# CLIMATE LITIGATION IN EUROPE: A DISCUSSION ABOUT EMERGING TRENDS IN THE CONTEXT OF PRINCIPLE OF NON-REGRESSION[1]

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**Abstract:** The climate crisis is one of the most serious problems that humankind has ever faced. With the adverse consequences of this phenomenon, new practices have emerged in social, economic, and legal structures. One of these new practices is doubtlessly climate litigation that aim to pressure states to fulfil their positive obligations concerning the mitigation of the human-induced climate crisis. Global warming, advancing at an unprecedented rate, is pushing governments to take immediate measures and shape their legislation accordingly. Within this movement, the principle of non-regression, rooted in human rights, has gained a tangible form in environmental law. This study explores the potential role of the climate crisis and, specifically, the climate litigation cases in Europe in establishing the principle of non-regression as a settled principle in environmental law. It discusses its value as an argument in climate litigation from a practical point of view.

**Keywords:** climate change; climate litigation; principle of non-regression; Paris Agreement; mitigation

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## I. INTRODUCTION

### A. IN GENERAL

The principle of non-regression is a topic of recent debate in literature and environmental law practice. There is no doubt that this principle is well-established in human rights law, given its regulation in major international human rights documents.[4] However, whether this principle has a customary nature in environmental law remains

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[4] United Nations Secretary-General. Gaps in International Environmental Law and Environment-related Instruments: Towards a Global Pact for the Environment – Report of the Secretary-General. In: *UN: environment programme* [online]. 2018 [cit. 2023-12-29]. Available at: https://wedocs.unep.org/xmlui/handle/20.500.11822/27070.

contentious. There are indeed views arguing that this is a settled principle in this discipline,[5] while other opinions in the literature deny such a customary nature.[6]

Despite this controversial setting, the principle of non-regression and its scope of application is gaining increasing significance. Such a concept is particularly debated because environmental protection is often the first area that states are willing to compromise, especially during times of economic hardships or crisis, such as the period following the COVID-19 pandemic or the ongoing conflict between Russia and Ukraine. With such pressures, states are willing to relax their environmental policies and legislation to ease budgetary strains.

Yet, on top of everything, the whole planet, including humanity, is witnessing an unprecedented climate crisis, necessitating immediate and effective measures to be implemented by states to mitigate its effects collectively.[7] In this context, state actions (or inactions) weakening environmental protections diminishing the safeguards established by their national environmental legislation, and this starkly contravenes the imperative necessity created by climate change. Consequently, the question of effectively exerting pressure on states to enforce the required mitigation measures becomes even more crucial. As such, one may ask whether the rising prevalence of climate litigation may be deemed an efficient instrument for establishing such pressure on states to fulfil their environmental obligations, marking an evolution in environmental and human rights law principles.

This study aims to explore the potential of such evolution. To this end, the methodological choices related to the case law analysed within this study will be addressed. Secondly, the background of developing the principle of non-regression will be presented. In the following part, the analysis will observe a concrete example of how this principle has started to gain practical importance in environmental law and elaborate on how the climate litigation practice in Europe may contribute to the evolution of the doctrine of non-regression. The principle's potential value as a practical litigation argument in climate cases will be explored in this context.

## B. A BRIEF OVERVIEW OF THE METHODOLOGY AND PREFERENCES OF THE CASE LAW

Climate change impacts the planet extensively and quickly. This phenomenon changes both nature and society, as well as the economic and legal systems. In this context, our contribution will address the implications of climate change and environmental law and particularly focus on climate litigation as an emerging practical tool in the legal arena for achieving progress in climate and environmental matters. Indeed, climate litigation can potentially influence and shape many areas in the legal field. This

[5] PRIEUR, M. – MAINGUY, G. Non-regression in Environmental Law. *S.A.P.I.EN.S. Surveys and Perspectives Integrating Environment and Society* [online]. 2012, Vol. 5, No. 2, pp. 35–38 [cit. 2023-12-29]. Available at: https://journals.openedition.org/sapiens/1405.

[6] MITCHELL, A. D. – MUNRO, J. An International Law Principle of Non-Regression from Environmental Protections. *International & Comparative Law Quarterly*. 2023, Vol. 72, No. 1, pp. 35–71.

[7] AR6 Synthesis Report: Climate Change 2023. In: *ippc* [online]. 2023 [cit. 2023-12-29]. Available at: https://www.ipcc.ch/report/sixth-assessment-report-cycle/.

study specifically focuses on the description and comparison of the practice regarding climate litigation in Europe. It aims to examine how the cases brought so far before the national courts in Europe may contribute to the evolution of the principle of non-regression in environmental law.

In this context, this study covers the national court decisions relevant to its research question. It is noteworthy that this study not only observes the court decisions given by the courts of the Member States of the European Union (EU) but also addresses the decisions from non-EU countries such as Switzerland or Türkiye. In that way, it is aimed to present a comprehensive overview of the potential offered by the European climate litigation practice to shape the future application of the principle of non-regression in the environment. It should be emphasized from the very beginning of the study that after the review of the available court decisions, it has been determined that there is currently no explicit European court decision referencing the principle of non-regression. As identified by the authors of this study, the courts in India provided the first instance of such reference. Therefore, this study examines this Indian court decision because of its potential to shed light on the European experience. Apart from this decision, the study mainly focuses on the decided cases in Europe and the pending cases to the extent that they can potentially contribute to the evolution of the principle of non-regression.

During the selection of the decisions, one of the challenges that the study faced was that the field of climate litigation is going through an ongoing evolution. Therefore, the available decisions are collected from the relevant databases. During the selection of the decisions, priority is given to recent cases based on claims that the state has failed to act in mitigating climate change under the Paris Agreement or relevant legislation or that the measures taken by the state are seen as insufficient. Indeed, as some cases involved specific state actions, these cases are also addressed within the scope of the research. Being structured on these cases, the study aims to spark an academic and practical discussion on how the principle of non-regression may become a settled principle in environmental law due to the evolving practice of climate change and whether such principle can be functionally used as a legal argument in these cases.

It is worthy of note that climate litigation is a relatively new concept in Europe, and the progress in this area is rapid. Therefore, the evaluation that will be made in this study addresses the current state of the practice and may not be fully up to date after a few months. It is also important to note that by the time of the writing of this article, the results of the 28th Conference of the Parties (COP28) of the United Nations Framework Convention on Climate Change (UNFCCC), which is held in Dubai (United Arab Emirates, 30.11. – 12.12.2023) are also expected to influence the future of the climate action.[8] Therefore, the outcomes of the conference may also impact the future practice of climate litigation.

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[8] More details at: COP 28: UN Climate Change Conference: 30 November – 12 December, Dubai, United Arab Emirates. In: *United Nations: Climate Change* [online]. 2023, p. 28 [cit. 2023-12-29]. Available at: https://unfccc.int/.

## C. GENERAL REMARKS ON THE PHENOMENON OF CLIMATE CHANGE AND THE CLIMATE (CHANGE) LAW

Climate change is one of the most pressing global issues that planet Earth is facing today. The impact of the climate-created crisis is that change infuses every aspect of our lives, including agriculture, forestry, transportation, healthcare, water management and so on. As emphasised by previous scholars, the effects of this crisis are so severe that the sixth mass extinction is in question, and all living beings are threatened by the adverse consequences of climate change. There is no doubt now that this change is human induced. Again, without any doubt, the main source of these extreme changes is human activities using non-renewable sources (fossil fuels) in an incredibly massive way. The distribution and cycle of carbon are practically out of our control. The concentration of carbon particles in the atmosphere is approaching the breaking point of 450 ppm. The negative tendencies have, unfortunately, even been accelerating in recent years.

In this context, there are two possible actions that can be used for climate change management. The first one aims to decrease the impact of the crisis by reducing greenhouse gas emissions, in other words, **mitigation** strategies (the word taking its roots from the Latin word *mitis agere* – to make it softer). At the same time, the second action may focus on **adaptation** to climate change, which aims to settle all systems on the planet, including ecosystems, to the adverse consequences of climate change, such as extreme weather conditions, rising sea levels etc. Indeed, both of these strategies must be implemented immediately and simultaneously. This study aims to focus on the mitigation aspect of the question. It overall seeks to find an answer whether the principle of non-regression may be effectively used to implement the mitigation strategies, as climate litigation is certainly an effective instrument for mitigation since it aims to accelerate and intensify the implementation of mitigation measures.

In this context, one may also ask why this study focuses on non-regression in environmental law but not climate change law. Indeed, the initial actions addressed towards climate change (or originally global warming) may be found in the international (public) environmental law more than thirty years ago. Indirectly, such concern was addressed directly in the conventions and protocols in the UNFCCC (Rio de Janeiro 1992) and its Kyoto Protocol dealing with air pollution and depletion of the Earth's ozone layer. A real and concrete milestone was achieved in 2015 by negotiating and ratifying the Paris Agreement. The Agreement is not only a global and legally binding public international law document, but there are specified aims and obligations for the member parties.

The ratification of the Paris Agreement has started an enormous boom in the numbers of the so-called "climate litigations" before the courts, not only on the national but even on the European and international levels. Overall, the aim has been to put effective pressure on governments to take action about the emission of greenhouse gases as well as implement other ambitious measures. Some of the litigations have been successful, such as the *Urgenda* Case in the Netherlands, which has been explained in more detail below, but some failed. Nevertheless, the tendency for climate litigation will surely

continue. Yet, one can conclude that such evolution is still happening within the realm of environmental law.

When determining whether a particular area of law qualifies as a new, autonomous legal discipline, examining its object of regulation, methods, and instruments is essential. In this context, such elements must be predominantly autonomous, distinct, and different from other disciplines. From our point of view, as environmental law and climate law demonstrate significant similarities, it may be deemed a mere subdiscipline as atomic, mining, natural resources, or energy law currently positions it as a subdiscipline of environmental law. However, one must also highlight that this perspective could evolve over time due to social and natural developments.

Indeed, at this juncture, we may be reminded that fields such as financial, social security, or environmental law were once seen as subdisciplines of administrative law in a broader sense. Yet, due to their increased complexity, they are now recognized as distinct fields. Such a similar pattern may be deemed applicable to the ongoing debates about the autonomous status of land or agricultural law. It is important to acknowledge that such theoretical discussions are important, yet they are not critical. Ultimately, practical developments and the natural progress of legal and societal changes may result in the evolution of these fields.[9] Therefore, it is not possible to conclude that there is a significant barrier or obstacle to climate law being considered as a pedagogical and research discipline in the future. Undoubtedly, the growing importance and relevance of climate-related issues renders climate law an increasingly significant area of interest for research and teaching across Europe in the future. Yet, such a discussion of a theoretical nature extends beyond the scope of this study. Hence, we deem it important to acknowledge the existence of this debate and highlight that this may be a promising question warranting further exploration in future research.

## II. THE PRINCIPLE OF NON-REGRESSION IN ENVIRONMENTAL LAW AND ITS RELEVANCE IN THE CONTEXT OF CLIMATE CHANGE

The principle of non-regression in environmental law is a doctrine prohibiting states from enacting legislative changes, commit actions, or endorse procedures that would cause backsliding in the context of existing environmental protection regimes, resulting in weaker environmental protection.[10] The principle concerns not only substantive aspects of law but also extends to its procedural elements.[11]

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[9] Compare e.g., KNAPP, V. *Teorie práva*. Prague: C. H. Beck, 1995, pp. 68–69.

[10] PRIEUR, M. The Principle of Non-regression. In: *Elgar Encyclopedia of Environmental Law* [online]. Cheltenham: Edward Elgar Publishing, 2018, p. 251 [cit. 2023-12-29]. Available at: https://www.elgaronline.com/display/book/9781785369520/b-9781785365669-VI_19.xml.

[11] LAVRIK, M. Customary Norms, General Principles of International Environmental Law, and Assisted Migration as a Tool for Biodiversity Adaptation to Climate Change. *Jus Cogens* [online]. 2022, Vol. 4, No. 2, p. 122 [cit. 2023-12-29]. Available at: https://doi.org/10.1007/s42439-022-00055-8.

The principle of non-regression is closely connected and goes hand in hand with the principle of progression. Indeed, non-regression aims to prohibit backsliding in environmental protection. In contrast, progression focuses on continuously enhancing the level of protection based on environmental legislation reflecting the latest scientific knowledge.[12]

The foundation of this principle can also be observed in non-regression clauses in bilateral investment treaties (BIT), yet competition concerns mostly drive these clauses. Indeed, the fact that such clauses were adopted in the treaties to which the United States and the European Union are parties have played pioneering roles in the development and adoption of this principle within the practice of environmental law and over time, these clauses have become more common in other BITs and have established a standard in investment law.[13] However, it would not be accurate to simply argue that such clauses underlie the principle of non-regression, which is discernible from multilateral environmental agreements that aim to establish a cooperative international action fostering environmental preservation.

The principle's emergence in the environmental law realm may be observed first during the referendum in California on 2 November 2010. During this referendum, a proposal on suspending a law that aims to reduce greenhouse gas emissions was in question. Such a proposal was drafted primarily at the behest of oil companies. Consequently, the voters rejected this attempt to backslide from the existing protection standards. Although there was no legal practical application of the principle, such a stance may be seen as one of the first modern reflections.[14]

Subsequently, the principle of non-regression was discussed during the negotiations for the "Future We Want" outcome document at the Rio+20 Conference.[15] During the conference, the calls by the European Parliament for the recognition of the principle in environmental protection led to the explicit inclusion of it in the draft outcome document. Yet, the principle did not make it into the final version in an explicit manner as there were opposition from the United States, Canada, and Japan.[16] Be that as it may, in the paragraph 20 of the outcome document, the principal found another implicit reflection: *"We acknowledge that since 1992, there have been areas of insufficient progress and setbacks in the integration of the three dimensions of sustainable development, aggravated by multiple financial, economic, food and energy crises, which have threatened the ability of all countries, in particular developing countries, to achieve sustainable development. In this regard, we mustn't backtrack from our commitment to the outcome of the United Nations Conference on Environment and Development. We*

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12 Gaps in International Environmental Law and Environment-related Instruments, p. 13.

13 MITCHELL – MUNRO, *An International Law Principle of Non-Regression from Environmental Protections*, pp. 37–42.

14 PRIEUR – MAINGUY, *Non-regression in Environmental Law*, p. 3.

15 PRIEUR, M. Chapter 18: Non-regression. In: AGUILA, Y. – VIÑUALES, J. E. (eds.). *A Global Pact for the Environment – Legal Foundations* [online]. University of Cambridge, CEENRG, 2019, p. 143 [cit. 2023-12-29]. Available at: https://globalpactenvironment.org/uploads/Aguila-Vinuales-A-Global-Pact-for-the-Environment-Cambridge-Report-March-2019.pdf.

16 MITCHELL – MUNRO, *An International Law Principle of Non-Regression from Environmental Protections*, p. 61.

*also recognise that one of the current major challenges for all countries, particularly for developing countries, is the impact from the multiple crises affecting the world today."*[17]

Whether there is a settled principle of non-regression in environmental law is still to be revisited within the United Nations framework. Indeed, there is no definitive provision regarding the principle yet. However, as per the United Nations General Assembly's decision dated 28 July 2022, Resolution 48/13, the right to a clean, healthy, and sustainable environment was recognized as a fundamental human right.[18] Such recognition paved the way for the revival of the question of the application of an already accepted principle of non-regression in human rights law to environmental rights. Such development once again highlighted the potential of the non-regression principle rooted in human rights law to evolve into a legal reality in environmental law.[19]

In this context, it is important to emphasise that a deeper and more widely accepted importance and scope of application is accorded to the doctrine of non-regression principle in the matters concerning the protection of fundamental human rights. Indeed, the non-regression principle in human rights is grounded in the Universal Declaration of Human Rights. Article 30 of the Declaration stipulates that *"nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein"*.[20] The principle has also found application in the decisions of regional human rights courts.[21]

There is no explicit mention of the non-regression principle in international environmental conservation instruments contrary to the Universal Declaration of Human Rights. Yet, it is possible to observe its reflections in certain provisions, particularly in the context of continuity and development. For instance, Article 8(k) of the Convention on Biological Diversity mandates developing and maintaining *"necessary legislation and/or regulatory provisions for the protection of threatened species and populations"*.[22] The emphasis on the development and maintenance of legislation and regulatory provisions aims to ensure progress in environmental protection and eliminate backsliding.

Recent international initiatives such as the Global Pact for the Environment also highlight the non-regression principle. Such recent inclusion of this principle demonstrates the emergence of a trend which was accepted in human rights law and environ-

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17 The General Assembly of the United Nations. Future We Want – Outcome Document. In: *Sustainable Development: Knowledge Platform* [online]. 2012 [cit. 2023-12-29]. Available at: https://sustainabledevelopment.un.org/futurewewant.html.

18 UN General Assembly (76TH SESS.: 2021–2022). The Human Right to a Clean, Healthy and Sustainable Environment: Resolution / adopted by the General Assembly. In: *United Nations: Digital Library* [online]. 2022 [cit. 2023-12-29]. Available at: https://digitallibrary.un.org/record/3983329.

19 MITCHELL – MUNRO, *An International Law Principle of Non-Regression from Environmental Protections*, p. 67.

20 United Nations. Universal Declaration of Human Rights. In: *United Nations* [online]. [cit. 2023-12-29]. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights.

21 ILEMİN ALAN, N. Uluslararası Çevre Hukukunda Geriye Gidilemezlik İlkesinin Yeri. *Periodicum Iuris*. 2023, Vol. 1, No. 1, p. 33.

22 United Nations. The Convention on Biological Diversity. In: *Convention on Biological Diversity* [online]. 1992 [cit. 2023-12-29]. Available at: https://www.cbd.int/convention/text/.

mental law.[23] Moreover, it is even possible to examine national legislation, as in France, which explicitly regulates this principle in matters of environmental law.[24]

Another recent example is the International Union for Conservation of Nature's (IUCN) Draft International Covenant on Environment and Development dated 2015. The draft acknowledges the fact that established principles in international environmental law, such as the precautionary and polluter pays principles, may be insufficient in the face of the current environmental crisis and adopts the principle of non-regression under Article 10: *"Substantive and procedural rules for environmental conservation shall be maintained without regression and interpreted and applied in favour of ecological integrity unless compelling reasons of public interest require otherwise. The necessity of any measures of regression shall be revisited and re-examined periodically in order to restore or enhance pre-existing levels of environmental conservation."*[25]

Given all these developments, one may conclude that in international environmental law, there is a necessity to ensure the maintenance of existing environmental protections, at least at their current level and their development. Moreover, with the right to a clean, safe, and sustainable environment considered within the ambit of human rights, an extensive interpretation of the principle of non-regression to include matters concerning environmental protection profiles as a natural, logical consequence.

It is also striking that when initial arguments on the principle of non-regression in environmental law were proposed, the opposing camp feared that such a principle would create a status quo and hinder progress.[26] However, it is worth highlighting that the non-regression principle merely sets a minimum standard and does not constrain states to adopt more comprehensive and stringent measures for environmental protection. As in other legal spheres, environmental law ultimately depends on the will of the sovereign and its content may be altered by the legislature. This puts existing environmental protection regimes perpetually at risk of a setback, a concern that cannot be overlooked in the current era of climate change. In this context, the non-regression principle has the role of a one-way street sign for the sovereign that makes it follow a certain level of commitment to protecting the environment and environmental rights. Yet, it cannot be reversed to lesser standards.

While the established nature of the principle of non-regression in international environmental law remains debatable, one might reasonably contend that given the recent developments, especially in the context of climate change, acceptance of prohibition of regression as an established principle is not unrealistic. Indeed, numerous studies in the literature focus on how this principle has evolved in human rights law and national laws.[27] Yet such an evaluation would exceed the scope of this paper, of which the goal

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[23] Gaps in International Environmental Law and Environment-related Instruments.

[24] DUTHEILLET DE LAMOTHE, L. Principe de Non-régression. *Juridique de l'Environnement*. 2018, Vol. 43, No. 1, pp. 187–194.

[25] International Council of Environmental Law (ICEL) – IUCN Commission on Environmental Law (CEL). Draft International Covenant on Environment and Development: Implementing Sustainability. In: *IUCN Library System* [online]. 2015 [cit. 2023-12-29]. Available at: https://portals.iucn.org/library/node/46647.

[26] PRIEUR, *The Principle of Non-regression*, pp. 251–259.

[27] *For example see* MITCHELL, A. D. – MUNRO, J. No Retreat: an Emerging Principle of Non-Regression from Environmental Protections in International Investment Law. *Georgetown Journal of International*

is to demonstrate that the evolution of this principle has become an even more important question given the context of the climate crisis and developing body of argumentation and jurisprudence through climate litigation cases. In this context, the next part will elaborate on this question and will attempt to elucidate the potential of the principle of non-regression as an argument in climate change litigation, especially concerning cases in Europe.

## III. PRINCIPLE OF NON-REGRESSION IN THE CLIMATE CONTEXT

### A. THE NON-REGRESSION PRINCIPLE IN THE PARIS AGREEMENT

There is no doubt that one of the most important climate action regimes is designed under the Paris Agreement.[28] The Paris Agreement does not include an explicit provision concerning the principle of non-regression, yet the text contains articles that embody this principle. Accordingly, Article 3 of the Agreement stipulates an expectation of progressive effort from all parties, given the needed support for developing countries for effective implementation. An alternative interpretation of the provision suggests that parties are obligated not to regress in their response towards climate change.

As is known, the Paris Agreement stipulates an international long-term global temperature goal for which states have committed to reduce their greenhouse gas (GHG) emissions. The basic instrument for states to implement these reduction targets is their nationally determined contributions (NDCs).[29] Within this setting, Article 4(3) of the Agreement mandates that each state in their subsequent NDCs represent a progression reflecting a higher ambition in comparison to their previous contributions and reflect the highest possible ambition in light of differing national circumstances, responsibilities, and capabilities.[30] In other words, successive NDCs submitted by each Contracting State should contain more comprehensive and ambitious measures for reducing GHG emissions.[31]

This is not the only emphasis on progression in the Agreement. Article 7(14)(d), Article 9(3), Article 13(11), and Article 14 also reference the concept of progression. It is possible to argue that the urgency of the subject matter of the Agreement highlights the need for international continuous and progressing cooperation. This need naturally

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*Law*. 2019, Vol. 50; MITCHELL – MUNRO, *An International Law Principle of Non-Regression from Environmental Protections*; LAVRIK, *c. d.*; PRIEUR, *Principle of Non-regression*; ILEMİN ALAN, *c. d.*

28 Paris Agreement – UN Framework Convention on Climate Change. In: *EUR-Lex: Access to European Union Law* [online]. [cit. 2023-12-29]. Available at: https://eur-lex.europa.eu/content/paris-agreement/paris-agreement.html.

29 KUH, K. F. The Law of Climate Change Mitigation: an Overview. In: DELLASALA, D. A. – GOLDSTEIN, M. I. (eds.). *Encyclopedia of the Anthropocene*. Oxford: Elsevier, 2018, Vol. 2, pp. 505–510.

30 VOIGT, C. The Power of the Paris Agreement in International Climate Litigation. *Review of European, Comparative & International Environmental Law*. 2023, Vol. 32, No. 2, pp. 237–249.

31 STANKOVIC, T. – HOVI, J. – SKODVIN, T. The Paris Agreement's Inherent Tension between Ambition- and Compliance. *Humanities and Social Sciences Communications*. 2023, Vol. 10, No. 1, Art. 550.

leads to the manifestation of the non-regression principle.[32] Notably, it is unsurprising that when states such as Mexico or Brazil weakened the effectiveness of their emission reductions in their updated NDCs compared to previous ones, these successive contributions were challenged before the national courts. It has been claimed that such weakening is contrary to the provisions of the Paris Agreement and, therefore, the fundamental human rights in the context of the right to life and a healthy environment.[33] Such exercise of claims may be considered as the manifestation of the principle of non-regression endorsed in the Paris Agreement.

### B. THE CASE OF THE SOCIETY FOR PROTECTION OF ENVIRONMENT & BIODIVERSITY / UNION OF INDIA

Before discussing significant climate litigation cases in Europe from the perspective of the non-regression principle, examining an example of how certain cases can effectively bring the principle of non-regression from concept to creation is worthwhile. The decision of *Union of India*, dated 2017, by the National Green Tribunal of India, is an important example in this setting.[34]

In 2016, the Society for Protection of Environment & Biodiversity filed a lawsuit before India's National Green Tribunal concerning a draft notification that exempts certain construction activities from environmental clearance requirements. The claimants argued in the case at hand that such an exemption would significantly impact climate change by causing irreversible environmental harm. Accordingly, they particularly underscored India's international obligations under the Paris Agreement. Whereas the Ministry of Environment and Forests stated that the draft notifications served the government's social policy to address the housing needs of vulnerable populations in India.

In this case, there was indeed a prospective state action that could result in backsliding from the current environmental protection regime. There was no concrete consequence of the backwardness. Yet, the claimants adopted a pre-emptive approach for this potential "normative retrogression"[35] and claimed that such a stance would conflict with the principle of non-regression.

The National Green Tribunal accepted these claims and ruled that the implementation of such notification would conflict with the established principle of non-regression in international law, stating that the notification, if implemented, would disagree with this principle. The Tribunal emphasized that the changes foreseen in the draft notification have the potential to seriously impact the environment and weaken the existing

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32 FALKNER, R. The Paris Agreement and the New Logic of International Climate Politics. *International Affairs*. 2016, Vol. 92, No. 5, pp. 1107–1125.

33 GANESAN, P. Challenging Regression in Climate Commitments: Doctrine of 'Non-Retrogression' to the Rescue? In: *Oxford Human Rights Hub* [online]. 4.1.2022 [cit. 2023-12-29]. Available at: https://ohrh.law.ox.ac.uk/challenging-regression-in-climate-commitments-doctrine-of-non-retrogression-to-the-rescue/.

34 National Green Tribunal. Society for Protection of Environment & Biodiversity v Union of India. In: *CASEMINE* [online]. 8.12.2017 [cit. 2023-12-29]. Available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2017/20171208_Application-No.-677of-2016-M.A.-No.-148-of-2017_decision.pdf.

35 WARWICK, B. T. C. Unwinding Retrogression: Examining the Practice of the Committee on Economic, Social and Cultural Rights. *Human Rights Law Review*. 2019, Vol. 19, No. 3, pp. 467–490.

environmental protection and that such a situation would directly contradict the principle of non-regression. Accordingly, the Tribunal partially nullified the draft notification and ordered the defendant's authority to re-evaluate and amend the clauses by the decision.[36]

At this juncture, it is essential to highlight that the principle of non-regression does not have a concrete regulation under Indian Law. Yet, the claimants persuaded the Tribunal to comply with such a principle by arguing that India's international obligations regarding climate change should not contradict such a principle.[37] Therefore, this example illustrates that climate litigation may play an important role in bringing the non-regression principle to the tangible legal sphere, as it serves to the urgency of the problem that international instruments have detailly regulated and, secondly, the arguments of the claimants' in these cases have the potential to contribute to this evolution by way of making the invisible visible.

### C. BACK TO THE FUTURE: AN EVALUATION OF THE CLIMATE LITIGATION CASES IN EUROPE

In this part of the study, we aim to delve into the ongoing or recently decided European climate litigation cases selected as per the previously explained methodology.[38] In this regard, the main intention of this study is to understand two key questions, one involving the future and the other involving the present. First is whether the outcomes of today's European climate litigation have the potential to echo into tomorrow's jurisprudential landscape and render the principle of non-regression a tangible part of environmental law. Second is the extent to which this principle can be instrumentalised in the present cases if endorsed by the claimants in their argumentation.

#### *1. TRAVERSING TIME AND LAW: AN OVERVIEW OF THE CLIMATE LITIGATION EXAMPLES IN EUROPE FROM THE PERSPECTIVE OF THE PRINCIPLE OF NON-REGRESSION*

After reviewing the climate litigation cases in Europe, of which information is available in the climate litigation databases, it is possible to discern three categories of cases from the perspective of the principle of non-regression. It is important to highlight at this juncture that in none of these categories is there an explicit use of the principle of non-regression. Yet, the content of the cases demonstrates that such a principle may find application in the related context.

Accordingly, we could discern three groups of cases in which claimants structure their arguments on a state action that is not considered to be sufficient, a state's inaction causing regression or stagnation, and finally, a certain state action that allegedly con-

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[36] The Principle of Non-regression and Indian Environmental Jurisprudence. In: *Bar and Bench* [online]. 26. 7. 2018 [cit. 2023-12-29]. Available at: https://www.barandbench.com/columns/the-principle-non-regression-indian-environmental-jurisprudence.

[37] CHATURVEDI, E. Climate Change Litigation: Indian Perspective. *German Law Journal*. 2021, Vol. 22, No. 8, p. 1465.

[38] Supra Section I.B.

flicts with the existing environmental protection regime. All these three categories of the groups show that there is indeed a climate litigation trend underscoring the need for the assurance of progressive environmental protection. Thus, they implicitly contribute to the evolution of the principle of non-regression in an indirect way.

Below, these three categories and exemplary cases will be examined in detail. In the first category of cases, claimants argue that a state action (generally an adoption of a climate act or national plan) is insufficient to mitigate climate change. In contrast, in the second category of cases, the state is generally claimed to be in a passive position. The related claimants typically argue that there is a failure or negligence in acting, which practically causes a regression or stagnation in climate change mitigation and, therefore, eventually, in the field of environmental protection. Finally, in the last category of cases, claimants base their arguments on a specific executive action or policy and argue that such actions are unlawful as they contradict the current environmental protection regime in the relevant jurisdiction.

### *2. EVALUATION OF THE EUROPEAN CLIMATE LITIGATION CASES IN THE CONTEXT OF PRINCIPLE OF NON-REGRESSION IN ENVIRONMENTAL LAW*

As highlighted above, the principle of non-regression is not explicitly invoked in the climate litigation cases reviewed in the scope of this study. Yet, it is possible to find this principle's essence in many cases. However, the essence of this principle is implicitly present in many of them.

#### *a. CASES INVOLVING STATE ACTION CLAIMED TO BE INSUFFICIENT OR STATE INACTION*

In this context, the evaluation will start from the landmark case of the *Urgenda Foundation v. State of the Netherlands*.[39] In the case, the Urgenda Foundation and Dutch Citizens claimed that the existing pledge of the Dutch government to reduce their GHG emissions by 17% was insufficient and asked the Dutch courts to compel the State of the Netherlands to adopt a more ambitious GHG reduction policy. The Hague District Court held that the Dutch government failed to fulfil its duty of care as per the Dutch Civil Code and held that the government must reduce the GHG emissions by at least 25%. Following this decision, the Court of Appeal upheld the first instance court's decision, and it also evaluated the case from the perspective of positive obligations of the state in terms of Articles 2 and 8 of the European Convention on Human Rights (ECHR). Accordingly, the Court of Appeal held that climate change constituted an imminent danger and created serious risks for the citizens and that the state acted unlawfully *"by failing to pursue a more ambitious reduction as of 2020"*.[40] The case may be considered as

[39] Urgenda Foundation v. State of the Netherlands. In: *Climate Change Litigation Databases* [online]. 2015 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/.

[40] The State of the Netherlands v. Urgenda Foundation [online]. 2018 [cit. 2023-12-29]. Available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2018/20181009_2015-HAZA-C0900456689_decision-4.pdf.

setting a precedent for deeming inadequate climate measures to ensure effective mitigation unlawful as they do not provide the required level of protection. Therefore, regarding climate policies, it is possible to argue that states have a legal duty to maintain and advance their mitigation efforts. Indeed, the Court of Appeal and the Supreme Court of the Netherlands based their decision on the application of the ECHR. Therefore, this case may be evaluated as a good example of showing that applying the principle of non-regression in human rights may transition to the realm of environmental law.[41]

Following the landmark case of *Urgenda*, another case from Germany questioned whether the emissions reduction target (55% until 2030 from 1990 levels) of Germany's Federal Climate Protection Act (KSG) was sufficient. The claimants asserted before the Federal Constitutional Court that this act violated their fundamental human rights.[42] Accordingly, claimants alleged that for Germany to fulfil its fair share of emissions reduction, it has had to reduce GHG emissions by 70% from 1990 levels by 2030. The Federal Constitutional Court acknowledged that the KSG provisions were inadequate and ordered the legislature to adopt clear emission reduction targets from 2031 onward. One may also argue that such a decision has significant potential for the evolution of the non-regression principle because, indeed, the decision of the court recognizes the requirement to have a more ambitious climate policy.

Another case challenging sufficiency of governmental mitigation efforts is the case of *Klimatická žaloba ČR v. Czech Republic*.[43] As in other European countries, the Czech Republic also has an agenda on actively addressing climate change, focusing on the sectors of industry, energy, transport, and agriculture. Such efforts have the contribution of numerous NGOs. There have been established movements and newer ones, such as the "Fridays for Future" organized by secondary school students and "Universities for Climate." Yet the critical question at this juncture is whether adequate measures are being taken at the policy level.

In this context, the significant case of *Klimatická žaloba ČR v. Czech Republic*[44] against the Czech Government and the Ministries of Environment, Agriculture, Industry and Trade, and Transport was initiated on 21 April 2021 by the NGO Climate Litigation (Klimatická žaloba), the municipality of Svatý Jan pod Skalou (Saint John under the Rock), the Czech Ornithological Society, and four natural persons (the case was represented by Frank Bold Advocates in Brno, with barrister P. Černý representing the plaintiffs). The claimants' submission centred on the assertion that the related state authorities in the Czech Republic were not adequately reducing greenhouse gas emissions. Accordingly, it has been argued that a reduction of 55% from 1990 levels by 2030 was

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41 For a similar argumentation and evaluation of a national court decision see VZW Klimaatzaak v. Kingdom of Belgium & Others. In: *Climate Change Litigation Databases* [online]. 2014 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/.

42 Neubauer, et al. v. Germany. In: *Climate Change Litigation Databases* [online]. 2021 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/.

43 For detailed information on the ongoing progress of the case see Klimatická Žaloba ČR. In: *Klimatická žaloba ČR* [online]. [cit. 2023-12-29]. Available at: https://www.klimazaloba.cz/.

44 Klimatická žaloba ČR v. Czech Republic. In: *Climate Change Litigation Databases* [online]. [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/klimaticka-zaloba-cr-v-czech-republic/.

a legally binding collective obligation of the European Union (and thus the Czech Republic) stemming from the Paris Agreement.

The Municipality Court in Prague has ruled in its judgement from 15 June 2022 (No. 14 A 101/2021-248)[45] in favour of the claimants. The Court decided that failing to adopt measures to ensure the reduction of GHG emissions by a 55% decrease in emissions is an illegal interference in the rights and held that the authorities should abstain from such infringement.

Upon the appeal application of all four ministries, the Supreme Administrative Court (SAC) in Brno partially decided to annul the first instance judgment. This judgement from 20 February 2023 can be found under No. 9 As 116/2022-166.[46] The main argument was that the commitments under the Paris Agreement are collective commitments for the EU as a whole and that there are no detailed and specified obligations for the member states. Therefore, any judgment in this direction cannot be given on the national level.[47] Further, the SAC has proclaimed that the government has no decision-making authority but only a coordinative role in climate matters. The SAC referred the case back to the first instance court.

The Municipal Court in Prague, upon reversal of its first decision, in its second decision dated 25 October 2023 (under No. 14 A 101/2021-445),[48] adopted a similar evaluation with the SAC and held that there was no existing concrete specified obligation for the Czech Republic to decrease emissions under international law (Paris Agreement etc.) nor from the EU law. The Court also emphasised that there was no such provision in the Czech legal system; therefore, it rejected the claim of the claimants to set concrete targets (81% or 84%, or even 89.74% decrease of the emissions of greenhouse gases by 2030). It's important to note that these targets, while reflective of the urgency perceived by the claimants, were not based on any existing legal obligations hinging upon a state decision or norms concerning human rights.

Besides the judgements given by both of the courts, it's worth noting that although it is relevant in terms of the distribution of obligations among EU members, the well-known principle of "common but differentiated responsibility" was not invoked.[49]

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45 Rozsudek Městského soudu v Praze ze dne 15. 6. 2022, č. j. 14 A 101/2021-248 [online]. [cit. 2023-12-29]. Available at: https://www.klimazaloba.cz/wp-content/uploads/2022/06/ROZSUDEK.pdf.

46 Rozsudek Nejvyššího správního soudu ze dne 20. 2. 2023, č. j. 9 As 116/2022-166 [online]. 2023 [cit. 2023-12-29]. Available at: https://www.klimazaloba.cz/wp-content/uploads/2023/02/rozhodnuti_9-as-116-2022-166.pdf.

47 Ibid.

48 Rozsudek Městského soudu v Praze ze dne 25. 10. 2023, č. j. 14 A 101/2021-445 [online]. 2023 [cit. 2023-12-29]. Available at: https://www.klimazaloba.cz/wp-content/uploads/2023/11/MS-v-Praze_Rozsudek_14-A-101-2021-445_201123.pdf.

49 Czech Courts are not the only courts that emphasized that a certain and clearly specified obligation may not be imposed on the state. Indeed, in the case of *Greenpeace* v *Spain I* the claimants asserted that the National Energy and Climate Plan was not sufficiently ambitious to fulfil the objectives of the Paris Agreement On 20 June 2023, the Supreme Court in its final decision stated that there was no failure in terms of taking the adequate measures as Spain is allowed to adopt its own national legislation in accordance with its EU commitments. The Court emphasized the fact that the national plans are adopted due to a negotiation at the EU level, therefore they even argued that they may not annul this plan basing on the fact that they were not sufficiently ambitious. For more information see Greenpeace v. Spain I. In: *Climate Change Litigation Databases* [online]. 20.6.2023 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/greenpeace-v-spain/.

Moreover, another relevant aspect of the case was an argument against the fact that judicial overreach into executive functions was not employed. Indeed, the Czech Constitution is rooted in the principle of separation of powers. There is a strict separation among the roles of the judiciary, executive, and legislative organs. Consequently, courts may not replace or override executive and legislative decisions. There is a clear boundary between judicial review and political decision-making. Still, the content of the case opens the way for an argument focusing on applying the non-regression principle. The principle could have provided a compelling legal basis.

The claimant NGO, along with the others, stated in advance that they would file an appeal before the SAC against the new decision of the Municipal Court in Prague as it does not favour the climate. They also plan to escalate the lawsuit to the Czech Constitutional Court in Brno, arguing that their fundamental human rights are seriously infringed. Overall, the process is ongoing. Although there are other cases in the Czech Republic dealing with the protection of air and nature having indirect consequences concerning climate policy, the case directly invoking obligations under the Paris Agreement and the protection of fundamental rights is *Klimatická žaloba ČR v. Czech Republic*. Time will show how the following cases will shape the climate litigation practice in the country.[50] For instance, recently the Pirate Party in the Czech Republic drafted and published the first version of the Czech Climate Act on 17 November 2023.[51] In response to the university's Strike for Climate, this initiative signalled a proactive step towards addressing climate concerns from the political sphere. However, as this version is preliminary and requires further discussion, it contains several contentious provisions.[52] In this context, it should be noted that only a few EU Member States currently have their dedicated climate laws, with Germany and Austria being the nearest examples among the Czech Republic's neighbours.[53] Therefore, drafting this act in the Czech Republic represents a step towards progress for climate legislation in Central Europe. Consequently, it would be possible to expect that this would not only foster local environmental reform but also contribute to the overall advancement in climate action within the EU, leading to different perceptions of climate litigation.

The state's existing climate policy was also questioned in the recent case of *Declic et al*. v *the Romanian Government*.[54] In the case, the claimant challenged whether the Romanian authorities have been failing their climate obligations since they have GHG

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[50] For an ongoing case in a similar vein see Greenpeace v. Spain II. In: *Climate Change Litigation Databases* [online]. [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/greenpeace-v-spain-ii/.

[51] Česká pirátská strana. Zákon o ochraně klimatu (klimatický zákon) [online]. [cit. 2023-12-29]. Available at: https://www.pirati.cz/documents/324/Klimatick%C3%BD-z%C3%A1kon_navrh-listopad.pdf.

[52] For example, section § 5, deals with access to justice. It includes provisions that could potentially hold the Czech Ministry of Environment accountable. Such section is particularly significant as it proposes concrete obligations and targets, expressed in percentages for specific years. In case such a draft is adopted, these provisions could lay a solid foundation for future claimants in climate litigation. It could provide the opportunity to counter the main argument of the SAC regarding the absence of concrete state obligations.

[53] BALOUNOVÁ, E. – SNOPKOVÁ, T. Český klimatický zákon – nutnost nebo…? *České právo životního prostředí*. 2023, Vol. XXIII, No. 1, pp. 13–40.

[54] Declic et al. v. The Romanian Government. In: *Climate Change Litigation Databases* [online]. 2023 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/declic-et-al-v-the-romanian-government/.

emission reduction targets for 2030 that are lower than the targets adopted at the EU level. They also asked the Court to determine whether the existing measures are adequate considering the global temperature increase limitation objectives foreseen under the Paris Agreement and whether such measures violate fundamental rights. Indeed, the claimants invoked the provision under the Romanian Constitution, which stipulates that the Romanian government has an obligation to ensure a *"better quality of life for its citizens and restore and protect the environment"*. The claimants' arguments implicitly emphasise the powerful tool of the non-regression principle in environmental law and the protection of fundamental human rights. The outcome of the case has the potential to inform other European cases by highlighting the importance of the alignment of the national policies with international environmental commitments and the progressive nature of these obligations.

In Ireland, the NGO Friends of the Irish Environment also questioned the sufficiency of Ireland's emission reduction plans and claimed that the national plan was invalid due to the failure to fulfil the short-term emissions reduction obligation.[55] The Court in Ireland did not accept such a claim because it considered that the current plan is an initial phase of realising the mitigation efforts, and it highlighted that this was a "piece of the jigsaw".[56] Indeed, the Court, by this decision, acknowledged the fact that an evolving and progressive strategy shapes the mitigation policies of the states. The potential contribution of the decision, in this case, is rather nuanced because it may hinder the immediate application of the non-regression principle concerning state policies as long as they follow a progressive and more ambitious long-term effort.

A recent case in Türkiye filed by young climate activists against the president of the Republic and the Ministry of Environment, Urbanization and Climate Change put into question the compatibility of the country's updated NDCs with its obligations under the Paris Agreement and human rights conventions.[57] This case, in fact, mirrors the Urgenda lawsuit in its approach but awaits judicial assessment on both legal and scientific grounds. Indeed, it also offers an opportunity for the application of the principle of non-regression as it argues that the updated NDC of the state will not result in a more ambitious *de facto* protection regime.[58] Therefore, the subject matter of the case has the potential to be evaluated in terms of this principle.

A case where the lack of a GHG emissions reduction target after 2020 was claimed to be violating the Austrian Constitution in the context of the rights of the children and

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55 Friends of the Irish Environment v. Ireland. In: *Climate Change Litigation Databases* [online]. 2019 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/friends-of-the-irish-environment-v-ireland/.

56 Mr. Justice MacGrath. Friends of the Irish Environment CLG and The Government of Ireland, Ireland and the Attorney General [online]. 2019 [cit. 2023-12-29]. Available at: https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2019/20190919_2017-No.-793-JR_judgment-2.pdf.

57 Genç iklim aktivistleri, Erdoğan'a dava açtı. In: *bianet* [online]. 5.10.2023 [cit. 2023-12-29]. Available at: https://bianet.org/haber/genc-iklim-aktivistleri-erdogan-a-dava-acti-278463.

58 A.S. & S.A. & E.N.B v. Presidency of Türkiye & The Ministry of Environment, Urbanization and Climate Change. In: *Climate Change Litigation Databases* [online]. 2023 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/as-sa-enb-v-presidency-of-turkiye-the-ministry-of-environment-urbanization-and-climate-change/.

their right to equality before the law.[59] The claimants also submitted before the Constitutional Court that the Austrian Federal Climate Protection Act only contains a negotiation obligation concerning the mitigation measures and does not have a deterrent sanction mechanism. It has also been alleged that the provisions of the Federal Climate Protection Act were not in compliance with international and European law. The Constitutional Court dismissed the claims and decided that it was unclear from the claimants' submissions how the future measures would interfere with the related fundamental rights.[60] According to the Court, the alleged unconstitutionality was not put forward in detail; it was decided that the application at hand was inadmissible. Indeed, the case's content highlights the importance of adopting clear legal obligations and having an ambitious mitigation effort that complies with international law. One may ask that, regardless of the question of whether such lack of stipulation of a clear mitigation obligation violates the rights of a specific group or not, such inaction could be deemed as a conflict with the non-regression principle, as Austria has an obligation to adopt ambitious mitigation policies as per the protection regime provided by the Paris Agreement. Such a question may take the case's evaluation in another direction and could potentially contribute to the evolution of the principle of non-regression.[61]

*b. CASES INVOLVING A SPECIFIC STATE ACTION*

A case that concerns a specific action by the state, which was considered to weaken the existing environmental regime, was again a case in the Czech Republic on the Expansion of Vaclav Havel Airport.[62] The case involved a regional development project, particularly the approval of an airport expansion in Prague by way of defining a new parallel runway. In addition to their arguments on noise and emissions pollution, the claimants, in their supplementary submission, asserted that such expansion would cause additional GHG emissions and that would undermine the objectives adopted under the Paris Agreement. Indeed, the claimants' arguments may be considered relevant to the principle of non-regression, as the Paris Agreement aims to reduce GHG emissions gradually and collaboratively in a progressive manner. The Court annulled the Principles of Territorial Development of the Central Bohemia Region as the project has significant sources of noise and emissions (non-GHG). Yet it did not accept claimants'

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59 Children of Austria v. Austria. In: *Climate Change Litigation Databases* [online]. 2023 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/children-of-austria-v-austria/.

60 For a similar case, with similar argumentation see In re Federal Climate Protection Act Austria. In: *Climate Change Litigation Databases* [online]. 27.6.2023 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/in-re-federal-climate-protection-act-austria/.

61 For a similar context see also Emma Johanna Kiehm, et al. v. State of Brandenburg. In: *Climate Change Litigation Databases* [online]. 2022 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/emma-johanna-kiehm-et-al-v-state-of-brandenburg/; Commune de Grande-Synthe v. France. In: *Climate Change Litigation Databases* [online]. 2021 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/commune-de-grande-synthe-v-france/; Notre Affaire à Tous and Others v. France. In: *Climate Change Litigation Databases* [online]. 14.10.2021 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/.

62 In re Václav Havel Airport Expansion. In: *Climate Change Litigation Databases* [online]. 24.6.2020 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/in-re-vaclav-havel-airport-expansion/.

arguments on the climate mitigation obligation, holding that reduction of GHG obligation may not be invoked to the extent that it concerns air traffic.

Another case that involves an argument concerning a specific state action is the case of the Yeşil Artvin Association and Others in Türkiye.[63] In this case, the claimants consisted of NGOs that targeted the issuance of thermal power plants. Claimants in this case argued that the emissions arising from these plants exacerbate climate change and, therefore, cause pandemics such as COVID-19. The Court dismissed the case due to a lack of legal grounds against the plants' operational licenses. Yet the case offers a good basis for discussing whether the principle of non-regression could find application if adopted by the claimants. Indeed, as a party to the Paris Agreement, Türkiye is under an obligation to reduce its GHG emissions. Therefore, one may suggest that it could be argued in this case that granting operational licenses for thermal power plants results in both normative and empirical retrogression in environmental protection and the right to a clean, healthy, and sustainable environment, thereby conflicting with the principle of non-regression, a concept first adopted in several provisions of the Paris Agreement and secondly recognized widely in human rights law?

Türkiye is indeed another jurisdiction where the climate litigation landscape is evolving. The country is still a candidate for the European Union and, therefore, is still harmonising its national law with EU law. The first significant case in Türkiye concerned Marmara Lake, a vital carbon sink and nationally important wetland in Manisa.[64] The lake's near-total depletion due to water diversion resulted in serious ecological and economic impacts. Therefore, the claimants in the case challenged the public administration's order on payment for rent due to the fishing activities in the region, which is no longer possible due to the loss of 98% of the surface of the lake.[65] The Manisa Administrative Court, in its rulings in 2022 and 2023, suspended and annulled the order, but this did not resolve the struggle.[66] The lake' conversion into agricultural land by the authorised governate triggered another lawsuit, this time combined with climate change arguments based on the states' obligations to preserve carbon sink areas and the non-regression principle implicitly endorsed in Turkish wetlands regulations enacted hinging upon the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (Ramsar Convention) and the National Wetland Protection Regulation. The case at hand indeed offers an interesting opportunity to observe the interaction

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63 Yeşil Artvin Derneği and others v. Presidency of the Republic of Türkiye, Ministry of Environment, Urbanization and Climate Change and Energy Market Regulatory Authority. In: *Climate Change Litigation Databases* [online]. 2021 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/yesil-artvin-dernegi-and-others-v-presidency-of-the-republic-of-turkiye-ministry-of-environment-urbanization-and-climate-change-and-energy-market-regulatory-authority/.

64 S.S. Gölmarmara ve Çevresi Su Ürünleri Kooperatifi v. Republic of Türkiye Ministry of Agriculture and Forestry, Manisa Directorate of Provincial Agriculture and Forestry. In: *Climate Change Litigation Databases* [online]. 28.10.2023 [cit. 2023-12-29]. Available at: https://climatecasechart.com/non-us-case/ss-golmarmara-ve-cevresi-su-urunleri-kooperatifi-v-republic-of-turkiye-ministry-of-agriculture-and-forestry-manisa-directorate-of-provincial-agriculture-and-forestry/.

65 Türkiye'nin ilk iklim davası Marmara Gölü balıkçıları adına açıldı. In: *bianet* [online]. 24.3.2022 [cit. 2023-12-29]. Available at: https://bianet.org/haber/turkiye-nin-ilk-iklim-davasi-marmara-golu-balikcilari-adina-acildi-259497.

66 Kuruyan Marmara Gölü'nde tarım başladı. In: *TRT HABER* [online]. 7.1.2023 [cit. 2023-12-29]. Available at: https://www.trthaber.com/foto-galeri/kuruyan-marmara-golunde-tarim-basladi/53043.html.

of climate change arguments combined with ecological protection and the application of the principle of non-regression to a specific state action.[67]

Collectively, these cases signify a burgeoning phase for the evolution of jurisprudence in terms of climate change, potentially shaping the interpretation and application of the non-regression principle in environmental law. As seen above, the current climate litigation cases in Europe have the potential to contribute to the evolution of the principle. The subject matter of the cases provides an arena that is favourable for the employment of argumentations based on the principle of non-regression as an established principle in environmental law or bridging human rights protection with the latter.

## CONCLUSION

As per the principle of non-regression, states are prohibited from taking actions that would render environmental protection weaker than the current regime. However, whether this principle is a fundamental principle in environmental law remains unanswered. Indeed, the principle is an established one within the realm of human rights. In this context, the fact that environmental rights have been recognized as a fundamental human right amidst the climate crisis paves the way for applying the non-regression principle in the realm of environmental law. This study examined the Paris Agreement as an environmental law document drafted in the context of climate change. It showed that the principle of non-regression is embodied in this instrument and that it started to gain a form of a distinct principle in environmental law.

In this regard, this study benefited from a growing body of national climate litigation cases. It explored the question of whether these cases may potentially contribute to the evolution of this principle and further whether it may have the value as an argument in these cases. Accordingly, landmark cases from European countries such as the Netherlands, Germany, Czech Republic, Romania, Turkey, and more are examined in the scope of this paper.

It is shown that the principle of non-regression, not explicitly but conceptually, is likely to emerge as an argument in climate litigation cases.

This study particularly sparks the discussion on how arguments based on the principle of non-regression may be constructed in climate litigation. As can be understood from the decided and the ongoing European cases, one may argue that the non-regression principle may be referenced within the framework of human rights law by way of arguing that the right to a clean and sustainable environment constitutes a fundamental human right. The states have a positive obligation to ensure such rights and are prohibited from adopting weaker provisions than the existing ones. Accordingly, one can even argue that the Paris Agreement may be considered a human rights related document in the context of a right to a healthy and sustainable environment and that it can be cited

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[67] For a more detailed analysis of the non-regression principle in the context of Ramsar Convention see VORDERMAYER-RIEMER, M. *Non-Regression in International Environmental Law: Human Rights Doctrine and the Promises of Comparative International Law*. Cambridge – Antwerp – Chicago: Intersentia, 2020.

to say that states have the obligation to comply with its articles embodying the principle of non-regression.

Be that as it may, there is also another approach that is academically more innovative but practically harder to accept. In this case, a claimant may assert that the principle of non-regression is a distinct fundamental principle in environmental law such as the polluter-pays principle, prevention principle, or precautionary principle. Indeed, in jurisdictions such as India, the principle is accepted as an established norm in international environmental law. Yet, the likelihood of acceptance of such an argument seems lower for the European practice, given the fact that in all the reviewed cases, there was no mention of such a principle. However, the growing body of climate jurisprudence and increasing interaction among different jurisdictions hold promise for the evolution of this principle.

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