



The German constitutional climate case - the court's arguments on the cross-border nature of climate change and its implications for standing

Franziska Johanna Albrecht, Green Legal Impact Germany e.V.

15.05.2024

Overview

Order of the First Senate of 24 March 2021, 1 BvR 2656/18 / 1 BvR 78/20 / 1 BvR 96/20 / 1 BvR 288/20

- 1) Legal Bases
- 2) Who were the complainants?
- 3) Admissibility of the complaints
- 4) The cross-border nature of climate change
- 5) Merits
- 6) Result

Legal Bases

Art
20a
GG

“Mindful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation and, in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order.”

- Purpose: afford protection against the effects of worldwide climate change by ensuring that national and European climate targets are reached (§ 1).
- Set out specific targets and annual emissions amounts § 3(1) and § 4(1), which were challenged in the proceedings.

KSG

Who were the complainants?

- Complaint 1 BvR 288/20: 9 young German people between the ages of 16 and 33, supported by German environmental NGOs Germanwatch, Greenpeace and Protect the Planet.
- Complaint 1 BvR 96/20: 10 young German people between the ages of 11 and 22, supported by German environmental NGO Deutsche Umwelthilfe.
- Complaint 1 BvR 2656/18: 11 individual complainants from Germany, **and** the German NGOs Solarenergie-Förderverein Deutschland and Bund für Umwelt und Naturschutz Deutschland.
- Complaint 1 BvR 78/20: 13 complainants from Bangladesh, among them lawyer Yi Yi Prue, 2 complainants from Nepal, supported by German environmental NGO Deutsche Umwelthilfe.

The complainants were chosen deliberately



Admissibility of the complaints

No 90: *"Insofar as the complainants are natural persons, their constitutional complaints are admissible. This applies insofar as they claim that duties of protection arising from fundamental rights have been violated. The complainants can in some cases claim a violation of their fundamental right to life and physical integrity (Art. 2(2) first sentence GG) and some of them can claim a violation of their fundamental right to property (Art. 14(1) GG) (see II 1, C I below for more details) because it is possible that the state, in adopting the Federal Climate Change Act, might have taken only insufficient measures to reduce greenhouse gas emissions and to limit global warming."*

- The complaints of the two registered associations were dismissed as inadmissible by the court.

Admissibility of the complaints

No 90: *"The complainants in proceedings 1 BvR 78/20 who live in Bangladesh and in Nepal also have standing. The Federal Constitutional Court has yet to clarify whether the Basic Law's fundamental rights oblige the German state to contribute towards protecting people abroad against impairments caused by the effects of global climate change and under what circumstances such a duty of protection could potentially be violated. The validity of German fundamental rights vis-à-vis these complainants does not appear to be ruled out from the outset"*

- The complaints of the 13 individuals from Bangladesh and 2 individuals from Nepal were accepted as admissible by the court.
- Future cases by people living outside Germany, who are affected by climate change impacts could be admissible.

The Cross-Border Nature of Climate Change

No. 149: *“The fact that the German state is incapable of halting climate change on its own and is reliant upon international involvement because of climate change’s global impact and the global nature of its causes does not, in principle, rule out the possibility of a duty of protection arising from fundamental rights [...] For example, the state must involve the international level in seeking to resolve the climate problem. Insofar as the duty of protection arising from Art. 2(2) first sentence GG is directed at the risks posed by climate change, it compels the state to engage in internationally oriented activities to tackle climate change at the global level and requires it to promote climate action within the international framework (for example through negotiations, via treaties or in organisations). National measures embedded within this framework then make a contribution towards halting climate change”*

The Cross-Border Nature of Climate Change

No. 199: *“The obligation to take climate action arising from Art. 20a GG is not invalidated by the fact that the climate and global warming are worldwide phenomena and that the problems of climate change cannot therefore be resolved by the mitigation efforts of any one state on its own. The climate action mandate enshrined in Art. 20a GG possesses – like global warming itself – a special international dimension from the outset. Art. 20a GG obliges the state to involve the supranational level in seeking to resolve the climate problem (a). Embedded within an international framework, national climate action measures are capable of having the impact required by Art. 20a GG. Even if such measures would be incapable of resolving the climate problem on their own, they must be taken in order to fulfil the climate action mandate under constitutional law”*

Merits: Duties of protection vis-à-vis complainants living in Bangladesh and in Nepal

No. 180: *“Even if the German state were obliged under Art. 2(2) first sentence and Art. 14(1) GG to afford protection to the complainants in Bangladesh and Nepal by taking action to limit the rise in temperature, such a duty of protection would not be violated by the challenged provisions. [...] it cannot be claimed that the legislator has taken no measures whatsoever to limit climate change or has only adopted provisions and taken measures that would be manifestly unsuitable or completely inadequate for achieving the required protection goal [...] Germany has ratified the Paris Agreement and the federal legislator [...] has based the Federal Climate Change Act upon the obligation to observe the Agreement and upon the commitment made by the Federal Republic of Germany to pursue the long-term goal of greenhouse gas neutrality by 2050.”*

Merits: Duties of protection vis-à-vis complainants living in Bangladesh and in Nepal

No. 181: “with overseas cases, the German state would not have the option of implementing adaptation measures as a precaution [...] It would therefore have only some of the precautionary measures at its disposal that are possible and necessary for protecting against climate change abroad. And yet whether or not the measures are sufficient to protect fundamental rights could only be evaluated by comparing the climate action measures taken with the possible adaptation options. In terms of fulfilling duties of protection arising from fundamental rights, emission reductions and adaptation measures complement one another and are inextricably linked. In this respect, it would not be possible to ascertain whether a possible duty of protection had been violated. [...] the Federal Republic of Germany [...] would have fulfilled this duty of protection through their international commitment to preventing climate change and through specific measures aimed at implementing the internationally agreed climate action”

Merits: Duties of protection vis-à-vis complainants living in Germany

No. 143: *“The risks posed by climate change give rise to duties of protection under Art. 2(2) first sentence and Art. 14(1) GG vis-à-vis the complainants who live in Germany [...] However, it cannot be ascertained that these duties of protection have been violated.”*

No. 152: *“It is for the legislator to decide how risks should be tackled, to draw up protection strategies and to implement those strategies through legislation. [...] [No. 154:] The German legislator has taken precautionary measures that are not manifestly unsuitable. The legislator has made efforts towards limiting climate change, not least by introducing the provisions of the Federal Climate Change Act challenged here.”*

Merits: Intertemporal guarantee of freedom

No 182: *“the legislator has violated fundamental rights by failing to take sufficient precautionary measures to manage the obligations to reduce emissions in ways that respect fundamental rights – obligations that could be substantial in later periods due to the emissions allowed by law until 2030.”*

No. 183: *“The legislator’s decision to allow the amounts of CO2 specified in § 3(1) second sentence and § 4(1) third sentence KSG in conjunction with Annex 2 to be emitted until the year 2030 has an advance interference-like effect (eingriffsähnliche Vorwirkung) on the freedom of the complainants [...] § 3(1) second sentence and § 4(1) third sentence KSG in conjunction with Annex 2 are unconstitutional to the extent that they create disproportionate risks that freedom protected by fundamental rights will be impaired in the future.”*

Result

No. 266: *“Ultimately, § 3(1) second sentence and § 4(1) third sentence KSG in conjunction with Annex 2 are unconstitutional insofar as they lack provisions that satisfy the requirements of fundamental rights (see para. 251 ff. above) on the updating of reduction targets from 2031 until the point when climate neutrality is reached as required by Art. 20a GG. To this extent, the constitutional complaint in proceedings 1 BvR 2656/18 – insofar as it is admissible – and the constitutional complaints in proceedings 1 BvR 96/20 and 1 BvR 288/20 are successful, whereas the constitutional complaint in proceedings 1 BvR 78/20 is unfounded.”*

- The Federal Climate Change Act was amended in 2021. However, the Act was recently weakened to allow for higher emissions from the traffic sector and it is doubtful whether Germany will reach its climate targets.
- There were various other (mostly unsuccessful) climate lawsuits in Germany. Several are still pending.

Terminology

- Grundgesetz = GG = Basic Law: The German constitution.
- Bundes-Klimaschutzgesetz = KSG = Federal Climate Change Act.
- Verfassungsbeschwerde = constitutional complaint (hence, „complainants“).

Where to find the text

- German original
- English translation
- English summary

Image Sources

Slide 3 top left to bottom right:

Greenpeace,

<https://www.greenpeace.de/klimaschutz/klimakrise/portraet-klimaklaegerinnen-verfassungsbeschwerde>; Stefan Müller (<https://commons.wikimedia.org/w/index.php?curid=116634850>);

Geulen & Klinger Rechtsanwälte, Verfassungsbeschwerde 10.01.2020, p. 56; Gordon Welters / Greenpeace,

<https://www.greenpeace.de/klimaschutz/klimakrise/portraet-klimaklaegerinnen-verfassungsbeschwerde>; Geulen & Klinger Rechtsanwälte, Verfassungsbeschwerde 10.01.2020, p. 61; Gordon Welters / Greenpeace,

<https://www.greenpeace.de/klimaschutz/klimakrise/portraet-klimaklaegerinnen-verfassungsbeschwerde>

Franziska Johanna Albrecht

Legal expert

albrecht@greenlegal.eu

www.greenlegal.eu

**green
legal
impact.**