



## Are climate change litigations possible in Italy? by Michele Carducci

The use of climate change litigations is increasing, also in Europe ([Sindico F. et al. \(eds.\) 2020 \(https://www.springer.com/gp/book/9783030468811?fbclid=IwAR1gDIZ16FPVrMYUiAFKuqTBRMaExYnpDJKELRqb1iMroec6hi4IQKWFjHg\)](https://www.springer.com/gp/book/9783030468811?fbclid=IwAR1gDIZ16FPVrMYUiAFKuqTBRMaExYnpDJKELRqb1iMroec6hi4IQKWFjHg))

They have three distinctive characteristics:

- They can be promoted towards States or companies;
- They arise from complaints made by citizens or local authorities;
- They are based on scientific evidence as a parameter for the evaluation of State policies or business decisions.

In Italy, the Network « *Legalità per il clima* (<https://www.giustiziaclimatica.it/>) » is carrying out a feasibility study on the possibility of using litigation strategies both towards the Italian State and companies.

The **Italian strategy** is based on the following characteristics:

- it is modelled on the *Joint Statement on Human Rights and Climate Change* ([https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E&fbclid=IwAR3v9KEatcMttvWMUIJVY\\_gBP2u2uzzO3hgmNTuTFTctaWY9fQbXDZ36EQQg](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E&fbclid=IwAR3v9KEatcMttvWMUIJVY_gBP2u2uzzO3hgmNTuTFTctaWY9fQbXDZ36EQQg)), the *Environmental Defenders Policy* (<https://www.unenvironment.org/news-and-stories/story/un-environment-launches-environmental-defenders-policy>) and the OSCE « *Guidelines on the Protection of Human Rights Defenders* (<https://www.osce.org/odihr/guidelines-on-the-protection-of-human-rights-defenders>);
- it uses the *Oslo Principles on Global Climate Change Obligations* (<https://globaljustice.yale.edu/oslo-principles-global-climate-change-obligations>), and the *Climate Principles for Enterprises* (<https://climateprinciplesforenterprises.org/>);
- it conforms the *Model Statute for Proceedings Challenging Government Failure to Act on Climate Change* (<https://www.ibanet.org/Climate-Change-Model-Statute.aspx>) of the International Bar Association (IBA) to the Italian context.

*Giudizio universale* (<https://giudiziouniversale.eu/>) is the national campaign to promote the first litigation against the Italian State. The lodging of the application will start in November 2020.

Through « *Giudizio universale* » the citizens bring an action before the competent Civil Court (Tribunale Civile), in accordance with article 2043 of the Civil Code and article 28 of the Italian Constitution.

The **Italian Constitutional Court** has issued important judgments on public and private liability, which are very useful for this climate change litigation.

It is necessary to highlight at least three consistent judicial interpretations.

1. First, Judgment no 641/1987 gives citizens the right to report public or private omissions affecting their right to health and a healthy environment. This complaint may work in accordance with article 2043 of the Civil Code also as a preventive action.
2. Second, Judgment no. 16/1992 defines the *neminem laedere* principle as the «basis» of the Rule of Law.

These two judgments show that an Italian litigation can also concern omissions by the State and companies and these omissions can be considered as a violation of fundamental rights, according to the scheme of *neminem laedere* principle and article 2043.

3. Finally, other judgments of the Italian Constitutional Court concern the role of science, in the same perspective provided by the UNFCCC ([Schleussner C.-E., Fyson C.L. 2020 \(https://www.researchgate.net/publication/339804569\\_Scenarios\\_science\\_needed\\_in\\_UNFCCC\\_periodic\\_review\)](https://www.researchgate.net/publication/339804569_Scenarios_science_needed_in_UNFCCC_periodic_review)). The UNFCCC establishes the legal scheme of the climate obligation and the causality in the so-called « *forcing* (<https://climate.nasa.gov/causes/>) » of climate change. It is built on two rules: the rule of « legal » causality, which attributes the liability of climate change to the anthropogenic emission of GHGs; and the rule of « material » causality, which entrusts the concrete identification of the climate obligation to science (so-called « *attribution science* (<https://slate.com/technology/2019/12/attribution-science-field-explosion-2010s-climate-change.html>)).

This scheme suggests that:

- Science is a «basic parameter» of both public and private climate obligation;
- The liability of climate change arises from public or private activities of production or exchange of goods and services that produce GHGs.

In Italy, **science is considered as a source of obligation** (so-called « *riserva di scienza* »: [Servetti D. 2019 \(https://www.pacineditore.it/prodotto/riserva-scienza-tutela-della-salute/\)](https://www.pacineditore.it/prodotto/riserva-scienza-tutela-della-salute/)) in some important Constitutional Court judgements.

Judgment no 282/2002 states that scientific knowledge limits «political decisions on a merely discretionary basis».

Judgment no 116/2006 extends this limit to business decisions (in accordance with the principles of prevention and precaution in the interests of the environment and human health, limits on freedom of economic initiative may be constitutionally justified only after verification of the state of scientific knowledge).

Moreover, the Italian Civil Code (see articles 2082 and 2135 and articles 2043, 2050 and 2051) provides for the correlation between liability and activities of production or exchange of goods and services.

**In conclusion**, it may be said that the Italian context is favourable to climate change litigations.

Within these litigations, the UNFCCC is also directly applicable: in fact, the Framework Convention is transposed into Italian law as *lex specialis* according to article 117 (1) of the Constitution.

The fundamental rights protected in Italian litigations, such as the right to life, the right to health, the right to a healthy environment but also the right to information (recognized by art. 6 of the UNFCCC) and the right to enjoy the benefits of scientific progress (provided by art. 15 of the 1966 UN Covenant on Economic, Social and Cultural Rights) belong to the European constitutional heritage.

In addition to these rights, the « **human right to the climate** » (safe, stable and with « compatible » emissions) should also be recognised (**Vanderheiden S. (ed.) 2012** (<https://books.google.it/books?id=DzsrDwAAQBAJ&pg=PR16&lpg=PR16&dq=vanderheiden+human+right+to+the+climate+safe,+stable&source=bl&ots=lx7Qaheumh&sig=ACfU3lNQ&hl=it&sa=X&ved=2ahUKewipgoDa74DqAhUGSxUIHQxwDDEO6AEwAHoECAoQAO#v=onepage&q=vanderheiden%20human%20right%20t>)). This right is linked to the right to life in the age of anthropogenic climate change and is an attempt to answer the following question: is life possible without a safe and stable climate?

The present era is characterized by a high degree of **ecosystem** (<https://academic.oup.com/bioscience/article/67/12/1026/4605229>), **climate** (<https://academic.oup.com/bioscience/article/70/1/8/5610806>), and **fossil** (<https://www.scientistswarning.org/wiki/methane-emergency/>) emergency.

The stability of the climate system has been compromised: therefore, States and companies circumventing this triple emergency contribute to damage to the climate system and violate the human right to stability.

Without a stable climate, all human rights become « **unstable** (<https://earthjustice.org/blog/2009-december/there-human-right-stable-climate>) ».

In the name of this stability, citizens access justice to denounce the omissions of States and companies that contribute to increasing GHGs.



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