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Do we have a right to live unsustainably? Judicial strategies to protect the rights and needs of future generations in environmental and climate litigation

I. Introduction

The traditional legal maxim that "everything which is not forbidden is allowed" has provided individuals and States with broad freedom to act as they please as long as they do not infringe upon the sphere of protected rights of other contemporaneous rights holders. This framework has therefore allowed unsustainable consumption patterns and resource exploitation to proceed unchallenged, since future generations were not considered as rights-holders, and have had no legal standing, physical existence, or voting rights to protect their interests in current decision-making processes. In the same vein, under conventional interpretation, States retain nearly unfettered discretion in managing their natural resources under their sovereignty and setting environmental protection standards, with only soft law provisions concerning future generations' interests. Judicial review, both on domestic and international levels, tends to be deferential to States' regulatory authority, especially regarding science-based policy matters, with courts showing substantial restraint in scrutinizing state decisions affecting long-term environmental interests.

However, this myopic approach that is dismissive, or even bling, to State conduct generating intergenerational risks or harm has become increasingly untenable as humanity has entered the Anthropocene era – a new geological epoch where human activity acts as an Earth-shaping forth that is capable of fundamentally altering the Earth's systems.[1] Scientific research unequivocally shows we face an unprecedented ecological and climate crisis, having already transgressed six of nine planetary boundaries that define humanity's safe operating space.[2] The time window for

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1 P. Crutzen, Geology of Mankind, (2002) (415) *Nature,* 23.

2 K. Richardson et al., Earth beyond six of nine planetary boundaries, (2023) (9) *Science Advances,* 37. DOI: https://doi.org/10.1126/sciadv.adh2458

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systemic intervention is rapidly closing,[3] therefore, the failure to transform our economic-legal systems will fundamentally undermine future generations' living conditions and life prospects.

The relationship between present and future generations has become a zero-sum game, where current growth comes at the direct expense of future wellbeing. Yet binding legal frameworks have been slow to adapt to this paradigm shift. The Paris Agreement wasn't adopted until 2015 and faces significant implementation challenges, while no comprehensive treaty exists to address the broader ecological crisis. National legislators have also largely remained passive in the face of these intergenerational challenges. Democratic systems exhibit an inherent bias toward short-term interests,[4] systematically disadvantaging future generations who lack voting rights or representation in current decision-making processes. Consequently, long-term concerns are routinely subordinated to immediate economic interests, as evidenced in many environmental regulations.

Future generations, thus, remain fundamentally dependent on the goodwill of present decision-makers. In the absence of binding national and international rules to manage the fundamental conflict between present and future interests, the principle of intergenerational equity offers a crucial normative foundation. This principle recognizes that short-term maximizing policies drastically reduce future generations' options by depleting current resources and attempts to counterbalance the power asymmetry and decision-making bias favoring the present and short-term economic gains.

This article presents a summary of the main findings of my habilitation research that was published as a book in Hungarian,[5] which examines the doctrinal avenues of protecting future generations before domestic, and some international, courts. This research has been dedicated to drawing and appraising the changing normative contours of inter-generational equity as arise from the recent wave of environmental and climate litigation cases. Although the principle of intergenerational equity currently lacks binding and justiciable character in international law and has mostly appeared in preambular or declarative provisions rather than enforceable obligations, this study suggests that it may nonetheless serve as an essential building block for finding a legal path forward from the Anthropocene crisis.

The central question explored here is whether present generations have a legally protected right to utilize natural resources excessively and to create environmental

[3] Intergovernmental Panel on Climate Change (IPCC), Summary for Policymakers, in IPCC, *Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the 6th Assessment Report* (IPCC, 2023), 20-1. para. B.6.1., https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf (last accessed: 31.12.2024.).

[4] P. Lawrence, Justifying Institutions for Future Generations Based on the Mitigation of Bias and Intergenerational Justice, in *Giving Future Generations a Voice – Normative Frameworks, Institutions and Practice* (Edward Elgar Publishing, 2021) 23.

[5] Sulyok K., *Van-e jogunk a fenntarthatatlansághoz?* (Orac, Budapest, 2025).

harms in ways that compromise the ability of future generations to meet their needs and enjoy their fundamental rights. This seemingly philosophical inquiry has profound legal implications, as courts around the world increasingly face claims based on the principle of intergenerational equity, which are filed by various actors in the name of future generations, or with express reference to their interests. What is more, an increasing number of judicial fora are stepping in to provide a judicially enforceable protection to the long-term environmental interests of posterity. Future generations appear in a growing number of legal systems and courts in various jurisdictions increasingly operationalize this concept to enforce protection against environmental and climate risks and harms.[6]

My book examines how the concept of intergenerational equity has evolved from a mere moral obligation or "soft law" principle to an increasingly justiciable norm that courts are willing to enforce through mandating binding constraints for present-day actors. The book analyzes how various legal doctrines under domestic and international law are reinterpreted to protect the interests of future generations who cannot represent themselves in policy-making and legislative processes. Through a comparative analysis of emerging case law across jurisdictions, the book identifies common legal strategies that have proven successful in protecting the long-term environmental interests of posterity before courts.

This article will briefly set out the main findings of the book's chapters and, therefore, addresses in Section 2 what will be called as the dual nature of intergenerational equity. This section will show how the principle of inter-generational equity has had two modes of operation, one being a standalone yet soft law principle that is not enforceable before the courts, and the other being an idea that is colouring the interpretation of well-established and justiciable norms and standards. Section 3 conducts a cross-jurisdictional overview of domestic climate and environmental litigation case-law and argues that the core normative protection that domestic as well as certain international courts afford to future generations lies in prohibiting the arbitrary treatment of future generations. Section 4 zeroes in on EU law and maps the building blocks of the protection of future generations in EU law that are already present in primary EU legislation such as the Treaties, the Charter of Fundamental Rights, and some of the general principles of EU law. Section 5 investigates the protection of future generations in the European Convention on Human Rights system, by unpacking the normative meaning of the 'inter-generational burden-sharing' principle as announced by the ECtHR in *KlimaSeniorinnen* case. Section 6

[6] For an overview of how future generations appear in the domestic legal systems of several European States and how domestic courts rely on this concept in their reasoning, see: K. Sulyok, *Annual Report of the 2024 EU Forum of Judges for the Environment (EUFJE) Conference: Human rights-based tools to protect the environment and future generations,* https://www.eufje.org/images/docConf/bud2024/Report_EUFJE2024_FINAL.pdf (last accessed: 31.12.2024.).

explores constitutional protection for future generations in Hungary, where the constitution contains a specific public trust provision, which has been enforced by the Constitutional Court on many occasions in order to safeguard the environmental interests of future generations. Section 7 draws conclusions by identifying some cross-jurisdictional solutions of courts for mediating between the competing interests of present and future generations. This section also comments on the potentially transformative character of intergenerational equity for the future of environmental and climate adjudication and law-making.

II. The dual nature of intergenerational equity: From a soft law principle to an enforceable obligation

Intergenerational equity – also referred to as intergenerational solidarity or justice – prescribes certain obligations for the current generation regarding the long-term interests, needs, or rights of future generations. For much of its history, this concept served merely as a soft law principle, appearing in non-binding documents and the preambles of international treaties. However, in recent years, an increasing number of judgments have emerged where national courts and, more recently, international judicial or quasi-judicial forums have endowed this principle with binding force, deriving judicially enforceable obligations for states.

The principle of intergenerational equity has deep moral roots in ethical literature, religious traditions, and ancient civilizations. Various indigenous communities, for instance, based decisions on ecosystem stewardship principles that considered the interests of past, present, and future generations. The Iroquois, for example, relied on the "seventh generation principle", which required leaders to consider the impact of their decisions on the next seven generations.[7]

The temporal scope of intergenerational equity varies. It may apply to all unborn generations, a handful of future generations, or be limited to the near future, such as 10-25 years as in the case of the Welsh Commissioner for Future Generations mandate.[8] The Maastricht Principles define future generations as "those generations that do not yet exist but will exist and who inherit the Earth",[9] a position adopted by

[7] See the seventh-generation principle adopted by the Confederation of the Six Nations of the Iroquois cited by Intergenerational solidarity and the needs of future generations: Report of the Secretary-General A/68/322. para 12.

[8] See the practice of the Welsh Commissioner for Future Generations in A. Netherwood and A. Flynn, A shift in public policy for future generations in Wales? Future generations and well-being planning, in J. Linehan and P. Lawrence (eds), *Giving Future Generations a Voice* (Edward Elgar Publishing, 2021) (149–168) 152.

[9] Maastricht Principles on the Human Rights of Future Generations, Section I.1).

several states in the advisory opinion proceedings before the International Court of Justice on states' climate change obligations.[10]

Legal scholars have identified three main obligations that current generations owe to future generations: the conservation of options, conservation of quality, and conservation of access.[11] Conservation of options requires present generations to preserve the diversity of natural and cultural resources so that future generations' options for solving their problems are not unduly restricted. Conservation of quality demands that the quality of Earth's systems be maintained so present generations do not pass on a degraded natural heritage. Conservation of access allows current generations free access to available natural resources as long as they respect future generations' equitable access rights.

While intergenerational equity has been incorporated into numerous international treaty preambles and occasionally in substantive provisions. For instance, Article 3 of the UN Framework Convention on Climate Change explicitly recognizes that "parties should protect the climate system for the benefit of present and future generations". Yet, there is currently no binding international treaty that explicitly obligates States to protect the long-term interests of future generations. The principle's meaning also remains somewhat fluid, with no established "catalogue"[12] of its elements, and varying definitions in non-binding legal instruments.

In the international human rights context, the principle of intergenerational equity is closely connected though distinct from the human rights framework. Human rights guarantees typically address intragenerational equity issues and apply among contemporaries, while intergenerational rights formulate obligations we owe to our descendants. Nevertheless, human rights norms are increasingly interpreted to allow for the judicial blocking of harmful policies that affect the interests of both present and future generations. This future-oriented dimension is particularly pronounced in relation to the right to life, environmental human rights, and the rights to food and water.

The Maastricht Principles on the Human Rights of Future Generations advocate for a new reading of international human rights law, pointing out that major human rights conventions do not limit their temporal scope,[13] suggesting that human rights guarantees should be equally guaranteed to future individuals as to present rights-holders. This approach has gained traction in climate litigation, where courts increasingly protect the human rights of present rights-holders against

[10] Olbigations of States with respect to climate Change, pending Advisory Opinion proceedings of the International Court of Justice.

[11] E. Brown Weiss, *In fairness to future generations: internatioanl law, common patrimony, and intergenerational equity* (The United Nations University, 1989).

[12] C. Redgwell, Principles and Emerging Norms in International Law Intra- and Intergenerational Equity, in C. Carlarne, K. Gray and R. Tarasofsky (eds), *The Oxford Handbook on International Climate Change Law* (Oxford University Press, 2016) 195.

[13] See Preamble Section II.

future harms and/or the rights of future individuals in the context of the climate and ecological crisis.

While initially viewed as merely symbolic, intergenerational equity has increasingly influenced judicial reasoning, with courts now more willing to incorporate future-oriented interpretations of existing legal obligations. This trend began in national legal systems and has started to permeate international adjudication, particularly in human rights contexts. By informing the interpretation of existing legal norms, intergenerational equity has become indirectly enforceable, even if it has not achieved status as an independently recognized binding principle. As Éloise Scotford noted, principles of international environmental law often serve as "normative stimuli" for courts to "develop law around these principles".[14] Intergenerational equity appears to fulfill a similar catalyzing function, providing theoretical grounds for judicial reasoning that infuses state obligations with an intergenerational dimension. This represents a significant evolution from its origins as a purely aspirational concept to its current role in shaping the normative content of binding and justiciable legal obligations.

III. Binding state obligations with intergenerational dimensions: The prohibition of arbitrary treatment of future generations

Referencing the interests of future generations appears to be an increasingly common litigation strategy in the legal systems of several jurisdictions. Despite the procedural and substantive legal differences between these cases, they share a common thread: the doctrines invoked by plaintiffs all ultimately seek to impose limits on the discretion of States to unilaterally undermine the long-term interests of future generations – in other words, to treat them in an arbitrary way. The prohibition of arbitrary exercise of governmental power constitutes the core of the "rule of law",[15] which also suggests that future generations litigation ultimately challenges the traditional contours of rule of law guarantees, seeking to expand them to the future as well.

This emerging trend in future generations litigation is examined in the book through the rule of law framework as defined by the Venice Commission of the Council of Europe, and organ that is tasked with advancing democracy and the rule

[14] E. Scotford, *Environmental Principles and the Evolution of Environmental Law* (Hart Publishing, 2017) 84.

[15] Venice Commission of the Council of Europe: Rule of Law Checklist, 2016. CDL-AD(2016)007-e, Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)007-e (last accessed: 31.12.2024.).

of law on the international level. This framework[16] identifies five major pillars for the rule of law, namely:

(i) Respect for human rights;
(ii) Quality requirements for legal regulations;
(iii) Guarantees against the arbitrary exercise of power;
(iv) Non-discrimination;
(v) Access to justice.

This research argues that in climate litigation cases referencing the interests of future generations, courts are increasingly extending the temporal scope of the above rule of law guarantees to the future, effectively prohibiting states from arbitrarily disregarding the interests and needs of future generations in pursuit of immediate economic advantages. This also means that climate litigation spurs a 'revolution',[17] or at least a 'transformation'[18] of the traditional scope and normative meaning of the rule of law in the age of the Anthropocene.

These pillars featured at the core demands of the plaintiffs in these cases, even though a wide variety of substantive legal bases are invoked in climate litigation in various types of proceeding and before different types of judicial fora. This research argues that the idea of intergenerational obligations act as a linchpin among all the different legal proceedings and that the intergenerationally conscious reinterpretation of traditional rule of law guarantees emerge as the shared legal architecture of climate litigation proceedings.

The first pillar, namely, respect for human rights, has seen courts extend the temporal scope of various human rights standards to the future, requiring protective measures again future risk or harm. Initially, courts derived obligations toward future generations from constitutional rights to a balanced and healthy ecology, as in the landmark *Minors Oposa* case in the Philippines.[19] Similar approaches have been

[16] European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, CDL-AD(2016)007, adopted 11–12 March 2016.
[17] K. Sulyok, A rule of law revolution in future generations' litigation – intergenerational equity and the rule of law in the Anthropocene, (2023) (14) *re:constitution working paper,* DOI: https://doi.org/10.25360/01-2023-00005
[18] K. Sulyok, Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations, (2024) (13) *Transnational Environmental Law,* 475.
[19] Supreme Court of the Philippines, *Minors Oposa v. Factoran* (Secretary of the Department of Environment and Natural Resources), G.R. No. 101083 July 30, 1993.

adopted in South Korea,[20] Hungary,[21] Brazil,[22] Hawaii,[23] and the State of Montana.[24] Other courts have focused on more general human rights guarantees that future living rights-holders would likely claim against dramatic climate impacts, such as the right to life and the right to private life under the European Convention on Human Rights.[25] Courts in Colombia[26] and Pakistan[27] have even explicitly recognized the environmental rights of "unborn generations", while Germany's Federal Constitutional Court held that inadequate climate protection measures in the federal climate protection law were unlawful because they shifted the burden of emissions reduction disproportionately to future generations. The Constitutional Court emphasized that such policies would lead to a future where "practically every form of freedom" would be endangered.[28]

Under the second pillar, courts have enforced quality requirements for climate legislation. Germany's Federal Constitutional Court found the federal climate law unconstitutional primarily because it did not specify long-term reduction targets, thereby unilaterally shifting the burden of emission reductions to future generations. Similar reasoning was adopted by South Korean Constitutional Court, referenced above, the Irish Supreme Court,[29] and the UK Supreme Court,[30] all demanding that climate policies be sufficiently detailed, concrete, and realistic.

The third rule of law pillar – prohibiting arbitrary exercise of governmental power – has manifested in various legal doctrines limiting sovereign decision-making that jeopardizes the long-term viability of natural values. Courts have consistently applied a "duty of care" standard requiring states to take all "reasonable and necessary" measures to prevent rights violations, including by third parties. The European Court of Human Rights recognized this duty in its first climate cases, while national courts applying the ECHR have concluded that governments exceeded their margin of

[20] Constitutional Court of Korea: Case on the National Greenhouse Gas Reduction Targets Addressing the Climate Crisis, Constitutional Court of Korea, Judgment, 29 August 2024.
[21] Constitutional Court of Hungary, Decision No. 14/2020 (VII.6.) AB (Forest decision).
[22] Supreme Court of Brasil: *PSB et al. v. Brazil* (on Climate Fund) (2022), paras. 6, 8, 15, 16.
[23] In re Hawai'i Electric Light Co., SCOT-22-0000418, 13 March 2023.
[24] *Rikki Held v. State of Montana,* Cause No. CDV-2020-307, Findings of Fact, Conclusions of Law, and Order (14 August 2023). Section VI.A. 40. *(Held v. Montana).*
[25] E.g. *VZW Klimaatzaak v. Kingdom of Belgium & Others,* French-speaking Court of First Instance of Brussels, Civil Section, JUG-JGC No. 167, judgment (17 June 2021) case.
[26] Supreme Court of Colombia: *Demanda Generaciones Futuras v. Minambiente,* Number 11001-22-03-000-2018-00319-01, 4 April 2018, para. 5.2.
[27] Supreme Court of Pakistan: *D. G. Khan Cement Company Ltd. V Government of Punjab,* C.P.1290-L/2019, para 19.
[28] German Federal Constitutional Court: *Neubauer et al.,* the Order of the First Senate of 24 March 2021, 1 BvR 2656/18, para. 117.
[29] Supreme Court of Ireland, *Friends of the Irish Environment,* Judgment of 31 July 2020 para.6.21, 6.36.
[30] *R (oao Friends of the Earth) v. Secretary of State for Business Energy and Industrial Strategy,* [2022] EWHC 1841 (Admin), para. 248.

appreciation under Articles 2 and 8 by failing to demonstrate the necessary care in designing greenhouse gas emission reduction pathways.

Other legal approaches include the public trust doctrine, which holds that states cannot dispose of natural resources without limitation but must act as sovereign trustees, preserving trust assets for beneficiaries, including present and future generations. This doctrine has been successfully applied worldwide in environmental litigation[31] to invalidate political decisions that arbitrarily harm future generations' needs and rights, and is increasingly used in climate litigation.[32]

The fourth rule of law guarantee addresses non-discrimination against minors and future generations based on age. Scientific evidence shows that children born today will experience far more dangerous climate conditions than previous generations – a 2020 study indicates that a person born in 2020 will live in a world on average 2 °C warmer and suffer six times more heatwaves than a person born in 1960.[33] Such unequal climate conditions resulting from present policies can be framed as discriminatory treatment, either as indirect discrimination against children based on age or as discrimination based on birth cohort.

Finally, the fifth pillar concerns access to justice in future generations cases, addressing whether environmentally and climatically charged policy decisions can be adjudicated by courts and whether plaintiffs have standing to protect future generations' interests. While the Venice Commission has noted that "the judicial branch appears to be best placed to protect the future generations against the decisions of present-day politicians",[34] the political question doctrine and separation of powers concerns still block climate litigation in some countries, particularly the United States and Canada.

[31] J. Orangias, Towards Global Public Trust Doctrines: An Analysis of the Transnationalisation of State Stewardship Duties, (2021) 12 (4) *Transnational Legal Theory,* 550–586; K. Sulyok, The Public Trust Doctrine, the Non-Derogation Principle and the Protection of Future Generations: The Hungarian Constitutional Court's Review of the Forest Act, (2021) (9) *Hungarian Yearbook of International Law and European Law,* 359.

[32] M. C. Blumm and M. Ch. Wood, "No Ordinary Lawsuit": Climate Change, Due Process, and the Public Trust Doctrine, (2017) 67 *American University Law Review,* 70–82, also see the lawsuits and campaigns launched by Our Children's Trust at https://www.ourchildrenstrust.org/ (last accessed: 31.12.2024.).

[33] W. Thiery, S. Lange and J. Rogelj, Intergenerational Inequities in Exposure to Climate Extremes, (2021) (374) *Science,* 158.

[34] European Commission for Democracy through Law (Venice Commission), Opinion No. 997/2020, 9 October 2020, CDL-AD(2020)020-e.

IV. Future generations in EU law: Building blocks of a legal obligation for EU institutions to protect Long-term interests

Despite the absence of explicit provisions obligating EU institutions to protect future generations in the founding Treaties, various legal hooks in EU primary legislation could be reinterpreted to justify stronger protection of long-term interests across all EU policies.[35] Several normative foundations in existing EU law, such as existing and emerging general principles of EU law, and international legal developments, under customary international law and some international treaties to which the EU is a party to, collectively provide a framework for future-proofing EU law.

The Treaty on European Union (TEU) contains key concepts that could support intergenerational protection. "Solidarity between generations" in Article 3(3) TEU could be interpreted as requiring EU institutions to balance short and long-term interests. Solidarity as a fundamental value under Article 2 TEU has been confirmed by the CJEU as "one of the fundamental principles of EU law" and could apply to intergenerational challenges. The EU's commitment to non-discrimination [Article 3(3) TEU] and sustainable development [Article 3(3) TEU] further supports this approach, as does the protection of human rights, including children's rights.

The EU Charter of Fundamental Rights offers the most direct reference to future generations in the primary legislation of EU law, stating in its Preamble that Charter rights "entail responsibilities and duties with regard to other persons, to the human community and to future generations" Article 37 on sustainable development provides an interpretative tool that could adjust the balancing of EU institutions between competing short and long-term interests.

General principles of EU law, particularly the precautionary principle and prohibition of age-based discrimination, provide additional support for the future-oriented duties of EU institutions. The precautionary principle, recognized as an autonomous general principle,[36] allows taking action to prevent future risks and is inherently future-oriented. The prohibition of age-based discrimination could also address the disparate impacts future generations will face due to climate change.

Two emerging general principles could potentially strengthen the framework by creating additional obligations for EU institutions to actively care for the future: intergenerational equity and the right to a healthy environment. Over 50% of EU

[35] For more details see: K. Sulyok, Future proofing EU law – does the European Union have a legal obligation to protect future generations? (forthcoming in RECIEL).

[36] T-13/99, *Pfizer Animal Health SA v Council,* ECLI:EU:T:2002:209, para 114; Joined Cases T-74, 76, 83–85, 132, 137 and 141/00, *Artegodan GmbH v Commission,* ECLI:EU:T:2002:283; see also: P. Craig and G. de Búrca, *EU Law* (4th ed., Cambridge University Press, 2020) 608.

Member States mention future generations in their constitutions,[37] and most recognize environmental rights, potentially justifying the CJEU's recognition of these as general principles of EU law.

International treaties to which the EU is party, including the UN Framework Convention on Climate Change, the Paris Agreement, the Convention on Biological Diversity, and the Aarhus Convention, all reference protection of future generations and form an integral part of EU law. Additionally, as a subject of international law, the EU must also respect customary international law with the scope of climate-related obligations currently being debated before the International Court of Justice in its pending climate advisory opinion.

Several legal avenues exist for mobilizing these normative foundations. EU legislators could adopt regulations based on a future-conscious reading of the Union's fundamental aims, potentially using the flexibility clause (Article 352 TFEU) to create legislation protecting future generations. The Commission could use its mandate to propose legislation that considers long-term impacts. Most transformatively, the CJEU could develop positive obligations under the Charter and declare new general principles of EU law based on emerging constitutional traditions in Member States. Without amending the founding treaties, these existing legal hooks could justify and potentially compel more ambitious protection of long-term interests by EU institutions, aligning with the fundamental purpose of the European project to ensure lasting peace and prosperity.

V. Protecting future generations by the European Court of Human Rights in climate cases

The European Court of Human Rights (ECtHR) made a groundbreaking shift toward protecting future generations in its landmark ruling in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*.[38] This decision represents a paradigm shift in how international courts approach intergenerational equity in climate litigation. The Court crafts another variation of the principle, namely, "intergenerational burden-sharing",[39] which becomes as a cornerstone principle in its reasoning, making it the first foundational consideration upon which the judgment was built. This principle became more than mere rhetoric, as the ECtHR derived specific legal obligations from it,

[37] R. Araújo and L. Koessler, The rise of the constitutional protection of future generations, (2021) (7) *LPP Working Paper,* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3933683 (last accessed: 31.12.2024.) which counts 81 such constitutions around the world.

[38] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* App. No. 53600/20, Grand Chamber judgment (April 9, 2024). For more details see K. Sulyok, Verein Klimaseniorinnen Schweiz and Others v. Switz. (Eur. Ct. H.R.), (2025) 64 (1) *International Legal Materials,* 1–186. DOI: https://doi.org/10.1017/ilm.2024.45

[39] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* paras. 410, 420.

namely, that of taking "immediate action" and the duty to set "adequate intermediate reduction goals… for the period leading to net neutrality".[40]

The judgment articulated specific positive obligations for State parties to the European Convention on Human Rights under Article 8, recognizing that the right to private life encompasses "the right of the individuals to effective protection by State authorities against the harmful effects of climate change".[41] The Court established an unprecedented list of technical requirements as part of States' positive obligations for adopting national climate measures, including *(i)* the obligation of setting time-bound carbon neutrality goals with quantifiable carbon budgets in a binding regulatory framework, which ensures reaching net neutrality within, in principle, three decades; *(ii)* the need to establish appropriate interim GHG reduction targets by sector, leading up to net neutrality; *(iii)* the duty of demonstrating compliance with these targets; *(iv)* that of updating targets based on the best available evidence and due diligence; *(v)* implementing relevant legislation in a timely, appropriate and consistent manner; and *(vi)* ensuring certain procedural safeguards, such as access to the underlying studies and information for affected citizens.[42]

Significantly, the Court rejected arguments that climate action should be left solely to the political branches, stating that climate change "is no longer merely a political matter but also a legal one".[43] It affirmed that courts have a duty to protect future generations from present-day political decisions, citing the Venice Commission's view that "the judiciary appears to be best placed to protect future generations against decisions by present politicians".[44]

The Court also explicitly rejected the "drop in the ocean" defense, emphasizing that all States must reduce emissions significantly to achieve climate neutrality within the next three decades, regardless of their relative contribution to global emissions.[45] This establishes a universal obligation that cannot be avoided by reference to one's globally marginal emissions or other States' inaction in taking adequate mitigation steps.

While the judgment does not explicitly mandate targeting the 1.5 °C temperature goal of the Paris Agreement, it does acknowledge that climate impacts will be significantly less severe if warming is limited to this level.[46] It is argued therefore that if read together with the requirement to prevent higher levels of warming that could cause "serious adverse effects",[47] the judgment does create, albeit indirectly, a duty of States toward aiming for 1,5 °C in their efforts.

[40] Ibid. para. 549.
[41] Ibid. para. 519.
[42] See Ibid. paras. 549–554.
[43] Ibid. para. 450.
[44] Ibid. para. 199.
[45] Ibid. para. 444.
[46] Ibid. para. 436.
[47] Ibid, para. 546.

At the same time, the judgment is silent on some important issues, such as the precautionary principle, negative emissions technologies, and climate justice considerations regarding historical emissions. It nonetheless establishes a robust foundation for future climate litigation cases where intergenerational equity serves as a key interpretive lens for State parties' human rights obligations. The judgment demonstrates how the concept of future generations can be effectively deployed in judicial reasoning to strengthen states' preventive obligations by extending the temporal horizon of their duties. This approach may influence other international courts, including the International Court of Justice in its pending advisory proceedings on climate change obligations.

VI. Protecting future generations by Hungarian courts: A constitutional public trust doctrine in action

The public trust doctrine represents one of the oldest legal principles governing natural resource management, with roots dating back to Roman law. This doctrine establishes that certain natural resources are held by the State in trust for public use and benefit, both for present and future generations. As trustee, the state's authority to manage these resources is constrained by fiduciary obligations to preserve them for the public and future beneficiaries.

In contemporary jurisprudence, the doctrine has evolved significantly across different jurisdictions. In the United States, where it has a rich jurisprudential history, courts have expanded the doctrine from traditional applications to navigable waters and shorelines to encompass wildlife protection, groundwater resources, and even atmospheric protection in climate litigation. The landmark *Mono Lake* case in California (1983) established that the public trust doctrine could limit previously granted water rights when necessary to protect ecological systems. In India, the Supreme Court has applied the doctrine broadly to protect forests, rivers, and other resources, explicitly stating in *M.C. Mehta v. Kamal Nath* (1997) that the doctrine extends beyond present needs to safeguard resources for future generations. The Philippine Supreme Court similarly ordered the rehabilitation of Manila Bay based on the public trust doctrine in 2008, while the Pennsylvania Supreme Court invoked the doctrine to invalidate legislation permitting hydraulic fracturing.

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.

The Hungarian Constitutional Court has consistently treated Article P as a source of substantive legal obligation rather than a mere declaratory statement. 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.

In its 14/2020 decision concerning the constitutionality of the amendment of the Forest Act, the Court explicitly recognized Article P as enshrining the public trust doctrine in Hungarian constitutional law.[48] Under this interpretation, the state functions as a trustee managing natural resources on behalf of future generations as beneficiaries. This fiduciary relationship limits the State's unfettered discretion to exploit natural resources and requires decision-making that balances present needs with future interests.

The Court has articulated several specific obligations flowing from Article P. First and foremost, the non-retrogression principle, according to which the legislature cannot step back from the stringency of statutory protection already provided in the law in force relating to the environment. This principle forbids the state from regulatory rollbacks or amendments lowering the level of protection without proper justification meeting strict constitutional requirements of proportionality and necessity in light of a narrowly defined list of legitimate aims.[49]

The intergenerational equity principle also forms part of Article P in the Court's interpretation. This principle, as proposed in the seminal book of Edith Brown Weiss,[50] is defined as imposing three main duties on the present generation, that of preserving options for future generations, maintaining environmental quality, and ensuring equitable access to resources.[51]

Moreover, the Constitutional Court found on the basis of Article P that the legislature has a duty to plan for the long-term, meaning that it must engage in multi-generational planning that transcends electoral cycles when making decisions affecting natural resources.[52] This is coupled with the duty of prudent resource management, as the State must conserve both the quantity and quality of water resources, and incentivize private citizens to use natural resources sustainably.[53]

Furthermore, the Court also deems the precautionary principle to be inherent in the protection of the interests of future generations. It stressed that in cases of scientific uncertainty about environmental risks, the burden falls on the State to prove

[48] 14/2020 (VII. 6.) AB decision.
[49] See decision Nos. 28/2017 (X. 25.) AB; 17/2018 (X. 10.) AB; 3104/2017 (V. 8.) AB finding violations of the non-retrogression principle.
[50] Brown Weiss, *In fairness to future generations...*
[51] Decision No. 28/2017 (X. 25.) AB.
[52] Decision No. 28/2017 (X. 25.) AB.
[53] Decision No. 13/2018 (IX. 4.) AB.

that regulatory changes will not cause irreversible harm to the environment.[54] The prevention principle is also associated with Article P) and with the right to a healthy environment, according to which the State must prioritize preventing environmental harm rather than merely sanctioning it after damage occurs.[55] The Constitutional Court even declared that the legislature cannot replace preventive regulatory tools with legal methods that address environmentally harmful activities *ex post facto,* as doing so constitutes an unconstitutional regression from the stringency of regulatory protection.

The above principles that were developed in environmental cases, are now gaining relevance before the Court in Hungary's first climate litigation case, which is pending before the Constitutional Court, challenging Hungary's Climate Protection Act of 2020.[56] Petitioners allege the inadequacy of Hungary's interim 2030 emissions reduction target of 40% below 1990 levels – a target the government acknowledged in 2024 has already been achieved. They argue this over-lenient target violates the right to a healthy environment and the public trust doctrine embodied in Article P) by putting future generations on a harmful path depency and unduly shifting the burden of decarbonization to posterity, particularly, since its ambition level makes in highly unlikely to effectively lead to net zero by 2050 and it falls far short of what IPCC science indicates is necessary to limit warming to 1.5 °C.

The petitioners' case has gained additional legal support with the *KlimaSeniorinnen* decision, which established concrete obligations for States to adopt effective climate measures, including appropriate interim reduction targets. Petitioners submitted an additional brief showing why and how the Climate Act fails to meet the positive obligations mandated by the ECtHR. The Court's ultimate decision may have profound implications for atmospheric public trust claims around the world, potentially establishing Article P's public trust doctrine as a powerful constitutional basis for challenging insufficient climate action on behalf of future generations.

VII. Conclusion: mediating between the competing interests of present and future generations

The legal protection of future generations requires courts to strike a legitimate and objective balance between competing interests of the present and the future. The underlying book has identified three principal methods that courts employ across domestic and international jurisdictions when adjudicating cases involving intergenerational conflicts.

[54] Decision Nos. 28/2017 (X. 25.) AB; 17/2018 (X. 10.) AB.
[55] Decision No. 13/2018 (IX. 4.) AB.
[56] Case No II/3536/2021.

1. Using scientific evidence to balance competing interests between generations

Courts frequently rely on scientific consensus about future risks to legitimate their intervention in policy decisions. In climate litigation, the European Court of Human Rights referenced IPCC reports when establishing states' obligation to adopt emission reduction targets based on best available science.[57] Similarly, the German Federal Constitutional Court emphasized that legislators must consider reliable data indicating potential exceeding of constitutionally relevant temperature targets.[58]

National courts also use scientific evidence as a reference point in defining what lies in the interests of future generations.[59] The Dutch Supreme Court directly adopted IPCC's global emission reduction projections when ordering the government to meet specific climate targets under ECHR Articles 2 and 8. National scientific advisory bodies' recommendations likewise play crucial roles, as seen in Belgium's *Klimaatzaak* case, where the court cited the Federal Council for Sustainable Development when finding a breach of the government's duty of care under civil law.[60]

2. Using soft law commitments as reference points

Courts frequently utilize non-binding political commitments and soft law instruments as benchmarks to determine whether a State conduct (or its absence) arbitrarily violates future generations' interests. The Hungarian Constitutional Court exemplified this approach in its Forest Act decision, where it used the Parliament's non-binding National Forestry Strategy to review mandatory rules in the Forest Act, finding that legislative changes permitting increased commercial logging while reducing nature conservation authorities' powers contradicted the sustainability principles in the strategy.[61]

The District Court of The Hague also employed similar reasoning in *Milieudefensie v. Royal Dutch Shell,* ordering the oil company to adopt stricter greenhouse gas reduction obligations based on the non-binding UN Guiding Principles on Business and Human Rights.[62] These examples demonstrate how courts transform soft law norms into judicially enforceable reference points, drawing authority from

[57] *Verein KlimaSeniorinnen Schweiz and Others v Switzerland,* paras. 64–68.
[58] *Neubauer et al.,* the Order of the First Senate of 24 March 2021, 1 BvR 2656/18, para. 214.
[59] For an overview of how domestic courts utilize scientific evidence see: Sulyok, *Annual Report of the 2024 EU Forum of Judges for the Environment (EUFJE) Conference...*
[60] *Klimaatzaak,* page 76.
[61] Decision No. 14/2020 (VII. 6.) AB.
[62] Hague District Court, *Milieudefensie v Royal Dutch Shel PLC,* Commerce Team, C/09/571932 / HA ZA 19-379, Judgment (26 May 2021) para 4.4.13.

their adoption independent of litigation and their reflection of policy consensus about long-term values.

3. Rule of law guarantees as judicial balancing mechanisms

Finally, as shown in Section 3, rule of law guarantees provides courts with established legal principles to define the contours of obligations States owe to future generations. While acknowledging sovereign discretion in balancing competing interests, courts increasingly examine state decisions through rule of law requirements, effectively demanding a "reasonable balance" between present interests and longer-term concerns.

This approach for mediating the needs and rights of present and future people offers several advantages. First, rule of law guarantees are primarily procedural in nature, making it easier for courts to apply in concretizing intergenerational equity requirements. Second, grounding reasoning in fundamental legal norms that both judges and litigants recognize as well-established and justiciable ensures that jurisprudential development, while innovative, represents an incremental rather than a radical change. The rule of law, being the backbone of almost every major legal systems, ensures that any legal development tied to its guarantees will be anchored to legitimate and shared legal concepts. Empirical research into legal innovations suggests that revolutions in law do not work.[63] Hence in order to ensure lasting change, the execution of innovative legal ideas – such as the judicial operationalization of future generations – should remain incremental.

4. Systemic effects of enforcing intergenerational rights and obligations on environmental and climate law

The triple planetary crisis demands transformative, systemic change in legal systems. The legal construction of future generations represents a promising innovation that extends obligations' temporal scope, providing a meaningful response to the Anthropocene. This research suggests that operationalizing the concept of future generations in a normative way could be an essential legal avenue of charting humanity's way out of the Anthropocene through mending the short-term bias of traditional environmental and climate law and governance. We need novel tools to counter the planetary crisis,[64] and incremental change will likely be insufficient.

[63] N. Craik and S. L. Seck, The Value of an Innovation Framework for International Law, in N. Craik et al. (eds), *Global Environmental Change and Innovation in International Law* (Cambridge University Press, 2018) (317–328) 319.

[64] See the speech of UN SG Antonio Guterres deliveed on 22 April 2024 acknowledging that "we cannot solve 21st century problems with 20th century tools", https://news.un.org/en/

This research argues that judicially enforcing inter-generational rights and obligations appears to drive a transformation in three main directions. Attaching normative force to the idea of future generations acts as decentralizing, diversifying and expansive force with respect to the system of environmental and climate laws.

Firstly, regarding its decentralizing effect, lawsuits concerning future generations give rise to new voices and legal narratives from non-state entities, including cities,[65] federal states, and indigenous communities. Although the concept of inter-generational equity is a common theme underlying all these lawsuits, the legal recognition of future generations occurs within a decentralized framework. This manifests in the fact that the legal protection of future generations has varied legal bases and normative content across the jurisdictions, which is intricately linked to the doctrines and cultural aspects of national laws. Moreover, the normative concept of future generations is not a homogenous global entity, but possesses an essentially local character, inasmuch as domestic courts often refuse to grant standing to extraterritorial plaintiffs in climate litigation[66] and they bundle interests of present and future generations only on a local or national scale.[67] Future generational litigation therefore appears to enforce legal protection for a posterity that is closely tied to local imaginaries, in spite of the fact that inter-generational tensions manifest themselves on a planetary scale.

Secondly, litigation concerning future generations have a broadening influence by establishing new rights-holders, such as future generations or children,[68] in specific legal systems. From a procedural standpoint, this is evident in legal frameworks that permit a variety of participants, including young plaintiffs, civil society groups, and ombudspersons, to gain standing as representatives of long-term interests. Additionally, the narrative surrounding future generations paves the way for innovative legal strategies, fostering a more "imaginative"[69] reasoning and a richer discourse that amplifies the perspectives of diverse actors and legal traditions.

story/2024/04/1148806 (last accessed: 31.12.2024.).

[65] Conseil D'État: *Commune de Grande-Synthe v. France,* N° 427301.

[66] For lack of standing see *Milieudefensie v Shell,* judgment, para. 4.2.5. where the Hague District Court did not allow ActionAid's claim to proceed for not representing Dutch citizens (Hague District Court, *Milieudefensie v Royal Dutch Shell PLC,* Commerce Team, C/09/571932 / HA ZA 19-379, Judgment (26 May 2021); for a judicial finding where standing was granted to extraterritorial plaintiffs though was found that substantive olbigations were only breached *vis-á-vis* territorial plaintiffs see: Neubauer case (German Federal Constitutional Court: *Neubauer et al.,* the Order of the First Senate of 24 March 2021, 1 BvR 2656/18, paras. 101 and 173–181).

[67] For a class action lawsuit where interests were bundled on a local scale see: *Milieudefensie v Shell,* para. 4.2.4.

[68] For more details see A. Nolan, Children and Future Generations Rights before the Courts: The Vexed Question of Definitions, (2024) 13 (3) *Transnational Environmental Law*, 522–546. DOI: https://doi.org/10.1017/S2047102524000165

[69] M. Wewerinke-Singh, A. Garg and S. Agarwalla, In Defence of Future Generations: A Reply to Stephen Humphreys, (2023) (34) *European Journal of International Law,* 651.

Thirdly, the normative concept of future generations acts as a broadening force, blurring the lines between soft law and hard law and expanding the scope of judicially enforceable obligations. In several cases, courts are employing non-binding standards as a reference point to determine the interests of future generations that States are obligated to protect. This indicates that aspirations of soft law are increasingly being transformed into binding legal standards in case-law related to future generations. Additionally, inter-generational equity often broadens the temporal scope of well-established legal obligations as shown above.

Lastly, the narrative surrounding future generations challenges the conventional understanding of sovereign rights under international law, thereby expanding the scope of obligations that States must consider for the future. In summary, litigation for future generations limits the extent of States' unrestricted discretionary choices, as allowed under both domestic and international law, by establishing inter-temporal obligations in their place.

This research does make any predictions as to the future development or outcome of climate litigation cases on the domestic or international levels. Nevertheless, it argues that if courts continue to read intergenerational equity into binding obligations, the legal concept of future generations would likely push environmental and climate law further into these directions, transforming the legal and governance landscape. The current decade will undoubtedly determine the legal reach and future of 'future generations' as a normative idea, which was among the foundational principles of international environmental law at its inception in 1972 at the Stockholm Conference.