ADMINISTRATIVE CLIMATE LAWSUITS

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Abstract
Climate litigation is a technique of holding nations and responsible parties accountable for failing to take enough actions to ensure the stability and sustainability of the climate. Administrative climate lawsuits are critical for upholding human rights and protecting future generations' rights. Climate change has serious consequences for human rights, such as health, sustainable development, and biodiversity. States are required to endeavor to avoid and mitigate the harmful consequences of climate change, and administrative climate lawsuits are one method of reining in government action. Administrative climate lawsuits, on the other hand, face obstacles such as demonstrating that the state did not employ public authority measures to combat climate change, establishing the causal link, and deciding the validity of launching such actions. In Jordan, the courts did not hear such cases, despite the fact that there is no impediment to their filing. The research addresses the validity of bringing administrative climate lawsuits, the amount of the state's commitment to climate-related decisions, and the technical building of administrative climate cases. Administrative environment lawsuits are without a doubt one of the methods for safeguarding human rights, since they are not a kind of legal luxury, but rather norms, ideas, and substance. These lawsuits have a certain character, pillars, and technological structure. According to the report, climate change is a harmful phenomenon that affects the rights of current and future generations, and the state has full responsibility for climatic changes. The Jordanian legislator did not handle the environment's right to the environment in the intended manner, and the requirements for initiating administrative climate claims are identical to general responsibility. More study and research are required to have a better understanding of climate litigation and its possible influence on human rights.
Keywords: *Climate litigation; Administrative climate lawsuits; Climate change; Jordan; Jordanian legislator*

INTRODUCTION

Climate litigation is an innovative method intended to sue countries and liable parties for insufficient measures taken to maintain the stability and sustainability of the climate.

Administrative climate lawsuits are a tool for holding the state and administrative agencies accountable for their administrative or commercial activity that results in harm to human rights. Constitutions have guaranteed the protection of human rights, and therefore all activities affecting those rights are subject to the oversight of the judiciary, as the body authorized to protect those rights. Any activity carried out by the state and administrative agencies is subject to judicial oversight, especially that which affects human rights.

The damages of climate change are well known, as it results in a rise in temperatures, which affects the growth of plants and animals, as well as a rise in sea level and drought. Furthermore, the survival of the communities on the front line has become vulnerable.

The climate issue has its own peculiarity, as it affects the rights of future generations, and is also linked to other human rights, such as the human right to health, the right to sustainable development, and the right to biodiversity. It is known that human rights are interdependent, indivisible, and some of them cannot be waived. Accordingly, a suitable environmental climate should be provided so that people can enjoy the rest of their rights.

Therefore, administrative climate lawsuits are considered one of the most important tools for preserving human rights. In an appropriate climate, a person can enjoy the rest of his rights. Climate action must be consistent with human rights obligations, standards and principles, and protect the rights of all people, especially those most affected by climate change.

Mitigating the effects of climate and preventing its negative effects is an obligation on the state, due to the harmful effects of climate change in the short and long term, and these damages affect humans, animals and plants, so countries must work hard to reduce the emission of anthropogenic greenhouse gases. In this regard, it possesses the regulatory means to face the negative effects of climate change, as it is the one that grants licenses to exploit natural resources and build factories, and all the mechanisms that pollute the environment and influence temperatures.

States are obligated to work to ensure ways to preserve human rights, with their regulatory authority and legal mechanisms. The state is obligated by the state to remove any violation of human rights. Therefore, it must work to preserve a sustainable climate.

Administrative climate lawsuits are one of the means of controlling government activity, as they represent a line of defense for a healthy, sustainable climate. The state must be liable before the rights holders for its contributions to non-climate matters, including its reluctance to regulate gas emissions.

Research problem

The study raises the issues of the legitimacy of filing administrative climate lawsuits, the extent of the state's commitment to the judgments issued in the field of climate, and the technical construction of the administrative climate lawsuits.

There is no doubt that the administrative climate lawsuits are one of the mechanisms for defending human rights, as they are not a form of legal luxury, but rather rules, concepts and content. These lawsuits have a nature, pillars and technical construction.

Study questions

By posing the research problem, the researcher will answer several questions:

1. What is meant by administrative climate lawsuits? And what are its legal implications?
2. What are the conditions for accepting administrative climate lawsuits?

Research aims

The study aims at finding out several points:

1. The definition of climate lawsuits and it objective principles.
2. The effects of the administrative climate lawsuits.
3. The conditions required to accept administrative climate lawsuits.

Research Methodology

The researcher relies on the analytical approach, the deductive approach, and the comparative approach:

The analytical approach: where we analyze the texts of the Jordanian law that regulate the process of legal liability.

The deductive approach: which relies on a process from the judiciary approach, after analyzing the judgments of the judiciary.

The comparative approach: where we discuss a comparison of the Jordanian legal system with what was stated in the Egyptian law and the French law. We present the trends of the law and the judiciary in those laws regarding the issue of administrative climate lawsuits.

Search Plan

The issue of the administrative climate lawsuits will be discussed in two topics as follows:

First topic: the nature of administrative climate lawsuits

Second topic: the conditions for accepting climate lawsuits

First topic

The nature of the administrative climate lawsuits

The phenomenon of the emission of thermal gases is one of the recent phenomena and the product of industrial progress, and it has a direct impact on human health, and it recently appeared to have direct damage to the climate, which in turn was reflected in human health and the rights of future generations to a clean environment.

Those thermal emissions were a direct result of greenhouse gases, and resulted in a rise in temperatures, which made the climate volatile and unstable, which caused damage to humans, animals and plants.

Climate changes are manifested in high temperatures, floods, fires, loss of biodiversity, and many phenomena that have a direct impact on human health.

All of these effects were the main motive for mobilizing civil society organizations in order to demand a halt to environmental change. The movement appeared in the Netherlands and spread from there to France, and individuals and civil groups did not find bodies to hear their complaints except the judiciary, which works to monitor the actions of the government.

Climate litigation emerged as an important means to oblige the state to take legal measures to counter climate changes. Climate lawsuits were based on an important constitutional principle, which is the human right to health and the right to a stable climate. The climate issue had another approach, as it is a common issue between current and future generations.

The administrative courts have become the safe haven for all those interested in the climate to present their opinions and state their arguments, in order to guarantee human rights and the rights of future generations.

The nature of the administrative climate lawsuits will be tackled in two themes as follows:

First theme

Definition of climate lawsuits

The definition of the administrative climate lawsuits lies in two sections: the definition of the environment and the climate, and the objective principles of the administrative climate lawsuits:

First section

Definition of environment and climate

- **Definition of the environment**

The Jordanian legislator defined the environment as that "the medium that includes living and non-living organisms, the materials they contain, the surrounding air, water, soil, the interactions of any of them, and the facilities or activities that humans establish in it. (1)

- **Definition of climate lawsuit**

Climate lawsuits are defined as those lawsuits that aim to take more ambitious measures and policies to confront the phenomenon of climate change resulting from increased greenhouse gas emissions.(2)

From this definition, it appears to us that the parties to the administrative climate lawsuits are: the plaintiffs, who are natural individuals or civil society associations concerned with environmental and climate affairs.

The defendants are governments and states, as those in charge of licensing industrial activities that are a source of greenhouse gases, which in turn cause global warming and thus climate change.

The aim of the lawsuit is to urge the governments to take more measures to combat climate change, or to issue laws that ensure the prevention of global warming.

Second section

Objective principles of the climate lawsuits

The plaintiffs in the administrative climate lawsuits based their lawsuit on a set of legal foundations, which find their source in the constitution and the rights of future generations.

First: in the constitution

The constitutions have recently dealt with the provision of new rights, and one of those rights was the right to a healthy environment. From this right a new term appeared on the legal scene, which is the right to a stable climate. This new right is one of the most important rights that appeared in recent days, which had a significant and constructive role in the emergence of the climate law in general.

A sustainable climate system means stabilizing the concentration of greenhouse gases at a certain limit to prevent any dangerous man-made disturbances.

(1) See Article 2 of the Environmental Protection Law No. 6 of 2017.

(2) Dr. Mohamed Ahmed Salama, Climate Lawsuits and Related Problems Before the Administrative Judge, Journal of the Faculty of Law, Zagazig University, Issue 36, 2021, p. 773

The right to a sustainable climate has become a constitutional right in most countries of the world, as is the case in France. The French Constitutional Council has approved this right.[3]

Regarding the Jordanian constitution, we find that it did not address the issue of climate change. The reason for that may be the novelty of the right to a sustainable climate.

As for the situation in Egypt, although the provisions of the Egyptian constitution were devoid of explicit provisions dealing with those liable for climate change, it can be said that the constitution stipulated a set of obligations on the state in the field of preserving the state's natural resources and the environment, taking into account the rights of future generations as well as the optimal use of the renewable energy sources.

The right to a sustainable climate finds its basis in several constitutional rights:

- **The right to health**

The Egyptian constitution stipulates that "every citizen has the right to health and integrated health care in accordance with quality standards…..."[4]

There is no doubt that the right to health includes within it the right to live in a healthy, sustainable climate that does not adversely affect the health of the citizen. The fatal consequences of climate change for individuals and the environment are inconsistent with the right to enjoy health. For this reason, the right to health is one of the basics of the right to a sustainable climate.

- **The right to protect the environment**

The Egyptian constitution stipulates that "every person has the right to a healthy and sound environment, and protecting it is a national duty. The state is committed to taking the necessary measures to preserve it, not to harm it, and to rationally use natural resources to ensure sustainable development and guarantee the rights of the future generations.[5] "

The constitution also stipulates that "the state is committed to protecting its seas, beaches, lakes, waterways and natural reserves, and it is prohibited to encroach, pollute or use them in a way that is inconsistent with their nature, and the citizen's right to enjoy them is guaranteed. The state also guarantees the protection and development of green space in urban areas and the preservation of plant, animal and fish wealth[6] ….. ".

The text of the Egyptian constitution is decisive regarding the human right to enjoy a healthy and sustainable climate, and it is known that the Egyptian judiciary is the guardian of rights and freedoms, and therefore the burden of protecting the human right to the climate falls on it.

Furthermore, Article 79 of the Egyptian Constitution stipulated the importance of ensuring food sovereignty in a sustainable manner and guaranteeing the preservation of agricultural biodiversity and local plant varieties to preserve the rights of generations.

It is noteworthy from the foregoing that the Egyptian constitution, although it did not explicitly stipulate the state's commitment to ensuring action in order to confront climate change, it did, however, repeat in more than one place the rights of future generations to natural resources and to maintain food sovereignty in a sustainable manner. Undoubtedly, this is a praiseworthy attitude from the constitutional legislator, although we hope that an explicit article will be added to the Egyptian constitution obligating action to combat climate change.

Second: the rights of future generations

The Egyptian constitution stipulated the right of future generations to a healthy environment that "the state's natural resources belong to the people, and the state is committed to preserving them, making good use of them, not depleting them, and observing the rights of future generations in

([3]) F. Hamon, M. Troper, Droit constitutionnel, LGDJ, 32e édition, 2011, Paris, §783.

([4]) See Article 18 of the Egyptian Constitution 2014.

([5]) See Article 46 of the Egyptian Constitution 2014.

([6]) See Article 45 of the Egyptian Constitution 2014.

them. Moreover, the state is committed to working on the optimal exploitation of the renewable energy sources …" [7]

Preserving the rights of future generations to use the country's natural resources and a clean environment is considered a very important matter that most of the world's constitutions and legislations are keen to stipulate and develop the necessary policies for their implementation.

As for the issue of climate change, it is a shared issue between generations, and therefore it is difficult to initiate measures aimed at climate justice without emphasizing the importance of the climate for future generations. In fact, the theory of intergenerational justice states that the environment and nature should be considered a legacy for future generations and that we are liable for the integrity and solidity of the (Robustesse) of the planet, not only for our own benefit, but for the benefit of future generations.

The issue of protecting the rights of future generations is undoubtedly a strong basis for building the cause of a sustainable climate. This is due to the impact of the phenomenon of the climate change and its impact on the rights of future generations. Over time, it will have more serious repercussions on our lives and on environmental systems, and this will appear in the long term.

The current generations mostly aim to leave "something" for their children, often in the form of money and property. However, there is no amount of money or property sufficient if future generations are in danger as a result of climate instability, which undoubtedly will lead to depriving them of vital resources such as fresh and clean air, drinking water and other disasters that are expected to occur due to climate change.[8]

The judiciary recognized the right of the future generations to the climate at the end of the last century. The rights of future generations to a healthy and clean environment were recognized for the first time in the Philippines through a Supreme Court ruling in a lawsuit filed by a group of children to stop deforestation based on the idea of "intergenerational equity", and that natural resources are considered the property of individuals of all ages. The court has ruled in favor of children based on the right to a clean environment, and that there is a joint liability between generations to keep the environment clean, and it is a liability that each generation bears towards the next generation.[9]

The jurisprudence went to the fact that the developments in climate litigation after 2015 resulted in major changes in the foundations of litigation. It has become possible in some countries to file an administrative climate lawsuit on behalf of and defend future generations. The right of future generations to the climate has become one of the established rights that must be administrative judiciary protect it.[10]

Climate liability has taken another turn as it takes into account the rights of future generations, which means that there is a shift in the classic rules of liability. The reason for that is represented in the obligation to protect the population from the environmental risks and the protection of the rights of the future generations to health, a clean environment and a sustainable climate.

The courts have considered several climate lawsuits, and the main reason for filling them was to preserve the rights of future generations. For example, a group of young people filed a complaint before the United Nations Committee on the Rights of the Child against the countries of Argentina, Brazil, France, Germany and Turkey. They asked to condemn the aforementioned countries for violating their rights under the United Nations Convention on the Rights of the Child by not following the policies that aimed at reducing greenhouse gases, which endangers their lives. [11]

We also find that the right to a sustainable climate as a right of future generations has been recognized directly in Colombia. A ruling was issued by the Supreme Court that supports the right

([7]) See Article 32 of the Egyptian Constitution 2014.

([8]) Ylam Nguyen، Constitutional Protection for Future Generations from Climate Change، 23 Hastings West Northwest J. of Envtl. L. & Pol'y 183 (2017). p. 186

([9]) Philippines Ecological Network, 26/07/1993 Supreme Court of the Philippines.

([10]) E. GAILLARD, Générations futures et droit privé, LGDJ, Paris, 2011,p322.

[11] Sacchi et al. v. Argentina et al, available at: http://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al.

to a sustainable climate that guarantees human dignity [12], where a group of young people accompanied by the Colombian Association (Dejusticia) filed a lawsuit against the state on the grounds that it does not guarantee their basic rights, which constitutes an assault on their constitutional rights, as the state has failed to limit deforestation in the Amazon, which has resulted in an increase in greenhouse gas emissions, which leads to harming the rights of the future generations and a breach of the duty of solidarity between generations (la solidarité intergénérationnell) despite its national and international commitments to mitigate climate change.
On April 5, 2018, the Colombian Supreme Court issued its decision on deforestation and the state's climate obligations by forcing the state to take further action. The court concluded that environmental degradation would cause serious harm to life and basic right.[13]
The court concluded in its ruling that the right to life, health, human dignity, and freedom is closely related to the environment. The children and future generations may use the will, which is a legal mechanism to protect basic rights without obtaining permission from their families. Moreover, the court found that the state seeks to respect the other as a restriction of legal controls. In this case the term "other" extends to include the population of the planet, including the generations that have not yet been born, in addition to all the species of animals and plants that have not yet been born.
In the United States of America, we find that the rights of future generations have been the cause of many climate lawsuits, and they have been associated with the principle of public trust [14]. In the case of Juliana, which was filed by 21 young people between the ages of 8 and 22 in August 2015, the court considered that the violation of the right of future generations is based on the basic rights that already exist in both the Constitution and judicial rulings in issues related to the environment, which is the right to life, freedom and property, and the right to natural resources. These rights are firmly rooted in US environmental litigation, and they called on the court to issue a court order ordering the government to implement a plan to phase out fossil fuel emissions and reduce carbon dioxide in the atmosphere. [15]
The ruling in this lawsuit was issued on January 17, 2017. The US Court of Appeals - Ninth Circuit - dismissed by a majority the case, although opinion was sharply divided. The majority found that the federal government had long encouraged the use of fossil fuels despite knowing that it could lead to catastrophic climatic changes, but the court eventually ruled against the plaintiffs on the grounds of lack of jurisdiction and lack of litigation and that this matter pertained to the legislature.

Third: The general principles of climate lawsuits in France before the administrative judge

Urgenda's lawsuit had a great impact on the development of the administrative climate judiciary, and echoes of this trend appeared in France, where the events of the Affaire du siècle case took place. There was a dispute over the validity of the courts to be a place to consider a topic other than the climate and its impact on human rights, and in the end the climate justice movement became an indisputable fact.
Civil society has been mobilized around the climate issue through lawsuits, which are a form of protest against the state, private companies. The civil society protests to express its dissatisfaction and disagreement with France's inappropriate climate policies. The French state does not do its

[12] Cour Suprême Colombienne, Générations futures v. Ministère de l'environnement et a., STC4360-2018, 05 avril 2018.

[13] Marta Torre-Schaub, Justice climatique : en Colombie, une décision historique contre la deforestation, May 20, 2018 ,disponible sur : https://theconversation.com

[14] The principle of public trust is one of the most important principles on which climate conflicts in the United States are based, which is based on the premise that the state should not deprive the future generation of the natural resources necessary for the well-being and survival of citizens.

[15] D. MARKELL & J.-B. RUHL, « An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual? », Florida Law Review 2012, vol. 64, n° 1, p. 27.

best to stop climate change, and therefore French climate policy does not rise to the level of a climate emergency.

The French climate lawsuits are based on objective principles represented by the right of every person to live in a stable and sustainable climate system, which is a prerequisite for promoting sustainable development and the enjoyment of human rights for current and future generations.[16]

There are a number of legal texts that serve as the basis for climate lawsuits in France. There are the rules regulating greenhouse gases represented in the rules or obligations that can be derived from the Environment Charter as well as the European Convention on Human Rights and European directives.

Regarding the French Constitution of 1958, it did not include any obligation on the state in the field of combating global warming. There is no doubt that the constitutionalization of combating climate change is a recent trend emerging in some countries in light of the threats posed by the climate change, which prompted ten countries to introduce commitment to combat climate change in their constitutions. [17]

Concerning France, we find that there are many legal articles that are suitable as support for filing administrative climate lawsuits.

- **Energy and Climate Law of 2019**

The French Energy and Climate Law No. 1147 of 2019 issued on November 8, 2019 is one of the most recent legislations related to climate change. The goal of the Energy and Climate Law is to achieve Neutralité carbone by 2050 and reduce fossil fuel consumption by 40%. [18]

The Energy and Climate Law dealt with combating the energy refineries or les passoires énergétiques, which means energy-intensive homes that consume a lot of heating in winter or air conditioning in summer. It also specified some commitments. For example, since the beginning of the year 2022 an energy audit is required in the case of selling or renting the energy refinery.

- **The Energy Transition for Green Growth Act 2015**

The objective of the of lawEnergy Transition for Green Growth of August 17, 2015 is to enable France to contribute more effectively to combating climate change and to enhance its energy independence, while ensuring an access to energy at competitive costs.[19]

In the field of combating climate change, this law aims to work in order to combat climate change, by setting quantitative targets for France and means of action to implement the Paris Agreement, especially in the field of housing and construction by reducing greenhouse gas emissions and energy consumption in buildings and accelerating renovation Energy in buildings and encourage the use of renewable energies.

Second theme

Implications of administrative climate lawsuits

First: implications of rejecting the administrative climate lawsuit

In the event that the climate lawsuits are not successful, as in Juliana's lawsuit, it may result in an indirect effect, and may affect the potential litigation in the future. An example of this is the Teitiota lawsuit related to a citizen from Kiribati who sought asylum in New Zealand due to climate

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(16) Dr. Muhammad Muhammad Abd al-Latif, Climate Lawsuits, 1st edition, Dar Al-Nahda Al-Arabiya, 2021, p. 97.

(17) Christel Cournil. " Étude comparée sur l'invocation des droits constitutionnels dans les contentieux climatiques nationaux. 2018, p. 89, disponible sur https://core.ac.uk/download/pdf/227329251.pdf.

(18) LOI n° 2019-1147 du 8 novembre 2019 relative à l'énergie et au climat (1) JORF n°0261 du 9 novembre 2019, sur: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000039355955/2021-02-01.

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(19) LOI n° 2015-992 du 17 août 2015 relative à la transition énergétique pour la croissance verte (1), disponible sur: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000031044385

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change, and the damages that may have caused to him and his family. The New Zealand Supreme Court and the United Nations Human Rights Committee rejected his request. In both cases, the decisions included statements acknowledging the risks posed by climate change, which did not close the door to future successes in different circumstances.

Second: implications of accepting administrative climate lawsuits

Litigants using this administrative climate lawsuit seek to oblige governments to comply with their human rights obligations by requiring countries to reduce greenhouse gas emissions as high as possible, in order to ensure a stable and livable climate and a clean and healthy environment.

When have the courts in various countries of the world accepted climate lawsuits that demand a sustainable climate, it follows that these lawsuits impose a legal duty on the government to prevent damages resulting from climate change, by reducing greenhouse gas emissions.[20]

The judgments issued to accept climate lawsuits follow a flexible approach in proving the causal relationship between human activity and greenhouse gas emissions, bypassing a major obstacle at which most climate liability lawsuits are destroyed.

In Urgenda's lawsuit [21] we find that the political resonance of the ruling was very great, during the Conference of the Parties COP 21, which was held in Paris, France, from November 30 to December 12, 2015. In the words of Christian Huglo, Urgenda's first decision resonated like thunder in the sky as she hummed "comme un coup de tonnerre dans un ciel serein" and urged the participating delegations to pay attention to the real dimension of climate change.[22]

Following the issuance of the ruling in the case by the Dutch Supreme Court on December 20, 2019, the Dutch government announced its intention to implement the judicial ruling, and therefore it developed a plan which included reducing the capacity of fuel stations that are still powered by

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[20] Dr. Muhammad Ahmad Salama, Climate Lawsuits, op. cit, pg. 784.

[21] The facts of the Urgenda case are summarized in that the Urgenda Foundation, a Dutch foundation for sustainability and innovation, filed a lawsuit against the Dutch government with 900 Dutch citizens in 2013, with the aim of obligating the Dutch government to do more in order to prevent global climate changes, as the Hague District Court ruled in favor of the plaintiffs in 2015 and obligated the Dutch state to reduce greenhouse gas emissions by at least 25% below 1990 levels by 2020. The court relied in its ruling largely indirectly on the text of Article 21 of the Dutch constitution, the goals of the European Union to reduce emissions and the principle of non-harm in international law and the principle of prevention, the principle of equity, and the principle of sustainability embodied in the Convention United Nations framework.

This ruling was appealed before the Dutch Court of Appeal, which upheld the ruling of the Hague District Court on October 9, 2018, and the court concluded that by failing to reduce greenhouse gas emissions by at least 25% by the end of 2020, the Dutch government is acting illegally in accordance with Articles 2 and 8 of the European Convention on Human Rights, where the court recognized Urgenda's claim under the rights stipulated in the European Convention on Human Rights, namely the right to life and the right to protect private and family life, and the Court of Appeal rejected the Dutch government's claim that the lower court's decision constitutes an order to create "an order to create legislation" or to violate the principle of separation of powers referred to in Dutch as trias politica and the role of courts under the Dutch constitution. The Court also held that adaptation measures could not compensate for the government's duty to take care of mitigating greenhouse gas emissions.

On May 24, the Dutch government filed a cassation appeal against the ruling issued by the Court of Appeal before the Dutch Supreme Court, and on December 20, 2019, the Dutch Supreme Court rejected the appeal submitted to it and confirmed that the Dutch government is obligated to reduce greenhouse gas emissions in the short term to prevent the risks arising from the changes. According to Articles 2 and 8 of the European Convention on Human Rights, climate change poses a real and immediate danger. Refer:

Cour du district de La Haye, 24 juin 2015, Urgenda v. Government of the Netherlands., Marta Torre-Schaub, L'affirmation d'une justice climatique au prétoire (quelques propos sur le jugement de la cour du district de La Haye du 24 juin 2015). In: Revue Québécoise de droit international, volume 29-1, 2016. P.162, https://www.persee.fr/doc/rqdi_0828-9999_2016_num_29_1_2233.

[22] C. HUGLO, Le contentieux climatique : une révolution judiciaire mondiale, Bruxelles, Bruylant, 2018, p. 314, Cité par Vincent Lefebve, Urgence climatique, quel rôle pour les juges et la justice ? 21 decembre 2019, p. 3, disponible sur : http://www.crisp.be.

coal by 75% and implementing a set of measures worth 3 billion euros to reduce gas emissions by 2022. These measures were taken from the "Climate Solutions Plan" submitted by the Urgenda Foundation. This case has triggered a wave of lawsuits related to climate change all over the world.(23)

It is noted that since the issuance of the ruling by the Dutch Court of The Hague in the Urgenda lawsuit in 2015, the courts have begun to witness a significant and noticeable increase in the number of administrative climate lawsuits. The individuals and foundations around the world have taken actions against countries with the aim of obtaining similar court rulings to the Urgenda lawsuit. There are already many climate lawsuits deliberating, which are based on the commitments of states in the field of human rights, as is the case in Ireland, Belgium, Sweden, Germany, the United States, Canada, Peru and South Korea. The arguments on which the litigants rely on the idea that reducing greenhouse gas emissions with the highest level of ambition amounts to the standard of due diligence for compliance with human rights obligations is based on the concept of "fair share" or shared liabilities.

Second topic

Conditions for accepting climate lawsuits

In order to accept administrative climate lawsuits, all elements of liability must be met, such as fault, damage, and a causal relationship. However, the issue becomes more complicated in the field of climate damage, determining the nature of damage, and explaining the causal relationship.

First theme

Climatic fault

The fault element is the first theme for instituting administrative climate lawsuits, and therefore the filer of the administrative climate lawsuit must prove the existence of a general climate commitment "l'obligation générale climatique" and the existence of a breach of this commitment in what constitutes a "carence fautive". This is done by theorizing the work of the state in the field of climate with the sources of law, such as international law.

First: definition of climate fault

Jurisprudence has made many attempts to define the fault, and their difference is due the fact that the term “fault” is a loose term, as it includes countless numbers of human behavior. Every behavior that is not right takes the character of a fault. In addition, some jurists look at the fault itself, regardless of the perpetrator. (24)

Some jurists believe that what is meant by fault in general is the breach of a legal duty issued by a distinguished person. (25)

The dean of civil law in the Arab world, Dr. Abdul Razzaq Al-Sanhouri, also defined the fault as “a breach of a legal obligation.(26) ”

A part of the jurisprudence defined the climate fault as the fault that results in damage to the environment and is the source of greenhouse gases and has negative effects that are difficult to rectify, especially the dangers resulting from technology. (27)

(23) Joana Setzer and Rebecca Byrnes، Global trends in climate change litigation: 2020 snapshot ، Policy report July 2020. p. 15.

(24) Dr. Ayman Ibrahim Al-Ashmawy, Developing the Concept of Fault as a Basis for Civil Liability, Dar Al-Nahda Al-Arabiya, Cairo, 1998, p. 19.

(25) Dr. Jalal Muhammad Ibrahim, The General Theory of Commitment, Sources of Commitment, 2003/2004, Al-Israa Press, p. 203.

(26) Dr. Abd al-Razeq Ahmed al-Sanhouri, The Mediator in Explanation of Civil Law, Part 1, The Theory of Commitment in General, Sources of Commitment, Dar Revival of Arab Heritage, Beirut, 1981, paragraph 527.

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(27) Dr. Saeed Saad Abdel Salam, The Problem of Compensating the Damages of the Technological Environment, Dar Al-Nahda Al-Arabia, Cairo, 2003, p. 2.

The law in the field of climate imposed an obligation on every person, stating that it is not permissible to harm the environment and preserve it from pollution, in order for social life to be straightened. Accordingly, if a person violates the duty to preserve the environment from pollution and deviates from the usual behavior, they will be considered faulty and held accountable by obliging them to compensate others for the damage they suffered as a result of this mistake, which is also applicable to the state.

The reason for climate change may be a violation of the laws and regulations in force in this regard, as the French Administrative Court - Cannes - ruled that the Ministry of Industry is liable for air pollution operations in some areas, despite the license for its activities such as the coal industry and the wine industry that cause material and moral damage to the environment. (28)

As for the French jurisprudence, we find that he went to say that the fault is an illegal act attributed to its perpetrator (29). In his book Civil Laws the jurist always defines civil fault by saying: "All losses and damages that occur by a person, whether this act is a result of lack of caution, lack of insight, recklessness, ignorance of what should be known or a mistake, no matter how small, for which he must compensate whenever his lack of insight or fault is the cause of its occurrence. (30)

The position of the French jurisprudence in defining the fault is characterized by that it has defined the two elements of fault, namely: the material element represented in illegality, and the moral element represented in the attribution.

Although the fault is one of the pillars of civil liability in the Egyptian and French law, the Jordanian law does not consider the fault as one of the pillars of the tort civil liability.(31)

In the field of determining the legal value of the goals of combating climate change or reducing greenhouse gas emissions in general, whether these goals are enshrined in international or internal law, the administrative judge always refuses to cancel an administrative decision on the grounds that it would be contrary to this goal, and the rulings issued by the French Council of State were repeated. I have to confirm this trend, which was also confirmed by the French Constitutional Council in its decision of August 13, 2005, through which it affirmed that the provisions of the Energy Transition Law for Green Growth related to the mitigation of greenhouse gases do not have any binding or coercive force.

Second: elements of climate fault

A- Deviance and encroachment on the climatic environment

Deviance and encroachment on the climate is represented in deviating from the usual behavior of the man, and jurisprudence distinguished between two criteria to differentiate between the act of deviance and encroachment on the climate:

- **Personal criterion:** It means that a person is not considered at fault unless he commits harmful behavior that he could have avoided, and this requires consideration of the person's own

(28) Dr. Alwani Embarek, International Liability for Environmental Protection, PhD thesis, Faculty of Law and Political Science, 2016, University of Mohamed Khedir Biskra, Algeria, p. 234..

(29) VENY {G} : Traité de droit civil, sous la direction de Jaques GHESTIN, les obligations, T.4la responsabilité conditionnelle. L.G.D.J. Paris, 1982 n 442-443، p. 530.532. .

(30) Toutes les pertes et tous les dommages qui peuvent arriver par les faits de quelques personnes soit imprudences, légèreté, ignorance de ce qu'on doit savoir, ou autres fautes Semblables, si légères puissent être, doivent être réparés par celui dont l'imprudence ou autre faute, y a donné lieu.

(31) Dr. Abdel Nasser Ziyad Hayajneh, Environmental Law, 1st Edition, Dar Al Thaqafa for Publishing and Distribution, 2012, p. 215.

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circumstances in terms of his psychological, mental and physical condition and the extent of his intelligence and culture.[32]

- **Objective criterion:** It means that the assessment of fault is as soon as the person deviates from the behavior of the ordinary man who represents the crowd of people, so he is not super intelligent nor is he limited in intelligence, as it is considered the abstract or typical person. That is the person is wrong if he commits behavior contrary to the behavior of the ordinary person who is neither highly intelligent nor negligent or lazy. [33]

The lesson in determining liability in the event of proving negligence or lack of foresight is the standard of the ordinary man, and it is an objective standard adopted by the judiciary in Egypt and France.

- The Egyptian Court of Cassation ruled in a ruling that: "The fault that leads to liability does not require that the aggressor be in bad faith, but it is sufficient that he be hasty, as in haste is a deviance from the normal behavior of the usual person, which is present in the what this fault. [34]

- The Paris Court also ruled that the airport was liable for the annoying and continuous sounds made by the aircraft's engines during landing and take-off from the pilot training center, on the basis of a fault in not taking the necessary precautions to prevent or reduce the noise. [35]

B - Discretion

Discretion means that when estimating the fault, we must take into account the internal circumstances of the person in question. This means that the person who is non-discerning is not liable. When assessing his deviance in behavior, we will neglect the circumstance of his lack of d discretion because it is an internal circumstance and not an external one, so the non-discerning person is not at fault. Thus, he becomes not liable for his act that harmed others. [36]

This opinion cannot be accepted, because the idea of liability requires accountability and blame, so a fault is an act that requires blaming its perpetrator, and it is not possible to blame a non-discerning person for his act or to attribute the fault to them, because the liability lies on the guardian. Despite that, the Egyptian legislator stipulated in the text of Article 164/ Paragraph 1 of the Civil Code that "a person shall be liable for his illegal actions when they are issued by them while he is discerning". Moreover, the Iraqi Civil Code in Article 191/1 stipulated that if a discerning or non-discerning boy, or someone in the same category, damages someone else's money, he must guarantee this money".

Furthermore, the French legislator stipulated in Article 1382 on attributing the fault to the official, the compensation claimant must prove the deviance of the liable person from the usual behavior, whether this deviance resulted from willfulness or negligence, lack of foresight, or lack of observance of laws and regulations [37] .

Second theme

Environmental damage

Some legal jurists tried to define damage as it is "the harm that a person suffers in his money, body, honour, or affection" [38]. Another defined it as the spark that emanates from thinking about

[32] Dr. Nazih Sadiq Al-Mahdi, Problems of Contemporary Civil Liability, Hamdi Salama and Partners Press, Giza, Egypt, 2006, pg. 62.

[33] Dr. Muhammad Hussain al-Shami, The Pillar of Fault in Civil Liability, "A Comparative Study," Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 132.

[34] The ruling of the Egyptian Court of Cassation in Appeal No. Appeal No. 1844, for the year 52 BC, session 7/17/1990.

[35] Refer to this ruling Dr. Nazih Al-Mahdi, Problems of Contemporary Civil Res, op. cit, pg. 107 et seq.

[36] Lisa Abdel Aziz Ahmed, Civil liability arising from environmental damage to medical waste, a research submitted to the Scientific Conference of the Faculty of Law, Tanta University, which was held from 23/24/4 of the year 2018 under the title of Law and the Environment, p. 3.

[37] La victim d'un dommage ne peut en obtenir reparation que si elle arrive a demo que celli – ci trouve directement son origine dans la faute".

[38] Dr. Mustafa Al-Zarqa, Islamic jurisprudence from a new perspective (General Jurisprudential Introduction), Dar Al-Fikr, Damascus, 1967, p. 587

holding the perpetrator accountable and defining the case against him in order to obtain reparative compensation .[39]

The law of August 8, 2016 on biological diversity in the French Civil Code included a new chapter dedicated to talking about damage [40]. It was defined as "the significant damage to the elements or functions of ecosystems or to the collective benefits that humans derive from the environment. Moreover, this definition covers objective damage to the environment, damage to water, soil, air, environmental functions, and collective harm to organizational and cultural services, in accordance with the provisions of Article 1247 of the French Civil Code.

Article 1246 of the same law stipulates that "any person liable for environmental damage is obligated to repair it". Moreover, Article 1252 stipulates that "regardless of compensation for environmental damage, the judge considering an application in this sense may decide on reasonable measures to prevent damage or terminate it.

First: Conditions of environmental damage

- **The environmental damage is existent**

In order for the damage resulting from climate change to be subject to liability and in order for a climate claim to be filed against it, it must be existent. That is, it is undoubtedly established. The damage is considered existent if it was immediate, i.e. actually occurred, and its occurrence resulted in material or moral loss to the injured person. An example is the damage resulting from environmental pollution with oil and gas, and it is certain that it will cause death, injury, or damage to money, in addition to other undoubtedly verified damages [41].

Likewise, the damage is considered existent if it is a future harm, and the future harm is the one whose cause has been realized, and all or some of its effects are retracted to the future, or to a later term. An example is the worker who suffers from a permanent disability that makes them unable to work. In this case the worker can claim compensation not only for the damage that actually occurred as a result of his disability to work, but rather he has the right to claim compensation for the damage that will inevitably occur in the future as a result of his disability to work, i.e. compensation for the financial loss that befalls him due to his disability to earn.[42]

Climate damage is what occurs to the environment, and environmental damage is only a form of damage in general. The environmental damage is considered existing if it has already occurred, such as if burning an oil or gas leak leads to pollution of the marine or air environment in a specific marine or geographical area. , or oil leakage from marine tankers led to the death of live animals in the pollution area. Moreover, the damage is considered realized if its occurrence in the future is existing and confirmed – which is called future damage.[43]

- **The environmental damage is direct**

Generally, damage is required to be direct in order for the administrative climate lawsuit to be filed. That is the damage is a natural result of the wrongful act that caused it.[44]

This is what most laws have stipulate, so we find that Article 221/1 of the Egyptian Civil Code stipulates that "if the compensation is not estimated in the contract or in the text of the law, then the judge is the one who estimates it. Compensation shall include the loss to the creditor and the

[39] Dr. Hamdi Abdel-Rahman, Sources of Commitment, Dar Al-Nahda, Cairo, 1997, p. 313.

[40] Loi n° 2016-1087 du 8 août 2016, pour la reconquête de la biodiversité, de la nature et des paysages.

[41] In this sense, the Jordanian Court of Cassation says that "the damage that must be compensated for is required to be existent. As for the potential damage, which is what did not occur and it is not known whether it will occur in the future or not, there is no compensation for it, and the current damage may be immediate, i.e. actually occurred It may be in the future." Appeal No. 1366 of 1999, see Dr. Amin Dawas, Journal of Judicial Rulings and Civil Offenses Law, Issue 2, I, Palestinian Judicial Institute, Ramallah, 2012, p.

[42] Dr. Youssef Obeidat, Sources of Obligation in Civil Law, "A Comparative Study", Dar Al-Masirah for Publishing and Distribution, Amman, 2008, p. 320 and et Seq. See also the ruling of the French Court of Cassation.

Cass. Civ .1re 22 oct. 1996: JCP .1996, IV, 2469; Bull:civ .n.354.

[43] Dr. Youssef Attari, International Law and Oil Pollution of the Marine Environment, Studies Journal, published by the University of Jordan, Volume 33, Issue 1, 2006, p. 132

[44] Dr. Muhammad Ibrahim Desouki, Civil Law, "Obligations," Al-Tuni Press, Alexandria, 1999, p. 217.

lost profits. It is stipulated that this be a natural result of non-fulfillment of the obligation or delay in fulfilling it, and damage is considered a natural consequence if the creditor was not able to anticipate it by exerting a reasonable effort".

In addition, Article (266) of the Jordanian Civil Code stipulates that "the guarantee shall be assessed in all cases according to the extent of the damage sustained by the injured party and the lost profits, provided that this is a natural result of the harmful act".

Therefore, a climate lawsuits cannot be filed unless this damage is direct, and this is the case when it is a natural result of harmful environmental activity. Damage to plants in land adjacent to a refinery cannot be claimed for compensation unless it is proven conclusively that the damage to plants was a natural and direct result of fumes and gases emitted from this factory or an oil spill occurred.

Second: Types of environmental damage

A - Physical damage

Physical damage befalls the funds or the financial liability of the injured person, or it is the violation of a right or a legitimate interest of the injured person of financial value.[45]

Any damage or destruction that affects the property of others as a result of the harmful act is considered a material damage that must be compensated. For example, the damage caused to a farm owner as a result of toxic gases and fumes escaping from a neighboring factory, which led to the destruction of agricultural crops or the death of animals on the farm. Also material damage is the one may leads to the owner of a property adjacent to a factory missing the opportunity to use his property in the proper manner due to the gases and fumes emitted from this factory. This pollution constitutes damage, although it does not result in material damage to the money of others, but it leads to a decrease in the economic value of the property, as it affects the possibility of selling or renting it at an acceptable price.

Most of the legislations set a definition of material damage: the Egyptian legislator defined it as "... the loss that the creditor suffered and the gain he missed. ..." [46]

Moreover, the Jordanian legislator also stipulated the meaning of material damage as "the guarantee is assessed in all cases according to the extent of the harm suffered by the harmed person, and the gain he lost, provided that this is a natural result of the harmful act.[47] "

The Jordanian Court of Cassation also ruled, in Case No. 638/1989, the right of the owners of the lands adjacent to the Fuheis Cement Factory to obtain compensation for the material damage they suffered, which was represented in the decrease in the value of the land and the trees planted on it, as a result of the dust rising from the factory.[48]

The Jordanian Court of Cassation also decided to compensate the plaintiff for damage to his fruit trees on the basis of the low value of the product due to the dust rising from the Cement Factory, which covered to tree leaves.[49]

We also find that the French judiciary also dealt with the problem of oil and gas pollution and responded to the request for compensation for material damage resulting from the practice of the state or its nationals for harmful environmental activities that cause material damage to other countries or their nationals that require compensation. An example is the case of pollution of the Rhine River due to the dumping of chemicals in it by (Sandoz) Company. The Dispute Court

[45] Dr. Adnan Al-Sarhan and Dr. Nuri Khatri, Explanation of the Civil Law, "Sources of Personal Rights and Obligations, a Comparative Study", Dar Al-Thaqafa for Publishing and Distribution, Amman, 2005, p..

[46] Refer to Article 221 of the Egyptian Civil Law No. 131 of 1948.

[47] Refer to Article 266 of the Jordanian Civil Code of 1976.

[48] Decision of the Jordanian Court of Cassation in its human rights capacity, No. 638/1989 (public body) on 10/10/1989, Adalah Center publications.

[49] Decision of the Jordanian Court of Cassation in its human rights capacity, No. 1018/1990 (a five-member panel) on 10/11/1990, Adalah Center publications

obligated the defendant company to pay the amount of 46 million French francs for the damages incurred by the citizens of the French state as a result of the chemical pollution of the river. [50]

B- Moral damage

Moral harm is defined as that does not affect a person with his money, but rather affects a non-financial interest for him. Moral harm takes the form of harm that affects a person's honor, reputation, or one of his moral rights[51].

Many laws stipulated the legitimacy of compensation for moral damage. We find the Egyptian legislator stipulating that "compensation includes moral damage as well, but in this case it is not permissible to transfer it to a third party unless it is determined by virtue of an agreement or demanded by the creditor before the courts [52] "

The Jordanian legislator also stipulated that "the right to guarantee deals with moral damage, so every transgression against a third party in his freedom, honor, reputation, social status, or financial consideration makes the aggressor liable for the guarantee".[53] . The Iraqi legislator followed the same direction, stipulating in Article 205/1 that the right to compensation deals with moral damage.."

The judiciary of the French Council of State has established that an association or institution can invoke moral damage in the event of an infringement of collective interests and rights. In this context, the personal nature of the damage for which you are claiming compensation must be established by proving the existence of a préjudice direct et certain damage resulting from the fault committed by the state. Thus, these associations must prove that the management's decision would adversely affect their collective interests in particular.[54]

Third theme

Causal relationship between climate fault and damage to the environment

The causal link between fault and damage is the direct relationship between the fault committed by the person and the result of the damage. It is indisputable that the concept of the causal link within the scope of administrative climate lawsuits is that it is not sufficient for fault and damage to be present, but rather the damage must be an inevitable and concomitant result of the fault. Moreover, the elements of traditional liability will not be complete unless the three pillars of liability rules are existing. The causative relationship has a major and important role in drawing the limits of liability, as it excludes every result in which the causal link is not available, as it is unique in drawing the limits of liability[55].

Establishing a causal relationship between the state's failure to take measures to mitigate the harmful effects of climate change and the damage actually occurring presupposes the existence of accurate scientific knowledge about climate changes and the nature of adaptation measures to be taken. If scientific knowledge enables the production of such evidence, there is no problem in proving sufficient causation [56].

The causal link in the administrative climate lawsuits means that there is a direct link between the fault committed by the perpetrator, whether it was a positive or a negative fault, and the harm caused, i.e. the damage that resulted from the act, whether on natural or legal persons or whoever

[50] Abdul Rahman Kassab, Civil Liability Arising from Environmental Pollution, Master Thesis, unpublished, Mutah University, Jordan, 2006, p. 60.

[51] Dr. Abd al-Razzaq al-Sanhouri, the mediator in explaining the civil law, op. cit, p. 981.

[52] Refer to Article 222 of the Egyptian Civil Code.

[53] Refer to Article 267/1 of the Jordanian Civil Code.

[54] Versailles, 21 nov. 1986, Assoc. pour la défense de la qualité de la vie à Bondy, Rec. CE 1986, p. 1306.

[55] Dr. Ismail Ali Ismail, Witness and Civil Liability in Law, Ph.D. Thesis, Faculty of Law, Tanta University, 2003, p. 354. Muhammad Ibrahim Desouki, Civil Law, op. cit, p. 227.

[56] Safia Cazet. La carence des pouvoirs publics dans l'adaptation au changement climatique: quels recours?. Anne-Sophie Tabau. Quel droit pour l'adaptation des territoires aux changements climatiques? L'expérience de l'Île de La Réunion, Droits International, Comparé et européen, 2018, p.174.

caused him damage, and because the causal link constitutes The third pillar of liability is that the wrongdoer is not obligated to compensate unless his fault was the cause of the damage.[57]

Undoubtedly, proving the causal link between the wrong act and the damage resulting from it does not raise any difficulty when this act is the only source of that damage. However, if environmental pollution results from oil and gas, then attributing the damage to a specific source is linked to a direct causal relationship is considered a difficult matter, because most of the environmental damage resulting from oil and gas pollution is considered indirect damage, and multiple sources are involved in causing it, especially in areas that are predominantly industrial or commercial. Therefore, proving this association in such cases is an accurate and difficult matter, which raises many legal problems.[58]

In the case of "Victenam retenans" against seven companies that produce chemicals, the American judiciary stated that the difficulty in this case is that these pesticides had effects on health. It also indicated that the real inability faced by the plaintiffs was to provide acceptable evidence of the causal link between these chemical pesticides and the many diseases that resulted from it.

CONCLUSION

Undoubtedly, the issue of climate change has become a real and indisputable reality. It is a problem that has harmful effects on all creatures, including humans, plants and animals, and has dire consequences for the development process as it works to disrupt the development process. It also works to disrupt human rights due to its connection with the rest of the rights.

The climate problem is characterized by its global nature, as it raises the administrative liability of the state for all thermal emissions that result in climate change. Therefore, the courts are an appropriate place to raise these issues and resolve them through a binding ruling for the state, according to which it is committed to working on issuing legislation aimed at reducing the emission of greenhouse gases of global warming.

Administrative climate lawsuits face several obstacles, represented by the difficulty of proving that the state did not use public authority measures to confront climate change. The law does not impose an explicit obligation on the state to preserve the climate.

In addition, the causal relationship in the administrative climate lawsuits is difficult to prove, as environmental pollution is due to several pollutants, and the state's fault is one of those causes and other causes are involved.

As for Jordan, the courts did not witness such cases, although there is no objection to their filing.

RESULTS

The study reached several results:

1. Climate change is a negative phenomenon that affects the rights of present and future generations and has serious damage to human rights.
2. The state is fully liable for climatic changes, and it is obligated in dealing with individuals to implement judicial rulings issued in the field of climate, and to remove all aspects of encroachment on the environment.
3. The Jordanian legislator did not deal with the right to the environment in the desired way, and perhaps the reason for that is due to the novelty of this right that was not known until recently.

[57] The causal relationship in the criminal law does not differ from the civil law, as it determines the act that caused the damage among the many acts surrounding the act, and if the damage was achieved and the reason for its occurrence was the fault of the perpetrator, then liability arises.

[58] Muhammad Abdel-Zaher Hussein, The Fault of the Injured and Its Impact on Civil Liability, Dar Al-Nahda Al-Arabiya, Egypt in 2002, pg. 25 d. Wahba Al-Zuhaili, Theory of Guarantee and the Provisions of Civil and Criminal Liability in Islamic Jurisprudence, a comparative study, Dar Al-Fikr, Beirut, 1975, p. 28.

4. The conditions required for filing administrative climate lawsuits do not differ from the conditions required for establishing liability in general, despite the specificity of those lawsuits.
5. The subject of climate lawsuits needs further study and research.

Recommendations

After this study, we can make several recommendations:

1. We recommend that the Jordanian legislator must stipulate the right to the environment, as the Egyptian legislator did with the constitutional amendment of 2014.
2. We recommend that the Jordanian and Egyptian legislators must stipulate the right to confront climate change and elevate it to the ranks of constitutional rights by stipulating this in the constitution.
3. We recommend that the Jordanian and Egyptian legislators give a special kind of protection to judicial rulings issued in the field of climate because of their importance for future generations.
4. We recommend that the Jordanian legislator should mitigate the required causation as a condition for accepting climate claims, as the French legislator did.

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Abstract

"Administrative climate lawsuits"

Based on the right to a stable and permanent climate and the rights of future generations, climate litigation has appeared as an important tool to oblige the state to take more ambitious policies in

the face of climate change. Given that the climate issue is shared between generations, with great support from civil society organizations.

These lawsuits were based on several constitutional foundations, including the right to health and the right to the environment. Moreover, these suits faced several legal obstacles represented in determining the cause of fault on the part of the state and determining the causal relationship between fault and environmental damage.