

*Francesco De Facci*

THE HUNGARIAN CONSTITUTIONAL COURT DELIVERS ITS RULING  
ON THE CLIMATE PROTECTION ACT\*

(CASE NOTE: HUNGARIAN CONSTITUTIONAL COURT, 3 JUNE 2025, N.  
II/3536/2021)

SUMMARY: 1. Introduction. – 2. The government framework, systemic and strategic climate litigation and the Hungarian legal context: a doctrinal analysis. – 3. The Climate Protection Act and the case. – 4. Concluding remarks.

1. *Introduction*

On 3 June 2025, the Court declared the unconstitutionality of Article 3(1) of Act XLIV of 2020<sup>1</sup> on Climate Protection<sup>2</sup>, employing a decision-making technique increasingly common across various legal systems. This technique consists in deferring the effects<sup>3</sup> of the declaration of unconstitutionality<sup>4</sup>, relying on the principles of intergenera-

\* [Author's note: this contribution is based on the unofficial English translation of the judgment of the Hungarian Constitutional Court provided to the author by a Hungarian colleague].

<sup>1</sup> Article 3(1) of the Climate Protection Act (Act n. XLIV/2020): «Hungary shall reduce its greenhouse gas emissions by at least 40% by 2030 compared to 1990 levels» [Author's note: translation by the author from Hungarian].

<sup>2</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, paras. 123-4. [Author's note: unless otherwise indicated, all references pertain to the reasoning part of the ruling].

<sup>3</sup> Article 3(1) of the Act XLIV/2020 shall remain in force until 29 June 2026.

<sup>4</sup> In “delayed declarations of unconstitutionality” – also employed by the Supreme Court of Canada and the Constitutional Court of South Africa – «[the courts] have the power to strike down an unconstitutional provision while freezing the effect of that judgment for a certain length of time to avoid a lacuna or clash with Parliament». This technique is similar – but distinct – from that adopted by the Italian Constitutional Court since Order n. 207/2018 (the so-called *Cappato* case). The Italian Court

tional equity, precaution, and prevention as enshrined in Articles P(1)<sup>5</sup>, XX(1)<sup>6</sup>, and XXI(1)<sup>7</sup> of the Fundamental Law of Hungary.

Furthermore, pursuant to Article 46(1)<sup>8</sup> and (2)(c)<sup>9</sup> of the Act on the Constitutional Court, the Court held that the National Assembly had violated the aforementioned provisions – including Article B(1) of the Fundamental Law<sup>10</sup>. Parliament had failed to ensure adequate legislative oversight of measures concerning climate change adaptation and resilience, considering the specific characteristics of Hungary and the Carpathian Basin<sup>11</sup>. The Climate Protection Act explicitly refers only to mitigation measures<sup>12</sup>. Consequently, the Court found grounds

has preferred a decision-making technique that may be defined as a “prospected declaration of invalidity”. Although the two techniques share similarities, the Italian approach differs in that the judges do not immediately rule on the unconstitutionality of the law but defer the decision, announcing to the legislature their intention to declare the contested provisions unconstitutional. For further analysis: M. DI BARI, *Suspended/Prospected Declarations of Invalidity: A Comparative Analysis of the Canadian, South African, and Italian Judicial Techniques*, in *DPCE Online*, n. sp. 1, 2019, pp. 810, 819.

<sup>5</sup> Article P(1): «Natural resources, in particular arable land, forests and the reserves of water; biodiversity, in particular native plant and animal species; and cultural artefacts, shall form the common heritage of the nation. It shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations».

[Author’s note: after the first full citation, all subsequent references to articles without explicit mention of the normative text refer to the Fundamental Law of Hungary].

<sup>6</sup> Article XX(1): «Everyone shall have the right to physical and mental health»

<sup>7</sup> Article XXI(1): «Hungary shall recognise and endorse the right of everyone to a healthy environment».

<sup>8</sup> Article 46(1): «If the Constitutional Court, in its proceedings conducted in the exercise of its competences, finds an omission on the part of the legislative body that culminates in a breach of the Fundamental Law, it shall call upon the infringing body to fulfil its responsibilities within the prescribed time limit».

<sup>9</sup> Article 46(2)(c): «The following shall be considered as failure to exercise legislative powers: [...] c) the essential content of the legislation derived from the Fundamental Law is incomplete».

<sup>10</sup> Article B(1): «Hungary shall be an independent, democratic rule-of-law State».

<sup>11</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 2 (operative part), para. 127.

<sup>12</sup> Ivi, para. 127.

to declare unconstitutionality by omission<sup>13</sup>. The Hungarian judges therefore ordered Parliament to remedy this legislative gap by 30 June 2026<sup>14</sup>.

This note will concisely address the doctrinal analysis of government framework, systemic and strategic climate litigation, in which this case can fit. In particular, the analysis will briefly and critically engage with the role of the Courts, particularly the Hungarian one, in this politically contentious issue. Consequently, the provisions of the Climate Protection Act whose constitutional legitimacy was challenged by the applicants will be explained. The article will then outline the reasoning adopted by the judges and offer a cross-border perspective by highlighting the reference to the *KlimaSeniorinnen* decision of the European Court of Human Rights (ECtHR)<sup>15</sup>. Finally, some concluding remarks will be developed from a comparative standpoint, seeking to identify a common core among climate-related cases that interpret fundamental rights through an intertemporal lens, contradicting an isolationist stance of the Hungarian Constitutional Court on matters concerning fundamental rights.

<sup>13</sup> «Silence – that is, the absence of a choice – or, likewise, a partially incomplete solution on the part of the legislature cannot be tolerated when such an attitude results in the failure to implement constitutional precepts crafted in the form of principles designed to endure over time, and therefore intended to provide guidance in the implementation and enforcement of constitutional norms. [...] Judicial review of legislative omissions has developed both in systems that have introduced ad hoc procedural instruments for this purpose (Portugal, Brazil, Hungary), and in legal orders that have not provided any formalization of such powers in the hands of the constitutional court (Italy, Spain, and Germany)». L. CASSETTI, *Corte costituzionale e silenzi del legislatore: le criticità di alcuni modelli decisori nel controllo di costituzionalità sulle lacune legislative e il ruolo dei giudici*, in L. CASSETTI and A. S. BRUNO (eds.), *I giudici costituzionali e le omissioni del legislatore: le tradizioni europee e l'esperienza latino-americana*, Turin, 2019, pp. 2-3. [Author's note: translation by the author from Italian]. For a critical approach to the use of unconstitutionality by omission: C. RUIZ MIGUEL, *L'incostituzionalità per omissione*, in *Quaderni costituzionali*, n. 2, 2003.

<sup>14</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 130.

<sup>15</sup> European Court of Human Rights, 9 April 2024, Case No. 53600/20.

## 2. *The government framework, systemic and strategic climate litigation and the Hungarian legal context: a doctrinal analysis*

For the purposes of this case note, the definition adopted for climate change litigation is the so called “narrow one”. It covers only litigation raising issues related to climate change in a direct and express way<sup>16</sup>. The phenomenon is a recent one, having come to life in the last two decades, in response to the failure of national policymakers to respect the obligations enshrined in the global climate change regime as envisaged by the UNFCCC and subsequent Conferences of the Parties (COPs)<sup>17</sup>. This disappointment has incentivized citizens and NGOs to react to ensure increasing pressure «on the executive and legislative branches of government to act on climate issues»<sup>18</sup>. Additionally, according to the IPCC, climate litigation «seeks to ensure that governmental action on climate change is more ambitious, and better aligned with the need to avert or respond to climate impacts identified and

<sup>16</sup> «Any piece of federal, state, tribal, or local administrative or judicial litigation in which the party filings or tribunal decisions directly and expressly raise an issue of fact or law regarding the substance or policy of climate change causes and impacts»; D. L. MARKELL and J.B. RUHL, *An Empirical Assessment of Climate Change in the Courts: A New Jurisprudence or Business as Usual?*, in *Florida Law Review*, n. 15, 2012, p. 27. For a broader definition, please refers to the following definition: «In our own writing seeking to define climate change litigation, we have sought to reflect this diversity through representing climate change litigation in terms of a series of concentric circles [...]. At the core are cases that centrally feature climate change issues or arguments. As we move outward in the circles, the link between climate change and the issues raised or argued in the case becomes less direct»; J. PEEL and H.M. OSOFSKY, *Climate Change Litigation*, in *Annual Review of Law and Social Science*, n. 16, 2020, pp. 23-24.

<sup>17</sup> I. ALOGNA, C. BAKKER and J.P. GAUCI, *Climate Change Litigation: Global Perspectives – An Introduction*, in I. ALOGNA, C. BAKKER and J.P. GAUCI (eds.), *Climate Change Litigation: Global Perspectives*, Leiden and Boston, 2021, p. 3.

<sup>18</sup> J. LIN, *Climate Change and the Courts*, in *Legal Studies*, n. 1, 2012, pp. 35-36. In this constitutional complaint, the applicants were 55 opposition members of the Parliament (*infra* note 31). Although, NGOs played a significant role alongside the applicants in submitting briefs to the Court as *amici curiae* (*infra* note 59). This type of constitutional complaint enters in the category of «proactive litigation», «which is initiated to promote policy change (such as by requesting the adoption or reform of legislation)». I. ALOGNA, *Increasing Climate Litigation: A Global Inventory*, in *French yearbook of public law*, n. 1, 2023, p. 104.

predicted by the scientific community»<sup>19</sup>. Another interesting aspect is the shortcoming of international mechanisms and the complementary role played by regional and national courts in climate and environmental litigation, based on their proximity to the legal environment<sup>20</sup>. Naturally, climate litigation always carries the risk of encroaching upon the doctrine of separation of powers, particularly when judicial bodies assume an expanded role despite the legislature's direct democratic legitimacy — even in situations where parliament proves unable to adopt necessary legislation<sup>21</sup>. In this regard, the Hungarian Constitutional Court has often been depicted as a restrained institution in its engagement with the legislative and executive branches, especially following the series of legislative and constitutional reforms enacted after 2010 that curtailed its independence<sup>22</sup>. Against this backdrop, the decision stands out as a notable and assertive exercise of judicial review in a politically sensitive context.

<sup>19</sup> N.K. DUBASH, C. MITCHELL and E.L. BOASSON et al., *Chapter 13: National and Sub-National Policies and Institutions*, in P.R. SHUKLA, J. SKEA, and R. SLADE et al. (eds.), *IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*, Cambridge (UK) and New York, 2022, p. 1376.

<sup>20</sup> G. PANE, *Litigating the Climate between National and International Regimes: Judicial Complementarity?*, in *Academy of European Law (European University Institute)*, n. 23, 2024, pp. 6, 14, 15-6.

<sup>21</sup> C. RUIZ MIGUEL, *L'incostituzionalità*, cit., pp. 808-10.

<sup>22</sup> After obtaining a two-thirds parliamentary majority in 2010, the governing right-wing parties began appointing justices to the Constitutional Court who were aligned with the governing parties' ideological preferences, doing so without engaging in consultation with the opposition. Furthermore, in March 2013, the Fourth Amendment to the Fundamental Law annulled the entire body of Constitutional Court case law developed prior to the entry into force of the 2011 Fundamental Law. This measure sought to compel the Court to recalibrate its jurisprudence in accordance with the values of the new political majority and to eliminate jurisprudential elements that embodied commitments to the principles of separation of powers and the rule of law. Z. SZENTE, *The Political Orientation of the Members of the Hungarian Constitutional Court Between 2010 and 2014*, in *Constitutional Studies*, n. 1, 2016, p. 133; G. HALMAI, *Populism, Authoritarianism and Constitutionalism*, in *German Law Journal*, n. 3, 2019, pp. 302-305. For further analysis about the crisis of the judicial system in Hungary: F. GÁRDOS-OROSZ (ed.), *The Resilience of the Hungarian Legal System since 2010: A Failed Resilience?*, Switzerland, 2025.

Considering all the above reasons, the *tertium comparationis* of this article will be strategic<sup>23</sup> and systemic<sup>24</sup> litigation against governments, under the umbrella concept of the so-called *Government framework cases*<sup>25</sup>.

### 3. *The Climate Protection Act and the case*

The Climate Protection Act, adopted by the National Assembly on 10 June 2020<sup>26</sup>, sets forth – according to its preamble – the objective of safeguarding Hungary’s environmental heritage and its people from increasingly extreme meteorological phenomena, primarily through mitigation measures. It mandates the government, considering international<sup>27</sup> and EU<sup>28</sup> obligations and in view of the energy transition, to establish or implement short-, medium-, and long-term targets<sup>29</sup>.

<sup>23</sup> «Strategic litigation is associated with ambitious and systemic outcomes. [...] strategic cases normally have larger ambitions that extend beyond individual situations, such as the adequacy of national climate policy and targets; and [...] the connection of litigation with larger advocacy strategies, because strategic lawsuits are commonly “part of a bigger puzzle”». M.E. LESSA, *Climate Litigation as Strategic Litigation*, in *Environmental Law Reporter*, n. 1, 2025, p. 10059.

<sup>24</sup> «Systemic climate change litigation, which challenges a State’s overall efforts to mitigate or adapt to climate change, [...]»; F. SINDICO, K. MCKENZIE, G.A. MEDICI-COLOMBO and L. WEGENER, *Systemic Climate Change Litigation*, in F. SINDICO, K. MCKENZIE, G.A. MEDICI-COLOMBO and L. WEGENER (eds.), *Research Handbook on Climate Change Litigation*, Cheltenham and Northampton, 2024, p. 77. «[...] those that push for greater ambition in climate mitigation, often referred to as systemic mitigation cases [...]»; United Nations Environment Programme, *Climate Change in the Courtroom: Trends, Impacts and Emerging Lessons*, Nairobi, 2025, p. 25.

<sup>25</sup> «Cases that challenge the ambition or implementation of climate targets and policies affecting the whole of a country’s economy and society»; J. SETZER and C. HIGHAM, *Global Trends in Climate Change Litigation 2024 Snapshot*, London and New York, 2024, p. 24.

<sup>26</sup> Act n. XLIV/2020.

<sup>27</sup> Hungary ratified the Paris Agreement on 5 October 2016. Information available at UN Treaties.

<sup>28</sup> EU Regulation n. 1119/2021.

<sup>29</sup> Articles 1, 2, 3, and 4 of Act n. XLIV/2020. Article 3(4) refers to the objective of climate neutrality by 2050.

The applicants – 55 opposition members of Parliament, exceeding the threshold of one-quarter of the National Assembly<sup>30</sup> – petitioned the Court to declare unconstitutional most of the provisions contained in the first four articles of the Act, alleging violations of Articles P(1), II<sup>31</sup>, XX<sup>32</sup>, and XXI(1) of the Fundamental Law, relevant international treaties<sup>33</sup> with reference to Article Q(1)<sup>34</sup> and (2)<sup>35</sup> of the Fundamental Law, and the principle of legal clarity enshrined in Article B(1).

After hearing the applicants' arguments<sup>36</sup>, the Court declined to proceed on the merits regarding Articles 1, 2, 3(2) and (3), and 4<sup>37</sup>, finding no breach of constitutional parameters. First, the challenge to Article 3(2) and (3)<sup>38</sup> was dismissed as inadmissible because the applicants failed to provide independent arguments concerning Hungary's energy consumption<sup>39</sup>. Second, the challenge to Articles 1, 2, and 4<sup>40</sup> was rejected on the grounds that it is entirely legitimate for the Act not to impose a specific obligation on the government to adopt every sin-

<sup>30</sup> The Hungarian National Assembly consists of 199 members. Information available on the Hungarian Parliament website.

<sup>31</sup> Article II: «Human dignity shall be inviolable. Every human being shall have the right to life and human dignity; the life of the foetus shall be protected from the moment of conception».

<sup>32</sup> Article XX: «(1) Everyone shall have the right to physical and mental health. (2) Hungary shall promote the effective implementation of the right referred to in paragraph (1) through agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision and by supporting sports and regular physical exercise as well as by ensuring the protection of the environment. (3) Producing, using, distributing and promoting drugs shall be prohibited in Hungary».

<sup>33</sup> United Nations Framework Convention on Climate Change, Paris Agreement, and the Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>34</sup> Article Q (1): «In order to create and maintain peace and security, and to achieve the sustainable development of humanity, Hungary shall strive for cooperation with all the peoples and countries of the world».

<sup>35</sup> Article Q (2): «In order to comply with its obligations under international law, Hungary shall ensure that Hungarian law is in conformity with international law».

<sup>36</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, paras. 1-14.

<sup>37</sup> Ivi, para. 22 (listing the cited articles of the Climate Protection Act).

<sup>38</sup> *Ibidem*.

<sup>39</sup> Ivi, para. 32.

<sup>40</sup> Ivi, para. 22.

gle implementing measure under the Climate Protection Act. Parliament retains the authority to legislate in this domain or, alternatively, to delegate such functions to the government<sup>41</sup>. Consequently, the government may only issue decrees «on matters not regulated by law or pursuant to statutory authorization»<sup>42</sup>. These circumstances did not warrant substantive review of the claims<sup>43</sup>.

Conversely, the Court proceeded to examine the constitutionality of Article 3(1) of the Climate Protection Act, which states: «Hungary shall reduce its greenhouse gas emissions by at least 40% by 2030 compared to 1990 levels»<sup>44</sup>.

Having verified that the claim concerning Article 3(1) was sufficiently defined<sup>45</sup>, the Court engaged in substantive reasoning. It first invoked Article P(1), which establishes that environmental protection is linked to the duty of the State and all citizens to preserve it for future generations<sup>46</sup>. After a historical excursus on the protection of natural resources dating back to the early Middle Ages<sup>47</sup>, the Court identified in Article P(1) the constitutional expression of the “public trust doctrine”<sup>48</sup>. This doctrine, originally rooted in Roman law and later developed within common-law systems, serves as a key hermeneutic principle<sup>49</sup>. This interpretation parallels the principle of sustainable development, which emphasizes the preservation of natural resources

<sup>41</sup> Ivi, para. 28.

<sup>42</sup> Art. 15 (3) of the Fundamental Law.

<sup>43</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, paras. 31, 33.

<sup>44</sup> Art. 3 (1) of the Act XLIV/2020.

<sup>45</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 22.

<sup>46</sup> Ivi, para. 36 (where the Court cited its Decision n. 14/2020 (VII.6), reaffirming that forest protection must be regarded as an *acquis* of the Fundamental Law of Hungary).

<sup>47</sup> Ivi, paras. 38-42.

<sup>48</sup> «Public trust doctrine is a legal principle establishing that certain natural and cultural resources are preserved for public use. Natural resources held in trust can include navigable waters, wildlife, or land. The public is considered the owner of the resources, and the government protects and maintains these resources for the public’s use». Legal Information Institute – Cornell Law School.

<sup>49</sup> Definition of *public trust doctrine* in EBSCO.

for the benefit of present and future generations. The Court went so far as to classify this principle as a norm of general international law<sup>50</sup>.

Subsequently, the judges referred to the principle of intergenerational equity, citing Article 38(1)<sup>51</sup> of the Fundamental Law and their own prior jurisprudence, while underscoring the public function served by the environment<sup>52</sup>. Article XXI(1) operates as a bridge between the protection of physical and mental health, enshrined in Article XX, and environmental protection under Article P(1). By guaranteeing the right to a healthy environment, this provision becomes a cornerstone of the Court's constitutional reasoning. The right to life and health cannot exist without a healthy environment in which human beings can thrive. Accordingly, the State's objective obligation of environmental protection under Article P(1) complements the citizens' subjective right to a healthy environment under Article XXI(1)<sup>53</sup>.

In implementing environmental policies, the government must adhere to the principles of precaution and prevention: not only must measures be avoided when foreseeable harm to the environment may result (prevention), but also when such harm cannot yet be scientifically demonstrated (precaution). This reasoning must always be conducted through an intergenerational lens<sup>54</sup>. Another instrument within the judges' "toolbox" is the principle of non-regression in environmental policy. Drawing on its own jurisprudence, the Court clarified that the principle of non-regression is not absolute<sup>55</sup>. It must be ba-

<sup>50</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 45.

<sup>51</sup> Article 38(1): «The property of the State and of local governments shall constitute national assets. The management and protection of national assets shall aim at serving the public interest, meeting common needs, and preserving natural resources, while taking into account the needs of future generations. The requirements for preserving and protecting national assets and for their responsible management shall be laid down in a cardinal Act».

<sup>52</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 46.

<sup>53</sup> Ivi, paras. 50-2.

<sup>54</sup> Ivi, para. 53.

<sup>55</sup> On this point, it is noteworthy that the Italian Constitutional Court reached similar conclusions in the *Ilva* case. In particular, in the judgment n. 85/2013, the Court emphasized: «All fundamental rights protected by the Constitution are mutually related to one another and it is thus not possible to identify any one of them in isolation as prevailing absolutely over the others. Protection must at all times be "systematic

lanced against other constitutional values, provided that such balancing never undermines the principles of precaution and prevention<sup>56</sup>. Likewise, the “polluter pays” principle is tied to the conservation of natural resources, regarded as the common heritage of the nation, within an intergenerational perspective<sup>57</sup>.

After outlining the principles underpinning its substantive analysis, and relying on scientific evidence, the Court emphasized the global and interconnected nature of climate change<sup>58</sup>. It concluded that climate change does not occur in isolation, but rather in conjunction with other anthropogenic effects. These effects are mutually reinforcing and inseparable. The bond between humans and their land is indissoluble; thus, mitigation is not an option but a duty of present generations to safeguard the natural values and landscape of the Carpathian Basin within a well-defined institutional and normative framework<sup>59</sup>.

At this juncture, the Court turned to the analysis of Article 3(1) of the Climate Protection Act, introducing new argumentative elements. It reaffirmed the duty of environmental protection from an intergenerational perspective, while also incorporating an international dimension, notably through the principle of “common but differentiated responsibilities,” established in international law since the 1992 Rio

and not fragmented into a series of rules that are uncoordinated and potentially conflict with one another” (see judgment n. 264 of 2012). If this were not the case, the result would be an unlimited expansion of one of the rights, which would “tyrannise” other legal interests recognised and protected under constitutional law, which constitute as a whole an expression of human dignity». (Reasoning in law, para. 9.) For a critical examination of the relationship between economic interests and individual rights in the context of environmental protection, as illustrated by the *Ilva* case: E.A. IMPARATO, *The Right to Life Passes through the Right to a Healthy Environment: Jurisprudence in Comparison*, in *Widener Law Review*, n. 1, 2016, pp. 123-134.

<sup>56</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 55.

<sup>57</sup> *Ivi*, para. 56.

<sup>58</sup> *Ivi*, paras. 58-82. Here, the importance of interventions by *amici curiae* should be highlighted: e.g., the Hungarian Association for Climate Protection and the Reflex Environmental Association.

<sup>59</sup> *Ivi*, paras. 83-5.

Conference<sup>60</sup>. Efforts to contain the effects of climate change constitute a shared responsibility of all states and of individuals within their jurisdictions, while considering available technologies and the need to share resources with developing countries<sup>61</sup>.

Of particular interest is the Court's approach in this passage, where it recalled Hungary's historical and cultural roots, especially the significance of its Christian tradition. Here, the Court cited Pope Francis's encyclical *Laudato Si'*, which affirms that climate is a common good and that humanity bears responsibility for its preservation. Human beings are composed of natural elements, making them part of nature and fostering an integral vision of the human-nature relationship<sup>62</sup>. Within this global perspective lies the recognition of climate change as a "common concern of humankind". It is the responsibility of all states – transcending national borders – to commit to protecting the climate system<sup>63</sup>. In this regard, Hungary, pursuant to Article Q(1), must cooperate internationally to promote sustainable development as a necessary response to the existence of climate change as a global challenge. Such cooperation must always occur within a framework of preserving humanity's global heritage and ensuring transnational distributive justice<sup>64</sup>.

<sup>60</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Brazil, 3-14 June 1992.

<sup>61</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 90. At this point, the Court referred to doctrinal analysis by P. CULLET, *Principle 7 – Common, but Differentiated Responsibilities*, in J.E. VIÑUALES (eds.), *The Rio Declaration on Environment and Development: A Commentary*, Oxford, 2015, pp. 229-244.

<sup>62</sup> Ivi, para. 89.

<sup>63</sup> Ivi, para. 91. Another doctrinal reference for a detailed explanation of the principle of "common concern of humankind": F. SOLTAU, *Chapter 10: Common Concern of Humankind*, in K.R. GRAY et al. (eds.), *The Oxford Handbook of International Climate Change Law*, Oxford, 2016, pp. 202-212.

<sup>64</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 93. For further discussion on transnational justice in the context of sustainable development, the Court cited: M. SZABÓ, *Intergenerational Justice under International Treaty Law: The Obligations of the State to Future Generations and the Example of the Hungarian Ombudsman for Future Generations*, in M.C. CORDONIER SEGGER et al. (eds.), *Intergenerational Justice in Sustainable Development Treaty Implementation*, Cambridge, 2021, pp. 68-98.

After once again referring to the concepts of intergenerational equity and the “public trust doctrine”<sup>65</sup>, the Court employed as constitutional benchmarks the 1992 United Nations Framework Convention on Climate Change, the 2015 Paris Agreement – particularly regarding nationally determined contributions – and the European Convention on Human Rights (ECHR), with specific reference to Article 8 as interpreted in the *KlimaSeniorinnen* judgment<sup>66</sup>. The Hungarian judges deemed the challenged provision – Article 3(1) – consistent with these treaties and, therefore, with the Constitution<sup>67</sup>. In particular, the Constitutional Court reached this conclusion by interpreting Article 8 ECHR in light of the margin of appreciation doctrine as (re)elaborated by the ECtHR. Citing paragraphs 550-551 of the ECtHR judgment<sup>68</sup>, the Court emphasized that the Climate Protection Act cannot be re-

<sup>65</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 94.

<sup>66</sup> Ivi, para. 113-5 and European Court of Human Rights, 9 April 2024, Case No. 53600/20.

<sup>67</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 113, 115-116.

<sup>68</sup> European Court of Human Rights, 9 April 2024, Case No. 53600/20: «550. When assessing whether a State has remained within its margin of appreciation (see paragraph 543 above), the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to: a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments; b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies; c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see subparagraphs a)-b) above); d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures. 551. The Court’s assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail that the State would be considered to have overstepped its relevant margin of appreciation (see paragraph 543 above)».

garded as the sole legislative instrument adopted by Parliament; rather, it must be construed in conjunction with various climate objectives embedded in other legislative or administrative texts. For these reasons, the Court found no incompatibility with Article 8 ECHR as interpreted in *KlimaSeniorinnen*<sup>69</sup>.

Conversely, by considering Articles P(1), XX(1), and XXI(1)<sup>70</sup> and interpreting them through the principles of intergenerational equity, precaution, prevention, and non-regression, the Court concluded that Article 3(1)<sup>71</sup> should be declared unconstitutional. This declaration was issued *pro futuro*, meaning its effects will take place as of 30 June 2026. The rationale lies in the absence of an *interim* target for reducing greenhouse gas emissions between 2023 and 2030, given that the 40% reduction target (relative to 1990 levels) set for 2030 had already been achieved in 2023. This failure to update the provision undermines intergenerational protection of fundamental rights, particularly the right to a healthy environment. Without continuous legislative updates, the risk of environmental harm increases<sup>72</sup>.

<sup>69</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, paras. 115-116 and European Court of Human Rights, 9 April 2024, Case No. 53600/20. For the purposes of this case note, and in light of the extensive literature addressing various aspects of this judgment, it is particularly relevant to consider how the broad substantive and procedural criteria articulated in paragraphs 550–551 of the ECtHR's *KlimaSeniorinnen* ruling afford domestic courts – such as the Hungarian Constitutional Court – a significant margin of appreciation when assessing whether State conduct amounts to a violation of Article 8 ECHR. V. STOYANOVA, *In Search for the Content of States' Positive Obligations under the European Convention on Human Rights: KlimaSeniorinnen and Climate Change*, in C. AMADO GOMES, H. OLIVEIRA, A. ROCHA, and M. FERMEGLIA (eds.), *Climate Change before International Courts: A Comparative Study*, New York, 2025, pp. 75-104. At the same time, the flexibility inherent in these criteria may generate political tensions in the relationship between courts and other branches of government; G. GRASSO, *Cambiamento climatico, separazione dei poteri, processo decisionale democratico: l'Assemblea federale svizzera "stoppa" la Corte europea dei diritti dell'uomo*, in *Osservatorio sul Costituzionalismo Ambientale - DPCE Online*, 2024.

<sup>70</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, para. 1 (operative part).

<sup>71</sup> *Ivi*, para. 22.

<sup>72</sup> *Ivi*, paras. 123-124. In the dissenting opinions of Judges Dr Ádám Mária Haszonicsné and Dr Zoltán Márki, the 40% target is interpreted as a minimum re-

The use of a delayed declaration of unconstitutionality, provided for under Article 45(4) of the Act on the Constitutional Court<sup>73</sup>, is justified both to ensure legal certainty and to allow Parliament sufficient time to revise the legislative text in compliance with the principle of separation of powers.

Finally, noting that the statute insufficiently regulates adaptation and resilience to climate change and the capacity of natural resources to absorb carbon dioxide, the Court, acting *ex officio*, ordered Parliament – by the same deadline set for the *pro futuro* declaration of unconstitutionality – to implement Articles P(1), XX(1), XXI, and B(1) and fulfill its legislative obligations, always taking into account the protection of fundamental rights from an intertemporal and sustainable development perspective<sup>74</sup>.

#### 4. Concluding remarks

The Hungarian Constitutional Court's decision can be situated within the trajectory of landmark government framework, strategic and systemic climate cases such as *Urgenda* from the Supreme Court of the Netherlands<sup>75</sup> and *Neubauer* from the German Federal Consti-

quirement that the government may autonomously increase without violating any constitutional provision. Furthermore, Judge Márki observed that this judgment perhaps assigns an excessively central role to the Court, placing it at the heart of political dynamics and complex climate-change analyses that do not properly belong to it within the doctrine of separation of powers. Ivi, paras. 145-167.

<sup>73</sup> Article 45(4): «The Constitutional Court may – in derogation from Subsections (1), (2) and (3) – rule to abolish a legislation that is contrary to the Fundamental Law or block the applicability of the annulled legislation in general, or in specific cases, if this is justified for the protection of the Fundamental Law and legal certainty, of a particularly important interest of the entity initiating the proceedings».

<sup>74</sup> Hungarian Constitutional Court, 3 June 2025, n. II/3536/2021, paras. 127-128, 130.

<sup>75</sup> Supreme Court of the Netherlands – Civil Division, 20 December 2019, n. 19/00135. The extensive scholarly debate surrounding this leading case in European climate litigation can broadly be distilled into two principal positions. On one side, commentators welcome the judgment as an encouraging precedent that may empower other foreign courts to address governmental inaction in responding to climate

tutional Court<sup>76</sup>. This development stands in tension with the Court's otherwise isolationist stance in various domains, including its approach to questions involving the disregard of European Union law in constitutional matters<sup>77</sup>, and, among these, its rejection of the egalitarian conception of human dignity<sup>78</sup>. However, inside this path of climate litigation, several common features emerge: the applicants' interest in safeguarding fundamental rights, the reliance on the precautionary

change. M. HESSELMAN, *Human Rights and EU Climate Law*, in E. WOERDMAN, M. ROGGENKAMP and M. HOLWERDA (eds.), *Essential EU Climate Law*, Cheltenham, 2021, pp. 259-292; J. SPIER, "The 'Strongest' Climate Ruling Yet": *The Dutch Supreme Court's Urgenda Judgment*, in *Netherlands International Law Review*, n. 2, 2020. On the other, authors urge caution, arguing that such judicial interventions may inadvertently discourage States from adopting more ambitious positions in international climate negotiations. B. MAYER, *The Contribution of Urgenda to the Mitigation of Climate Change*, in *Journal of Environmental Law*, n. 2, 2023.

<sup>76</sup> Federal Constitutional Court, 24 March 2021, n. 1BvR 2656/18, 1BvR 78/20, 1BvR 96/20, 1BvR 288/20. The extensive literature production on this landmark ruling in German constitutional history can be condensed in two main strands. The first highlights the Court's innovative approach in construing fundamental liberties through an intergenerational lens. F. GALLARATI, *Intergenerational Justice from Theory to Practice: The Rights of Future (and Present) Generations in Climate Litigation*, in *Italian Papers on Federalism*, n. 2, 2024, pp. 66-69. The second critiques the judgment for its lack of clarity regarding the German State's prioritization between its international mitigation obligations and its adaptation duties. J. MURKIN, *All that Glitters Is Not Gold: The German Constitutional Court's Climate Ruling and the Protection of Persons Beyond German Territory Against Climate Change Impacts*, in *Völkerrechtsblog*, 2021.

<sup>77</sup> A. KUSTRA-ROGATKA, *The Kelsenian Model of Constitutional Review in Times of European Integration - Reconsidering the Basic Features*, in *International and Comparative Law Review*, n. 1, 2019, pp. 14-15.

<sup>78</sup> The Constitutional Court's interpretation of human dignity – rooted in a national socio-legal environment that prioritizes the protection of the Hungarian people on ethnic and religious grounds – stands detached from the EU's fundamental values and the shared European legal order. The Hungarian Constitutional Court embraced this line of reasoning in its 2021 Decision n. 32/2021 (XII. 20.) AB, delivered in the aftermath of the Court of Justice of the European Union's judgment in Case C-808/18 (December 2020), in which Hungary was found to have committed systemic violations of the rights of asylum seekers. A. KOVÁCS and G. HALMAI, *The Hungarian Constitutional Court: From a Target to an Agent of Autocratization*, in *Global Jurist*, n. 2, 2026, p. 288.

principle, and the State's obligation to protect the fundamental rights of present generations in an intergenerational context against the adverse effects of climate change<sup>79</sup>. If we take into consideration particularly the decisions by the German and Hungarian Constitutional Courts<sup>80</sup>, it is possible to highlight some of the similarities and differences. On one side, the two constitutional courts had relied firmly on the role of science-based evidence<sup>81</sup> and international law<sup>82</sup>. The "public trust doctrine" principle, present consistently in the jurisprudence of the Hungarian Constitutional Court<sup>83</sup>, can be derived from the "duty of care" on the legislator by art. 20a of the German Basic Law<sup>84</sup>. The decision on declaring unconstitutional the two provisions derive

<sup>79</sup> P. L. LÁNCOS, *The Possible Impact of Urgenda and the Klimabeschluss on Climate Litigation on the Example of the Petition Pending before the Hungarian Constitutional Court*, in *Wroclaw Review of Law, Administration and Economics*, n. 1, 2023, p. 76.

<sup>80</sup> This focus on a specific bilateral comparison comes from the fact that Hungarian law developed under the Austrian Hungarian monarchy. In fact, German has been a known language among lawyers and judges, allowing them to understand and be influenced by decisions of German jurisprudence, especially in the first phase of existence of the Hungarian Constitutional Court. P. L. LÁNCOS, *Editorial Comments: The German and the Hungarian Constitutional Court's Climate Decisions*, in *Hungarian Yearbook of International Law and European Law*, 2025, p. 22.

<sup>81</sup> Ivi, p. 26.

<sup>82</sup> Ivi, p. 27.

<sup>83</sup> «Hungary's constitutional framework offers a robust protection for future generations through Article P of the Fundamental Law, which establishes the concept of the "common heritage of the nation". This provision, unique among European constitutions, requires the State and all citizens to protect, maintain, and preserve natural resources, biodiversity, and cultural heritage for future generations. [...] Through a series of landmark decisions since 2015, the Court has both annulled legislation that would have diminished environmental protections and established affirmative duties for the state as a fiduciary for future generations»; K. SÜLYÖK, *Do We Have a Right to Live Unsustainably? Judicial Strategies to Protect the Rights and Needs of Future Generations in Environmental and Climate Litigation*, in *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae. Sectio Iuridica*, 2024, pp. 275-276.

<sup>84</sup> P. L. LÁNCOS, *Editorial Comments*, cit., p. 27. Article 20a: «[Protection of the natural foundations of life and animals] 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».

from lacking specificity on targets and measures<sup>85</sup>. On the other side, the German court focused more on the balance between the rights and interests of present and future generations, by leaving more room to political choices in climate matters. Instead, the Hungarian court referred to the principle of non-regression creating a stringent requirement on the legislator<sup>86</sup>.

Given the positive impact of the two precedents in prompting legislative reform of climate laws and policies<sup>87</sup>, it is hoped that Hungary will likewise foster an effective and respectful dialogue among state powers to address one of the most pressing challenges of our century.

<sup>85</sup> P.L. LÁNCOS, *Editorial Comments*, cit., p. 27.

<sup>86</sup> Ivi, pp. 25-6.

<sup>87</sup> «Shortly after the 2019 Supreme Court ruling, the [Dutch] Government adopted a legislative and policy package worth approximately €3 billion, incorporating approximately 30 of Urgenda's proposals. Measures included subsidies for home energy efficiency and renewable energy, as well as incentives to reduce cattle and pig herds. Parliament also enacted a statutory coal phase-out by 2030, committing to close the remaining coal-fired power plants (some of which had come online just two years prior) and to cap their emissions to ensure durable compliance with the 25% target. The Netherlands met the Urgenda target, achieving a 25.5% emissions reduction from 1990 levels by 2020. The effects of the Urgenda decision, however, extended well beyond the 2020 deadline. In 2021, the Government announced an additional €6 billion climate package to reduce emissions towards 2030, citing the obligation from the Urgenda judgment as the basis for that political decision. [...] Within weeks, the [German] Government proposed amendments to the law which were adopted by Parliament less than two months after the ruling. The revised Act increased Germany's 2030 emissions reduction target from 55% to 65%; 186 established new targets between 2030 and 2040, as well as a new 2040 target; and brought forward its net-zero deadline from 2050 to 2045. The Government also quickly established a €8 billion fund to help achieve these goals – a similar approach to that taken in the Netherlands following the Urgenda ruling» [Text added in brackets and footnotes deleted from text]; Climate Litigation Network, *Laying the foundations for our shared future: How ten years of climate cases built a legal architecture for climate protection*, Amsterdam, 2025, pp. 43-44, 46.

\*\*\*

*Abstract*\**Ita*

Questo articolo offre un commento conciso sulla sentenza emessa dalla Corte costituzionale ungherese il 3 giugno 2025, che ha dichiarato l'incostituzionalità dell'articolo 3(1) della Legge XLIV del 2020 sulla protezione del clima. L'analisi colloca la decisione nel più ampio quadro del contenzioso climatico sistemico e strategico, esaminandone le implicazioni dottrinali per gli obblighi governativi nella governance climatica. Inoltre, il ragionamento della Corte dimostra un'attenzione alla giurisprudenza transnazionale attraverso il richiamo alla decisione *KlimaSeniorinnen* della Corte europea dei diritti dell'uomo. La prospettiva comparata aiuta ad individuare convergenze emergenti nelle controversie climatiche che interpretano i diritti fondamentali attraverso una lente intertemporale, tenendo conto del contesto giuridico ungherese.

*Parole chiave:* contenzioso climatico, analisi comparata, Corte costituzionale ungherese, equità intergenerazionale, incostituzionalità per omissione, incostituzionalità differita

*En*

This article offers a concise commentary on the judgment delivered by the Hungarian Constitutional Court on 3 June 2025, which declared Article 3(1) of Act XLIV of 2020 on Climate Protection unconstitutional. The analysis situates the decision within the broader framework of systemic and strategic climate litigation, examining its doctrinal implications for governmental obligations in climate governance. The Court's reasoning emphasizes its engagement with transnational jurisprudence through reference to the *KlimaSeniorinnen* ruling of the European Court of Human Rights. The comparative perspective will help in identifying emerging commonalities in climate-related

\* Articolo sottoposto a referaggio fra pari a doppio cieco (*double-blind peer review*).

adjudication that interpret fundamental rights through an intertemporal lens, having regard to the Hungarian legal context.

*Keywords:* climate litigation, comparative analysis, Hungarian Constitutional Court, intergenerational equity, unconstitutionality by omission, delayed declarations of unconstitutionality

