli, Studio Legale Saltalamacchia' (*Avvocati Napoli -Studio Legale Saltalamacchia* 28 June 2021) https://studiolegalesaltalamacchia.com/giudizio-universale-la-prima-causa-di-giustizia-climatica-in-italia/ accessed 25 July 2024.

[111] The legal team consisted of lawyer Luca Saltalamacchia, lawyer Raffaele Cesari, and Professor Michele Carducci, (n 5, 8).

[112] The support campaign numbered 15,000 signatories, but the affiliation campaign took place during Covid. See Saltalamacchia L, 'E' Partito Il Giudizio Universale' (*Giustizia climatica ambientale e sociale* 12 June 2021) https://www.lefrivista.it/2021/06/12/e-partito-il-giudizio-universale/ accessed 23 February 2024. One of the meetings for the information and support campaign was held in Turin in 2019; see: Saltalamacchia L, 'Giudizio Universale: Facciamo Causa per Il Diritto Umano al Clima ' (Conferenza 'Il futuro è ora: acqua e giustizia climatica!' Sabato 12 ottobre 2019 - Fabbrica delle E, Corso Trapani 91b Torino.2019) https://www.youtube.com/watch?v=qhRRUGcdauU accessed 25 July 2024. Case documentation is available on the campaign website *www.giudiziouniversale.eu*.

Giudizio Universale is the first systemic[113] Italian climate case against the government. It is 'systemic' because of its ambitious targeted outcome in mitigation policy, the involvement of civil society, and its novel filing in a civil court. It is counter-current[114] and adaptive to the Italian legal system, taking a 'rights- and tort-based' approach deeply grounded in legal and scientific reasoning.

The cause is rights-based and complemented by the civil law principle of non-contractual liability under Article 2043 of the Civil Code (tort law)[115], challenging the State for failing

[113] Climate Litigation Network includes the case in this category. See Maxwell et al. (n 28), 35, 41, 61 and as systemic is evaluated by: Magi L, 'Giustizia Climatica E Teoria Dell'atto Politico: Tanto Rumore per Nulla' (2021) 3 Osservatorio sulle fonti https://www.osservatoriosullefonti.it/mobile-saggi/mobile-fascicoli/3-2021/1677-giustizia-climatica-e-teoria-dell-atto-politico-tanto-rumore-per-nulla accessed 26 May 2024; Levantesi S, 'Italy's First Climate Lawsuit Seeks Bold Emissions Target in Effort to Protect the Planet and Human Rights' (*DeSmog* 4 November 2021) https://www.desmog.com/2021/11/04/italy-climate-lawsuit-giudizio-universale-human-rights/ accessed 7 June 2024; Fermeglia M and Luporini R, '"Urgenda-Style" Strategic Climate Change Litigation in Italy: A Tale of Human Rights and Torts?' (2023) 7 Chinese Journal of Environmental Law 245 https://brill.com/view/journals/cjel/7/2/article-p245_7.xml accessed 23 February 2024; Magri M, 'Il 2021 E' Stato l'Anno Della "Giustizia Climatica"?' (2021) 2021 Ambiente Diritto https://www.ambientediritto.it/wp-content/uploads/2021/12/IL-2021-E-STATO-LANNO-DELLA-GIUSTIZIA-CLIMATICA_Magri.pdf accessed 25 July 2024; D'Alessandro E and Castagno D (eds), 'Reports & Essays on Climate Change Litigation' (2024) 31 Quaderni Del Dipartimento Di Giurisprudenza Dell'università Di Torino 31/2024 https://www.collane.unito.it/oa/items/show/180 accessed 25 July 2024.

[114] As climate change falls into a sub-category under environmental law, the traditional approach to environmental cases is to file the claims before Italy's administrative court (TAR). Some legal scholars, as well as the civil court judge, also follow this approach. See: Vanetti D, 'I Cambiamenti Climatici tra Cause Civili, Scelte Politiche e Giurisdizione Amministrativa' (2024) https://rgaonline.it/wp-content/uploads/2024/03/Vanetti_Commento-sentenza-del-Tribunale-di-Roma-su-Giudizio-Universale-20240310-1-1.pdf accessed 3 July 2024.

Conversely, according to Carducci (n 21) and Pisanò (n 35), climate and environment differ ontologically; moreover, Greco clarifies that there is no law stating that climate cases should be assigned to a specific judge, while case law clearly states that 'an ordinary judge (a civil judge) is the natural judge of fundamental rights' (Ord.Cass.civ SSUU n 21262/2016), Greco (n 86), 19-20. The unconventional nature of this case, being the first of its kind, is also evident e.g. as the appeal has been made to a civil judge and not an administrative one.

[115] The specificities of Italy's 'tort system' derive from the fact that Italian courts pioneered a broad concept of non-economic loss, especially for physical injury, one that even influenced European law. The European 'Principles on Non-Contractual Liability Arising out of Damage Caused to Another' incorporate this idea, distinguishing 'injury as such' as legally relevant damage, separate from economic and non-economic losses. Articles 2:201(1) and 6:204 of these Principles reflect this innovative approach, which, while unique in its detail, has gained acceptance across various European jurisdictions. Piotr Tereszkiewicz, 'Old and New Directions in Comparative Tort Law' (2024) (2024) 11:1 JICL 121–134 SSRN http://dx.doi.org/10.2139/ssrn.4872509 accessed 19 July 2024, 129-130;

See also Martin-Casals M, Amato C and Comandé G, 'Italy' in Miquel Martin-Casals (ed), *The Borderlines of Tort Law: Interactions with Contract Law* (Intersentia 2019) https://www.cambridge.org/core/product/CFF37A695A25E5CCB7309322C2427E5D, accessed 19 July 2024.

to prevent damage from urgent threats, as proven by science[116] and as mandated by international climate law and UNFCCC regulations. Key characteristics of the case are explored below.

The Crucial Deference to a Shared Terminology Regarding Climate Change

In line with Articles 31 and 32 of the Vienna Convention[117], the interpretation of international law requires, within the bounds of 'good faith', the avoidance of any interpretation that 'leaves the meaning ambiguous or obscure', or 'leads to a result which is manifestly absurd or unreasonable'[118]. This principle is pursued in the summons in the Italian case with the clarification of every term using the IPCC glossary for scientific data[119] and the terminology of Art. 1 of the UNFCCC for climate obligations. Scientific facts are central to *Giudizio Universale*, as they 'frame elements of the problem' to which the law must provide a solution. This approach was successfully pursued in the *Urgenda* case[120] and recently confirmed by the ECtHR's *KlimaSeniorinnen* ruling[121].

Carducci rightly highlighted that misrepresentation of specific scientific and legal terms that determine the factual basis of the case is an obscurantist and negationist practice

[116] Carducci declared, during the interview, that Giudizio Universale is a claim for the sovereignty of citizens who rise up to protect themselves against the inaction and negligence of the state in effectively addressing climate change and complying with the obligations set by various sources of climate law, Interview, Carducci, (n 94).
[117] The principle of 'good faith' is already affirmed in international law, inert alia, in the Vienna Convention on the Law of Treaties (1969), particularly in Article 26 (*Pacta sunt servanda*), which states that treaties are binding upon the parties and must be performed by them in good faith.
[118] Paris Agreement (2015) United Nations Framework Convention on Climate Change – TREATIES Chapter XXVII 7.d.
[119] For an in-depth analysis on the role of the IPCC for the climate facts: Bhandari M.P., *Getting the Climate Science Facts Right. The Role of the IPCC*, London-New York, 2020.
[120] In *Urgenda Foundation v The State of The Netherlands* – the Lower Court Decision explained why it would rely on the IPCC findings and its reports by reminding how the UNCCC made provisions for the establishment of the IPCC as a global knowledge institute, (n 6).
[121] *KlimaSeniorinnen*, (n 22)

that has no place either in a State Attorney's Office or a civil court when climate emergency and human rights are at stake[122].

The Recognition of Climate Change as a Climate Emergency

Carducci states that the climate emergency is a '*fatto-atto di verità*' (a fact-act of truth), as established by Art. 2 of the UNFCCC, that requires action[123]. As such, denying the right to a stable climate, as recognized by Art. 32 of the Constitution under the 'right to a healthy environment'[124], would be '*contra naturam'*. Given Italy's location in the centre of the vulnerable Mediterranean 'climate hot spot'[125] - exacerbating risks for human rights - mitigation action is crucially urgent, rendering timely assessments of the State's compliance essential[126].

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[122] Carducci rightly affirmed in his interview with the Author that the distortion and ignorance of terms at the heart of a factual and legal truth is obscurantism and denialism that should not be associated with either the State Attorney's Office or the adjudicating court, especially when human rights and emergencies are at stake. Such distortions conceal State inaction and may also reflect a 'Pilate-like' attitude from those tasked with judging. Carducci's Interview, (n 94). This opinion is shared with Saltalamacchia interview (n 59); Magi (n 113); Cardelli L, 'La Sentenza 'Giudizio Universale': Una Decisione Retriva' (2023) www.laCostituzione.info <https://www.lacostituzione.info/index.php/2024/03/11/la-sentenza-giudizio-universale-una-decisione-retriva/> accessed 30 May 2024; Campeggio G, 'La Sentenza "Giudizio Universale" e il "Minimo Costituzionale" tra Costituzione e CEDU' (www.laCostituzione.info 17 July 2024) https://www.lacostituzione.info/index.php/2024/07/17/la-sentenza-giudizio-universale-e-il-minimo-costituzionale-tra-costituzione-e-cedu/ accessed 18 July 2024.

[123] Carducci M, 'Emergenza Climatica: Tra 'Formule Radbruch' e Diritto Umano al Clima Stabile e Sicuro' (*Scienza & Pace Magazine* 18 March 2023) <https://magazine.cisp.unipi.it/emergenza-climatica-tra-formule-radbruch-e-diritto-umano-al-clima-stabile-e-sicuro/> accessed 27 June 2024.

[124] Atto di Citazione V.12, (n 89).

[125] Italy is at the centre of the Mediterranean Basin, and as defined in the IPCC AR6 Report :'The Mediterranean Basin is considered particular in comparison to most other regions due to the high exposure and vulnerability of human societies and ecosystems to these changes: a '*climate change hotspot*', IPCC, 'Cross-Chapter Paper 4: Mediterranean Region', 'Climate Change 2022: Impacts, Adaptation and Vulnerability' (IPCC 2022) <https://www.ipcc.ch/report/ar6/wg2/> accessed 25 August 2024, 2253.

[126] The reasoning of urgency and the importance of 'ratione temporis' to address the evolving climate change impacts were also confirmed in the *Neubauer* ruling, counteracting a government mitigation plan with no clear time definition with the statement: 'Respecting future freedom also requires initiating the transition to climate neutrality in good time' in *Neubauer,* (n. 63), Art. 4, 2.

A Cogent Logical-Argumentative Line of Reasoning

The writ of summons asserts that ‘knowing is a duty’ and a ‘duty to act’ derives from the Italian State’s admission that the climate crisis is an urgent threat. As such, its action must ensure non-regression, as part of its “duty of progression”[127]. ‘Non-regression’, as per the plaintiffs, entails acting urgently to avoid worsening irreversible processes and safeguarding the human right to a stable and safe climate.

5.1 Cause of action, Main Claims and Legal Grounds

The preamble to the writ of summons states that plaintiffs are taking the Italian State to court for neglecting to combat climate change, and to demand compliance with obligations within set timelines and targets[128]. Without adequate and timely action, a sustainable future is unattainable, condemning future generations to a deteriorating quality of life and thus endangering human rights[129]. The plaintiffs sought preventive protection against State torts in civil courts, the civil jurisdiction responsible for preventing damage in situations of ‘urgent threat’[130]. The aim is to ensure the State fulfils its duty to address climate change effectively and promptly.

[127] Implemented in the NDC (n 73).
[128] A Sud, ‘Atto Di Citazione’ (n 89), 14.
[129] Saltalamacchia L, ‘Luca Saltalamacchia Giudizio Universale: Insights from a Pending Leading Case’ in Elena D’Alessandro and Davide Castagno (eds), *Reports & Essays on Climate Change Litigation* (Università degli Studi di Torino 2024) https://iris.unito.it/handle/2318/1956631 accessed 17 July 2024.
[130] Saltalamacchia L, Cesari R and Carducci M, ‘‘Giudizio Universale’ Quaderno Di Sintesi Dell’azione Legale’ (2020) https://jimdo-storage.global.ssl.fastly.net/file/2d504c75-6354-4c93-94fd-664cd8267f18/Giudizio%20Universale%20Quaderno%20Sintesi%20Azione.pdf
accessed 13 June 2024, 8.

There are two Primary requests[131], one purely declaratory and one that aims to compel the State to act (*facere*)[132]:

- Primarily the plaintiffs request the judge to ascertain the State's liability under Article 2043 of the Civil Code or, alternatively, under Article 2051 of the Civil Code[133];

- Secondly, the court is asked to order the defendant (based on Article 2058, paragraph 1 of the Civil Code[134]) to 'take all necessary steps to reduce artificial domestic CO_2-eq emissions to 92% below 1990 levels by 2030, or such other greater or lesser amount, as may be ascertained'[135].

The legal grounds are described below.

5.2 Factual Evidence of the Urgency: Duty of Knowledge and '*Riserva di Scienza*'

The basis of the claim's argumentation lies in the scientific facts behind the climate emergency[136]. Climate obligations are science-based[137] and a scientific approach is

[131] This paper focuses on the primary-level claims, while the secondary claims involve the State's 'liability from qualified social contact' (Art. 1173 Civil Code). Applicants argue that their participation in the public consultation (VAS) for the Italian National Integrated Plan for Energy (PNIEC) created legitimate trust that the State would fulfil its climate obligations. The State is accused of violating good faith, fairness and protection obligations, disregarding EU Regulation No. 2018/1999 and betraying the trust of Italian citizens. The subsidiary claim will also proceed differently in the appeal.
[132] A Sud, 'Giudizio Universale. The Last Judgment - Climate Case The Writ Of Summons Explained To Citizens' (2021) https://giudiziouniversale.eu/wp-content/uploads/2021/06/Executive-Summary-writs-of-summons-ENGLISH.pdf accessed 28 June 2024.
[133] Saltalamacchia et al, (n 130).
[134] Full text of the request: 'The court is asked to 'order the defendant, pursuant to Article 2058, para. 1, of the Civil Code, to take all necessary steps to reduce artificial domestic CO2-eq emissions to 92% below 1990 levels by 2030, or such other greater or lesser amount as may be ascertained', (n 88) (Author's translation).
[135] The request laid out in Arts. 2058.1 'Compensation for damages through specific performance' (Ministero dell'Economia e Finanze, 'Codice Civile - Gazzetta Ufficiale' (*www.gazzettaufficiale.it*) https://www.gazzettaufficiale.it/anteprima/codici/codiceCivile accessed 16 July 2024, consists in aligning the PNIEC with measures suitable to ensure its adequacy and sufficiency in achieving the goal of limiting the increase in global temperatures to within +1.5°C, which can be achieved (only) by reducing emissions by 92%.'*La richiesta di risarcimento del danno mediante reintegrazione in forma specific*a', Atto di Citazione, (n 89), VI.5, 70.
[136] Saltalamacchia L, et al. (n 130), 6.
[137] Established in Paris Agreement (2015) United Nations Framework Convention on Climate Change – TREATIES Chapter XXVII 7.d., 4.1.

binding for the State and, consequently, for the judge. The State, and the court evaluating its action, must follow *riserva di scienza* ('scientific reserve'), i.e. prioritize scientific evidence while acknowledging the emergency when establishing GHG reduction targets in the NDC[138].

In its interpretation of Articles 9, 32, and 33 of the Constitution, which highlight the benefits of culture, science and the environment to improving society's well-being, Italian constitutional jurisprudence supports the doctrinal formula of *riserva di scienza*[139]. This principle aligns with Article 191 of TFEU[140] and the ECHR[141], forming the basis of the precautionary principle that requires regulations to be 'based on guidelines shared by the national and international scientific community', as confirmed by the Italian Constitutional Court (No. 2024/105)[142].

Although some scholars oppose prioritizing scientific facts over legal interpretation in climate litigation, arguing that excessive 'deference' and reliance on uncertain data may cause judicial overreach[143], it is widely accepted that despite scientific uncertainty, incorporating scientific considerations supports the precautionary principle. It must be considered that climate action cannot be postponed under the 'pretext' of uncertainty[144].

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[138]A Sud, (n 132).

[139] A Sud, (n 134).

[140] Consolidated Version of the Treaty on the Functioning of the European Union (2012) OJ C326/47, Art. 191(2) states: 'Union policy on the environment shall aim at a high level of protection, taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle (...) '.

[141]The ECtHR interpreted ECHR rights, such as the Right to life (Article 2) and the Right to respect for private and family life (Article 8), in ways that can encompass environmental concerns. ECtHR Judgment, *KlimaSeniorinnen,* (n 22).

[142] Corte Costituzionale (n 102).

[143] de Augustinis, Juliana, 'Judicial Approaches to Science and the Procedural Legitimacy of Climate Rulings: Comparative Insights from the Netherlands and Germany' (2023) 29 Eur Law J 378 https://doi.org/10.1111/eulj.12483 accessed 21 June 2024, 381- 382.

[144] Article 3.3 UNFCCC, (n 32).

Carducci notes that scientific facts such as climate change are recognized by law as sources of legal effects and therefore as supranational normative facts[145]. In applying *riserva di scienza*, the 'fact of knowledge' serves as an 'intermediary parameter' between the formal legal source and the decision-maker[146].

Given the Italian State's awareness of the climate crisis and resulting risk, as per the IPCC 2018 Special Report, recognising the necessity for immediate action demonstrated in the claim, the State should act accordingly[147].

5.3 Duty Means Acting: The State's Responsibility for Inaction in Addressing the Climate Emergency Infringes *Neminem Laedere* and Human Rights

Paradoxically, the most contradictory of the State's decisions is its relative inaction, which is defended as sovereignty to act in the face of the emergency, what is known as 'inertia of the Power'[148].

From Duty Arises Action

The plaintiffs argue that although the State is aware of the climate emergency, it is not acting to adequately reduce the GHG emissions causing it, thus limiting freedoms and personal development (protected by Article 3 of the Constitution). Furthermore, it is not disseminating science-based facts and fulfilling its warning function, in disregard of the Aarhus Convention[149].

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[145] Carducci (n 21), 52.

[146] UNFCCC, Introduction to Science, 2019, (n 32).

[147] Atto di Citazione, (n 89), III.

[148] Title of a report filed by the plaintiffs. A Sud, 'Inerzia al Potere'. https://asud.net/wp-content/uploads/2024/02/Report-Inerzia-al-potere-2024-def-ASUD.pdf accessed 12 June 2024.

[149]The claim requests the establishment of a robust framework for monitoring and reporting the progress of Italy's emissions reduction measures to ensure transparency, accountability and continuous improvement. It also requests increased public participation in climate decision-making processes and improved access to information on climate policies and their impacts. The Italian State has betrayed this 'warning function', Atto di Citazione, (n 89) V 26, 68.

In the summons, the claimants assert that the State has failed its duties, as established by the UNFCCC[150], to mitigate climate change by taking adequate actions to reduce GHG emissions. The Italian government is further alleged failing to uphold the duty of equity and solidarity among States and disregards the scientific constraint (*riserva di scienza*) as an interposed and binding parameter to State prerogative[151], the precautionary principle in political decisions, and the protection and promotion of human rights[152].

Insufficiently fulfilling the climate obligations arising from the international agreements to limit the global temperature rise to +1.5°C, Europeanized by EU Regulation No. 2018/842 - as per the plaintiffs' supporting document *'Inerzia al Potere'*-, the Italian government is allowing climate impacts to threaten individual rights and exacerbate the emergency.

The plaintiffs argue that the State's responsibility as a 'custodian' of the climate system derives from its powers and authority to control and mitigate hazardous situations, outlined in Article 117 of the Constitution[153]. This includes preventive measures to forestall escalating risk and ensure non-regression in environmental standards.

The State's persistent failure to achieve climate stability and fulfil its obligation to prevent harm in situations of urgent threat triggers the application of a 'tortuous act under non-contractual liability'[154] under Article 2043 of the Civil Code. The principle of *neminem laedere*, (harm no one)[155], recognized by the Constitutional Court, protects essential

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[150] Established in Art. 4 No. 2(a) of the UNFCCC, (n 13) Commitments; Atto di Citazione, (no. 89) IV.4.c.
[151] Atto di Citazione, (n 89), VI.I.
[152] Saltalamacchia L, et al., (n 127).
[153] 'Article 117 explicitly assigns the State exclusive competence over the environment and ecosystems thus the duty to safeguard the climate system, and the 'complex' obligation of protection', Atto di Citazione (n 89), Author's translation.
[154] Source: '*illecito da responsabilità civile extra contrattuale*' (Author's translation). The translation does not mean correspondence with tort law; see Martin-Casals M, et al. (n 115).
[155] Although the translation of *neminem laedere* might be 'no harm', the principle of Italian law differs from the principle of no harm in customary international environmental law, not only due to jurisdiction

assets, including health and a healthy environment. Neglecting this duty constitutes a breach of civil liability, as it jeopardizes these fundamental rights[156].

Ensuring Non-Regression: Fulfilling the Human Right to a Stable and Safe Climate

The plaintiffs argue that failing to mitigate in good faith[157] temperature increases by 2030 will lead to the detriment of the human condition, deriving from the State's failure to fulfil its duty of care and heed the precautionary principle[158]. The precautionary principle aims to prevent environmental harm before it materializes, allowing preventive action to address uncertain threats. According to Peel[159], this principle is essential for a holistic assessment of threats and uncertainties and potential tipping points which necessitate an international legal approach to pre-emptively address damage.

The Italian State is alleged to be acting negligently as it neither sufficiently prevents nor safeguards against climate risks, with the escalating severity of climate change-induced damage leading to increased violations of human rights.

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but also because '*Neminem laedere*' is applied to Italy's domestic legal framework which affects individuals and entities, including State ones, and covers all types of wrongful acts causing harm within Italian jurisdiction. Ricciardelli U, 'L'evoluzione dell'istituto della Responsabilità Civile ad Opera della Corte di cassazione Italiana' (2019) Treccani in: https://www.treccani.it/magazine/chiasmo/diritto_e_societa/Dinamismo/SGL_evoluzione_responsabilita.html> accessed 2 July 2024; for 'no harm' principle see: Maljean-Dubois S, 'The No Harm Principle as the Foundation of International Climate Law', *Debating Climate Law* (Cambridge University Press 2021) https://www.cambridge.org/core/product/463C5C34617F8A16A71270C6F2718F51 accessed 2 July 2024, 15; Mayer B, 'Construing International Climate Change Law As a Compliance Regime' (2018) 7 TEL (Transnational Environmental Law) 121, https://doi.org/10.1017/S2047102517000127 accessed 2 July 2024.

[156] Atto di Citazione, (n 89), VI.3.

[157] Carducci M, 'La Buona Fede 'Climatica' Dopo La COP28' (2023) 0 Eunomia. Rivista di Studi su Pace e Diritti Umani 127 http://siba-ese.unisalento.it/index.php/eunomia/article/view/28261 accessed 14 May 2024.

[158] Article 191 of the TFEU already imposes the principle of non-regression, particularly concerning the fight against climate change, (n 72).

[159] Peel J, 'Precaution' in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law (2nd edn)* (Oxford University Press eBooks 2021) https://doi.org/10.1093/law/9780198849155.003.0018 accessed 2 July 2024

Per the writ of summons, according to ECHR Article 2 and Article 8[160], the State has the positive obligation 'to take appropriate measures to safeguard the lives of the people under its jurisdiction' [161] and this translates - interpreted as in *Urgenda* in light of the UNFCCC and the Paris Agreement - into the State's 'individual responsibility' to mitigate climate change and eliminate greenhouse gas emissions in line with its 'fair share'.

Only if the State acts to interrupt the risk of regression of the human conditions will its duty of care be fulfilled[162]. For actions or omissions endangering subjective rights[163], Article 2043 of the Civil Code allows for preventive protection. According to the Constitutional principle of *neminem laedere*, an act is unlawful if it poses a danger to a subjective right, such as the right to health and environmental health. Thus, Article 2043's provision for civil liability can assume preventive and sanctioning roles in line with the precautionary principle and is utilised in the case to challenge the Italian State.

This view had already been applied by the Dutch Supreme court when it ruled that the Dutch government had a legal duty of care to protect its citizens from the effects of climate change explicitly linking the precautionary principle with human rights[164] and emphasizing that the State's duty to prevent harm extends to future generations[165].

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[160] The Convention serves in the Italian legal system as an intermediary norm in the constitutional legitimacy review under Article 117, paragraph 1, of the Italian Constitution, Masala (n 104).
[161] Atto di Citazione, par V.19, 63.
[162] In the Writ of Summons is defined that '[t]he 2030 deadline marks the ultimate legal threshold of 'non-regression' (the point of no return (...)) of existing conditions in the face of climate emergency', Rete Legalità per il Clima , 'Atto Di Citazione' (n 89) IV.24, 54.
[163] Atto di Citazione (n 89) English version IV.4 70.
[164] In line with the declaration of the UN High Commissioner for Human Rights that climate impacts affect all the most fundamental human rights, in: United Nations, 'Five UN Human Rights Treaty Bodies Issue a Joint Statement on Human Rights and Climate Change.' (*OHCHR*2019) https://www.ohchr.org/en/statements/2019/09/five-un-human-rights-treaty-bodies-issue-joint-statement-human-rights-and accessed 16 July 2024
[165] *Urgenda*, (n 65).

5.4 The Request for a *Facere* in Line with *Riserva di Scienza* and Fair Share.

To ensure the preventive protection of fundamental human rights (ECHR Articles 2 to 8), the calculation of quantitative targets must be based on the principle of common but differentiated responsibilities and respective capabilities (Articles 2.2 and 4.3 of the Paris Agreement), while the temporal objective must remain 2030, the point of no-return for protecting climate stability[166].

The requirement is a 92% reduction in GHG emissions by 2030, compared to 1990 levels[167], as calculated by Climate Analytics[168] in the analysis annexed to the writ of summons[169]. Using the IPCC effort-sharing methodology and the principle of 'equity and common but differentiated responsibilities' (Art. 2.2, Paris Agreement) [170], and considering Italy's historical emissions, current capabilities, and literature on equity

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[166]Atto di Citazione, (n 89), VI.7.

[167] The full definition, which is reproduced in the judgment, is the appellants' request that the following conclusions be upheld: '*as a consequence, order the defendant, pursuant to Article 2058(1) of the Civil Code, to conform (adapt) the PNIEC to the provisions appropriate to achieving the reduction, by 2030, of the artificial national emissions of CO2-eq to the extent of 92% with respect to 1990 levels, <u>or such other greater or lesser extent as may be ascertained in the course of the proceedings.</u>'* The Lawyer for the plaintiffs emphasised that the objective is for the court to assess the effectiveness of the measures in place not the precise amount of reduction, that is why in this formulation 'greater or lesser, in the course of ascertainable case' in *Sentenza*, (n 1), 5.

[168] Climate Analytics is an international non-profit organization that conducts research and analysis related to climate change, well known for its contributions to the scientific data for international climate negotiations, such as those under the UNFCCC and creator of tools for climate action such as Climate action Tracker. See: https://climateanalytics.org/.

[169] The Climate Analytics report is Annex C2 to the Writ of Summons and quoted in Atto di Citazione, (n 89) Chapters III.27- 28, IV.5e/g, IV.6e, V.3 and V.10. In Art. 4.2. a. Effort sharing methodologies are defined in relation to remaining budget in the IPCC AR6 Report AR6 WGIII (full report), 1468 and explained in Climate Analytics Report in Chapter 5.2 'Applying the IPCC effort sharing methodology to Italy' 21-26, Ganti G and others, 'Italy's Climate Targets and Policies in Relation to the Paris Agreement and Global Equity Considerations' (Climate Analytics 2021).

[170] The mathematical calculation of incremental target improvements is taken from the research: Geiges, A., Parra, P. Y., Andrijevic, M., Hare, W., Nauels, A., Pfleiderer, P., Schaeffer, M., & Schleussner, C.-F. (2019). Incremental improvements of 2030 targets insufficient to achieve the Paris Agreement goals. *Earth System Dynamics Discussions*, 1–18. https://doi.org/10.5194/esd-2019-54.

methodology, Climate Analytics concludes that Italy should aim for its 'full fair share range'[171], by adopting the highest ambition level to meet the 1.5°C target.

Unfortunately, the actions envisaged by Italy's mitigation policy (PNIEC)[172], deemed insufficient by the European Commission[173], are expected to reduce GHG emissions by only 36% by 2030: a failure of the State to fulfil its duty to intervene. Citizens can hence seek proactive protection (based on Art. 2043) by requesting a *'facere'* demanding measures to eliminate current and potential damages[174].

6. The Dismissal, a Questionable Failure to Address the Matter

While throughout Europe we see judicial efforts to address governmental inaction and regulatory shortcomings in mitigating climate change, the Rome court has refrained from deciding on the merits. After three years of depositions and thousands of pages of supporting documents, the first instance of the civil trial ended on 26 February 2024, with the court declaring the main claims inadmissible due to absolute lack of jurisdiction

[171] PNIEC -Ministero dello Sviluppo Economico, 'Piano Nazionale Integrato per l'Energia E Il Clima' (2020) https://www.mase.gov.it/sites/default/files/archivio/pniec_finale_17012020.pdf accessed 16 July 2024.
[172] Even with an equal reduction rate among all States, the reduction in Italian emissions to limit temperature increases to +1.5°C would amount to 63% by 2030 compared to 1990 levels. In: Atto di Citazione, (n 89) III.15, p.38-39.
[173] European Commission, Commission Staff Working Document 'Assessment of the Draft Updated National Energy and Climate Plan of Italy' (European Commission 2023) https://commission.europa.eu/system/files/2023-12/SWD_Assessment_draft_updated_NECP_Italy_2023.pdf accessed 6 June 2024.
[174] Under Article 2043 of the Italian Civil Code.

(‘*difetto assoluto di giurisdizione’*[175]) thus failing to address the substantive issues presented[176].

‘Absolute lack of jurisdiction’ is defined as the total lack of provisions in the legal system capable of protecting the interest brought before the court, making it unrecognizable by any Italian Judge[177].

The judgment states:

> ‘The interest in filing a suit against the State to obtain the sentence of the latter to take - as a form of compensation - any measure needed to abate national CO2-eq emissions by 92% by 2030, relative to 1990 levels, does not qualify as a legally protected subjective interest, since decisions regarding the timing, and management of addressing anthropogenic climate change fall within the purview of political bodies’[178].

[175] As for the secondary request of the plaintiffs, the court declared itself ‘incompetent’ with regard to its power to review the legitimacy of the administrative acts adopted by the Government to pursue the international and European objectives of CO_2 reduction (PNIEC - National Integrated Energy and Climate Plan), devolving it to Italy’s administrative court (TAR).

[176] As noted by the plaintiffs’ lawyer, the secondary claim is based on the resulting obligation of protection established between the State and the plaintiffs, which was reinforced during their participation in the public consultation procedure (VAS) for the Italian National Integrated Plan for Energy and Climate (PNIEC). This represents a ‘*contatto sociale qualificato’* (qualified social contact), understood as ‘an act capable of producing obligations in accordance with the legal system’ (Civil Code Art. 1173). The plaintiffs asked the government to review the PNIEC and consider the observations sent during the public consultation. The claim submitted in the alternative was dismissed as the civil court had no jurisdiction over reviewing the legitimacy of the Integrated National Energy and Climate Plan (PNIEC), as said review, in the court’s words, falls under the jurisdiction of an administrative judge. Interview with Luca Saltalamacchia, (n 59). Summary of the effort accomplished about this by the plaintiffs in ‘A Sud, ‘Sentenza Giudizio Universale: Il Tribunale Di Roma Decide Di Non Decidere’ (*A Sud* 2023) https://asud.net/ultima/giudizio-universale-sentenza/ accessed 12 June 2024.

[177] The Italian Supreme Court definition in: Giabardo CV (n 44).

[178] *A Sud et al. v Italy* (2024) 39415 *Sentenza* Tribunale Ordinario Di Roma Sezione Seconda Civile, (Author’s translation).

This judicial 'posture[179] is formalised by a brief ruling that lacks argumentative depth, fails[180] to comply with the duty of correspondence that requires judges to address all the claims[181], and contains misrepresentations and obscure terms[182].

The author's interviewees Carducci, Saltalamacchia and Fantozzi expressed astonishment and disbelief over this 'unjust ruling'[183]. The judgment could imply, as Saltalamacchia noted, that as per the ruling the case 'is not really cognizable (*'justiciable')* by any judge', leaving Italy without a forum for climate claims[184].

The following statement from the ruling shows the court's judicial reasoning on the Italian State's climate obligations:

> Given that this [global warming] is a problem caused by a multiplicity of factors involving the planet, combating climate change requires a unified effort by States that have 'self-regulated' on the issue[185].

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[179] Here defined as the 'interpretative approach' or 'methodological orientation' that the court adopts when addressing and deciding on specific legal issues.
[180] Contrary to the principle of '*minimo costituzionale*' (constitutional minimum) (Art. 54 DL 83/2012). See Campeggio G. (n 122).
[181] Regarding the depth and analysis provided, the plaintiffs' lawyer noted that the 14-page ruling addressed thousands of pages of documentation submitted by the plaintiffs during various hearings. Furthermore, contrary to the duty of correspondence between the requests and the ruling, not all points raised by the plaintiffs were addressed in the ruling. Civil Code, Article 112 (R.D. 28 ottobre 1940, n. 1443) [Aggiornato al 02/03/2024].
[182] Of this opinion inter alia are Cecchi R, 'Il Giudizio (O Silenzio?) Universale: Una Sentenza Che Non Farà La Storia' (2024) Diritti Comparati <https://www.diritticomparati.it/il-giudizio-o-silenzio-universale-una-sentenza-che-non-fara-la-storia/> accessed 26 May 2024; Palombino G, 'Il 'Giudizio Universale' è Inammissibile: Quali Prospettive per La Giustizia Climatica in Italia?' (2024) www.laCostituzione.info <https://www.lacostituzione.info/index.php/2024/03/25/il-giudizio-universale-e-inammissibile-quali-prospettive-per-la-giustizia-climatica-in-italia/> accessed 8 July 2024; and Cardelli L, (n 122).
[183] A year before the ruling, Carducci wrote about the commitment required in the current climate emergency: 'If even the judges were to turn a blind eye, their 'unjust judgment' should be publicly denounced.' This is undoubtedly now the case. Carducci M, 'Emergenza Climatica: Tra 'Formule Radbruch' E Diritto Umano al Clima Stabile E Sicuro' (*Scienza & Pace Magazine*18 March 2023) https://magazine.cisp.unipi.it/emergenza-climatica-tra-formule-radbruch-e-diritto-umano-al-clima-stabile-e-sicuro/ accessed 27 June 2024.
[184] The ruling states that 'in Italy there is no court able to decide on this type of claim' (n 178.) In the interview, Saltalamacchia explained that if the appeal is rejected or not submitted, a valid ruling would remain stating that no court could judge the actions of political power on climate change mitigation, even when human rights are being violated. Saltalamacchia interview (n 59).
[185] In the ruling in Italian: [il fenomeno del riscaldamento globale]. 'Trattandosi di un problema provocato da una molteplicità di fattori che coinvolgono il pianeta, il contrasto ai cambiamenti climatici richiede un impegno unitario degli Stati che sul tema si sono 'autoregolamentati'.

The judge's arguments can be grouped into three main lines of reasoning: (1) mitigation policies fall within the realm of political action and are thus non-justiciable under the principle of separation of powers; (2) international climate obligations are not attributable to individual citizens of the State; and (3) there is a lack of demonstrable nexus to citizens' damages.

6.1 Neglecting Climate Obligations in the Name of Separation of Powers: Political Discretion Ignoring Human Rights

The State's Attorney addresses the issue of 'scientific reserve' raised by the plaintiffs, framing it as an attack on the State's political discretion in climate change legislation[186]. This interpretation is adopted by the judge[187] although in the Italian legal system, the 'political aspects' of law-making are subordinate to scientific rationale if legislation is to be constitutional[188] .

'Separation of powers' is a hurdle to gaining admission to court and to obtaining a ruling on merit. While in *Urgenda*, the Dutch Supreme Court prioritized human rights, establishing a 'minimum threshold' beyond which the State's jurisdiction can be

[186] The 'scientific reserve' is seen as an attack on the political discretion of the state in the legislation to combat climate change: 'It follows that judicial activity can only be halted before petita that go beyond the perimeter of decision-making powers, presided over by the principle of the separation of powers, as is the case in the present case in which the plaintiffs claim to be able to review choices entrusted to the broadest discretion of the legislature', *in* 'Presidenza del Consiglio dei Ministri, ' Comparsa Conclusionale Presso Tribunale Ordinario di Roma Seconda Sezione Civile (R.G. 39415/2021, Udienza Di P.c. 13.09.2023, G.U. Dr.ssa A. Canonaco)' (A Sud 2020) https://drive.google.com/drive/folders/1sFXShye_m1sj77vkLQ-oWCeMsWSkMJvE accessed 29 June 2024, 7.

[187] Sentenza, (n 8),11, (Author's translation).

[188] The constitutionalist Casonato reveals this interpretation as early as the Constitutional Court's 2002 ruling that science assumes the function of an indicator of the 'scientific reasonableness' of a law and will come to play a role as an 'interposed parameter of constitutionality'. This principle is subject to limitation in the areas that fall within the Court's purview and require a scientific framework 'unless other constitutional rights or duties of equal standing come into play' (Judgments 282 of 2002 and 162 of 2014): Casonato C, 'La Scienza Come Parametro Interposto Di Costituzionalità' (2016) 2 Biodiritto https://www.biodiritto.org/ocmultibinary/download/3056/29631/7/e52e8148166d5b6ec2e5fa38fdd49156/file/2_2016_Casonato.pdf accessed 6 July 2024, 8, 11.

diminished[189], the Italian judge adopted the government's position, rejecting climate obligations based on the principle of separation of powers[190]. The ruling defines separation of powers as a 'core principle of the legal system'. However, Greco has shown that its role in the Italian legal system has never been to protect the margin of discretion of executive power, but rather to protect the autonomy of judges so as to guarantee the application of the rule of law and the protection of human rights[191]. Former Vice President of the Italian Constitutional Court, Marta Cartabia, defines separation of powers as 'the condition for the effective protection of individual rights and liberties, in order to assure each individual an effective remedy against any breach of her or his rights' [192].

In Italy, all acts of political power are subject to judicial review[193], as the Constitution[194] upholds the 'rule of law' principle. As regards the concept of 'political discretion',

[189] The Dutch Supreme Court ruled that the Government still retained adequate discretion in determining the measures needed to meet specified emissions targets. However a judicial body could establish a specific target for reducing emissions, provided that this target represents the 'minimum threshold' below which the human rights of individuals under the State's jurisdiction would face serious endangerment. See Luporini R, 'The 'Last Judgment': Early Reflections on Upcoming Climate Litigation in Italy' (2021) 77 QIL, Zoom-in 27 https://www.iris.sssup.it/retrieve/dd9e0b32-5df3-709e-e053-3705fe0a83fd/Luporini_QIL.pdf accessed 30 May 2024.

[190] The definition of the Italian government in the Comparsa Costituzionale, (n 181) is 'An inadmissible intrusion of the judiciary into the competencies of Parliament and the Government, thereby violating the overarching principle of separation of powers.'.

[191] Greco G, (n 86), 21.

[192] Cartabia M, 'European Court of Human Rights the Authority of the Judiciary Separation of Powers and Judicial Independence: Current Challenges', Separation of Powers and Judicial Independence: Current Challenges (Corte Costituzionaleit 2018), https://www.cortecostituzionale.it/documenti/news/cartabia_3.pdf , accessed 5 April 2024, 8.

[193] Conti explains that the principle of justiciability of public authority acts is fundamental in the Italian Constitution as it ensures power is subject to the law when interacting with citizens. Acts can typically be challenged so that citizens have concrete protection of their individual rights against various expressions of public administration power Conti RG, 'Atto Politico vs Giustizia 'Politica'. Quale Bilanciamento Con I Diritti Fondamentali?' (2023) 68 www.giustiziainsieme.it https://www.giustiziainsieme.it/en/costituzione-e-carta-dei-diritti-fondamentali/2941-atto-politico-vs-giustizia-politica-quale-bilanciamento-con-i-diritti-fondamentali accessed 7 June 2024.

[194] Article 113 of the Italian Constitution.

scholars and courts[195] have sought to limit the definition of ‘political act’[196] to legislative acts of Parliament and only regarding the ‘political nature’ of a decision. Ghinelli[197] states that an act is political only if there are no legal parameters for judicial review; when statutory law sets thresholds, policymakers must adhere to these parameters, and are therefore subject to judicial review[198].

Conti reports[199] that in Italy it is common to interpret the view of every ‘legal formant’[200] as having ‘political significance’ and thus it should be judged exclusively by voters and politics. This broad interpretation of ‘political action’ is applied in the ruling discussed herein.

The Italian Constitutional Court, as Greco says, has clearly set the limits of judicial intervention: the judiciary cannot rule on subjects not addressed in existing legislation but can and must address partial legislative gaps. It must evaluate based on scientific reasonableness without falling into a political judgment[201].

In Italy’s democratic parliamentary republic, people and their rights are the origin and purpose of political power, which is non-justiciable in its objectives but bound by the rules of international climate law.

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[195] The definition of ‘political act’ is interpreted narrowly to be applied as an exception, because otherwise the guarantee of judicial protection ensured by the Constitution would be an empty one Therefore, a political act constitutes an exception to the rule of appealability of the act: Conti RG, (n 193)
[196] According to Law 97/1953 for the Constitutional Process cited in Greco, (n 86), 21.
[197] Ghinelli G, ‘ Justiciability and Climate Litigation in Italy’ in Elena D’Alessandro and Davide Castagno (eds), Quaderni Del Dipartimento Di Giurisprudenza Dell’università Di Torino 31/2024, vol. 31 (Dipartimento di Giurisprudenza dell’Università di Torino 2024), 29. https://www.collane.unito.it/oa/items/show/180 accessed 12 March 2024.
[198] Definition from *Corte di cassazione, sezioni unite*, Judgment No. 18829 of 2019 cited in Ghinelli G, (n 197), 32.
[199] Conti, (n 193).
[200] Monateri, P.G., Sacco, R. (2002). Legal Formants. In Newman, P. (eds) The New Palgrave Dictionary of Economics and the Law. Palgrave Macmillan, London. https://doi.org/10.1007/978-1-349-74173-1_224 Sacco coined the term ‘legal formant’, which includes judicial interpretation and precedent.
[201] Greco (n 86), 23.

As the climate emergency is detrimental and a risk for people's rights, political power cannot ignore its risks, and this must be the constraint on political discretion[202]. This reasoning was applied in the *Urgenda*[203] case when the Dutch Supreme Court ruled that while the government has discretion over emissions measures, a judicial body can set specific emissions targets if they ensure protection of human rights[204].

Similarly, in Neubauer, although the German Constitutional Court noted that the legislature is not required to justify decisions stemming from a legislative process, it found that the State's failure to specify how it would achieve its long-term carbon neutrality target in the Federal Climate Change Act conflicted with fundamental rights. In a way, the Rome court took a stance on separation of powers by interpreting the *riserva di scienza*, advocated by the plaintiffs, as restrictive of the discretionary power of the State, since it obliges policymakers to justify their choices based on science and their impact on human rights[205].

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[202] Atti processuali. Le Conclusioni. (inoltre: Sull'inesistenza della discrezionalità statale senza vincoli né limiti sull'emergenza climatica, alla luce del *consensus* statale all'autolimitazione, cfr. CUNHA VERCIANO, *La discrezionalità del potere nella lotta al cambiamento climatico*, in *www.federalismi.it*, 26, 2023) Rete Legalità per il Clima, ' Comparsa Conclusionale Presso Tribunale Ordinario Di Roma Seconda Sezione Civile (R.G. 39415/2021, Udienza Di P.c. 13.09.2023, G.U. Dr.ssa A. Canonaco)' (A Sud 2020) https://drive.google.com/drive/folders/1sFXShye_m1sj77vkLQ-oWCeMsWSkMJvE accessed 29 June 2024.

[203] According to Bouwer, in the Urgenda case courts have emphasized that the Dutch separation of powers is not absolute since a judge's power and authority is derived from democratically enacted legislation: Bouwer K, 'Lessons from a Distorted Metaphor: The Holy Grail of Climate Litigation' (2020) 9 Transnational Environmental Law 347378 https://www.cambridge.org/core/product/40B0DC6E8F3A54AA2A9B4908DFA7E46F, accessed 29 June 2024, 366.

[204] Luporini R, 'The 'Last Judgment': Early Reflections on Upcoming Climate Litigation in Italy' (2021) 77 QIL, Zoom-in 27 https://www.iris.sssup.it/retrieve/dd9e0b32-5df3-709e-e053-3705fe0a83fd/Luporini_QIL.pdf accessed 30 May 2024.

[205] *Neubauer and Others v Germany* (n 63) [239-241]. See also Christina Eckes, '*Separation of Powers in Climate Cases: Comparing Cases in Germany and the Netherlands'* Verfassungsblog, 10 May 2021. Available at: https://verfassungsblog.de/separation-of-powers-in-climate-cases/

In *KlimaSeniorinnen*[206], the ECtHR prioritized the rule of law and judicial review over the State, arguing that political processes may be driven by short-term interests over 'sustainable policymaking' that encompasses human rights and interests of future generations. A science-based method centred on a Carbon Budget is defined as an 'external limit to the discretion of power'.

The idea in the Rome court's ruling that State decisions are '*naturaliter politiche'* ('inherently political') and would be limited by the judge deciding on the case is unsustainable when the issues at hand involve human rights and their protection against climate change issues, which are broader and more fundamental than any 'political interest'[207].

The summons does not ask the court to dictate how Italy should meet its climate obligations but to evaluate if current objectives align with the Paris Agreement. The State Attorney's interpretation distorts this by rejecting an assessment of the *'quomodo'* (the how)[208], although inconsistent with the claim[209].

6.2 International Commitments Do Not Bind the State to Citizen Claims

According to the ruling, in Italy 'It cannot be considered that the State has an obligation (of a civil nature enforceable by individuals) to reduce emissions in the manner desired by the plaintiffs.' According to jurists in constitutional and public law[210], this incorrectly

[206] In paragraph 572 of the judgment, the ECtHR acknowledges that 'the measures and methods determining the details of the States climate policy fall within its wide margin of appreciation, [however] in the absence of any domestic measure attempting to quantify the respondent States remaining carbon budget, the Court has difficulty accepting that the State could be regarded as complying effectively with its regulatory obligation under Article 8 of the Convention', *KlimaSeniorinnen* (n 22).
[207] Giabardo CV, (n 44).
[208] Comparsa di Costituzione e Risposta della Presidenza del Consiglio dei ministri, (n 181).
[209] See (n 166) citing the full text of the claim in the Writ of Summons.
[210] Greco, (n 86)

implies that international agreements ratified and transposed into the Italian legal system do not raise climate obligations of the State challengeable in court by citizens. This interpretation thus hinders the effectiveness of the Paris Agreement in defending the interest of citizens and safeguarding their rights.

This interpretation has two sub-arguments:

The first point is the non-recognition of the state's international climate obligations since 'no norm exists to affirm it', and the State's mitigation is defined by self-regulation.

This non-recognition is grounded on the 'drop in the ocean'[211] principle and on State 'self-regulation'[212]. It lacks the 'good faith' underlying the Paris Agreement and hides behind Italy's 'minimal emissions contribution', as well as the impossibility of determining direct causation[213].

This stance also disregards Article 4 of the Paris Agreement and the definition of 'equity' regulating State emissions contributions[214], as well as the principle of shared responsibility in international law[215]. It disregards 'attribution science' used by the IPCC, and the EU's principle of 'partial uncertain causation', which holds States proportionately accountable for the impact of their emissions on climate change[216]. In other climate

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[211] The State declares that Italy, with its minimal share of emissions, hardly definable in a causality definition, has no relevance or responsibility as its minimal contribution would not produce significant results on the global situation in: R.G. 39415/21 - Ud. 14/12/2021 – G.U. Canonaco *Comparsa Di Costituzione e Risposta, 24.*

[212] Ibid, 8.

[213] The Italian States affirms in its rebuttal: 'Thus, the global, transboundary and cumulative nature of the States' contributions to climate change complicates the determination of so-called 'climate change responsibility,' leading to the conclusion that no State can be considered solely (and directly) responsible for global warming itself, nor for the disastrous consequences that may result' Canonaco (n 181).

[214] See Greco, (n 86), 9.

[215] See also Nollkaemper A and others, 'Guiding Principles on Shared Responsibility in International Law' (2020) 31 Eur J Int Law 15 https://doi.org/10.1093/ejil/chaa017 accessed 7AD.

[216] This principle states that in cases involving multiple activities, where it is certain that none caused the entire damage or any determinable part of it, all activities that probably contributed to the damage are presumed to have caused it equally. This is a corollary to the European principle of 'loyal cooperation'

cases, courts reaffirmed the State's obligation to mitigate despite the size of the domestic contribution to global emissions[217].

The second point is that the ruling dismissed justiciability stating 'it does not qualify as a legally protected subjective interest'[218]. The judge's rejection of the State's obligations is grounded in the lack of a specific law protecting an individual's right to a stable and safe climate, even though the summons defines a 'public' or 'collective interest' that is inherent to a State's duty of care to counter risks to deterioration of human rights[219]. Furthermore, the Italian Constitution includes the right to health and a healthy environment under the State's duty of care. These rights are protected and unconditionally recognized by the Constitution, constitutional jurisprudence, the European Convention on Human Rights (ECHR), and the EU Charter of Fundamental Rights[220].

6.3 The Court's Lack of Knowledge vs Scientific Reserve in Addressing Climate Change

Despite the State's claim that it does not intend to 'shirk its responsibilities in addressing the emergency caused by anthropogenic climate change' and the court confirming 'the

within the EU (Article 4.3 TEU): PETL (Principles of European Tort Law) Article 4.3 TEU, See European Group on Tort Law, Principles of European Tort Law: Text and Commentary (2005), Art. 9:101.

[217]European Court of Human Rights, '*Grand Chamber Case of Verein KlimaSeniorinnen Schweiz and Others V. Switzerland* (Application No. 53600/20) JUDGMENT' (*hudoc.echr.coe.int*9 April 2024) https://hudoc.echr.coe.int/eng/# accessed 27 June 2024, 315 and 387, see (n 22) : 'In this context, as regards the issue of causality, the domestic courts (in the Netherlands, Germany and Belgium) had held that State responsibility should be established not on the basis of causality, but on the basis of the principle of attribution, which meant that individual States were responsible, pro rata, for their own contribution to climate change, par.387, 157.

[218] *A Sud et al v Italy* (2024) 39415 (Tribunale Ordinario Di Roma Sezione Seconda Civile), Sentenza, 12.

[219] On October 8, 2021, during its 48th session, the Human Rights Council adopted Resolution 48/13, which formally acknowledged 'the right to a clean, healthy, and sustainable environment' as essential for the full enjoyment of human rights. This recognition was reaffirmed by the United Nations General Assembly in July 2022. Subsequently, on August 1, 2023, Protocol No. 15 to the European Convention on Human Rights came into effect, further connecting environmental and human rights.

[220] Atto di Citazione, (n 89), VI.6a.

awareness of the defendant administration, and more generally of the Italian authorities, of the serious issues raised by the plaintiffs'[221], the court's interpretation fails to acknowledge the science-based grounding of the request of action by the plaintiffs, reflecting the State's regressive position[222].

The judge ignores the detailed and referenced analysis of sources and science-based principles, as well as the extensive use of IPCC Reports in line with various systemic cases[223], and simplifies the 'global warming phenomenon' to 'a problem caused by multiple factors affecting the planet,' without addressing the impact of human activities on the climate emergency. It appears that complexity is a tenuous justification for the State's abdication of responsibility and the court's judicial inertia.

Evaluating the complexity and scientific uncertainty of climate change to draw legal conclusions is a recognized judicial challenge[224], but this does not exempt courts from their duty to adjudicate[225], as recently confirmed by the ECtHR in *KlimaSeniorinnen*[226]. The Rome court, however, hid behind its inability to verify and interpret the presented

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[221] *Comparsa di Costituzione e Risposta della Presidenza del Consiglio dei Ministri RG 39415/21 - Ud 14/12/2021 – GU Canonaco* (Tribunale di Roma Sezione II Civile, RG 39415/21), Author's translation.
[222] The judgment has been called 'retrogressive' - Magi (n 113) and 'anti-scientific' due to its negationist arguments in Stavenato N, 'Se Un Fisico Legge La Sentenza 'Giudizio Universale'' (2024) La Costituzione.info https://www.lacostituzione.info/index.php/2024/03/29/se-un-fisico-legge-la-sentenza-giudizio-universale/ accessed 26 May 2024.
[223] The importance of the precautionary principle and the 'best available science' assessment has been declared in various European courts, including on *Urgenda* (n 65), *Neubauer* (n 63), and the recent ECtHR Judgment on *KlimaSeniorinnen* (n 22).
[224] Giabardo, CV (n 44); Stuart-Smith RF et al., 'Filling the Evidentiary Gap in Climate Litigation' (2021) 11 Nature Climate Change 651 https://doi.org/10.1038/s41558021010867 accessed 10 July 2024; V Cavalcanti MF, 'Fonti Del Diritto E Cambiamento Climatico: Il Ruolo Dei Dati Tecnico-Scientifici Nella Giustizia Climatica in Europa' (2023) 58 DPCE Online https://www.dpceonline.it/index.php/dpceonline/article/view/1889 accessed 13 June 2024,329ss, 332.
[225] With ruling no. 5253 of 25 February 2021, Italy's Court of Cassation confirmed that judges had the 'power/duty' to legally qualify the facts underlying a claim or exceptions, and to identify the applicable rules of law accordingly. Comments in Mancusi AA, 'Il Potere-Dovere Del Giudice Di Qualificare Giuridicamente I Fatti Posti a Base Della Domanda' (*PuntodiDiritto* 1 September 2021) https://www.puntodidiritto.it/potere-dovere-giudice-qualificare-giuridicamente-fatti-posti-a-base-domanda/ accessed 7 July 2024.
[226] Regarding the *KlimaSeniorinnen* judgment, the ECtHR writes 'One of the key features of climate-change cases is the necessity for the relevant court to engage with a body of complex scientific evidence' (n 22), 427.

data so as to avoid evaluating the merits[227]– incoherently foregoing independent technical advice[228] while claiming to 'lack the information needed' to adjudicate[229].

Conversely, the ECtHR ruling on *KlimaSeniorinnen*[230] stated that 'in view of the clear science, the urgency of the situation and the clear ultimate objective of the UNFCCC, the State had a positive obligation'[231].

6.4 Avoiding Evaluation and Deferring Effective Mitigation

Several jurists noted the Rome judge's indecisiveness, shortsightedness and inconsistency in the face of the climate emergency[232]. As rightly pointed out by the plaintiffs' lawyers, time is crucial to mitigation. Thus, putting off the decision in a 'Pilate-like' manner is out of kilter with a need for courts to adapt in a world crying out for 'climate justice' – if not as envisaged by climate activists, at least from a 'climate-conscious' perspective. Not judging the State for failing to act on its climate commitments and for not applying Art. 2 of the UNFCCC, which clearly establishes that a State is bound to protect the climate system for the benefit of present and future

[227] Cecchi R, 'Il Giudizio (O Silenzio?) Universale: Una Sentenza Che Non Farà La Storia' (2024) Diritti Comparati https://www.diritticomparati.it/il-giudizio-o-silenzio-universale-una-sentenza-che-non-fara-la-storia/ accessed 26 May 2024, 3.

[228] Use of a CTU (Court-appointed expert) allows judges to ask for expert knowledge to resolve case-related technical issues, as established by Articles 61 and 62 of Italy's Civil Code.

[229] *Giudizio Universale* Sentenza, (n 218),11, (Author's translation).

[230] In particular, in view of the magnitude of the risks posed by climate change, the clear science, the urgent situation and the clear ultimate objective of the UNFCCC, the State had a positive obligation to take all measures that were not impossible or disproportionately economically burdensome with the objective of reducing GHG emissions to a safe level. The situation required the State to do everything in its power to protect the applicants' *KlimaSeniorinnnen* (n 22) par.319.

[231] Also, the recent judgment of the International Tribunal for the Law of the Sea underlined the critical influence of scientific research in guiding legal interpretations. See Jamali A (Hazar), 'The Value of IPCC Reports in Shaping Climate Change Jurisprudence' (*Climate and Human Rights Litigation Database* 11 June 2024)https://climaterightsdatabase.com/2024/06/11/the-value-of-ipcc-reports-in-shaping-climate-change-jurisprudence/ accessed 7 July 2024.

[232] Inter alia: Cardelli L, (n 122); Cecchi R, (n 232) Magi (n 13).

generations, means relieving the State of its responsibilities. This is illogical and suicidal[233].

Relevant for the appeal is that jurists not involved in the case have determined that the ruling does not comply to the minimum constitutional requirements (‘*minimo costituzionale*’) for judicial reasoning, which must be ‘explicit and clear, understandable, and must not contain ‘manifest and irreducible contradictions.’[234].

Furthermore, this ruling leads to a broader reflection on the role of courts in climate litigation to better understand whether Italy truly cannot have a climate court[235], or whether courts, including Italian ones, can and must serve as democratic forums for hearing and ruling on challenging new issues that cannot simply be avoided.

7. The Court’s Role for Human Rights Protection in the Climate Emergency

While the plaintiffs’ lawyers assert that a judge’s role is to bolster climate action to counter State negligence[236], several Italian jurists opine that the *Giudizio Universale* judge shirked this responsibility by failing to decide[237].

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[233] Greco, (n 86); Campeggio G, ‘L’emergenza Climatica Tra “Sfera Dell’insindacabile” E Istituzioni Suicide’, (2021) www.laCostituzione.info file:///C:/Users/utente/Downloads/Campeggio%20Emergenza%20climatica%20sfera%20indecidibile.pdf accessed 26 May 2024.

[234] Cited sources: Articles 1173 & 2740 of the Civil Code and Art. 28 of the Constitution. See Magi (n 113), Campeggio G (2024), (n 122), 1-5.

[235] Palombino G, ‘Il “Giudizio Universale” è Inammissibile: Quali Prospettive per La Giustizia Climatica in Italia?’ (2024) laCostituzione.info https://www.lacostituzione.info/index.php/2024/03/25/il-giudizio-universale-e-inammissibile-quali-prospettive-per-la-giustizia-climatica-in-italia/ accessed 8 July 2024.

[236] The following quotation summarizes this idea: ‘If even judges were to turn a blind eye, their unjust judgment should be publicly denounced’. Carducci M, ‘Emergenza Climatica: Tra “Formule Radbruch” e Diritto Umano al Clima Stabile e Sicuro’ (*Scienza & Pace Magazine*18 March 2023) https://magazine.cisp.unipi.it/emergenza-climatica-tra-formule-radbruch-e-diritto-umano-al-clima-stabile-e-sicuro/ accessed 27 June 2024.

[237] Inter alia: Cangiano A, ‘Il Caso “Giudizio Universale”: Un’occasione Sprecata?’ (2024) Liberi oltre le illusioni <https://www.liberioltreleillusioni.it/articoli/articolo/il-caso-giudizio-universale-unoccasione-sprecata> accessed 30 May 2024; Cecchi R, (n 232).

The interviewed lawyers and jurists view this (non)decision as 'lacking courage'. Courage is certainly needed to address the pressing future challenges brought by climate change, namely, judges are to embrace 'judicial empowerment'[238]- as happened in various systemic climate cases - by challenging doctrinal 'business as usual' in a bid to extend the outer boundaries of existing legal doctrine[239]. Judges must compensate for legislative inaction and 'move the law forward'[240] towards a responsible climate legal system.

However, Redford, an international human rights lawyer interviewed for this paper[241], believes that labelling climate cases as systemic based on court activism may carry a dogmatic connotation of 'overreaching'. Rather, judges should responsibly apply their mandate, interpreting laws innovatively to address new and evolving situations.[242] Claudia Setzer[243] concurs, asserting that judges should not see climate cases as an 'extraordinary task', but rather apply the law in an ordinary and appropriate way.

According to Carducci, judges should adopt Radbruch's 'double formula' when applying the law, namely refuse to tolerate the intolerable (human destruction of the planet) and to deny the undeniable (the irreversible degeneration of the planet's liveability and habitability)[244]. Carducci believes that courts must respect the relationship between

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[238] Cartabia M, (n 192), 1.
[239] Fisher E, Scotford E and Barritt E, 'The Legally Disruptive Nature of Climate Change' (2017) 80 The Modern Law Review 173 https://doi.org/10.1111/1468-2230.12251 accessed 19 July 2024; 173, 174.
[240] Voigt C in BIICL, 'Our Future in the Balance. The Role of Courts and Tribunals in Meeting the Climate Crisis International Virtual Summit' (BIICL 2021) https://www.biicl.org/documents/142_our_future_in_the_balance_event_report.pdf accessed 18 July 2024.
[241] See Redford, (n 7).
[242] See also Gevisser M and Redford K, *The Revolution Will Not Be Litigated* (OR Books 2023).
[243] Claudia Setzer in BIICL, 'Our Future in the Balance. The Role of Courts and Tribunals in Meeting the Climate Crisis International Virtual Summit' (BIICL 2021) https://www.biicl.org/documents/142_our_future_in_the_balance_event_report.pdf accessed 18 July 2024.
[244] Carducci M, (n 183); see also Di Rocco D, 'L'eredità Della Formula Di Radbruch Tra Certezza E Mutevolezza Del Diritto' (2022) Ius In Itinere https://www.iusinitinere.it/leredita-della-formula-di-radbruch-tra-certezza-e-mutevolezza-del-diritto-42284#_edn5 accessed 18 July 2024.

factual truth and law, encompassing the attention to logical, semantic and discursive faithfulness. Creating a common vocabulary of scientific and legal discourse was indeed among the objectives of the UNFCCC[245].

Cartabia believes that a court's public function is not limited to interpreting law but also 'construe legislation'[246] addressing legal gaps and incorporating international law. She notes that courts are increasingly 'legal shapers'[247] in climate law, a key area of legal innovation. Similarly, Smith[248] and Carlarne[249] emphasize the essential role of innovative climate litigation in combating the climate crisis. These views imply that laws can and have been interpreted by courts in ways both novel and unforeseen by legislatures.

While the excessive interpretative leeway of courts may be criticised as an undemocratic intrusion into legislative power, this is envisaged by the Italian legal system and foreseen by the Italian Constitution[250], enabling courts to fill partial legislative gaps.

Rocha believes judicial empowerment can enhance climate action by providing a 'public forum' where individuals and entities impacted by climate change can defend their

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[245] Carducci M, (n 107) states that Article 1 of UNFCCC aims to create a common vocabulary between scientific definitions of the climate situation and legal discourse on the subject, so that shared interpretations and actions converge.

[246] Cartabia, (n 192), 3.

[247] Cartabia, Ibid.

[248] Smith DC, 'Courts Must Provide Climate Change Leadership in the Absence of Lawmaking Progress' (2021) 39 Journal of Energy & Natural Resources Law 385 https://doi.org/10.1080/02646811.2021.1982172, accessed 19 July 2024.

[249] 'Absent climate litigation pushing state and corporate actors to change their behaviour, the climate crisis will proceed, largely unabated, to the detriment of present and future generations, alike.' Carlarne CP, 'The Essential Role of Climate Litigation and the Courts in Averting Climate Crisis' in Benoit Mayer, Alexander Zahar and Cinnamon Piñon Carlarne (eds), *Debating Climate Law* (Cambridge University Press 2021) https://www.cambridge.org/core/product/D244A98AD71078EA12F6B170CFBD4D57 accessed 19 July 2024, 113-114.

[250] Article 12 of the Preleggi addresses situations where there is no applicable law. It provides that in such cases, judges should decide according to the analogy of the law and, if necessary, based on the general principles of the legal system, becoming 'legal formants'. The *Preleggi* can be accessed online: Brocardi, 'Banca Dati Normativa' (2003) https://www.brocardi.it/preleggi/capo-ii/art12.html, accessed 19 July 2024; regarding this point see: Sorrenti G, 'Soggetto Alla Legge… in Assenza Di Legge: Lacune E Meccanismi Integrativi' (2018) 1 Costituzionalismo https://www.costituzionalismo.it/download/Costituzionalismo_201801_654.pdf accessed 19 July 2024.

rights, raise awareness and underline the legitimacy of their claims[251]. Systemic cases have extended beyond courtrooms, involving civil society performing, as envisaged by Pisanò, a bottom-up democratic function that makes individuals, even young and future generations, protagonists in the *de jure* process for the recognition and protection of a subjective right to a stable climate[252]. This inclusive approach towards climate governance is in line with SDGs, which should also concern courts and could improve regenerative development[253].

However, for courts to adopt this empowering role and become a critical forum to facilitate debate[254], judges must give plaintiffs' claims due weight, a responsibility that the Rome court may have neglected. The *Giudizio Universale* ruling was 'a missed opportunity'[255].

Judge Preston lists various ways courts can contribute to combating climate change. One seems to reprimand the Rome judge:

> '[C]ourts have a duty, and will discharge that duty, to hear and determine justiciable climate change claims. Courts cannot and do not brush aside, defer consideration of, or filibust about the concerns and claims of people, unlike the political branches of government'[256].

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[251] Rocha A, 'Courts as Agents of Change' in Elena D'Alessandro and Davide Castagno (eds), *Reports & Essays on Climate Change Litigation*, vol. 31 (Quaderni Del Dipartimento di Giurisprudenza Dell'Università di Torino 31/2024 2024) https://www.collane.unito.it/oa/items/show/180 accessed 12 March 2024, 221.

[252] The case Duarte Agostinho and Others v Portugal and Others App no 39371/20 (ECtHR, 7 July 2023) is an example where youth had a voice. Pisanò A, 'Il Diritto al Clima. Una Prima Concettualizzazione' (2021) 20 L'Ircoverco 261 <https://lircocervo.it/wp-content/uploads/2021/12/13.-Pisano.pdf> accessed 26 July 2024, 272.

[253] Aparicio Chofré L, 'Della Giustizia Climatica a Uno Sviluppo Rigenerativo. L'Agenda 2030 E Gli Obiettivi Di Sviluppo Sostenibile Sono Una Valida Tabella Di Marcia?' (2024) 0 Eunomia. Rivista di Studi su Pace e Diritti Umani 51 http://siba-ese.unisalento.it/index.php/eunomia/article/view/28258 accessed 8 July 2024, 56.

[254] Pisanò *il diritto al clima* (n 35), 197.

[255] Cangiano A, 'Il Caso "Giudizio Universale": Un'occasione Sprecata?' (2024) Liberi oltre le illusioni https://www.liberioltreleillusioni.it/articoli/articolo/il-caso-giudizio-universale-unoccasione-sprecata accessed 30 May 2024.

[256] Preston BJ, 'The Contribution of the Courts in Tackling Climate Change' (2016) 28 J Environmental Law 11 https://doi.org/10.1093/jel/eqw004 accessed October, 4AD.

Conti offers a convincing perspective that judges act as an anti-majoritarian force[257], upholding the rule of law to protect minorities and the vulnerable to address legal gaps and avoiding political bias when fundamental rights protected by laws and international treaties are at stake[258]. This reinforces the judge's constitutional role as a 'guardian and custodian of rights'[259].

While some jurists reject court intervention in climate governance, citing concerns about judicial activism and the risk that courts set policy[260], Gruber affirms that by applying 'apolitical law', which keeps to the court's 'pure' role of being the 'mouth of the law', judges fail their responsibility, remaining 'stagnant' as the emergency deepens[261]. The failure to decide on the case's merits by the Rome court could be seen as irresponsible fatalism[262].

A major challenge for judges is to understand climate science, which is particularly significant in climate lawsuits[263]. According to Carnwath[264], given the relevance of

[257] Stasio D, 'Giudici Imparziali Solo Se Consapevoli Della Loro Funzione Contromaggioritaria' (2024) 1-2 Questione Giustizia.
[258] Conti RG, (n 193), 8.1.
[259] Principle incorporated in Article 101 of the Italian Constitution establishing that judges are independent and only bound by the law, which defines their role in administering justice on behalf of the citizenship. Additionally, Article 24 of Italy's Civil Code guarantees individuals the right to access justice and receive legal protection for their rights and interests. Conti Ibid.
[260] Blokker P, 'Populist Understandings of the Law: A Conservative Backlash?' (2020), Partecipazione e conflitto https://www.researchgate.net/publication/346548193_Populist_Understandings_of_the_Law_A_Conservative_Backlash , accessed 21 July 2022, 15.
[261] Gruber M-C, 'The Anthropocenic Cupola: On Future Models of Climate Change Liability' (2023) 44 Zeitschrift für Rechtssoziologie, 66 https://doi.org/10.1515/zfrs-2023-1004 accessed 19 July 2024
[262] The judges express to justify the expense's division: 'The lack of specific precedents on the matter at hand and the objective complexity and severity of the planetary emergency caused by anthropogenic climate change, which has driven the claim, justifies the compensation of legal costs between the parties, *Sentenza*, (n 218), 14.
[263] de Augustinis J, 'Judicial Approaches to Science and the Procedural Legitimacy of Climate Rulings: Comparative Insights from the Netherlands and Germany' (2023) 29 Eur Law J 378 <https://doi.org/10.1111/eulj.12483> accessed 21 June 2024
[264]Carnwath R, 'Climate-Conscious Courts: Reflections on the Role of the Judge in Addressing Climate Change' (*Grantham Research Institute on climate change and the environment*2022) https://www.lse.ac.uk/granthaminstitute/news/climate-conscious-courts-reflections-on-the-role-of-the-judge-in-addressing-climate-change/ accessed 26 July 2024.

scientific evidence in climate litigation, judges must be able to understand it when adjudicating climate cases. A number of European courts and the ECtHR have acknowledged[265] that a 'climate-conscious court', should possess a fundamental scientific understanding of the climate crisis, its causes and consequences.

A set of ethical rules for judges deciding on a State's mitigation policies should be included in their ethical and behavioural code[266], as promoted by the International Court of the Environment Foundation, which sees judges as co-responsible, underlining the need for greater commitment to addressing the climate crisis in order to find just and innovative solutions[267]. As Ahsan reminds us, 'judges might have the last word on the climate crisis'[268].

Although guidelines for judicial ethics differ between jurisdictions for normative and societal reasons, the novelty and complexity of climate litigation and its being 'at the intersection of major challenges to ethical action'[269], including its non-legal aspects, requires professional, ethical and educational development in most courts.

Analysing judges' behaviour in the *Urgenda* case, Mak[270] defines the 'elements of virtuous judgecraft'. In brief, judges must be guided by law and conscience when

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[265] *KlimaSeniorinnen* (n 22), *Neubauer* (n 63).
[266] Such as in: Code of Ethics for the Magistrates' Association, https://www.associazionemagistrati.it/codice-etico, accessed 22 July 2024.
[267] Postiglione A, 'Giustizia Climatica: Il Ruolo Dei Giudici Nazionali' (ICEF - International Court of the Environment Foundation 2023) https://www.icef-court.org/wp-content/uploads/2023/07/Giustizia-climatica-il-ruolo-dei-giudici.pdf accessed 22 July 2024.
[268] Irum Ahsan in 'Climate Litigation and the Separation of Powers: Global Perspectives' (BIICL 2021) https://www.biicl.org/documents/142_our_future_in_the_balance_event_report.pdf accessed 18 July 2024 underlines the role of judges in the climate fight invoking: 'as judges, you might as well have the last word on the climate crisis, 12.
[269]Stephen Gardiner, 'Climate Ethics, Health and the Law: Connecting the Dots', 'Our Future in the Balance. The Role of Courts and Tribunals in Meeting the Climate Crisis International Virtual Summit', 7
[270] Maljean-Dubois S, 'The NoHarm Principle as the Foundation of International Climate Law', *Debating Climate Law* (Cambridge University Press 2021) https://www.cambridge.org/core/product/463C5C34617F8A16A71270C6F2718F51 accessed 2 July 2024

navigating professional and ethical questions arising from novel and complex issues; maintain independence from and courage in the face of political branches; and effectively integrate scientific expertise into their decisions. In addition to ethical codes, education on judicial ethics and scientific insights may help render judges 'capable and responsible' in their judgments. Ethical values play an important role given the choices that humanity needs to make in this crucial moment. It is undisputable that *de jure* cannot be value-neutral[271].

8. Anticipated Judicial Scenarios: Legal Grounds Backed by the ECtHR

The 'absolute lack of jurisdiction' ruling will be challenged[272] in the appeal, likely based on factual misinterpretation, omission or contradictory reasoning[273], violation of the principle of 'requested vs. pronounced'[274], and incorrect application of the law[275]. The legal grounds cited in the summons, including Articles 2[276] and 32 [277] and the amended Article 9 of the Italian Constitution, and Articles 2 and 8 of the ECHR, were arguably misinterpreted and disregarded by the ruling.

[271] The alleged need for value neutral judgments is often used as an instrument by politicians and judges to conceal the reality and hinder decisions, see: Brown DA, Gwiazdon K, Introduction, in: Brown DA, Gwiazdon K and Westra L, *The Routledge Handbook of Applied Climate Change Ethics* (Informa2023), 2.
[272] The whole strategy of the appeal is still confidential, since it has not yet been filed.
[273] In Italy, judicial rulings must be based on what is called '*constitutional minimum*'. This term was coined following Article 54 of Decree Law No. 83/2012 regarding appeals and was adopted by the Court of Cassation as a practical interpretation of Article 111, paragraph 6 of the Constitution. 'Constitutional minimum' means that judicial justifications must be explicit and clear, understandable and free from 'manifest and irreducible contradictions', as this would result in a violation of Article 132, paragraph 2, 4, of Italy's Civil Code and lead to the ruling being annulled due to 'lack of justification, which is an essential requirement of any ruling'. Campeggio G, 'La Sentenza "Giudizio Universale" e il "Minimo Costituzionale" tra Costituzione E CEDU' (LaCostituzione.info 17 July 2024) https://www.lacostituzione.info/index.php/2024/07/17/la-sentenza-giudizio-universale-e-il-minimo-costituzionale-tra-costituzione-e-cedu/ accessed 18 July 2024.
[274] *Articolo 112 Codice di procedura civile* (R.D. 28 ottobre 1940, n. 1443) [Aggiornato al 02/03/2024].
[275] Some of the contradictory and misinterpreted elements of the brief ruling highlighted in this paper may serve as legal grounds for the appeal as 'errors in judgment'.
[276] Which defines the principle of solidarity, Atto di Citazione VI.3 (n 89)
[277] Ibid V.12, (n 88).

Among the recent jurisprudential rulings which will be produced for the attention of the appellate judges[278], there is one which Saltalamacchia and Carducci[279] consider particularly relevant: the ECtHR ruling on the *KlimaSeniorinnen* case[280]. This judgment laid out the 'right path' for national courts of the Council of Europe States in addressing future climate litigation[281].

ECHR rights, including Article 8, (among others) though not directly argued, were cited in it by the plaintiffs as 'infringed rights'[282]. The infringement of these rights by insufficiently addressing climate change is indirectly considered a violation of Art. 2043 (neminem laedere)[283], and to Art. 2058[284] and should lead to fulfilment of their two demands. This will be reinforced by the KlimaSeniorinnen ruling since, according to the Italian Code of Civil Procedure (Art. 345), the infringed right may be reinforced in the appeal and the recent judgment of the ECtHR may be introduced as 'relevant case'[285].

With the premise that the ECHR in the Italian Legal system is binding as an 'interposed parameter', in the 'prominent interpretation'[286] given by the ECtHR, the way in which in KlimaSeniorinnen, the Court interpreted Article 8 ECHR in relation to climate change, is

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[278] Among the jurisprudence which will be presented probably also the Italian Constitutional Court ruling 2024/105, explained in this paper in Chapter Five will have an important role.
[279] Interview with Carducci (n 94), Interview with Saltalamacchia (n 59)
[280] 'However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law', *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, (n 22), par.412.
[281] Although not directly applicable, it serves as a key precedent that clarifies the ECtHR's stance on climate litigation for parties under the ECHR.
[282]Atto di Citazione (n 89), par V.19.
[283] See chapter 5.3 of this paper, (n 153).
[284] See chapter 5.1, (n 134,135).
[285] According to Article 345 of the Italian Code of Civil Procedure, it is possible to refer to infringed rights that were not constitutive of the original claims, provided that these rights are connected to issues already raised in the first instance and serve to strengthen the grounds for appeal without altering the objections to the '*causa petendi'* (the legal basis of the claim). See Brocardi, *'*Articolo 345 Codice di procedura civile (R.D. 28 ottobre 1940, n. 1443) (02/03/2024) Domande ed eccezioni nuove' , '*Banca Dati Normativa'* https://www.brocardi.it/codice-di-procedura-civile/libro-secondo/titolo-iii/capo-ii/art345.html?q=345+cpc&area=codici, accessed 25 August 2024.
[286] See (n X) on the prominent role of ECtHR according to the Italian Constitution

the interpretation that also the Italian judge needs to adopt to verify a norm's constitutionality. In particular stating that States have certain climate obligations and that to avoid a violation of the European Convention—a State should carry out precise actions[287] will certainly be relevant in the Italian appeal[288].

The reasoning in the ECtHR ruling thus reinforces the *Giudizio Universal's* legal construction:

- State Climate Obligations[289]: States must adhere to binding climate laws and scientific evidence (IPCC) to avoid violating human rights under Article 8 of the Convention, which requires protection from serious climate change impacts on life, health, well-being, and quality of life[290]. These rights were identified as "infringed" in the Giudizio Universale Writ of Summons.
- Effective Mitigation Measures: These are defined by substantial GHG reductions, assessed through carbon budgeting[291], underpinning the claimant's request for action (*facere*) based on Climate Analytics analysis.

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[287] *Verein KlimaSeniorinnen Schweiz and Others V. Switzerland* (2024) ECtHR Application No. 53600/20 (9 April 2024) <https://hudoc.echr.coe.int/eng/#> accessed 27 June 2024, par. 550.

[288] Carducci highlighted that its relevance also derives from Italy's inclusion as *amicus curiae* in the ECtHR ruling. During the proceedings the Italian government intervened as *amicus curiae*, supporting Switzerland's position against its State climate obligations and for the non-justiciability of the State based on the separation of powers principle. With its judgment, according to Carducci, the European Court directly addresses to Italy, outlining crucial points that support the plaintiffs' claims, ibid.(n22).

[289] 'In line with the international commitments undertaken by the Member States, most notably under the UNFCCC and the Paris Agreement, and the cogent scientific evidence provided, in particular, by the IPCC (see paragraphs 104-120 above), the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights, notably the right to private and family life and home under Article 8 of the Convention' *,* ibid*,* par. 546.

[290] 'Article 8 [of the CEDU] must be seen as encompassing 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 above' ibid, par. 519.

[291] 'It follows from the above considerations that effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades' Ibid, par. 548.

- Limits on the Margin of Appreciation[292]: Obligations to mitigate climate change should override the State's margin of appreciation, which remains relevant for operational decisions. This sets a clear boundary on the separation of powers argument.
- Scientific Guidance: States and courts must follow scientific guidance on climate change, provided by the IPCC and its reports[293], which underpin the legal principle of "*riserva di scienza*" in the Italian case.

To avoid any infringement of Art. 8 of the Convention and verify the constitutionality Italian courts should in the future interpret the climate change related norms and assess climate policies towards the ECtHR requests[294].

The plaintiffs are certain they will prevail in the Italian case, as the right to a stable and healthy climate, which is an extension of the right to health and respect for family life (as stated by the ECHR), allows them to demand that the court evaluate the State's performance in addressing climate change., in its duty of care to protect its citizens from the effects of climate change within the civil liability.

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[292] Defining a two-tier margin of appreciation with two levels of liberty. Procedural requirements defined in the Paris Agreement Art.4 (n 13). See: Hilson C, 'The Meaning of Carbon Budget within a Wide Margin of Appreciation: The ECtHR's KlimaSeniorinnen Judgment' (2024) Verfassungsblog https://verfassungsblog.de/the-meaning-of-carbon-budget-within-a-wide-margin-of-appreciation/ accessed 27 May 2024

[293] '(…) As regards climate change, the Court points to the particular importance of the reports prepared by the IPCC, as the intergovernmental body of independent experts set up to review and assess the science related to climate change, which are based on comprehensive and rigorous methodology, including in relation to the choice of literature, the process of review and approval of its reports as well as the mechanisms for the investigation and, if necessary, correction of possible errors in the published reports. These reports provide scientific guidance on climate change regionally and globally, its impact and future risks, and options for adaptation and mitigation', *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, (n 22), par. 429. Furthermore, 'It follows from the above considerations that effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades' Ibid, par. 548.

[294] Ibid par. 550.

9. Conclusions

Given that courts have become increasingly important in addressing deficiencies in domestic mitigation policies, civil activism and the efforts of brave lawyers must ensure that fair judgment is not hindered. One could argue that the barrier of unadaptive legal interpretations, which neglect the urgency of mitigating the climate emergency, can contribute to dangerous risks for the human rights of this and future generations.

A re-evaluation of the role of judges as 'guardians' of constitutional and human rights, especially in civil courts, may be then necessary. Judges must not only interpret the rule of law and advocate for issues arising from international obligations but must fully uphold and protect human rights, even from climate change, by adapting the interpretation of the law, while remaining within the rule of law.

This paper suggests that to pursue a 'climate-conscious' approach, a paradigm shift is needed in the educational pathways of judges and lawyers incorporating education on climate sciences and promoting an ethical re-evaluation that prioritizes human rights.

This 'climate-conscious' comprehensive approach followed by University College Dublin should be mandatory, as it provides holistic education in the legal and scientific dimensions of climate change. Only with an understanding of climate change and its impact on the Sustainable Development Goals and Human Rights can a judge, addressing climate change related cases, evolve from being merely a 'mouth of the law' to being a 'megaphone', a strong advocate for human rights and the environment.

This paper has concluded that the arguments put forward by the judge in the first *Giudizio Universale* ruling, such as separation of powers, drop-in-the-ocean and self-regulation, do not hold up to scrutiny. Therefore, the expectation is that the appellate

judges will rule in a more ethical and climate-conscious manner, making this case a decisive step in driving mitigation.

The Italian State is unlikely to avoid its duty for much longer: the final judgment will finally address the important matter of climate obligation and human rights also in Italy.

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