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Law

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# Parliaments' sovereignty and future generations' protection

some remarks on limits to parliamentary  
activity in climate change litigation

2023 - 2027  
**DEPARTMENT  
OF EXCELLENCE**  
Ministero dell'Università e della Ricerca



# Most significant cases



- Vienna-Schwechat Airport Expansion (2017)
- Urgenda Foundation v. State of the Netherlands (2019)
- “Verein KlimaSeniorinnen Schweiz v. Bundesrat” (2020)
- Greenpeace Nordic Ass’n v. Ministry of Petroleum and Energy (People v Arctic Oil) (2020)
- Friends of the Irish Environment v. Ireland (2020)
- Commune de Grande-Synthe v. France (2021)
- Notre Affaire à Tous and Others v. France (2021)
- VZW Klimaatzaak v. Kingdom of Belgium & Others (2021)
- Klimatická žaloba ČR v. Czech Republic (20.2.23)



# Key constitutional challenges of climate change litigation



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- ❖ democracy and judicial activism
- ❖ relationship between science and politics



# Climate litigation and judicial activism



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➤ climate lawsuits as strategic political struggle to overcome legislative inactivity

➤ wide range of claims

- international obligations compliance



- rights based suits

➤ wide range of judicial approaches

- denial of jurisdiction



- declaration of constitutional duty of judges to review legislator and government activity



# Science and politics in the environmental matter



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- climate change cases based on infringement of environmental goals
- environmental law as domain of technical regulation
- increasing trend to rely only on scientific knowledge
- problems related to an unconditional science-based approach:
  - plurality of scientific fields involved in environmental regulation
  - mutability of scientific knowledge over time
  - uncertainty of scientific forecasts on future
  - need to take into due considerations social costs of environmental risks and scientific based solutions
- need to guarantee a correct approach of 'cooperation' between science and politics



# The role of scientific evidence in the judicial reasoning: in search of uniformity



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- science as unquestionable element: external and absolute limit to the margin of appreciation of legislator
- science as limit to the Parliament when transposed in binding normative documents (international agreements)
- science as one of the several elements to take into consideration
- science as uncertain element



# Lack of common approach in judicial review of legislation



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- declaration of infringement of constitutional charter but self-restraint on specific remedies to hold
- declaration of constitutional invalidity
- explicit orders to the legislator



# What space for parliamentary sovereignty?



- division of roles as confirmed cornerstone in the judicial reasoning
  
- opportunity of adopting long-termism approach
  
- need to implement a more transparent decision-making process
  - opportunity to foster democratic participation
  
  - need to motivate solutions adopted







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**Thank you**

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