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ACCESS TO JUSTICE IN CLIMATE CHANGE LITIGATION FROM TRANSNATIONAL PERSPECTIVE: PRIVATE PARTY STANDING IN RECENT CLIMATE CASES

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Abstract
Climate change litigation has grown intensively in recent years, becoming an important feature of climate governance in the US and a growing trend in some other jurisdictions. However, climate plaintiffs have traditionally encountered many procedural hurdles, including standing, which has often barred access to justice. To have standing, a party must be able to show some kind of interest in the outcome of the case, which usually stipulates the presence of a concrete injury emanating from an identifiable entity or the existing law. In case of climate change litigation, plaintiffs must thus assert actual injury from industry or state action/inaction with regard to GHG emissions and the resulting climate change, which may still be somewhat difficult from a scientific point of view. This chapter seeks to explore the current trends in private party standing in the US, Australian and European climate cases.

Keywords: Climate change, litigation, access to justice, standing, private parties, United States, Australia, Europe

1. INTRODUCTION

Over the last three decades, the global problem of climate change has been widely discussed and recognized at the highest international level through state participation in various mechanisms, including the much anticipated Paris Agreement adopted at the end of 2015.[1] Within the scientific circles, the consequences of climate change are commonly considered as potentially devastating and, taken at their worst, even deadly for many ecosystems and human communities alike.[2] However, despite the growing international consensus on the necessity of abating climate change, primarily by gradually curbing the global greenhouse gas (GHG) emissions – the result of massive use of fossil fuels and the key driver for global warming – the lack of political will to address the problem in a decisive way has continued to pose a critical challenge to the objective of stabilizing the planet's climate.[3]

The persisting inconsistencies in the regulatory response led to the rise in litigation. To date, defining climate change litigation may still be somewhat difficult, as the latter has taken many forms, including the lawsuits challenging agency permits and rules, lawsuits against governmental inaction

[1]Paris Agreement under the United Nations Framework Convention on Climate Change, CFCCC/CP/2015/L.9/Rev.1. See also *L. Rajamani*, The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations, *Journal of Environmental Law* 2016 (28), pp. 337-358.

[2]See, in general, the Intergovernmental Panel on Climate Change (IPCC), 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

[3]See *R. Lazarus*, Super Wicked Problems and Climate Change: Restraining the Present to Liberate the Future, *Cornell Law Review* 2009 (94), pp. 1153-1233.

with regard to GHG emissions, lawsuits exploring the legal avenues offered by common law and many more.[4] It is true though that despite the constantly growing number of such cases, their jurisdictional distribution has been very uneven, and so far only a few jurisdictions – predominantly pertaining to the common law legal system, most notably the US and Australia – have established a body of relevant case-law.[5] In those jurisdictions climate cases have already become a common feature of climate governance;[6] furthermore, the judiciary itself has been increasingly identified as an important actor in tackling climate change.[7] And yet, the process of bringing climate cases before the courts has usually been all but smooth, as plaintiffs have traditionally encountered many procedural hurdles in bringing forward their claims.[8] Among those hurdles, standing has established a notorious reputation, particularly for its role in barring many private parties[9] in the US access to justice.

In general terms, to have standing, a party must be able to show some kind of interest in the outcome of the case.[10] The purpose of standing, therefore, includes determining the persons that could seek judicial review, ensuring that only those directly concerned are able to litigate the questions at issue.[11] On the other hand, the over-strict application of the standing doctrine can significantly limit the access to justice, particularly in cases of public interest litigation.[12] As with the other procedural challenges, the problems related to plaintiffs' standing are not unique to climate change litigation, nor to environmental litigation as a whole. However, the application of the standing doctrine itself may differ across different jurisdictions.[13]

This chapter seeks to explore the current trends in private party standing in climate cases within three different jurisdictions – the US, Australia and Europe. The next part of the chapter will focus on the US, as the jurisdiction most prolific in terms of relevant jurisprudence, and will be divided into three sections, each discussing a particular group of cases: 1) cases concerning climate change impact assessment; 2) cases concerning the regulation of GHG emissions and air quality; 3) common law cases. The third part will discuss standing in Australian climate cases and the last one will address the revolutionary Dutch *Urgenda* case in Europe.

2. STANDING IN THE US

In assessing standing in contemporary environmental litigation, the US federal courts have commonly relied on the renown Supreme Court's case *Lujan v. Defenders of* Wildlife,[14] which revolved around the compliance of the US government's activities abroad with the federal endangered species legislation, and resulted in a restrictive approach to environmental plaintiffs' standing.[15] In that case, the Supreme Court articulated a three-element 'irreducible constitutional minimum of standing' (the *Lujan* test): 1) an injury in fact (that is, an invasion of a legally protected interest) –

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[4]For a discussion on the definition of climate change litigation, see *D. Markell & J. B. Ruhl*, An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?, *Florida Law Review* 2012 (64), pp. 26-27; *J. Peel & H. M. Osofsky*, Climate Change Litigation's Regulatory Pathways: A Comparative Analysis of the United States and Australia, *Law & Policy* 2013 (35), pp. 152-153.

[5]See *J. Peel & H. M. Osofsky*, Climate Change Litigation: Regulatory Pathways to Cleaner Energy, 2015, pp. 16-18. See also *M. Wilensky*, Climate Change in the Courts: An Assessment of Non-US Climate Litigation, *Duke Environmental Law & Policy Forum* 2015 (26), p. 131.

[6]*Peel & Osofsky*, *supra*, note 4 at p. 175.

[7]See e.g. *B. J. Preston*, The Contribution of the Courts in Tackling Climate Change, *Journal of Environmental Law* 2016 (28), pp. 11-17.

[8]See *Peel & Osofsky*, *supra*, note 5 at pp. 266-267.

[9]In this chapter, the term 'private parties' refers to individuals and NGOs.

[10]Sierra Club v. Morton, 405 U.S. 727, 731-732 (1972). See also *A. Scalia*, The Doctrine of Standing as an Essential Element of the Separation of Powers, *Suffolk University Law Review* 1983 (17), p. 882.

[11]*W. Fletcher*, The Structure of Standing, *Yale Law Journal* 1988 (98), p. 222.

[12]On public interest litigation in the context of climate change see e.g. *J. Lin*, Litigating Climate Change in Asia, *Climate Law* 2014 (4), pp. 140-149.

[13]See e.g. *J. Hammons*, Public Interest Standing and Judicial Review of Environmental Matters: A Comparative Approach, *Columbia Journal of Environmental Law* 2016 (41), p. 515.

[14]Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

[15]See, in general, *C. R. Sunstein*, What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III, *Michigan Law Review* 1992 (91), pp. 163-236.

which is *(a)* concrete and particularized and *(b)* actual or imminent and not conjectural or hypothetical; (2) a causal connection between the injury and the conduct complained of – that is, the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party; and (3) a likelihood that the injury will be redressed by a favourable decision.[16] The Supreme Court has since held that in environmental cases, the injury within this meaning should not be interpreted as injury to the environment itself, but rather as injury to the plaintiff,[17] hence environmental plaintiffs must be able to demonstrate their use of the affected area to adequately allege injury in fact.[18]

As shall be discussed below, in terms of climate change litigation, the application of the *Lujan* test has been quite problematic, because of the complex scientific background to the global problem of climate change itself.[19] Fortunately enough, though, the issue of climate science has not proven to be an insurmountable obstacle in the way of standing, as demonstrated by the Supreme Court's position in its first and, perhaps, most renown climate case, *Massachusetts v. EPA*.[20] In this case, the plaintiffs, including the state of Massachusetts, other states, local governments and private organisations, alleged that the US Environmental Protection Agency (EPA) has abdicated its responsibility under the federal air quality legislation – the Clean Air Act (CAA) – to regulate automobile GHG emissions.[21] The Supreme Court recognized at the highest level the causal link between GHG emissions and climate change, and the impact of climate change on the environment and stated that the widely shared nature of such an injury does not diminish the interest of the concrete party.[22] Moreover, the Court held that the fact that there are other major GHG emitters like China and India, should not preclude the US agency from its regulatory duty, even if the latter by itself is unable to solve the global problem, since '[a] reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.'[23] However, although this case arguably facilitated standing for state plaintiffs, with the Supreme Court holding that the injury to the state of Massachusetts lawmaking and regulatory capabilities required relaxed standing, it did not provide an answer with regard to standing of private parties.[24] This part will now turn to examine the relevant cases in detail.

2.1. Cases Concerning Climate Change Impact Assessment

This category of cases, revolving around the question whether climate change should be considered in environmental impact assessment, is by far the oldest in the context of climate change litigation, dating back to its dawn in the early 1990s;[25] throughout the years, private plaintiffs faced the challenges to standing with mixed success.

In a number of earlier cases, courts denied standing because the alleged failure to consider the impact of climate change arguably could not be traced to plaintiff's injury. This was the court's line of reasoning in case *Center for Biological Diversity v. U.S. Department of the Interior*, where environmental NGOs challenged a leasing plan for oil and gas development in the outer continental shelf off the coast of Alaska, claiming that the leasing programme violated the National Environmental Policy Act (NEPA), because the agency failed to take into consideration the effects of

[16] *Lujan*, at 560-561.
[17] Friends of the Earth, Inc. v. Laidlaw Environmental Services (toc), Inc., 528 U.S. 167, 181 (2000).
[18] *Id.*, at 183 (quoting the earlier Supreme Court case *Sierra Club v. Morton*, at 735).
[19] It is worth mentioning that in some climate cases, the judiciary explicitly distanced itself from this issue by alluding, *inter alia*, to the lack of scientific and, accordingly, regulatory competence to deal with climate change, thus simply 'bouncing' the problem back to the traditional decision-making bodies. Thus, in *AEP v. Connecticut*, the Supreme Court stressed that 'judges lack the scientific, economic, and technological resources an agency can utilize in coping with issues of this order' (American Elec. Power Co., Inc. v. Connecticut, 564 U.S. 410, 428 (2011)).
[20] Massachusetts v. E.P.A 549 U.S. 497 (2007).
[21] *Id.*, at 505.
[22] *Id.*, at 499, 553-555.
[23] *Id.*, at 499-500.
[24] See *D. S. Green*, Massachusetts v. EPA Without Massachusetts: Private Party Standing in Climate Change Litigation, *Environs: Environmental Law & Policy Journal* 2012 (36), pp. 35-63.
[25] See City of Los Angeles v. National Highway Traffic Safety Admin. 912 F.2d 478 (D.C. Cir. 1990).

climate change.[26] Relying on the *Lujan* test, the Court of Appeals for the District of Columbia Circuit stressed that the 'standing analysis does not examine whether the environment in general has suffered an injury', but rather whether a party has suffered an injury that affects it in a 'personal and individual way'.[27] With regard to the latter, the court held that the plaintiffs averred that any significant adverse effects of climate change 'may' occur at some point in the future, but this does not amount to the actual, imminent, or 'certainly impending' injury required to establish standing.[28] Furthermore, the court held that climate change is a harm that is shared by humanity at large, and the redress that plaintiffs seek – to prevent an increase in global temperature – is not focused any more on the plaintiffs than it is on the remainder of the world's population,[29] thus the alleged injury is too generalized to establish standing.[30] A fairly similar conclusion was reached in some other earlier climate cases falling into this category.[31]

On the other hand, private parties in some other earlier climate cases arising under NEPA were successful in terms of standing. In the 2011 case *WildEarth Guardians v. US Forest Service*, for instance, an environmental NGO challenged the environmental impact statement issued by the agency with regard to coal mining operation on National Forest land, claiming that the agency failed to identify reasonable alternatives for reducing methane levels within mines and the respective impact on climate change.[32] In support of its standing, the organization presented a declaration from one of its members, who described the various ways that climate change injured his interests, namely, how it negatively affected his habitual outdoor activities.[33] The District Court for Colorado stressed that an association has standing if: '(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'[34] In the present case, the court agreed with the plaintiff NGO that the contested decision would cause injury to its members' enjoyment of the lands at issue and the injury was not conjectural or hypothetical and was traceable to the action of the defendants, thus standing was granted.[35]

In recent years, the tradition of granting standing to private parties in such cases has been upheld. A notable example of this is the case *WildEarth Guardians v. Jewell,*[36] where environmental organizations claimed that the Bureau of Land Management failed to adequately consider several environmental concerns, including the increase in local pollution and global climate change caused by future mining, before authorizing the leasing of the tracts of federal land.[37] The plaintiff NGOs stated that the agency's decision harmed the interests of their members, who had aesthetic interests in the land surrounding the tracts concerned and planned to visit the area regularly for recreational purposes.[38] Although the District Court for Columbia was persuaded that the increase in local air, water and land pollution from mining on the above-mentioned tracts injured the plaintiffs' members, it denied standing because arguably they could not demonstrate a link between their members' recreational and aesthetic interests, 'which are uniformly local, and the diffuse and unpredictable effects of GHG emissions.'[39] However, according to the Court of Appeals for the District of Columbia Circuit, such an approach 'sliced the salami too thin'.[40] Although the D.C. Circuit still considered that the respective environmental groups 'cannot establish standing based on the effects of global climate

[26]Center for Biological Diversity v. U.S. Dept. of Interior, 563 F.3d 466 (D.C. Cir. 2009).
[27]*Id.*, at 478.
[28]*Id.*
[29]*Id.*
[30]*Id.*
[31]See Amigos Bravos v. U.S. Bureau of Land Management, 816 F.Supp.2d 1118, 1123 (D.N.M. 2011).
[32]WildEarth Guardians v. US Forest Service, 828 F.Supp.2d 1223, 1233-1234 (D.Colo. 2011).
[33]*Id.*
[34]*Id.*, at 1234-1235.
[35]*Id.*
[36]WildEarth Guardians v. Jewell, 738 F.3d 298 (D.C. Cir. 2013).
[37]*Id.*, at 305.
[38]*Id.*, at 305-306.
[39]*Id.*, at 306-307.
[40]*Id.*, at 307

change', it stressed that they have established 'a separate injury in fact not caused by climate change – the harm to their members' recreational and aesthetic interests from *local* pollution' and concluded that the 'aesthetic injury follows from an inadequate [environmental impact assessment] whether or not the inadequacy concerns the same environmental issue that causes their injury'.[41] Most importantly, the court agreed that 'if the [agency was] required to adequately consider each environmental concern, it could change its mind about authorizing the lease offering'.[42] This line of reasoning found support in some other recent cases.[43]

It may be observed that in these cases the issue of harm from local pollution prevailed over the alleged global impact of climate change, although the consideration of the latter was held important in preventing the above-mentioned harm. The situation was somewhat different in the 2015 case *WildEarth Guardians v. US Forest Service*,[44] where, similarly, environmental NGOs challenged agency decisions approving coal leases that would expand coal mines in area partially within national grassland, which was a unit of national forest system, claiming that the agency did not take a hard look at direct, indirect and cumulative local air quality impacts as well as climate impacts resulting from coal mining and combustion.[45] The plaintiff NGOs relied on the declarations from their members, who provided numerous examples of how local air pollution – including haze, dust clouds, particulate matter emissions – and/or climate change-related weather events negatively impacted their lives.[46] Notably, with regard to climate change, it is important to notice that these declarations were made by the respective NGOs' members from different and, often, geographically not proximate states, including Colorado, Florida, New Jersey, Texas, California and Wyoming.[47] The District Court for Wyoming, referring to the two above-mentioned decisions, rejected the argument that 'petitioners lack standing when they assert that coal leasing in the areas of concern would impact global climate change and would in turn threaten their members' enjoyment of the at-issue areas' and concluded that 'petitioners have standing to challenge the [decision] even if their argument that [this decision] failed to adequately analyze climate change impacts has no common nexus with the concrete injury to recreational interests'.[48]

In contrast, the issue of analysing the impact of climate change was central in the recent case concerning biodiversity and endangered species, *Oceana v. Pritzker*, where the plaintiff – an environmental group – had to demonstrate its standing on behalf of its members in a lawsuit, challenging the opinion of National Marine Fisheries Service with regard to loggerhead sea turtles.[49] The contested opinion, *inter alia*, allegedly failed to explain the connection between evidence of present and short-term effects caused by climate change and led the agency to the conclusion that climate change would not result in any significant impact on the species.[50] The District Court for Columbia stressed that an organizational plaintiff, such as Oceana, 'may have standing to sue on its own behalf to vindicate whatever rights and immunities the association itself may enjoy or, under proper conditions, to sue on behalf of its members asserting the members' individual rights.'[51] The court acknowledged that Oceana had standing to challenge the agency's decision on behalf of its members because it proffered declarations from five of them, who stated that they enjoyed observing and/or studying loggerheads and had plans to continue doing so.[52] Since the agency's decision permitted an unlawfully excessive amount of harm to loggerheads, which threatened the enjoyment

[41] *Id.*
[42] *Id.*, at 306.
[43] See High Country Conservation Advocates v. United States Forest Service, 52 F.Supp.3d 1174, 1187 (D.Colo. 2014); Montana Environmental Information Center v. U.S. Bureau of Land Management 615 Fed.Appx. 431 (9th Cir. Mem. 2015).
[44] WildEarth Guardians v. US Forest Service 120 F.Supp.3d 1237 (D.Wyo. 2015).
[45] *Id.*, at 1246.
[46] *Id.*, at 1250-1255.
[47] *Id.*
[48] *Id.*, at 1257.
[49] Oceana, Inc. v. Pritzker, 125 F.Supp.3d 232 (D.D.C. 2015).
[50] *Id.*, at 250-252.
[51] *Id.*, at 240.
[52] *Id.*, at 241.

and study of those animals by those members, vacating this decision would redress the above-mentioned injury.[53] The court thus concluded that Oceana's members had standing to sue in their own right and while their interests were germane to Oceana's purpose as an ocean conservation group, and their individual participation was not required either by the nature of Oceana's claims or by the relief that it requested, Oceana had organisational standing to sue on their behalf.[54]

The situation, though, was different with regard to organisational standing in case *Kunaknana v. US Army Corps of Engineers*,[55] where an environmental NGO and residents of a town in Alaska challenged the decision to issue a permit to a company to fill certain wetlands in the National Petroleum Reserve in order to develop a drill site.[56] The plaintiffs claimed, *inter alia*, that the issuance of the permit violated NEPA because the defendant relied on outdated environmental impact assessment and failed to carry out supplemental analysis in light of new information about the impact of climate change.[57] The District Court for Alaska granted standing to residents, holding that their habitual activities within the vicinity of the project's area, namely 'aesthetic, spiritual, cultural, religious, and recreational enjoyment' of the land, could be directly harmed by the project, traceable to the defendant's actions and redressable by a favourable court decision.[58] However, the court denied standing to the NGO, holding that none of its members' declarations indicated any past activities in the project area or concrete plans to visit it in the future, while their general interest in certain animal species was insufficient to confer standing to challenge a single project affecting some portion of those species with which they had no specific connection.[59]

2.2. Cases Concerning the Regulation of GHG Emissions and Air Quality

Another established trend in climate change litigation has seen the exploration of the avenues offered by legislation concerning GHG emissions and air quality, namely the CAA; the general picture of private party standing in these cases, though, was fairly similar to that in the cases described in the category above.

Thus, in an early case *Northwest Environmental Defense Center v. Owens Corning Corp.*, where environmental groups brought action alleging that manufacturer was constructing facility without having obtained preconstruction permit required under the CAA, the District Court for Oregon noted that the challenged future GHG emissions sources were local and members of the plaintiff organizations resided, worked, and recreated near the partially-completed facility.[60] The court, therefore, agreed that 'those individuals would suffer some direct impact from emissions entering into the atmosphere from defendant's facility, as would the local ecosystem with which these individuals constantly interact.'[61] With regard to those emissions impact on global warming and the subsequent harm to the plaintiff, the court observed the indirect nature of such a link; yet it stressed that the adverse effects alleged in plaintiffs' complaint would be felt by them in the place of their residence, which was also the place of defendant's emissions sources.[62] The court, therefore, stated that while the adverse effects from the emissions would not necessarily be limited to that geographical place, the 'plaintiffs' injuries are not diminished by the mere fact that other persons may also be injured by the defendant's conduct'.[63] Furthermore, even though the defendant was not the only entity allegedly 'discharging pollutants into the atmosphere that may adversely impact the plaintiffs,' the court held that the traceability element 'does not require that a plaintiff show to a scientific certainty that the

[53] *Id.*
[54] *Id.*
[55] Kunaknana v. U.S. Army Corps of Engineers 23 F.Supp.3d 1063 (D.Alaska 2014).
[56] *Id.*, at 1067-1068.
[57] *Id.*, at 1093.
[58] *Id.*, at 1085.
[59] *Id.*, at 1078-1084.
[60] Northwest Environmental Defense Center v. Owens Corning Corp. 434 F.Supp.2d 957, 965 (D.Or. 2006).
[61] *Id.*
[62] *Id.*
[63] *Id.*

defendant's emissions, and only the defendant's emissions, are the source of the threatened harm.'[64] Finally, with regard to redressability, the court concluded that 'in environmental and land use cases, the challenged harm often results from the cumulative effects of many separate actions that, taken together, threaten the plaintiff's interests', thus 'the relief sought in the complaint need not promise to solve the entire problem'.[65]

Strangely enough, the considerations on standing in this case, though subsequently endorsed by the Supreme Court in *Massachusetts v. EPA*, did not find much support in courts in the following years. An example of this is the recent case *Washington Environmental Council v. Bellon*, where environmental organisations sought to compel the Washington State Department of Environmental Quality and other agencies to regulate GHG emissions from the state's five oil refineries, by claiming that the agencies failed to define the emission limits and apply those limits to the oil refineries in question in violation of the CAA.[66] Although the defendants admitted that in Washington, GHGs have caused climate-related changes, such as 'rising sea levels, coastal flooding, acidification of marine waters, declines in shellfish production, impacts to snow pack and water supplies, agricultural impacts on the east side of the Cascades, and changes in forest fires' and did not dispute the fact that the oil refineries in question emit GHGs,[67] they contended that the case must be dismissed for lack of standing.[68] In support of their standing, members of the plaintiff NGOs submitted affidavits attesting to their current and future recreational, aesthetic, economic, and health injuries resulting from elevated levels of GHGs, including their impeded ability to enjoy habitual outdoor activities, damage to their property caused by flooding and wildfires as well as respiratory health problems in their families.[69]

The Court of Appeals for the Ninth Circuit agreed that the above-mentioned facts satisfied the injury in fact requirement of the *Lujan* test;[70] however, it held that plaintiffs did not meet their burden in satisfying the 'irreducible constitutional minimum' requirements under either the causality or redressability prong.[71] With regard to causality, the court delved into a lengthy discussion on how the plaintiffs' position was compromised by the global scale and nature of climate change, its drivers and effects. Thus it held that plaintiffs offered only 'vague, conclusory statements' that the agencies' failure to set the standards at the oil refineries contributed to GHG emissions, which in turn, contributed to climate change that resulted in their purported injuries.[72] Specifically, the court held that plaintiffs' causal chain from the lack of the above-mentioned standards to their personal injuries consisted of 'a series of links strung together by conclusory, generalized statements of contribution, without any plausible scientific or other evidentiary basis that the refineries' emissions are the source of their injuries.'[73] The court concluded that 'attempting to establish a causal nexus in this case may be a particularly challenging task' due to the 'natural disjunction between plaintiffs' localized injuries and the greenhouse effect,' as GHGs, 'once emitted from a specific source, quickly mix and disperse in the global atmosphere and have a long atmospheric lifetime' and there is 'limited scientific capability in assessing, detecting, or measuring the relationship between a certain GHG emission source and localized climate impacts in a given region.'[74]

Furthermore, the court stressed that 'there are numerous independent sources of GHG emissions, both within and outside the [US], which together contribute to the greenhouse effect', while the above-mentioned oil refineries in Washington are responsible for 5.9% of GHG emissions in Washington, which renders the effect of this emission on global climate change 'scientifically

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[64] *Id.*, at 967.
[65] *Id.*, at 968.
[66] Washington Environmental Council v. Bellon, 732 F.3d 1131, 1135 (9th Cir. 2013).
[67] *Id.*, at 1136.
[68] *Id.*, at 1138-1139.
[69] *Id.*, at 1139-1141.
[70] *Id.*, at 1141.
[71] *Id.*, at 1147.
[72] *Id.*, at 1142.
[73] *Id.*
[74] *Id.*, at 1143.

indiscernible'.[75] In court's view, in contrast to the situation in *Massachusetts v. EPA*, where the Supreme Court held that the GHG emission levels from motor vehicles were a 'meaningful contribution' to global GHG concentrations, given the fact that the US automobile sector accounted for 6% of world-wide carbon dioxide, the GHG emissions contribution in the present case was not meaningful from a global perspective.[76] Similarly, with regard to resdressability, the court stated that as the effect of collective emissions from the oil refineries on global climate change is 'scientifically indiscernible,' and plaintiffs' injuries were likely to continue unabated even if the oil refineries were subject to the requested standards.[77]

A somewhat similar decision was reached in another recent case, *Communities for a Better Environment v. EPA*, where three environmental NGOs challenged EPA's decision not to alter primary national ambient air quality standards for carbon monoxide (CO) and not to adopt secondary standards.[78] According to the CAA, the EPA had to establish the latter standards for six common air pollutants, including CO; the primary standards had to be set at a level 'requisite to protect the public health,' which encompassed human health, while the secondary standards had to be set at a level 'requisite to protect the public welfare,' which encompassed, *inter alia*, the welfare of animals, the environment and climate.[79] Specifically with regard to climate change, it is worth noting that since 1985 EPA has found that a secondary standard for CO was not needed to protect the public welfare, and the five-year review of the above-mentioned standards initiated by the EPA in 2007 focused on CO effect on climate, as the only element of public welfare known to be affected by it.[80] In 2011, the EPA concluded that the link between CO and climate change was tenuous, thus it could not determine whether any secondary standard would reduce climate change.[81] Plaintiffs, accordingly, challenged the lack of a secondary standard, contending that CO 'will worsen global warming and in turn displace birds that one of petitioners' members observes for recreational purposes'.[82]

The Court of Appeals for the District of Columbia Circuit, however, held that plaintiffs have failed to establish the causation element of standing, because they 'have not presented a sufficient showing that [CO] emissions in the [US] – at the level allowed by EPA – will worsen global warming as compared to what would happen if EPA set the secondary standards in accordance with the law as petitioners see it'.[83] The court was persuaded by the EPA's findings that CO effects on climate change involved 'significant uncertainties', thus it was impossible to anticipate how any secondary standard that would limit its ambient concentrations in the US would in turn affect climate and thus any associated welfare effects, and concluded that plaintiffs' theory of causation was 'a bridge too far'.[84]

2.3. Common Law Cases

Among the US climate cases falling under the common law category, the one extremely interesting, in terms of private party standing, is the renown *Comer v. Murphy Oil*.[85] According to the plaintiffs – the property owners in Mississippi – the defendants, including a number of fossil fuel producing companies, caused the emission of GHGs that contributed to global warming and, accordingly, to a rise in sea levels, which added to the ferocity of Hurricane Katrina, ultimately destroying plaintiffs' property.[86] Unlike cases in other categories, this lawsuit was directed not against the regulating bodies, but against the actual polluters themselves, with plaintiffs asserting claims for compensatory and punitive damages based on, *inter alia*, state common law actions of public and

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[75]*Id.*, at 1143-1144.
[76]*Id.*, at 1145-1146.
[77]*Id.*, at 1147.
[78]Communities for a Better Environment v. E.P.A., 748 F.3d 333 (D.C. Cir. 2014).
[79]*Id.*, at 334.
[80]*Id.*, at 335.
[81]*Id.*
[82]*Id.*, at 338.
[83]*Id.*
[84]*Id.*
[85]Comer v. Murphy Oil USA, 585 F.3d 855 (5th Cir. 2009).
[86]*Id.*, at 859.

private nuisance.[87] The Court of Appeals for the Fifth Circuit granted plaintiffs standing, holding that all three elements – that is injury, causation and redressability – were satisfied. In particular, the court reiterated the Supreme Court's position in *Massachusetts v. EPA* with regard to causal chain between GHG emissions, global warming, extreme weather events (namely the severity of flooding and hurricanes) and, consequently, the related damage to private property.[88] Similarly, the court rejected allegations that GHG emissions from the defendants' activities were too negligible to consider, holding that the 'fairly traceable' test should not be used as an inquiry into whether a defendant's pollutants are the sole cause of an injury but rather whether 'the pollutant causes or *contributes to* the kinds of injuries alleged by the plaintiffs', while the claimed monetary damages accounted for redressability.[89]

The case, though, was ultimately dismissed, and on refile, the District Court for the Southern District of Mississippi held that the plaintiffs lacked standing because their claims were not fairly traceable to the companies' conduct.[90] According to the court, '[a]t most, the plaintiffs can argue that the types of emissions released by the defendants, when combined with similar emissions released over an extended period of time by innumerable manmade and naturally-occurring sources encompassing the entire planet, may have contributed to global warming, which caused sea temperatures to rise, which in turn caused glaciers and icebergs to melt, which caused sea levels to rise, which may have strengthened Hurricane Katrina, which damaged the plaintiffs' property.'[91] Most interestingly, the court availed itself of what might be described as a scientifically-impossible test to plaintiffs' standing, put forward by the defendants: '(1) what would the strength of Hurricane Katrina have been absent global warming; (2) how much of each Plaintiff's damages would have been attributable to Hurricane Katrina if it had come ashore at a lower strength; and (3) how much of each Plaintiff's damages was attributable to failures by others, [for example] governmental agencies, to prevent additional injury.'[92] It does seem, though, that such a narrow interpretation of traceability represents a rather radical approach, which, in case of general acceptance, would most probably render climate change litigation impossible. Fortunately, however, many courts have been unwilling to introduce such draconian measures to test plaintiffs' standing.

An example of a much more positive approach may be observed in another very interesting line of common law climate cases, the so-called atmospheric trust litigation. These cases, involving children plaintiffs, is the result of a nationwide legal campaign initiated in 2011 in every state in the US. In such cases, the plaintiffs recourse not to the 'conventional' statutory provisions on air quality or impact assessment, but to the common law public trust doctrine – an ancient doctrine requiring government to hold vital natural resources in trust for the public beneficiaries, thus protecting those resources from monopolization or destruction by private interests[93] – which is explicitly enshrined in some state constitutions and grants environmental human rights.[94] Although so far the success rate of such cases has been rather low, they have shown an interesting and quite promising trend with regard to liberalization of the standing requirements.

For example, in *Kanuk v. Alaska*, the plaintiffs – a group of Alaskan children, acting through their guardians – requested the Superior Court of Alaska to, *inter alia*, declare the atmosphere a public trust resource under the state's Constitution, and that the state has an affirmative fiduciary obligation to protect and preserve it for present and future generations of Alaskans, by reducing the CO_2 emissions by at least 6% per year from 2013 through at least 2050 and preparing and maintaining a

[87]*Id.*
[88]*Id.*, at 861-864.
[89]*Id.*, at 866-867.
[90]Comer v. Murphy Oil USA, Inc., 839 F.Supp.2d 849 (S.D.Miss. 2012).
[91]*Id.*, at 861.
[92]*Id.*, at 862.
[93]*M. C. Wood & C. W. Woodward IV*, Atmospheric Trust Litigation and the Constitutional Right to a Healthy Climate System: Judicial Recognition at Last, *Washington Journal of Environmental Law & Policy* 2016 (6), pp. 647-648.
[94]*A. B. Klass*, The Public Trust Doctrine in the Shadow of State Environmental Rights Laws: A Case Study, *Environmental Law* 2015 (45), pp. 439-440.

full and accurate annual accounting of Alaska's CO_2 emissions.[95] The plaintiffs supported their claims by alleging that they had been specifically and personally affected by climate change in the form of erosion from ice melt and flooding from increased temperatures, decline of animal life and receding glaciers, which negatively impact the ability to enjoy and pass on local traditions, and culture.[96]

Although the superior court did not go into details of the case and dismissed it as non-justiciable,[97] on the appeal, the Supreme Court of Alaska approached the case more diligently. With regard to standing, the court agreed with the plaintiffs that the alleged injuries from climate change were both specific and personal.[98] The court concluded that the complaint showed direct injury to a range of recognizable interests, especially in light of the court's broad interpretation of standing and the policy of promoting citizen access to justice, thus the plaintiffs' allegations were sufficient to establish standing.[99] Furthermore, the court was not persuaded by the argument that climate change affects the humanity at large and does not distinguish the plaintiffs from any other person in Alaska.[100] The court stressed the individual nature of the harm to the plaintiffs and further contended that denying injured persons standing on grounds that others are also injured would effectively prevent judicial redress for the most widespread injury solely because it is widespread, which would perverse the public policy.[101] The court also agreed with the plaintiffs that according to this line of reasoning, no lawsuit could ever be filed concerning any matter of public interest, thus most environmental litigation would be prohibited.[102] This case, though, was decided by a state court; however a fairly identical position on plaintiffs' standing was reached in two other similar public trust climate cases by another state court and federal court respectively.[103]

3. STANDING IN AUSTRALIA

In a general sense, climate change litigation in Australia followed a pattern fairly similar to its US counterpart, focussing on challenges to administrative decisions or conduct related to approval of developing coal-fired power plants, coal mines, etc.[104] At the same time, in Australia, the procedural barriers related to standing have been less of a hurdle due to open standing provisions in most environmental and planning laws.[105] In such cases, the emphasis is usually made on the injury to the environment itself, rather than injury to any particular plaintiff.[106] Of course, the focus on environmental injury may still be a problem in case of climate change. Thus, for example, in an early case *Wildlife Whitsunday*, where environmental conservation groups challenged the administrative decisions concerning the development of two new coal mines, contending that the resulting GHG emissions would contribute to global warming and thus cause harm to important and vulnerable ecosystems, including the Great Barrier Reef World Heritage Area, the Federal Court of Australia refused to acknowledge the contested projects' detrimental effect to the environment and dismissed the case.[107] Specifically, the court stated that the connection between the burning of coal at some particular place in the world, the resulting GHG emissions, their contribution to global warming and the latter's impact on the environment, was far from obvious.[108]

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[95]Kanuk ex rel. Kanuk v. State, Dept. of Natural Resources, 335 P.3d 1088, 1091 (Alaska 2014).

[96]*Id.*, at 1092-1093.

[97]*Id.*, at 1091.

[98]*Id.*, at 1092-1093.

[99]*Id.*, at 1093.

[100]*Id.*

[101]*Id.*, at 1094.

[102]*Id.*

[103]See Funk v. Wolf, 144 A.3d 228 (Pa.Cmwlth. 2016); Juliana v. United States, WL 6661146 (D.Or. 2016).

[104]See *B. J. Preston*, The Influence of Climate Change Litigation on Governments and the Private Sector, *Climate Law* 2011 (2), p. 486.

[105]*Peel & Osofsky*, *supra*, note 5 at p. 275

[106]*E. D. Kassman*, How Local Courts Address Global Problems: The Case Of Climate Change, *Duke Journal of Comparative & International Law* 2013 (24), p. 215.

[107]Wildlife Preservation Society of Queensland Proserpine/Whitsunday Branch Inc v. Minister for the Environment & Heritage & Ors [2006] FCA 736.

[108]*Id.*, para. 72.

Meantime, in those cases where the question of standing did emerge, Australian courts followed the common law 'special interest' test, which requires more than intellectual or emotional concern of individuals in the protection of the environment, yet holds that formal representation in a consultative process, government's recognition and/or funding, or a nexus with protection of a particular segment of the environment may be sufficient to establish organisational standing.[109] In *Haughton v. Minister for Department of Planning and Ors*, for instance, the Land and Environment Court of New South Wales upheld the standing of an individual, who challenged the Minister's for Planning approvals for two new coal-fired power stations, claiming, *inter alia*, that the Minister failed to consider the principles of ecologically sustainable development and the impact of those projects on climate change as the elements of the public interest.[110] In support of his standing, the applicant presented numerous arguments, affirming his interest in the matter, including commitments to environmental activism and campaigns, active membership in an NGO focussing on combating climate change, which contributed to the related public engagement, as well as the fact that he himself lived in an area, susceptible to severe weather events that could be worsened due to climate change.[111] The court was persuaded by these arguments and held that 'there can be no doubt as to the significant interest and concern held by [the plaintiff] in the anthropogenic effects of climate change brought about by the combustion of fossil fuels, particularly in the use of coal as the source of energy for the production of electricity.'[112] The court also recognized that 'that interest and concern extends beyond that which may be held by many members of the public', as indicated by the plaintiff's environmental activities,[113] even despite the fact that his concerns and views 'are not unique'.[114]

To a similar effect was the Victorian Civil and Administrative Tribunal's decision in case *Dual Gas*, where three environmental NGOs and an individual challenged a works approval for a new power station, which was supposed to introduce new power generation technology using brown coal and natural gas.[115] According to the project developers, the new plant was to produce power with a lower GHG emissions intensity than conventional coal-fired power plants, thus effectively becoming a 'part of the solution' to global climate change; however, the project's opponents argued that it actually was a ‘part of the problem’, as it still contributed to substantial GHG emissions in Victoria.[116] These were essentially the arguments of the private parties who opposed the project's approval in the present case, by claiming that the project will result in a discharge of GHG emissions and other air pollutants, including sulphur dioxide, nitrogen oxides and particulates, that is inconsistent with the air quality management.[117]

The court delved into a quite thorough discussion on the matter of affected person's interests and, accordingly, standing under the relevant legislation. It concluded that the latter granted a more liberal test for standing in environmental matters than the 'special interest' test applied at common law; yet the court remained unconvinced that the relevant provisions gave open standing to any person, thus some kind of interest must still have been demonstrated.[118] This interest, in court's view, had to be demonstrated through a 'material connection with the subject matter of the decision under review' and might have emanated from 'a genuinely held and articulated intellectual or aesthetic concern [...], as opposed to a broader environmental concern generally.'[119] The difficulty, however, once again lay in determining the 'point beyond which the affectation of a person’s interests by a decision should be regarded as too remote or too general to support standing', even where there is

[109]Dual Gas Pty Ltd & Ors v Environment Protection Authority [2012] VCAT 308, para. 116.
[110]Haughton v Minister for Planning and Macquarie Generation [2011] 185 LGERA 373, para. 9.
[111]*Id.*, para. 82.
[112]*Id.*, para. 93.
[113]*Id.*
[114]*Id.*, para, 94.
[115]*Dual Gas*, paras. 1-2.
[116]*Id.*, paras. 3-5.
[117]*Id.*, para. 8.
[118]*Id.*, paras. 116-118.
[119]*Id.*, para. 129.

very wide, albeit not unlimited standing.[120] The court held that in such cases, certain principles may apply in order to overcome the above-mentioned difficulties, including 'the nature of the particular proposal for the works approval, the materiality or breadth of its potential environmental impact, and the involvement of the person in the works approval application process.'[121]

In the present case, the court deemed relevant that the potentially global impact of GHG emissions rendered wider standing appropriate, even in cases 'where a person may not have a direct connection to the location of the works approval', as opposed to situations where localised emissions of air pollutants was contested and where, accordingly a greater connection should be established.[122] However, even with regard to GHGs, the court considered important the materiality threshold in relation to 'the type or size of the works or emissions that is relevant to whether a person's interests are genuinely affected' as well as to 'the connection of the person to the particular subject matter of the decision under review'.[123] With regard to the two latter criteria, the court held that the significant contribution of GHG emissions in this specific case 'raises potential issues of material interest or concern to all Victorians, and creates an almost unique level of "affected interests" and standing compared to the more usual sort of works approval matters', while 'participation in the process or some genuine connection with the proposal may be a relevant factor in demonstrating more than a general environmental concern, and something that amounts to an affected interest.'[124] Applying these two principles to the parties objecting the project in the present case, the court, therefore, concluded that all four of them demonstrated genuine connection with GHG emissions and climate change; however, only three of them were able to provide evidence of their involvement in the present works approval process, thus satisfying the standing requirements.[125]

4. STANDING IN EUROPE: THE DUTCH URGENDA CASE

As already mentioned, climate change litigation has been largely a US and, to a lesser extent, Australian phenomenon; meanwhile, the bulk of climate-related European cases has traditionally revolved around the established EU emissions trading scheme (EU ETS) before the EU courts and under the provisions of the EU law.[126] Such cases have not been driven by NGOs, but almost exclusively by the EU Member States and European Commission, while cases brought by the industry have been commonly dismissed due to the restrictive approach to private party standing in the EU law.[127] At the same time, along with its Member States, the EU itself is a member of the Aarhus Convention,[128] an international legal instrument, presenting a rights-oriented approach to environmental protection,[129] and described as a key driver for environmental rights in Europe,[130] with the public access to justice in environmental matters being one of the Convention's three pillars.[131]

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[120]*Id.*, para. 132.

[121]*Id.*, para. 133.

[122]*Id.*, para. 134.

[123]*Id.*

[124]*Id.*

[125]*Id.*, para. 135-138.

[126]See *Wilensky*, *supra*, note 5.

[127]See *J. van Zeben*, Implementation Challenges for Emission Trading Schemes: The Role of Litigation, in S. E. Weishaar (ed.) Research Handbook on Emissions Trading, 2016, pp. 232-256. For an insight into public access to EU courts in environmental matters see *S. Marsden*, Direct Public Access to EU Courts: Upholding Public International Law via the Aarhus Convention Compliance Committee, *Nordic Journal of International Law* 2012 (81), pp. 175-204.

[128]Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, adopted on 25 June 1998, entered into force on 30 October 2001. Available in English at http://www.unece.org/env/pp/treatytext.html. See also *J. Jendrośka*, Aarhus Convention and Community Law: the Interplay, *Journal for European Environmental & Planning Law* 2005 (2), pp. 12-21.

[129]See *M. Fitzmaurice*, Note on the Participation of Civil Society in Environmental Matters. Case Study: The 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, *Human Rights & International Legal Discourse* 2010 (4), pp. 47-65.

[130]*J. Jendrośka*, Citizen's Rights in European Environmental Law: Stock-Taking of Key Challenges and Current Developments in Relation to Public Access to Information, Participation and Access to Justice, *Journal for European Environmental & Planning Law* 2012 (9), p. 73.

[131]See Article 9 of the Convention.

Although the provisions of the Convention have been applied in the EU law, the ambiguity surrounding the access to justice of private parties in environmental matters at the EU level has persisted,[132] never mind the fact that at the national level, standing of environmental NGOs is acknowledged everywhere in Europe.[133] Still, even though the Aarhus Convention has been invoked in several climate-related European cases, including the EU ETS case-law, so far it has been applied with regard to the access on information and public participation[134] and its potential application from the access to justice perspective in future climate cases remains to be seen.

This last part will thus focus only on one but very significant recent national case *Urgenda v. the Netherlands.*[135] The case concerned the Dutch NGO Urgenda request to have the Hague District Court order the government to take more action to mitigate climate change, principally by reducing the GHG emissions in the Netherlands by at least 25%, compared to 1990, by the end of 2020.[136] The case was based on a complex synthesis of Dutch constitutional and civil law, international climate and human rights law, EU law and the scientific data provided by the IPCC, and attracted enormous attention of legal scholars.[137]

With regard to its nature, the Urgenda case stands closest to the US common law public trust cases, but with one important exception: in it, the plaintiff NGO claimed that it represented the interests of not only Dutch citizens but also foreigners and future generations.[138] The defendant – the state of the Netherlands – accepting Urgenda's standing with regard to its representation of Dutch citizens, challenged the international and intergenerational dimensions of Urgenda's claim.[139] Furthermore, the state defendant contended that it could not be held liable for climate change, since

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[132]See, for example, *C. Poncelet*, Access to Justice in Environmental Matters – Does the European Union Comply with its Obligations?, *Journal of Environmental Law* 2012 (24), pp. 287-309; *H. Schoukens*, Articles 9(3) and 9(4) of the Aarhus Convention and Access to Justice before EU Courts in Environmental Cases: Balancing On or Over the Edge of Non-Compliance?, *European Energy and Environmental Law Review* 2016 (25), pp. 178-195.

[133]*S. Benvenuti*, Access to Justice in Environmental Matters. Which Role for the European Networks of Judges?, *Journal for European Environmental & Planning Law* 2014 (11), p. 172.

[134]See, for example, Greenpeace Ltd v Secretary of State for Trade and Industry (Queen's Bench Division, Administrative Court, 2007, EWHC 311 (Admin)) (concerning a challenge to the decision with respect to public consultations on the UK Government's energy policy); Environment-People-Law v Ministry of Environmental Protection of Ukraine (Lviv Administrative Court of Appeal, 2010, available at http://epl.org.ua/en/law-posts/violation-of-the-legislation-on-the-right-to-information-and-public-participation-in-climate-change-issues-by-the-ministry-of-environmental-protection-in-ukraine/) (concerning a request for information on the development of climate change policy in Ukraine); Case C-524/09 Ville de Lyon v Caisse des dépôts et consignations [2010] ECR I-14115 (concerning a request for information on the the GHG emission allowances sold in France); Case 204/09 Flachglas Torgau GmbH v Bundesrepublik Deutschland [2012] ECLI:EU:C:2012:71 (concerning a request for access to information relating to the Law on the national allocation plan for GHG emission licences in Germany).

[135]Urgenda Foundation v. The State of the Netherlands, C/09/456689 / HA ZA 13-1396 (2015) (Hague District Court, the Netherlands) (available in English at http://www.urgenda.nl/documents/VerdictDistrictCourt-UrgendavStaat-24.06.2015.pdf) (last visited 29 Dec. 2016).

[136]*Id.*, para. 3.1.

[137]These are just some publications in English: *J. Lin*, The First Successful Climate Negligence Case: A Comment on Urgenda Foundation v. The State of the Netherlands (Ministry of Infrastructure and the Environment), *Climate Law* 2015 (5), pp. 65-81; *K. J. de Graaf & J. H. Jans*, The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change, *Journal of Environmental Law* 2015 (27), pp. 517-527; *L. Bergkamp & J. C. Hanekamp*, Climate Change Litigation against States: The Perils of Court-made Climate Policies, *European Energy and Environmental Law Review* 2015 (24), pp. 102-114; *J. van Zeben*, Establishing a Governmental Duty of Care for Climate Change Mitigation: Will Urgenda Turn the Tide?, *Transnational Environmental Law* 2015 (4), pp. 339-357; *A. S. Tabau & C. Cournil*, New Perspectives for Climate Justice: District Court of The Hague, 24 June 2015, Urgenda Foundation versus the Netherlands, *Journal for European Environmental & Planning Law* 2015 (12), pp. 221-240; *J. Lambrecht & C. Ituarte-Lima*, Legal Innovation in National Courts for Planetary Challenges: Urgenda v State of the Netherlands, *Environmental Law Review* 2016 (18), pp. 57-64; *M. Peeters*, Urgenda Foundation and 886 Individuals v. The State of the Netherlands: The Dilemma of More Ambitious Greenhouse Gas Reduction Action by EU Member States, *Review of European, Comparative & International Environmental Law* 2016 (25), pp. 123-129; *S. Roy & E. Woerdman*, Situating Urgenda v the Netherlands within Comparative Climate Change Litigation, *Journal of Energy & Natural Resources Law* 2016 (34), pp. 165-189.

[138]*Urgenda*, para. 4.5.

[139]*Id.*

its emissions formed but a tiny fraction of the global totals and many other parties contribute to climate change with their emissions.[140] As might be easily perceived, this argument was used in some of the cases discussed above; however, in case of Urgenda, it was used not to challenge the plaintiff's standing, but on the merits. And although analysing the latter is not within the scope of this chapter, it is worth noting that the court dismissed such arguments on the grounds of shared global responsibility for climate change and issued the requested order.[141]

In assessing Urgenda's standing to represent the interests of foreign citizens, the court referred to the Dutch Civil Code, according to which individuals or legal persons are only entitled to bring an action to the civil court if they have a sufficient personal interest in the claim.[142] With regard to NGOs, the Civil Code stipulates that 'a foundation or association with full legal capacity may also bring an action to the court pertaining to the protection of general interests or the collective interests of other persons, in so far as the foundation or association represents these general or collective interests based on the objectives formulated in its by-laws'.[143] At the same time, legal persons can only bring their action to the court if they have made sufficient prior efforts to enter into a dialogue with the defending party to achieve the requirements set forward.[144]

The court noted that Urgenda's claims against the state belonged to the group of claims that national legislature foresaw and wanted to make possible, by setting out that an environmental organisation's environmental protection claims without an identifiable group of persons needing protection, were allowable.[145] The court further stressed that Urgenda's by-laws stipulated that it strived for a more sustainable society, 'beginning in the Netherlands'.[146] It should be observed, that with regard to the term 'sustainable society', Urgenda specifically referred to the definition of 'sustainable development' in the 1987 report of the World Commission on Environment and Development of the United Nations (the Brundtland Report), which provided the following definition: 'Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'[147]

The court agreed with the plaintiff that the formulation of Urgenda's by-laws demonstrated prioritisation, but not limitation, to Dutch territory – hence the interests that Urgenda wanted to defend concerned primarily, but not solely, the territory of the Netherlands.[148] In other words, the court recognized that the term 'sustainable society' had an inherent international (and global) dimension; therefore, by defending the interests of a 'sustainable society', Urgenda was actually protecting interests that crossed national borders.[149] Consequently, the court was persuaded that Urgenda could partially base its claims on the fact that emissions in the Netherlands also had consequences for persons outside the Dutch national borders, since Urgenda's claims were directed at such emissions. The court also agreed that the term 'sustainable society' has a clear intergenerational dimension, which was expressed in the above-mentioned definition of 'sustainability' in the Brundtland Report; therefore, in defending the right of not just the current but also the future generations to availability of natural resources and a safe and healthy living environment, Urgenda also strived for the interest of a sustainable society.[150]

5. CONCLUDING REMARKS

It may be quite difficult to draw any concrete parallels between the discussed climate cases,

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[140]*Id.*, para. 4.78.
[141]*Id.*, paras. 4.79 and 5.1.
[142]*Id.*, para. 4.4.
[143]*Id.*
[144]*Id.* The court acknowledged that Urgenda has met this requirement, making sufficient efforts to attain its claim by entering into consultations with the state.
[145]*Id.*, para. 4.6.
[146]*Id.*, para. 4.7.
[147]*Id.*, para. 2.3.
[148]*Id.*, para. 4.7.
[149]*Id.*
[150]*Id.*, para. 4.8.

given the extremely uneven distribution of them among the above-mentioned jurisdictions and the different nature of the respective national legal systems as well as numerous other limitations. Nevertheless, the discussed case-law certainly enables us to have a broader picture of the relevant issues as they unwind on a macro level.

Thus, it is clear that in the US, private plaintiffs have faced the challenges to standing with mixed success, which seems to have depended strongly on the judiciary's approach to the scientific side of the problem. As a result, courts' views on standing may not necessarily be consistent and differ on a case-by-case basis. Private parties have often been granted standing in cases concerning climate change impact assessment; however, in many of such cases, the decisive role in establishing standing was played by the issue of local pollution and not global climate change. For the same reason plaintiffs have been denied standing in cases concerning the regulation of GHG emissions, as courts were unwilling to accept the fact that local emission sources or air quality standards had any palpable impact on climate change. At the same time, this does not seem to extend to the emerging atmospheric trust litigation, where, on the contrary, the contested emissions are state- or nation-wide and where plaintiffs rely on common law and constitutional provisions.

From a transnational perspective, it may be observed that in case of NGOs the most important issue is the active involvement of the organisation in the related action; however, the scope of the latter varies between jurisdictions, from representation of its affected members' interests, organisational legal background to governmental recognition and participation in specific projects.

In the end, it may be easy to argue that courts were never meant to be the proper arena for climate change in the first place. But then, if persons suffering injuries from climate change are denied access to justice simply because of the application of various legalistic mechanisms, the judiciary's ability to protect those interests from the most insidious and far-reaching challenges that humanity faces literally goes up in smoke. For this reason, standing in climate change litigation should not be used as a tool to simply discard cases raising 'inconvenient' global issues, which may someday, in a most devastating way, affect everyone on the planet.