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# Intergenerational Justice as a Lever to Impact Climate Policies: Lessons from the Complainants' Perspective on Germany's 2021 Climate Constitutional Ruling

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## Abstract

Climate litigation based on the constitutional rights of future generations is an emerging and promising approach to enforcing long-term policies based on intergenerational and climate justice. In Germany, a high-profile constitutional judgment triggered by climate activists ruled that the German climate policy infringes future freedom rights. Based on an assessment of legal opportunity structures and interviews with key actors, this research finds that the complainants utilised the opportunity to facilitate a strong public perception of intergenerational injustice set by the Fridays for Future movement. While the court's response in the form of the intertemporal effect doctrine is ambiguous and does not constitute clear fundamental rights of future generations, the complainants reached their strategic goal to directly influence policymakers and draw public attention to the issue of climate protection as an intergenerational responsibility. An interplay of four different legal arguments and numerous actors associated with the climate movement was crucial to triggering this outcome. These findings from a sociolegal bottom-up perspective are of great relevance as they show that impactful climate litigation through intergenerational principles relies on the strategic utilisation of the cultural context beyond the legal sphere.

**Keywords:** climate activism; climate change; intergenerational justice; sociolegal

## 1. Introduction

Current political measures to reduce greenhouse gas emissions are often not far-reaching enough to match self-formulated reduction goals, and legal tools to hold governments accountable are limited. The group of people that will disproportionately suffer the consequences from political shortcomings related to global warming are young and future generations. Or, as eighteen-year-old climate activist Greta Thunberg has expressed in 2018, “what we do or don't do right now, will affect my entire life and the lives of my children and grandchildren”.<sup>1</sup> Yet, the interest of future generations remains significantly underrepresented, and climate policies are lacking long-term commitments.<sup>2</sup> Future generations are likely to face severe environmental problems that will impact their

<sup>1</sup> “Greta Thunberg Ted Talk Transcript: School Strike for Climate” (REV, 12 December 2018) <<https://www.rev.com/blog/transcripts/greta-thunberg-ted-talk-transcript-school-strike-for-climate>> (last accessed 28 December 2022).

<sup>2</sup> G Winter, “The Intergenerational Effect of Fundamental Rights: A Contribution of the German Federal Constitutional Court to Climate Protection” (2022) 34(1) *Journal of Environmental Law* 209.

livelihoods and infringe upon their fundamental freedom rights. Intergenerational justice is inherent in numerous constitutions, frequently combined with a requirement to promote sustainable development. However, courts have most often deferred the enforcement of principles of this kind to legislatures, as the legal standing of not-yet-existing people remains abstract and the creation of a causal link between policy failure and the endangerment of people is extremely difficult to prove.<sup>3</sup>

The debate around the rights of future generations as an angle to climate litigation is largely centred around court decisions, with a strong focus on isolated legal arguments. Approaching this issue from a purely legal point of view establishes the impression that courts are the sole actors to determine whether and how intergenerational justice can be applied to climate litigation. While courts ultimately determine the outcomes of constitutional complaints, a solely court-centred perspective risks overlooking the crucial role of claimants and the cultural circumstances under which climate cases evolve. The claimants, as the actors who initiate complaints and cause the court to react to their legal arguments, set the frame of climate as an intergenerational justice issue. The meaning attached to the rights are developed by environmental activists and under cultural circumstances that are beyond the legal sphere. Consequently, the relationship between these cultural and legal meanings is the underlying dynamic that translates the rights of future generations from an abstract concept in legal bodies to a court case with direct consequences in the real world.

To address this issue, this article looks at a ground-breaking constitutional case in Germany where claimants, at least partially, proved state liability for insufficient climate mitigation based on intergenerational proportionality. In 2021, the German Federal Constitutional Court (BVerfG) ordered the national government to correct and significantly modify its Federal Climate Change Act (CCA), to reduce emissions and to strengthen future mitigation pathways.<sup>4</sup> This court ruling sparked significant attention in the media, and observers have labelled it as a “*Hoffnungsträger*” (beacon of hope) for climate activism.<sup>5</sup> Shortly before the 2021 general elections in which climate policy was a key issue, the standing government announced that it would immediately correct its climate legislation to match generational responsibility.<sup>6</sup> Internationally, the BVerfG has an important reputation, and the decision is expected to influence climate litigation on a global scale.<sup>7</sup>

This article finds that while the court’s response in the form of the intertemporal effect doctrine is ambiguous and does not constitute clear fundamental rights of future generations, the complainants reached their strategic goal to directly influence policymaking and draw public attention to the issue of climate protection as an intergenerational responsibility. This article argues that impactful climate litigation and the legal representation of future generations relies on the strategic utilisation of the cultural context beyond the legal sphere. The frame of climate justice was created by the Fridays for Future (FFF) movement, and the complainants, led by established environmental organisations, utilised this opportunity by matching their legal argumentation to the according legal provisions inherent in the German Constitution.

<sup>3</sup> I Gonzalez-Ricoy and F Rey, “Enfranchising the future: Climate justice and the representation of future generations” (2019) 10(5) WIREs Climate Change e598.

<sup>4</sup> LJ Kotzé, “Neubauer et al. versus Germany: Planetary Climate Litigation for the Anthropocene?” (2021) 22(8) German Law Journal 1423–44.

<sup>5</sup> “Remo Klinger über erfolgreiche Klimaklagen: Klimaschutz hat Verfassungsrang” (TAZ, 2021) <<https://taz.de/Anwalt-ueber-erfolgreiche-Klimaklagen/!5765073/>> (last accessed 20 January 2023).

<sup>6</sup> “Klima-Urteil: Merkel will das Gesetz schnell verschärfen” (Merkur, 2021) <<https://www.merkur.de/politik/klimaschutzgesetz-angela-merkel-cdu-csu-spd-scholz-klimawandel-erneuerbare-energien-bundesverfassungsgericht-zr-90488076.html>> (last accessed 15 December 2022).

<sup>7</sup> S Kirchner, “Climate Justice for Future Generations (Order of the First Senate) (BVerfG)” (2023) 62(2) International Legal Materials 336–90.

These findings are developed through a sociolegal analysis approach to rights mobilisation to understand the relation between the societal and legal norms that create the possibility of intergenerational justice as a lever to impact climate policies. The guiding concept to facilitate this approach is legal opportunity structures (LOS), enabling an assessment through legal and cultural dimensions. Relying on empirical data from six interviews with the environmental activists behind the German constitutional ruling, this article focuses on the claimants' perspective on climate litigation as an expression of activism.

## II. Setting the stage: intergenerational justice and the debate about the German court case

The legal bases concerning future generations are typically referred to as “the rights of future generations”, “intergenerational justice” or “intergenerational equity”.<sup>8</sup> While the governmental policies that affect future generations are obviously not limited to climate, by its nature the question of striking a balance between the interests of current and future generations is closely related to environmental issues. Originating from an ethical debate about one's responsibility to the following generations on an individual level, the discussion was increasingly elevated to the legal sphere in the 1980s and 1990s. This was a response to growing concerns about environmental threats caused by industrial emissions.<sup>9</sup> The legal arguments centre around the state's responsibility to direct social life in a way that ensures that the natural bases of life are preserved and extinction of humanity is avoided.

In this context, intergenerational justice principles found their way into numerous constitutions, which opened up the opportunity of legal mobilisation of citizens and, hence, environmental activists. Therefore, it is not surprising that environmental activists are increasingly trying to utilise legal opportunities embedded in national constitutions as part of an international strategy to restrict greenhouse gas emissions.<sup>10</sup> A detailed understanding of national court processes and mobilisation strategies is crucial when observing global climate litigation trends.

Article 20a in the German Constitution expresses that “mindful also of its responsibility towards future generations, the State shall protect the natural bases of life”, which is a clear example of a combination of intergenerational and environmental justice.<sup>11</sup> Under this provision, a high-profile case that recently emerged is the decision of the BVerfG in 2021 in which complainants challenged the constitutionality of the government's climate policy. This case will probably have a significant impact on the climate litigation literature as it showcases an innovative legal strategy based on the rights of future generations.<sup>12</sup> So far, most publications about the case have focused on the BVerfG as the main actor shaping the German climate policy. These court-centred approaches neglect the influence of the activists who filed the complaints in the first place. When mentioned, the complainants are overwhelmingly presented as one coherent group, and only few authors point out that the court's ruling was a reaction to four constitutional complaints (Table 1).<sup>13</sup>

<sup>8</sup> HS Cho and OW Pedersen, “Environmental rights and future generations” in M Tushnet, T Fleiner and C Saunders (eds), *Routledge Handbook of Constitutional Law* (Abingdon, Routledge 2012) p 408.

<sup>9</sup> L Gündling, “Our responsibility to future generations” (1990) 84(1) *American Journal of International Law* 207–12.

<sup>10</sup> L Wegener, “Can the Paris Agreement help climate change litigation and vice versa?” (2020) 9(1) *Transnational Environmental Law* 17–36.

<sup>11</sup> BVerfG Order of the First Senate of 24 March 2021 – 1 BvR 2656/18, 28 <[http://www.bverfg.de/e/rs20210324\\_1bvr265618en.html](http://www.bverfg.de/e/rs20210324_1bvr265618en.html)> (last accessed 29 December 2022).

<sup>12</sup> Winter, *supra*, note 2.

<sup>13</sup> P Minnerop, “The Advance Interference-Like Effect of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court” (2022) 34(1) *Journal of Environmental Law* 135–62.

**Table 1.** Cases overview.

Case	Leading environmental organisation	Referenced legal basis in the Grundgesetz (Basic Law)
BvR 2656/18 <sup>14</sup> (BUND case)	BUND	Articles 2 and 14 Article 20(3)
BvR288/20 <sup>15</sup> (Greenpeace case)	Greenpeace	Articles 1 and 2 Article 20a
BvR 96/20 <sup>16</sup> (DUH case 1)	DUH	Articles 2 and 14
BvR 78/20 <sup>17</sup> (DUH case 2)	DUH	Articles 2 and 14

BUND = Bund für Umwelt und Naturschutz; DUH = Deutsche Umwelt Hilfe.

In practice, the constitutional ruling was triggered by four separately filed claims over a relatively short time span. Each case was supervised by one or more environmental organisations, included multiple claimants, and was supported by specialised lawyers. The constitutional court recognised the similarities of the cases and summarised that the complaints “primarily rely on duties of protection arising from fundamental rights under Art. 2(2) first sentence and Art. 14(1), on a fundamental right to a future consistent with human dignity and a fundamental right to an ecological minimum standard of living”.<sup>18</sup> Consequently, the BVerfG decided to consolidate the complaints and respond to them in one decision. In their interviews, the representatives of the organisations claim that the different complaints had no influence on the others’ underlying legal strategies. Cooperation between the different organisations only occurred after the submission of the complaints.

The similarities in timing and content are striking. Except for the Bund für Umwelt und Naturschutz (BUND) case, which was initiated in 2018 and before the CCA came into force but was later amended to target it, all complaints were filed in 2020 and feature intergenerational justice claims. As Article 20 and the inherent rights of future generations are not new to the constitution, the opportunity to mobilise these rights can hardly be explained by purely legal circumstances. To understand this dynamic and assess how the German rights of future generations were elevated from the abstract to the practical level for the first time, it is crucial to explore these mobilisation efforts in their cultural context.

### III. The guiding framework

#### 1. The lens of legal opportunity structures

In the scholarship of legal mobilisation, the concept of LOS offers a dynamic lens through which to assess strategic litigation.<sup>19</sup> Legal opportunities refer to those features of the legal

<sup>14</sup> “Klageschrift” (SFV, 2018) <<https://www.sfv.de/media/3292/download/Klageschrift%20Klimaklage-Endfassung.pdf?v=1&inline=1>> (last accessed 12 February 2023).

<sup>15</sup> “Verfassungsbeschwerde” (Germanwatch, 2020) <[https://www.germanwatch.org/sites/germanwatch.org/files/Klimaklage%202020%20-%20Verfassungsbeschwerde\\_online.pdf](https://www.germanwatch.org/sites/germanwatch.org/files/Klimaklage%202020%20-%20Verfassungsbeschwerde_online.pdf)> (last accessed 12 February 2023).

<sup>16</sup> “Verfassungsbeschwerde” (DUH, 2020) <[https://www.duh.de/fileadmin/user\\_upload/download/Press\\_emitteilungen/Umweltpolitik/Klimaschutz/Verfassungsbeschwerde\\_Klimaklage\\_Linus\\_Steinmetz\\_et\\_al\\_final\\_geschw%C3%A4rzt-Anhang\\_01.pdf](https://www.duh.de/fileadmin/user_upload/download/Press_emitteilungen/Umweltpolitik/Klimaschutz/Verfassungsbeschwerde_Klimaklage_Linus_Steinmetz_et_al_final_geschw%C3%A4rzt-Anhang_01.pdf)> (last accessed 12 February 2023).

<sup>17</sup> “Verfassungsbeschwerde” (DUH, 2020) <[https://www.duh.de/fileadmin/user\\_upload/download/Press\\_emitteilungen/Umweltpolitik/Klimaschutz/Verfassungsbeschwerde\\_Klimaklage\\_Linus\\_Steinmetz\\_et\\_al\\_final\\_geschw%C3%A4rzt-Anhang\\_01.pdf](https://www.duh.de/fileadmin/user_upload/download/Press_emitteilungen/Umweltpolitik/Klimaschutz/Verfassungsbeschwerde_Klimaklage_Linus_Steinmetz_et_al_final_geschw%C3%A4rzt-Anhang_01.pdf)> (last accessed 12 February 2023).

<sup>18</sup> BVerfG, supra, note 11.

<sup>19</sup> E Lehoucq and WK Taylor, “Conceptualizing legal mobilization: How should we understand the deployment of legal strategies?” (2020) 45(1) Law & Social Inquiry 166–93.

system that increase actors' likelihood to apply litigation and determine the chances of success.<sup>20</sup> The three most important dimensions of LOS are (1) access to courts, (2) legal stock and (3) cultural stock.

#### *a. Access to courts*

The first crucial dimension of LOS is the access to courts, as the accessibility of formal institutional mechanisms fundamentally shapes the emergence, progress and outcomes of collective action. This dimension is stable and mostly only changes over the long term.<sup>21</sup> There are two main factors that influence the access to courts in the legal system: the rules of legal standing and the costs of the legal process. Legal standing refers to the requirements that an actor must fulfil to be able to initiate a lawsuit concerning a specific legal right. The norms outlining the legal standing to claim a specific right determine who has the potential to mobilise the law. This is essential because without legal standing, formal litigation is not possible.<sup>22</sup> Typically, the issue of standing is related to proving potential direct harm to an individual, and, depending on the legal system, activists are able to invoke the principle of associational standing, which enables organisations to bring legal claims on behalf of their members.<sup>23</sup> This is important as organisations are often the main actors channelling activism. Finally, costs of legal processes are a crucial factor shaping the access to courts. The ability to pay for the initiation of a legal process determines whether an actor has access to rights mobilisation.

#### *b. Legal stock*

The second key dimension of LOS is the legal stock available to the claimants. Legal stock refers to the body of law that exist in a particular field, which is a crucial determinant of enabling rights mobilisation.<sup>24</sup> The existence of inviolable rights is a necessary precondition to initiate litigation. Legal mobilisation also requires a set of mechanisms that render these rights substantially enforceable.<sup>25</sup> The exact requirements on the enforceability of a legal breach are described in the relevant legislation that constitutes the legal stock. This factor typically only changes over the long run and thus is considered a stable dimension.

Interestingly, the nature of what determines a legal stock is also strongly affected by whether the legal system is rooted in a civil or a common law tradition. A major difference between common law countries and civil law countries (such as Germany) is the role of precedent in court decisions. However, Vanhala argues against the view that a more flexible legal system simplifies legal mobilisation because “changes in legal stock can create or limit opportunities for [non-governmental organisations] to frame their legal claims persuasively”.<sup>26</sup> Ultimately, this means that the issue of legal stock is case and context specific.

<sup>20</sup> L Vanhala, “Is legal mobilization for the birds? Legal opportunity structures and environmental Nongovernmental organizations in the United Kingdom, France, Finland, and Italy” (2018) 51(3) *Comparative Political Studies* 380–412.

<sup>21</sup> G De Fazio, “Legal opportunity structure and social movement strategy in Northern Ireland and southern United States” (2012) 53(1) *International Journal of Comparative Sociology* 3–22.

<sup>22</sup> RE Case and TE Givens, “Re-engineering Legal Opportunity Structures in the European Union? The Starting Line Group and the Politics of the Racial Equality Directive” (2010) 48(2) *JCMS: Journal of Common Market Studies* 221–41.

<sup>23</sup> De Fazio, *supra*, note 21.

<sup>24</sup> Vanhala, *supra*, note 20.

<sup>25</sup> Case and Givens, *supra*, note 22.

<sup>26</sup> Vanhala, *supra*, note 20.

### c. *Cultural stock*

The third dimension of LOS is the cultural stock surrounding a specific right. The cultural stock refers to the social consensus of what is perceived as injustice. A change of cultural stock can develop independently from the legal stock and from the availability of legal claims. Andersen explains that a change in cultural stock is caused by cultural contradictions, or when cultural values are conflicted by the force of events, or when ideologies are not reflected in policies.<sup>27</sup> The resulting cultural stock influences the meaning-making of rights, which shapes the kinds of claims that activists will forward.

While access to courts is a relatively independent feature, cultural and legal stock are closely related, as “legal and cultural frames are mutually constitutive: cultural symbols and discourses shape legal understandings just as legal discourses and symbols shape cultural understandings”.<sup>28</sup> This not only shows that the legal and cultural perceptions of rights are in constant conversation with each other, but also indicates the importance of framing. On the one hand, claimants construct their legal argument depending on the framing of a certain right. Vanhala explains that the way in which organisations perceive the world creates internal meaning-making that determines the strategy of collective action.<sup>29</sup> On the other hand, cultural framing also influences the receptivity of the judiciary.<sup>30</sup> A judicial culture that is not open to the enforcement of specific politically charged issues will deny rights mobilisation even if access and legal stock are available. The receptivity of a court is influenced by the judges’ political preferences and their inevitable sensitivity to cultural stock.<sup>31</sup> Consequently, it is extremely important that the framing of a rights mobilisation matches the available cultural opportunities.

## 2. Methodology

To apply the LOS lens, this article draws on content analysis based on legal and empirical data. First, key legal documents provide the basis of the legal arguments reflecting the three most important perspectives – the BVerfG ruling, the letters of complaint and the CCA – on the German court ruling as described. Second, this article applies an analysis of empirical data, most notably interviews presenting the complainants’ personal evaluations of the rights mobilisation process. I conducted six semi-structured online interviews with two claimants, two lawyers and two representatives of environmental organisations. The interviews were held with actors involved in each of the four different complaints that triggered the court ruling. Additionally, the analysis is complemented with numerous publicly available sources representing the complainants’ opinions, such as public statements, blogs or websites. This empirical perspective is crucial to capturing the activists’ strategy.

## IV. Four complaints, one goal: advancing the debate on climate justice

To understand how the complainants mobilised the rights of future generations before the German constitutional court, it is important to assess the goal that the plaintiffs attempted to achieve with this litigation. Obviously, their direct legal objective is expressed in their letters of complaint, and, essentially, they all demanded that the German government revised the CCA. However, this analysis finds that the overall goal was not to achieve a legal objective but to influence the wider political debate about climate change.

<sup>27</sup> EA Andersen, *Out of the Closets and Into the Courts: Legal Opportunity Structure and Gay Rights Litigation* (Ann Arbor, MI, University of Michigan Press 2005).

<sup>28</sup> *ibid.*

<sup>29</sup> Vanhala, *supra*, note 20.

<sup>30</sup> De Fazio, *supra*, note 21.

<sup>31</sup> *ibid.*



BUND centred its legal strategy around the goal that the German state needs to implement a clear carbon dioxide (CO<sub>2</sub>) budget to comply with the climate goals of the Paris Agreement.<sup>32</sup> Yet, the corresponding lawyer pointed out that “the case was never about the CO<sub>2</sub> budget which was rejected by the court. It was about boundaries, and they have been crossed.”<sup>33</sup> Here, the specific legal argumentation was secondary to the overall message of the court as a last resort to bring the government to comply with crucial climate objectives. From a campaigning point of view, it becomes even more clear that the complaint was part of a larger strategy in which the outcome of the court case was secondary. The Greenpeace representative stated that:

This climate complaint was embedded in a wider strategy so that the German climate targets will be raised. And one tactic we have chosen is this constitutional complaint. That is of course my perspective as a campaigner, that it was never about winning this lawsuit or not, but about building political pressure along the lawsuit, building public pressure, and creating awareness that people are already directly affected by the consequences of the climate crisis today.<sup>34</sup>

Considering that the three environmental organisations have been active since the 1970s and are established parts of the climate protection movement, it comes as no surprise that the complaints forwarded the social cause of climate protection. In rights mobilisation, activists typically utilise the formal institutional process as a tool to forward the broader cause of the social movement.<sup>35</sup> Thus, the constitutional complaints at hand must be understood as part of a larger strategy to forward climate activism. The goal is to build political pressure rather than the direct legal consequences of the complaint.

Moreover, the data show that while planning and submitting the claims, the chances of a successful complaint were estimated as extremely slim. When asked about the outcome of the complaints, all six interviewees expressed how surprised they were by the BVerfG agreeing with their claims to a large extent. This may be best exemplified by the Deutsche Umwelt Hilfe (DUH) representative, who explained that “I prepared several press releases: including one titled ‘rejected without justification’, and one ‘rejected with good justification’. Of course, I have always hoped that the judges would rule in our favour but I was surprised by the magnitude of the ruling.”<sup>36</sup> While this highlights the significance of the court ruling, it also shows that the complainants never expected to win the case. Hence, the complainants’ strategic goal was not the court process itself but rather to contribute to a public debate about climate justice. This strategic goal is important to keep in mind when assessing how the complainants utilised the LOS.

## V. Applying the legal opportunity structures lens

### I. Access to courts: the standing of future generations

Legal standing defines the type of actor that is eligible to appeal to the court, which significantly influences the legal strategy that activists will employ.<sup>37</sup> Legal standing is a major challenge to claiming the rights of future generations due to the abstract nature of

<sup>32</sup> “Verfassungsbeschwerde” (*Germanwatch*, 2020) <[https://www.germanwatch.org/sites/germanwatch.org/files/Klimaklage%202020-%20Verfassungsbeschwerde\\_online.pdf](https://www.germanwatch.org/sites/germanwatch.org/files/Klimaklage%202020-%20Verfassungsbeschwerde_online.pdf)> (last accessed 12 February 2023).

<sup>33</sup> Interview with BUND lawyer.

<sup>34</sup> Interview with Greenpeace representative.

<sup>35</sup> M McCann, “Law and Social Movements: Contemporary Perspectives” (2006) 2 *Annual Review of Law and Social Science* 17–38.

<sup>36</sup> Interview with DUH representative.

<sup>37</sup> Vanhala, *supra*, note 20.

the legal representation of future persons. To define future generations as legal personas that can claim rights is in stark contrast to constitutional standing procedures, which are typically designed for citizens that can directly argue their interests before the court.<sup>38</sup>

Yet, the supposed interest of present generations can overlap with the interest of future generations. In our interview, the Greenpeace complainant underlined the following:

We should do it better than the generations before us. . . . Apart from that, I can't imagine that anyone from a future generation will complain about the fact that at some point people before them at least tried, to the best of their ability, to take care of their future.<sup>39</sup>

This shows that this claimant was not only motivated by wanting to protect their own rights, but also driven by a moral obligation to prevent future generations from having to fix the current generation's shortcoming. Additionally, the claimant dismisses misrepresentation of unborn individuals, one of the main obstacles to the legal standing when it comes to future generations.<sup>40</sup> The claimant shows awareness of their responsibility towards future generations.

From the perspective of the court, the issue unfolds in a different manner. On the one hand, the court is aware of the indirect consequences that a future-oriented approach to protecting young people has on unborn individuals. This becomes evident through the court's decision that "the state is obliged to afford this protection to the current population and also, in light of objective legal requirements, to future generations".<sup>41</sup> The court recognises that it is crucial for the state to protect future generations, on an objective dimension, through a future-oriented approach to climate policies.

On the other hand, the German provision on legal standing clearly states that complainants need to be natural persons and able to prove that a violation of a fundamental right is at least possible.<sup>42</sup> Consequently, the court states that "the complainants are not asserting the rights of unborn persons or even of entire future generations, neither of whom enjoy subjective fundamental rights. Rather, the complainants are invoking their own fundamental rights."<sup>43</sup> This statement confirmed the abovementioned expectation that legal standing is a major obstacle to enforcing the rights of future generations, which already limits the extent to which this ruling can be considered as intergenerational justice. Nevertheless, the interest of future generations, despite not being granted direct legal standing, remains a critical argument, as the analysis below reveals.

When it comes to legal costs, it is no coincidence that all of these cases were sponsored by large and established environmental organisations, as they have the resources and networks to organise such a constitutional complaint. One claimant explained that "we did not have to worry about costs, everything was covered by Greenpeace and Germanwatch".<sup>44</sup> This indicates that, unlike other forms of climate activism such as protesting or school strikes, the climate movement relies on environmental non-governmental organisations to facilitate climate litigation cases as a tool to push for better climate governance. The legal opportunities determined by legal costs create a dependence on climate organisations and provide the non-governmental organisations with significant influence over how climate activism is represented in the courts.

<sup>38</sup> Gonzalez-Ricoy and Rey, *supra*, note 3.

<sup>39</sup> Interview with Greenpeace claimant 1.

<sup>40</sup> Gonzalez-Ricoy and Rey, *supra*, note 3.

<sup>41</sup> BVerfG, *supra*, note 11.

<sup>42</sup> *ibid*, 11.

<sup>43</sup> *ibid*, 33.

<sup>44</sup> Interview with Greenpeace claimant 2.



## 2. Legal stock: what were the chances?

According to the LOS theory, the available body of law shapes the legal opportunities that activists consider when choosing rights mobilisation to forward their agenda.<sup>45</sup> The claims of intergenerational justice were based on the infringement of fundamental freedoms and address the German Basic Law. Here, the four separately filed cases followed a similar argumentation based on the duty to protect. The duty to protect is a principle that arises from Article 2(2) and partly out of Article 14(1) *Grundgesetz*.<sup>46</sup> This incorporates the obligation to protect life and physical integrity, which the claimants saw as being infringed by the consequences of climate change. The constitutionally required minimum standard is only violated if protective measures are completely missing, when the measures are evidently unsuitable to meet the aim of the duty to protect or when the measures fall significantly below the required standard of protection.<sup>47</sup>

The relevant legislation on intergenerational rights is described in Article 20a, which states that “mindful of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation”.<sup>48</sup> While this might seem like a directly enforceable provision, the article is located outside the fundamental rights section and thus does not constitute a subjective fundamental right to environmental protection.<sup>49</sup> As such, Article 20a constitutes a *Staatszielbestimmung* (fundamental national objective), meaning that it is a principle that the state must follow when setting national objectives. Thus, this article typically comes into effect if the government implements a law that sets long-term goals for the state and these objectives violate the provisions in Article 20a. In other words, Article 20a can only be invoked as a response to a legislation.

All four complaints based their argumentation on a violation of the duty to protect based on Articles 2 and 14 *Grundgesetz*. The claimants argued that the CCA’s inefficiency in meeting the climate targets set out in the Paris Agreement violates the state’s duty to protect because the consequences of climate change harm the lives and physical integrities of the claimants.<sup>50</sup> The complainants evaluated the duty to protect as a promising approach to claim sufficient environmental protection before the BVerfG, as highlighted in the following three arguments.

First, the BUND case links the duty to protect to Article 20 in 2018, two years before the other complaints.<sup>51</sup> The corresponding letter of complaint features the *Wesentlichkeitsgrundsatz* (essential matters doctrine) and argues that the freedom rights of future generations are at essential risk due to climate change. In our interview, the BUND lawyer explained that they developed this legal strategy a long time ago and decided to finally launch a case based on this argumentation in 2018 together with BUND to support his aim.<sup>52</sup> They claim that initially no one in the climate litigation environment thought that such a constitutional approach to climate litigation could be possible and that “the moment when the BVerfG signalled there’s something to this, everyone wanted to join in”.<sup>53</sup> This is difficult to verify, but it is likely that his legal argumentation influenced the following complaints.

<sup>45</sup> Andersen, *supra*, note 27.

<sup>46</sup> I Härtel, “Klimaschutzverfassungsrecht: Klima-Staatszielbestimmungen im Föderalismus” (2020) 42 *Natur und Recht* 577–88.

<sup>47</sup> Minnerop, *supra*, note 13.

<sup>48</sup> BVerfG, *supra*, note 11.

<sup>49</sup> Härtel, *supra*, note 46.

<sup>50</sup> BVerfG, *supra*, note 11.

<sup>51</sup> “Klageschrift” (SFV, 2018) <<https://www.sfv.de/media/3292/download/Klageschrift%20Klimaklage-Endfassung.pdf?v=1&inline=1>> (last accessed 12 February 2023).

<sup>52</sup> Interview with BUND lawyer.

<sup>53</sup> *ibid.*

Second, Greenpeace launched their complaint in 2020 and based it on the generational responsibility under Article 20a and the duty to protect in Article 2. The main characteristic of this claim is that it is a direct response to the CCA and focuses on the necessity of a carbon budget with intergenerational proportionality.<sup>54</sup> The Greenpeace constitutional lawyer, who authored the case, explained that they also considered other approaches, but

[w]e felt that the best way to argue the case was to use the duty to protect. It was time to take the court by its word and use previous argumentation by the court. After all, there was a great deal of discussion in legal scholarship as to whether and where the thresholds for the minimum measure requirement were prescribed.<sup>55</sup>

This statement suggests that legal strategy was directly influenced by the academic discussion of and experience from previous cases. However, the Greenpeace constitutional lawyer did not specify which cases and publications exactly influenced their strategy.

Third, the two DUH cases also based their claims on the duty to protect and combined them with an infringement of the individual *Eigentumspositionen* (position of property ownership). The legal argumentations in DUH case 1 and DUH case 2 largely overlap. The main difference is that the DUH case 1 claim focuses on young claimants residing in Germany, while the DUH case 2 claim focuses on non-German claimants. The representative of the DUH explains:

The organisations also approached the conditions of the Basic Law on which the complaint was based in different ways. In our case, it was more a question of the effects leading to a future that was no longer worth living.<sup>56</sup>

Interestingly, the two DUH cases mention the important consequences for future generations but do not claim the according principle under Article 20a. This shows that all four cases appeal to some version of intergenerational justice but approach the issue with significantly differing legal arguments.

However, this careful preparation of legal arguments and interpretation of diverse articles does not mean that the LOS given by the legal stock was very promising. The Greenpeace lawyer explained that until the very last minute they expected the court to reject all of the claims. They hoped for “a couple of raisins that I can use for future cases” and was completely surprised when the court followed aspects of their legal argumentation.<sup>57</sup> The BUND lawyer even signalled that they initially hesitated to apply their legal argumentation based on fundamental rights as they thought it was too early for the court to accept such an argumentation. They did not expect the rights mobilisation to be successful despite their clear awareness of the LOS through the available legal stock. Nevertheless, this hesitation was not only due to legal reasons, but also due to societal considerations, which will be discussed in the section on cultural stock.

### **3. Legal stock: international pressure as quasi-legal stock**

While the legal stock constitutes a legal body in the classical sense of legal stock that applies to most rights mobilisation cases, the BVerfG decision was shaped by additional

<sup>54</sup> “Verfassungsbeschwerde” (Germanwatch, 2020) <[https://www.germanwatch.org/sites/germanwatch.org/files/Klimaklage%202020%20-%20Verfassungsbeschwerde\\_online.pdf](https://www.germanwatch.org/sites/germanwatch.org/files/Klimaklage%202020%20-%20Verfassungsbeschwerde_online.pdf)> (last accessed 12 February 2023).

<sup>55</sup> Interview with Greenpeace lawyer.

<sup>56</sup> Interview with DUH representative.

<sup>57</sup> Interview with DUH lawyer.

legal circumstances. The LOS literature typically focuses on constitutional or international law as separate legal norms that usually do not interact.<sup>58</sup> As the case at hand is a constitutional complaint and thus not an international issue, a conventional approach to the LOS framework would suggest that the legal stock is exclusively formed by constitutional law. However, the interviews with the complainants indicated that arguments based on international law significantly influenced the BVerfG's ruling as well.

By ratifying the Paris Agreement in 2015, 193 Parties committed to address climate change by “holding the increase in the global average temperature to well below 2°C”.<sup>59</sup> This treaty provides the largest international legal framework to facilitate climate mitigation and protect fundamental freedoms that are at risk. While the climate targets themselves are not directly binding under international law, the Paris Agreement contains due diligence requirements according to which states must attempt to reach the climate goal through its application in the national judicial or other national political systems.<sup>60</sup> Such implementation of due diligence in light of national circumstances has proven binding status under national law in other climate litigation cases such as the *Urgenda* case in the Netherlands.<sup>61</sup> Similarly, the BVerfG's ruling provides extensive references to the Paris Agreement and, keeping in mind the constitutional provision of the openness of the Basic Law towards the international system under Articles 24 and 59,<sup>62</sup> acknowledges the Paris Agreement as setting the framework for Germany's climate action obligations.<sup>63</sup>

From the complainants' point of view, it was a strategic choice to appeal to Germany's ratification of the Paris Agreement as reflected in all four letters of complaints. In our interview, the Greenpeace lawyer explained that the BVerfG is highly aware of the global trend to utilise the Paris Agreement on a national level, stating that “I suspected that at some point, the court would have to follow a similar direction”.<sup>64</sup> He explained that the Paris Agreement sets a timeframe in which Germany is obliged to significantly lower its CO<sub>2</sub> emissions by 2050. This numerically formulated goal can easily be compared to the measures taken by the CCA. In a strikingly similar manner, the four letters of complaint utilise this opportunity and apply a strategy that appeals to the commitment to Paris Agreement provisions.

Relatedly, and with references to decisions by the Irish and Dutch constitutional courts, the complaints extensively consulted the International Panel on Climate Change (IPCC) reports that summarised the scientific basis of the risk of climate change. Interestingly, reports from the IPCC are increasingly used in European courtrooms as climate cases are typically based on emission reduction policies, which heavily rely on data provided by climate scientists.<sup>65</sup> This trend was also reflected in the German constitutional case, where the usage of scientific reports significantly shaped the legal opportunity that led to the court's decision. The legal construction of the complainants heavily relied on IPCC reports to argue insufficient climate action by the German government. All four letters of complaint have at least one chapter that summarises data by the IPCC as the scientific

<sup>58</sup> Vanhala, *supra*, note 20.

<sup>59</sup> BJ Preston, “The Influence of the Paris Agreement on Climate Litigation: Legal Obligations and Norms (Part I)” (2021) 33(1) *Journal of Environmental Law* 1.

<sup>60</sup> C Voigt and F Ferreira, “Differentiation in the Paris Agreement” (2016) 6(1–2) *Climate Law* 58–74.

<sup>61</sup> Wegener, *supra*, note 10.

<sup>62</sup> R Wolfrum and S Vöneky, “The reception of international law in the German legal order: An introduction” in *The Implementation of International Law in Germany and South Africa* (Praetoria, Praetoria University Law Press 2015) pp 3–22.

<sup>63</sup> BVerfG, *supra*, note 11, 63.

<sup>64</sup> Interview with Greenpeace lawyer.

<sup>65</sup> *ibid.*

basis for the following legal argument.<sup>66</sup> In our interview, the Greenpeace legal representative explained that when developing the legal strategy, “the starting point must be a science-based assessment”.<sup>67</sup> Through its international importance and policy neutrality, the IPCC reports tend to be an “international soft-law construct” presenting the objectively correct facts on climate science.<sup>68</sup>

A major challenge to mobilising the rights of future generations is to establish causality between current events and the future infringement of fundamental rights.<sup>69</sup> As presented in the four letters of complaint, the complainants consulted scientific data to prove that the shortcomings of the German climate policy would cause limited freedom of future generations. More specifically, the complainants utilised the CO<sub>2</sub> estimations inherent in the CCA to show that reducing greenhouse gases by 55% by 2030 would be insufficient. Under current emission trends, the remaining CO<sub>2</sub> budget after 2030 would be less than one gigatonne of CO<sub>2</sub>.<sup>70</sup> As carbon neutrality is to be achieved by 2050, this means that the remaining budget of CO<sub>2</sub> would be disproportionately lower for generations after 2050. Consequently, post-2030 activities that produce CO<sub>2</sub> would be severely limited, which disproportionately infringes freedom rights under constitutional law.<sup>71</sup> The underlying calculations were based on findings given in IPCC reports, which underlines the opportunity arising from science-based argumentation. The Greenpeace representative stated that “we have consciously not used any of our own calculations but relied on studies that government consults itself”.<sup>72</sup>

This leads to the observation that international norms in the form of the Paris Agreement and IPCC reports constituted quasi-legal bodies that significantly contributed to the LOS that facilitated the case at hand. The plaintiffs utilised these norms to argue the sharp contrast of international and national commitments to climate mitigation, which ultimately would lead to the endangerment of future generations. These findings expand the conventional view that the legal stock in a constitutional claim is purely defined by a national legal body. Arguably, this is due to the borderless consequences of global warming that inevitably add an international component to national climate laws. Additionally, the timeframe and exact carbon reduction quantities inherent in the agreement constitute a precise framework that reaches into the future. This created the opportunity to establish a strong and scientifically based causality between current shortcomings leading to future infringements of fundamental rights. Consequently, the international quasi-legal stock supported a legal strategy based on the rights of future generations.

#### **4. Cultural stock: climate activism cannot be ignored any longer**

When assessing rights mobilisation and the underlying LOS, it is crucial to consider surrounding cultural circumstances and their influence on court cases.<sup>73</sup> The cultural frame of social rights issues shapes whether and how activists decide to engage in litigation. Additionally, the judge’s ruling is influenced by public sentiment on fundamental developments such as climate change.<sup>74</sup>

Arguably, one of the largest and most impactful climate campaigns is the FFF movement. FFF is youth-led and -organised, and it started in August 2018 when

<sup>66</sup> BVerfG, *supra*, note 11.

<sup>67</sup> Interview with Greenpeace lawyer.

<sup>68</sup> *ibid*, 148.

<sup>69</sup> Cho and Pedersen, *supra*, note 8.

<sup>70</sup> Kotzé, *supra*, note 4.

<sup>71</sup> BVerfG, *supra*, note 11.

<sup>72</sup> Interview with Greenpeace representative.

<sup>73</sup> Andersen, *supra*, note 27.

<sup>74</sup> De Fazio, *supra*, note 21.

fifteen-year-old Greta Thunberg began a “School Strike for Climate”.<sup>75</sup> This call for action sparked immense global attention, with students and activists around the globe uniting to protest in front of their government buildings. While it is important to note that FFF does not speak for climate activism as a whole, it is undeniable that the movement significantly shaped the cultural stock on climate protection. At its core, the movement has four concrete demands:<sup>76</sup>

- (1) To create a safe pathway towards under 1.5°C of global warming
- (2) Climate justice and equity for everyone
- (3) To follow the Paris Agreement
- (4) To unite behind the science

Strikingly, FFF’s understanding of climate activism closely aligns with the claimants’ framing of fundamental rights violations. This becomes evident when comparing the four fundamental goals of FFF with the argumentation presented in the letters of complaint. The overall importance of keeping global warming below 1.5°C is highlighted in every claim, which resembles demand (1) of FFF. This is closely linked to FFF’s demand (3) to comply with the climate objectives as ratified in the Paris Agreement. As the findings on legal stock show, appealing to the Paris Agreement as an international framework for climate mitigation was important to the claimants’ legal strategy. Similarly, FFF’s narrative to “unite behind the science”, with reference to the IPCC, matches the complainants’ usage of data by the IPCC.<sup>77</sup> This shows a clear alignment of the legal and cultural stock.

However, it is notable that FFF’s demand (2) – “climate justice and equity for everyone” – is also represented in the constitutional complaint, despite being a more abstract expression of cultural stock.<sup>78</sup> While FFF’s conception of climate justice is not necessarily to be understood as a legal concept, it highlights the rights of future generations. FFF demands future-oriented and sustainable policies and rejects “decisions taken at the expense of poorer regions and future generations”.<sup>79</sup> The legal argument in the constitutional complaint clearly addresses this narrative. The complainants claim “a fundamental right to a future consistent with human dignity and a fundamental right to an ecological minimum standard of living”, which is violated by the German climate policy.<sup>80</sup>

The appearance of popular cultural stock in the claimants’ legal argumentation is not a coincidence but a strategic choice. A clear link between the representatives of the claims and the FFF movement is evident. Most noticeably, the first listed plaintiff in the Greenpeace case is Luisa Neubauer. She is the public face of the FFF movement in Germany and has been labelled as the “German Greta Thunberg”.<sup>81</sup> In our interview, the Greenpeace campaigner explains that they strategically requested Neubauer as a complainant to “increase the visibility of the claim and establish a connection to the young climate movement in Germany”. As Neubauer’s name is listed first, the court case is frequently

<sup>75</sup> “Fridays for Future – How Greta started a global movement” (FFF, 2021) <<https://fridaysforfuture.org/what-we-do/who-we-are/>> (last accessed 3 January 2023).

<sup>76</sup> “Fridays for Future – Our demands. Act now!” (FFF, 2019) <<https://fridaysforfuture.org/what-we-do/our-demands/>> (last accessed 3 January 2023).

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid.*

<sup>79</sup> “Fridays for Future – A few reasons to save the world” (FFF, 2021) <<https://fridaysforfuture.org/take-action/reasons-to-strike/>> (last accessed 3 January 2023).

<sup>80</sup> BVerfG, *supra*, note 11.

<sup>81</sup> M Lohr “Kann sie das Klima Retten“ (HNA, 2019) <<https://www.hna.de/lokales/goettingen/goettingen-ort28741/fridaysforfuture-luisa-neubauer-ist-gesicht-klimaschutzproteste-onl-11787825.html>> (last accessed 19 January 2023).

referenced as *Neubauer et al v. Germany*.<sup>82</sup> This immediately created an obvious connection to the FFF movement, sparking media attention as part of the litigation strategy.<sup>83</sup>

In the other claims, numerous young claimants are associated with the FFF movement as well. The interviews showed<sup>84</sup> that these organisations frequently recruit claimants for climate litigation cases from the FFF network. The creation of a link between the intergenerational justice frame associated with FFF and the strategy to litigate under Article 20a was a conscious choice aiming to increase public attention. Hence, the cultural frame clearly influenced the perspective of the plaintiffs and contributed to the opportunity to initiate litigation.

However, it is another question as to whether the calculated framing of the cultural stock also affected the receptivity of the judges. In theory, the court is an apolitical institution that solely relies on internal decision-making processes, and of course it is impossible to undisputedly prove that a judge was influenced by the opinion of the public. However, judges inherently possess political sensibility.<sup>85</sup> This debate was also represented in the interviews that indicated diverging opinions on this issue. On the one hand, the representatives of the organisations stated that they do not think that the court was influenced by the public debate surrounding intergenerational justice. They explain that their conscious connection of the complaint to the FFF movement was done with the sole intention of increasing public attention as part of a global climate litigation strategy. On the other hand, the interviewed lawyers argued that the constitutional court is an organ that is sensible to public opinion. In our interview, the Greenpeace lawyer stated:

I think the impact of FFF on this case cannot be overstated. Without this mood in the country, this judgement would not have been achieved. I am not saying that the court only reacts to sentiment, but this public debate did not bypass the court.<sup>86</sup>

Concluding, this shows the extreme importance of the cultural stock. While the access to courts and legal stock dimensions created crucial opportunities, the cultural stock aligned with the rights of future generations-based strategy and opened up the LOS. Access to courts and legal stock are stable factors, meaning that they remain largely unchanged and open over a long period of time. However, the cultural stock is a contingent factor that is more flexible, and the openness of this factor depends on the cultural development related to the perception of the climate crisis as a generational injustice, triggered by the activities of the FFF movement.<sup>87</sup> It set the intergenerational justice frame and created public pressure that matched the existing access to courts and legal stock. This matches Andersen's LOS observation that the cultural stock is crucial to facilitating legal mobilisation for social change.<sup>88</sup>

### **5. The legal opportunity structures in relation to the rights of future generations**

The application of the LOS theory to the constitutional climate complaint established the cultural stock as a crucial factor that provided the opportunity to trigger the judgment by the BVerfG. The standing and background of the young claimants underlined the issue of generational injustice and, similarly, the strategy of utilising relevant articles in the

<sup>82</sup> Kotzé, *supra*, note 4.

<sup>83</sup> Interview with Greenpeace representative.

<sup>84</sup> *ibid.*

<sup>85</sup> De Fazio, *supra*, note 21.

<sup>86</sup> Interview with Greenpeace lawyer.

<sup>87</sup> De Fazio, *supra*, note 21.

<sup>88</sup> Andersen, *supra*, note 27.



German Basic Law as the existing legal stock, focused on mobilising the rights of future generations. The element of intergenerational injustice impacted all dimensions of the LOS and shaped the legal strategy of the plaintiffs.

However, from a solely legal point of view it is questionable whether this objective of invoking the rights of future generations was truly achieved. The Greenpeace lawyer explained that

we welcomed the decision, but it is expected that the doctrine will have to be expanded a little further. It is not known, for example, whether the principle of intertemporal safeguarding of freedom can also be transferred to other areas of law, and if so, how. These are important questions.<sup>89</sup>

Additionally, the provisions on legal standing showed that the plaintiffs had no capacity to directly represent the interest of future generations.<sup>90</sup> Minnerop confirms this view and states that the court's focus on future freedom rights "fails to make the entire spectrum of intergenerational equity as an international principle visible, one that Article 20a Basic Law could incorporate".<sup>91</sup> Consequently, from a purely legal point of view the complainants' objective of claiming intergenerational justice as a fundamental right was not achieved.

However, the plaintiffs never expected to achieve generational climate justice in the first place. From a social movement perspective, their goal of mobilising the rights of future generations went beyond the sphere of the court itself, and the strategic objective was to trigger a public debate and to pressure the government to take political action. This goal was achieved, as the immediate governmental reaction to the court ruling was more far-reaching than what the court demanded in its decision.<sup>92</sup> The Greenpeace lawyer stated that "the ruling still achieved our goals. Although the court did not follow our reasoning, we have achieved significant parts of our goals."<sup>93</sup>

Interestingly, the Greenpeace campaigner explained that the first publications immediately after the statement by the BVerfG did not even declare the complaint as successful, and that it took a whole day before the media picked up on the narrative that the complaint was at least partially successful. They argue that this was due to the court's complex and ambiguous construction of the intertemporal doctrine.<sup>94</sup> Nevertheless, the media coverage of the issue was immense, and, regardless of the legal ambiguity, corresponding articles extensively discussed intergenerational justice as a fundamental and legitimate principle of climate justice.

As McCann explains, legal mobilisation can trigger a public perception of legal norms that goes beyond the concrete outcome in the courtroom.<sup>95</sup> This helps to construct a common identity uniting diversely situated citizens. This understanding of legal mobilisation applies to the German case. This was important to the activists' identity, as "for years we have demonstrated and said that something has to change, and no one listened to us. Now, the court finally confirmed that we were right."<sup>96</sup> Ambiguous or not, the BVerfG as the highest German legal institution publicly legitimised the climate activists' claim that insufficient climate protection is an intergenerational issue.

<sup>89</sup> Interview with Greenpeace lawyer.

<sup>90</sup> BVerfG, *supra*, note 11.

<sup>91</sup> Minnerop, *supra*, note 13, 153.

<sup>92</sup> Interview with BUND lawyer.

<sup>93</sup> Interview with Greenpeace lawyer.

<sup>94</sup> Interview with Greenpeace representative.

<sup>95</sup> McCann, *supra*, note 35.

<sup>96</sup> Interview with Greenpeace representative.

## VI. Conclusion

Guided by an interest in the complainants' utilisation of legal opportunities to mobilise the rights of future generations, this article developed several relevant findings. In their complaint, the climate activists facilitated a strong public perception of climate protection as an intergenerational responsibility. The cultural awareness of intergenerational justice was increased through the involvement of the FFF movement, and the complainants, led by established environmental organisations, utilised this opportunity by matching their legal argumentation to the according legal provisions inherent in the German Constitution. The complainants never expected to win, and thus the main strategic objective was to influence policymaking and public perception rather than a specific legal outcome. Despite the court's ambiguous intertemporal doctrine, the ruling had considerable political impact and helped to legitimise the climate movement's cause based on intergenerational justice.

Additionally, the bottom-up perspective showcased the multi-layered interactions of different complaint procedures, environmental actors and legal strategies. The complaint represented a joint effort by numerous activists based on a symbiosis of established and new streams of the climate movement. The skillsets of individual climate activists, innovative lawyers and established environmental organisations were crucial to achieving this court ruling. While this interaction developed against the background of legal circumstances in Germany, it constitutes valuable lessons for climate activism in general. Based on first-hand insights from key actors involved in the case, this article indicates that a unified and highly organised climate movement is necessary to facilitate climate litigation as a successful tool for triggering political impact.

This article highlighted that it is important to assess climate litigation within its societal context. The LOS lens revealed that while access to courts and legal stock created necessary legal opportunities in this instance, the contingent dimension of cultural stock constituted the decisive opportunity that enabled the German court outcome. This confirms Andersen's point that cultural circumstances are important in order to understand legal mobilisation beyond the scope of a court-centred approach.<sup>97</sup> Finally, this article expanded the LOS concept by finding the Paris Agreement to be an international quasi-legal stock that can influence litigation on a constitutional level. In this context, impactful climate litigation and the legal representation of future generations rely on the strategic utilisation of resources beyond conventional legal bodies.

**Competing interests.** The author declares none.

<sup>97</sup> Andersen, *supra*, note 27.