СУЧАСНА СИСТЕМА МІЖНАРОДНОГО ПРАВА

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EXTRATERRITORIAL JURISDICTION IN INTERNATIONAL RIGHTS-BASED CLIMATE LITIGATION

ЕКСТЕРИТОРІАЛЬНА ЮРИСДИКЦІЯ В МІЖНАРОДНИХ СУДОВИХ ПРОЦЕСАХ З ПРАВ ЛЮДИНИ ТА КЛІМАТУ

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Abstract. *The article is dedicated to the phenomenon of international rights-based climate litigation which concerns responsibility of states for the breaches of human rights in cases relating to scientific data on climate change, climate policy, national climate legislation and (or) international climate law. The purpose of the article is to analyze the legal arguments of parties as well as of international human rights courts and quasi-judicial bodies concerning the possibility to apply extraterritorial jurisdiction of states in climate cases. The author considered several cases brought before the Court of Justice of the European Union (People's Climate case and Biomass case), the European Court of Human Rights (Verein KlimaSeniorinnen Schweiz case and Duarte Agostinho case), the Inter-American Commission on Human Rights (the Inuit and Athabaskan cases), the United Nations Human Rights Committee (Daniel Billy case) and the United Nations Committee on the Rights of the Child (Sacchi case). The author tried to answer one of the main questions: is it possible to recognize a state's jurisdiction over persons, with the aim of invoking its responsibility for failure to take mitigation and adaptation measures to combat the effects of climate change, if those persons are neither its nationals nor residents, in other words, are within the territorial jurisdiction of another state? The article refers to the novel concept of 'effects-based' / 'control-over-the-source' / 'impacts' jurisdiction. The author concludes that there are opposite comments on the extraterritorial jurisdiction in rights-based climate litigation: some scholars argue that restrictive approach to extraterritorial jurisdiction possess serious risks for future climate litigation at international courts and human rights bodies; others are of the view that departure*

from the traditional 'control over the victim' concept of extraterritorial jurisdiction may pose dangers to the current international legal order.

***Keywords**: human rights, climate change, extraterritorial jurisdiction, Court of Justice of the European Union, European Court of Human Rights, Inter-American Commission on Human Rights, United Nations Human Rights Committee, United Nations Committee on the Rights of the Child.*

***Анотація.** Стаття присвячена феномену міжнародних судових процесів з прав людини та клімату, які стосуються відповідальності держав за порушення прав людини у справах відносно наукових даних про зміну клімату, кліматичної політики, національного кліматичного законодавства та (або) міжнародного кліматичного права. Метою статті є аналіз правових аргументів сторін та міжнародних судів і квазісудових органів з прав людини щодо можливості застосування екстериторіальної юрисдикції держав у кліматичних справах. Автор розглянула кілька справ, поданих до Суду Європейського Союзу (справи People's Climate і Biomass), Європейського суду з прав людини (справи Verein KlimaSeniorinnen Schweiz і Duarte Agostinho), Міжамериканської комісії з прав людини (справи інуїтів і атабасків), Комітету ООН з прав людини (справа Daniel Billy) і Комітету ООН з прав дитини (справа Sacchi). Автор спробувала відповісти на одне з головних питань: чи можна визнавати юрисдикцію держави над особами з метою прикликання її до відповідальності за невжиття заходів з пом'якшення та адаптації до наслідків зміни клімату, якщо ці особи не є ні її громадянами чи резидентами, іншими словами, перебувають у межах територіальної юрисдикції іншої держави? У статті йдеться про нову концепцію юрисдикції, заснованій на «наслідках» / «контролі над джерелом» / «впливі». Автор робить висновок, що існують протилежні коментарі щодо екстериторіальної юрисдикції в кліматичних судових процесах, заснованих на правах людини: деякі вчені стверджують, що обмежувальний підхід до екстериторіальної юрисдикції має серйозні ризики для майбутніх кліматичних судових процесів у міжнародних судах і органах з прав людини; інші вважають, що відхід від традиційної концепції екстериторіальної юрисдикції, заснованій на «контролі над жертвою», може становити небезпеку для сучасного міжнародного правопорядку.*

***Ключові слова**: права людини, зміна клімату, екстериторіальна юрисдикція, Суд Європейського Союзу, Європейський суд з прав людини, Міжамериканська комісія з прав людини, Комітет ООН з прав людини, Комітет ООН з прав дитини.*

Relevance of the topic. It is a well-established and universally recognized principle of international law that the jurisdiction of states is primarily territorial. This means that each state is entitled to exercise full powers within its own borders. Foreign states may be allowed to exercise their powers in the territory of other states only 'by virtue of a permissive rule derived from international custom or from a convention' (*Permanent Court, 1927, p. 18-19*), as was proclaimed by the Permanent Court of International Justice in its judgment in the famous *S.S. 'Lotus'* case. Thus, though the principle of territoriality is the basic principle of states' jurisdiction in criminal, administrative or civil matters, sometimes international law provides for some exceptions which became the basis for the so-called extraterritorial jurisdiction. The legitimate grounds for the extraterritorial jurisdiction which have been formed over a long period of time may be derived from the international legal rules regarding immunity from jurisdiction of the host state for high-ranking officials or diplomatic and consular agents of the sending state; immunity from jurisdiction of aircrafts and maritime vessels, military forces or military bases abroad; jurisdictional immunities of states and their property; passage through international rivers, international channels and straits, etc.

Some grounds for the extraterritorial jurisdiction may pave the way to political, diplomatic, economic and legal conflicts between different states, for example, the principles of active and passive nationality, protection and universality in international criminal law; the 'effects' doctrine, 'single economic entity' or 'implementation' doctrines in antitrust (competition) law; the concept of 'processes and production methods' in international trade law. Sometimes states exercise jurisdiction outside their sovereign territories due to armed conflict or occupation of the territories

of other states. International law, while not recognizing the legality of aggression and occupation, nevertheless accepts the extraterritorial jurisdiction of the occupying state or state exercising 'effective control' over foreign territory for the purposes of protecting human rights.

Climate litigation – an absolutely new phenomenon in international environmental and human rights law – concerns recognition of the jurisdiction of national and international courts and quasi-judicial bodies and responsibility of states for the breaches of human rights in cases relating to scientific data on climate change, climate policy, national climate legislation and (or) international climate law. While contributing to implementation of international climate agreements and setting more ambitious national climate targets, climate litigation leads to many divergencies and conflicts concerning a new basis for the extraterritorial jurisdiction of states in climate-related matters. The jurisdiction of international courts and quasi-judicial bodies depends on the jurisdiction of states, as well as interrelates with such important issues as admissibility, victim status, exhaustion of domestic remedies, etc. Careful consideration of all these problems may bring scholars and practitioners to a deeper understanding of the nature of extraterritorial jurisdiction and build solid arguments 'pro' or 'contra' its expansion in climate- and human rights-related issues.

Recent literature review. To make thorough research of the stated problem, we used the papers of such foreign authors as Setzer J., Narulla H., and Bradeen E. (concerning climate litigation in Europe), Skelton A. (concerning *Sacchi* case), Liston G., Ibrahim L., and Blattner Ch. E. (concerning *Duarte Agostinho* case), Raible L. and Schayani K. (concerning climate change cases of the European Court of Human Rights), Szpak A. (concerning the Athabaskan petition) and Torre-Schaub M. (concerning the advisory opinion of the International Court of Justice). There are a lot of scientific works dedicated to climate litigation and extraterritorial jurisdiction in human rights cases as separate issues. Extraterritorial jurisdiction in international rights-based climate litigation is usually analyzed just as one of the many other topics within the same articles and monographs. We tried to create a comprehensive understanding of this complex phenomenon in our own research provided below.

The purpose of the paper. The purpose of this article is to analyze the legal arguments of parties as well as of international human rights courts and quasi-judicial bodies concerning the possibility to apply extraterritorial jurisdiction in climate cases.

Main research results. Before we start the analysis, it should be mentioned that relations between the jurisdiction of a court and admissibility of claims is a disputed topic in public international law which is a subject-matter for another research. Usually, decisions of a court on its own jurisdiction and on the admissibility of claims are separate procedural stages in international litigation. After a court having accepted its jurisdiction in the case, it still must decide if an applicant's claims are admissible. Admissibility may be determined at the preliminary jurisdictional phase and (or) later, at the merits phase. In the jurisprudence of international human right bodies, the consideration of admissibility often comprises the issues of the jurisdiction of a state, victim status, exhaustion of domestic remedies as well as compliance with other procedural requirements by the applicants. Recognition of a jurisdiction of a state is the prerequisite for further consideration of its responsibility for human rights violations.

To date, thousands of cases dealing with alleged violations of human rights by non-compliance of states with their climate-related obligations have been considered or pending before various national courts, about 60 cases – before the Court of Justice of the European Union (hereinafter – the CJEU), about 10 cases – before the European Court of Human Rights (hereinafter – the ECtHR) (*Setzer, Narulla, & Bradeen, 2022*). Besides, each of the following international institutions – the Inter-American Commission on Human Rights (hereinafter – the IAComHR), the United Nations Human Rights Committee (hereinafter – the UNHRC) and the United Nations Committee on the Rights of the Child (hereinafter – the UNCRC) – received communications or delivered decisions in at least 1 or 2 cases. Applicants – mainly individuals and non-governmental organizations – asserted that states (in cases dealt with by the ECtHR) and the EU institutions (in cases dealt with by the CJEU) breached their human rights, e.g., the right to life, health, respect for private and family life, access to legal remedies, access to information, etc. and relied on different

international documents such as the European Convention on Human Rights (1950), Paris Agreement (2015), the EU Lisbon treaties (2007), etc. Unfortunately, most of these cases passed only jurisdictional (admissibility) phase and have never been considered on merits. Nevertheless, the argumentation applied by parties and international bodies sheds the light on the complex jurisdictional issues including the possibility of recognizing the extraterritorial jurisdiction and extraterritorial human rights obligations of states in the era of climate change. One of the main questions which must be decided by human rights institutions is: is it possible to recognize a state's jurisdiction over persons, with the aim of invoking its responsibility for failure to take mitigation and adaptation measures to combat the effects of climate change, if those persons are neither its nationals nor residents, in other words, are within the territorial jurisdiction of another state?

We'll start our analysis with the case-law of the universal human rights bodies, namely, the UNHRC and the UNCRC. In *Daniel Billy et al. v. Australia* decided by the UNHRC in 2022 the authors and six of their children, who belonged to the indigenous people of the Torres Strait Islands, complained that Australia violated their human rights under the International Covenant on Civil and Political Rights (1966) because it failed to take mitigation and adaptation measures to combat the effects of climate change in that region (*Daniel Billy, 2022*). The government insisted that 'climate change is a global phenomenon attributable to the actions of many states', its effects are beyond the jurisdiction and control of just one state and that the applicants didn't show any causation between the alleged violations of their rights and the state party's activities (*Daniel Billy, 2022, para. 4.2*). The UNHRC was not pursuaded by those arguments, found no obstacles to the admissibility of claims and stated that Australia was in violation of the Covenant. There was no room for extraterritorial jurisdiction in this case. Only if some of the applicants had been the nationals of states other than Austarlia or the applicants had insisted that the UNHRC should take into account the GHG emissions generated abroad and attribute them to Austarlia, the Committee would have been forced to assess such a possibility.

The *Sacchi case* is a famous case brought by sixteen children who were nationals of Argentina, Brazil, France, Germany, India, Marshall Islands, Nigeria, Palau, South Africa, Sweden, Tunisia, and the United States of America before the UNCRC against Argentina, Brazil, France, Germany and Turkey. They submitted five separate communications against each of these states. The applicants claimed that the respondent states violated their rights under the United Nations Convention on the Rights of the Child (1989) by failing to prevent and mitigate the consequences of climate change (*Sacchi, et al. v. Argentina, 2021*). All applicants argued that the Committee had jurisdiction to examine the case in relation to their own states (Argentina, Brazil, France, Germany) as well as Turkey. The children claimed that all five states had jurisdiction over each of the authors of the communication, including in relation to the authors who were neither their nationals nor residents, in other words, had extraterritorial obligations towards them; and that all five states were responsible for human rights violations. The reason behind the applicants' argumentation was as follows: extraterritorial obligations may arise when a state controls activities, namely GHG emissions, in its territory that cause transboundary harm, namely, climate change impacts like sea-level rise or extreme weather conditions which hinder the enjoyment of children's rights to life, health or culture (*Sacchi, et al. v. Argentina, 2021, para. 5.2*).

Argentina submitted that the communication was inadmissible *ratione loci* in relation to the authors who were not its nationals and didn't reside in its territory because the Committee didn't have jurisdiction to analyse events that allegedly had occurred outside its territory, over which it didn't exercise any type of jurisdiction or control, and because there was no causal link between its actions and the violations of children's rights (*Sacchi, et al. v. Argentina, 2021, para. 4.3*). France argued that extraterritorial jurisdiction required the state to excercise effective control over the territory on which the applicants reside, Germany argued that the collective and global nature of climate change rendered the establishment of jurisdiction which was impossible to prove (*International Human Rights Law, 2022, p. 1983*), and Brazil argued that the authors had not demonstrated the extent to which the alleged violations could be attributable to Brazil which was not amongst the main CO2 emitters, presently or historically (*Sacchi, et al. v. Brazil, 2021, para.*

4.3). Turkey was of the view that acceptance of the extraterritorial jurisdiction over the authors would mean acceptance of the respondent states' effective control on a global scale, over every state, that would lead to the risk of the erosion of jurisdiction and undermining the fundamental principle of state sovereignty (*Sacchi, et al. v. Turkey, 2021, para. 7.6)*.

The Committee's decision was delivered in 2021. The UNCRC referred to the relevant articles of the Convention and its Optional Protocol concerning its own competence as well as the jurisdiction of states and observed 'that present communication raises novel jurisdictional issues of transboundary harm related to climate change' (*Sacchi, et al. v. Germany, 2021, para. 9.4)*. The Committee relied on the reasoning of the Inter-American Court of Human Rights (hereinafter – IACtHR) provided in its Advisory Opinion on the Environment and Human Rights (2017) and accepted the applicants' arguments. It concluded that the collective responsibility for climate change does not absolve a state of its individual responsibility that may derive from the harmful effects of emissions originating in its territory on children, whatever their location (*Sacchi, et al. v. Germany, 2021, para. 9.10)*. Though the Committee acknowledged the victim status of the applicants and the extraterritorial jurisdiction of all five states over all 16 applicants, it found the communication inadmissible for failure to exhaust domestic remedies.

The scholars characterize the case as unique, as it is the first one where a complaint was brought before an international human rights body against multiple state parties by people from different regions of the world (*Skelton, 2023*). The Committee's decision on jurisdiction and victim status was labelled as 'ground-breaking' and 'historic', the one which pushed the boundaries of international law on extraterritorial jurisdiction (*Skelton, 2023*). Some commentators observe that the *Sacchi* case represented 'the explosion of human rights law's predominant control-based test of extraterritorial jurisdiction' (*International Human Rights Law, 2022, p. 1984*), because the Committee went away from the traditional 'authority and control' test and recognized jurisdiction over harms caused by cross-border emissions (*International Human Rights Law, 2022, p. 1984*).

In 2024, the Grand Chamber of the ECtHR ruled in three climate cases that were initiated for the first time in this regional human rights court: *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, Carême v. France* and *Duarte Agostinho and Others v. Portugal and 32 Other States*. The Court acknowledged that climate cases raise unprecedented issues which have not so far been addressed in its previous case-law on environmental matters (*Verein KlimaSeniorinnen Schweiz, 2024, para. 414*). As in the UNHRC's case of *Daniel Billy, Carême* didn't raise any extraterritoriality questions because the applicant was the national of France.

Verein KlimaSeniorinnen Schweiz case was brought by a Swiss association and its members, a group of elderly women, who were concerned about the consequences of global warming for their live, health, private and family life, and complained about the actions of the Swiss authorities in the field of climate-change mitigation. This case touches upon one aspect of the extraterritorial jurisdiction of a state. At the admissibility stage, the parties argued on whether the ECtHR should take into account the GHG emissions generated abroad, mainly through the import of different goods, and whether they must be attributed to Switzerland (so-called embedded emissions) (*Verein KlimaSeniorinnen Schweiz, 2024, paras. 275-276*). The government insisted that such emissions produced beyond the state's territory could not be linked to any omissions on the part of Switzerland, because they were out of its direct control (*Verein KlimaSeniorinnen Schweiz, 2024, paras. 285-288*). The Court took into account these emissions because they formed a significant part of the overall Swiss GHG footprint and dismissed the respondent state's objection concerning the lack of jurisdiction (*Verein KlimaSeniorinnen Schweiz, 2024, paras. 279, 283*). The ECtHR drew to the conclusion that 'the applicants' complaint concerning 'embedded emissions', although containing an extraterritorial aspect, does not raise an issue of Switzerland's jurisdiction … but rather one of Switzerland's responsibility' for their alleged effects on the applicants' rights (*Verein KlimaSeniorinnen Schweiz, 2024, para. 287*). Unfortunately, the Court didn't address this aspect in a proper way at the merits stage. Meanwhile, it made a very important observation that since Article 1 of the European Convention on Human Rights on jurisdiction is 'principally territorial, each State

has its own responsibilities within its own territorial jurisdiction in respect of climate change' (*Verein KlimaSeniorinnen Schweiz, 2024, para. 443*).

Duarte Agostinho case was brought by six Portuguese nationals under age of 10-23 years against Portugal and other 32 states. The applicants complained that the respondents violated their rights by not taking ambitious climate measures and, as a result, they experienced serious impacts on their lives, well-being, mental health and the amenities of their homes, like heatwaves, wildfires and smoke therefrom (*Duarte Agostinho, 2024, para. 3*). They argued that concerning states other than Portugal, extraterritorial jurisdiction must be established on the exceptional grounds because their acts, namely, failure to limit GHG emissions, produced effects outside their boundaries bringing the applicants within their jurisdiction (*Duarte Agostinho, 2024, para. 121*). They argued that lodging application against one territorial state, Portugal, would be an insufficient measure (*Duarte Agostinho, 2024, para. 125*). They deemed the extraterritorial jurisdiction as grounded on the specific features of climate change, as well as the need to avoid a vacuum within the Convention legal space (*Duarte Agostinho, 2024, para. 125*). It is remarkable that the applicants insisted on the extraterritorial jurisdiction on the basis of the fact that there was a great variation in vulnerability to climate impacts and in the adaptive capacity of various countries across Europe, and that if they had brought the case only against Portugal, that would have left them within a vacuum of protection (*Liston, 2024, p. 1-2*). To substantiate their arguments, they relied on the judgment of Germany's Federal Constitutional Court in *Neubauer et al. v. Germany* where the Court envisaged that reducing the GHG emissions produced in Germany, this state could protect people outside its territorial jurisdiction against the impacts of climate change (*Duarte Agostinho, 2024, para. 178*).

The respondent governments disagreed that the applicants were within the jurisdiction of states other than Portugal because they were neither their nationals nor residents (*Duarte Agostinho, 2024, para. 77*). They insisted that they did not exercise any form of control over the territory in which the applicants resided and did not exercise any authority over the person of the applicants or over their property (*Duarte Agostinho, 2024, para. 79*). The ECtHR accepted the respondents' position highlighting that two traditional exceptions for the recognition of the extraterritorial jurisdiction ('effective control over an area' and 'state agent authority and control') could not be applied in the case (*Duarte Agostinho, 2024, paras. 181-182*). In the case the Court refused to expand **extraterritoriality test in the context of climate change (***Ibrahim, 2024***).** Furthermore, though the Court mentioned some specific features of climate change, e.g. its transboundary nature, it refused to elaborate a novel approach to jurisdiction (*Raible, 2024, p. 2*). It also reiterated that jurisdiction cannot be established merely on the basis of the argument that a state is capable of taking a decision or action impacting the applicant's situation abroad (*Duarte Agostinho, 2024, para. 199*). In other words, extraterritorial jurisdiction can't be established on the grounds of the impact of governmental acts on the interests of the applicants. Since it is rather impossible to accept cause-and-effect relations between the GHG emissions and breaches of persons' rights, because everybody in the world could be potentially impacted by the phenomenon, the extension of the Convention's scope turning it into 'a global climate-change treaty' (*Duarte Agostinho, 2024, para. 208*) finds no support in the Court's case-law. The Court found the complaints inadmissible in relation to Portugal due to the lack of the exhaustion of domestic remedies and in relation to other states – due to the absence of the extraterritorial jurisdiction.

The experts observe that the ECtHR approach to the extraterritoriality in climate cases will predetermine future climate litigation: complaints will be brought for the benefit of European residents and exclude the representation of interests of the most affected people and areas in other regions of the world (*Schayani, 2024*). Some authors conclude that since the Court adopted the approach which recognizes jurisdiction of a state over the victim but not over the source, it excluded individuals residing in the Global South, outside the territories of state parties to the European Convention, who suffer major negative climate consequences due to the historic injustice, from access to climate litigation (*Schayani, 2024*). Others have an opposite view: they caution against excessive expanding the extraterritorial jurisdiction of states in international judicial practice, because such novel 'effects-based' / 'control-over-the-source' / 'impacts' jurisdiction

approach overlooks the fact that jurisdiction must be established between a state which bears human rights obligations and the rights-holder (*Blattner, 2024)*.

The CJEU could have had an opportunity to deal with a respondent state's extraterritorial jurisdiction in several cases, including *Armando Ferrão Carvalho and Others v. the European Parliament and the Council* (known as *People's Climate* case) and *Peter Sabo and Others v. European Parliament and Council of the European Union* (known as *Biomass* case), but they were dismissed on the procedural grounds in 2021. The first case was brought by 36 individuals from the EU member states, namely Germany, France, Italy, Portugal and Romania, as well as Swedish association representing indigenous Sami peoples and from Kenya and Fiji (*Armando Ferrão Carvalho, 2021*). They demanded the repeal of three pieces of the EU legislation that, in their opinion, did not comply with the Paris Agreement, and argued that the EU should adopt a more ambitious climate target. The second case was brought by individuals from various EU member states (Estonia, Ireland, France and Slovakia), several environmental associations registered in the EU as well as from the United States (*Peter Sabo , 2021*). The appellants sought the annulment in part of the directive on renewable energy sources, which, in their opinion, contradicted the environmental goals of the Lisbon Treaty and violated the Charter of Fundamental Rights of the European Union.

The General Court and the European Cort of Justice held that the appellants did not satisfy any of the *locus standi* criteria laid down in the fourth paragraph of Article 263 of the Treaty on the Functioning of the European Union (2007) (*Armando Ferrão Carvalho, 2021; Peter Sabo , 2021*). The CJEU was not able to proclaim its position on the possibility to accept extraterritorial jurisdiction of the EU member states for the omissions having effect on the rights of nationals of Kenya and Fiji (the first case) or the USA (the second case).

The same situation is observed with the IAComHR. In 2005, the Inuit, indigenous peoples of the Arctic regions of the USA and Canada, lodged a petition to the Commission stating that the inaction of the USA as the biggest GHG emitter to deal with climate change violated their fundamental rights to life, property, culture and livelihood envisaged in the American Declaration of the Rights and Duties of Man (*Petition, 2005*). The Inuit petition was the first request from a human rights body to rule on the issue of the extraterritorial jurisdiction over states' obligations on climate change (*Torre-Schaub, 2023*). In 2006, the IAComHR informed that it was not possible to process the petition. In 2013, a similar petition was filed by the Athabaskan peoples of the Arctic regions of Canada and the United States against Canada claiming that black carbon pollution from this state harmed the Arctic environment and ecosystems upon which indigenous peoples depend (*Petition, 2013*). The case is still pending before the Commission.

In these two cases, the petitioners, indigenous peoples living in both states (the USA and Canada) complained about the acts and omissions of just one state. Hence, the problem of extraterritorial jurisdiction emerged as well (*Szpak, 2020, p. 1576*): that of the USA in the first case and Canada, in the second. Here, the question arises: is it possible to rely on the jurisdiction and invoke the responsibility of a state for failure to take mitigation and adaptation measures to combat the effects of climate change, if the GHG emissions have been produced in its own territory but impact the human rights of persons which are within the territorial jurisdiction of another state (Canada in the first case and the USA, in the second)?

Though the IACtHR stated one of the most expansive positions towards extraterritorial jurisdiction in environmental cases in its Advisory Opinion on the Environment and Human Rights mentioned above, the IAComHR didn't have an opportunity to rely on this position in the Inuit and Athabaskan cases. Meanwhile, we may expect the interpretation of some extraterritorial aspects in relation to states' jurisdiction and human rights obligations concerning climate change in the upcoming Advisory Opinion on the Climate Emergency and Human Rights, the IACtHR has to deliver soon in accordance with the request made by Colombia and Chile in 2023. One of the questions the Court will have to answer is 'What should a State take into consideration when implementing its obligations … to mitigate any activities under its jurisdiction that exacerbate or could exacerbate the climate emergency?' (*Request, 2023*). The same year, the UN General

Assembly requested the International Court of Justice (hereinafter – the ICJ) to render its own Advisory Opinion on the Obligations of States in Respect of Climate Change. Obviously, the Court will be seized with the issues of extraterritorial jurisdiction and climate-human rights obligations of states.

In 2024, another court – the International Tribunal on the Law of the Sea – has already rendered its Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law. Although the Tribunal noted that climate change raises human rights concerns (*International Tribunal, 2024, para. 66*), the issue of interlinkages between states' obligations to preserve marine environment, on the one hand, and protection of human rights in the era of climate change, on the other, was not interpreted in the document. Meanwhile, the Tribunal analyzed the principle of international environmental law according to which sates have responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction in the context of the marine environment. It concluded that the UN Convention on the Law of the Sea (1982) requires states 'to take all necessary measures to ensure that GHG emissions under their jurisdiction or control do not cause damage to other states and their environment, and that pollution arising from such emissions under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights' (*International Tribunal, p. 148)*.

We can assume that time has come for national courts to ask advisory opinion of ECtHR on the scope of the state jurisdiction, including the extraterritorial one, in human rights and climate change issues. Although, unlike their judgments, advisory opinions of international courts do not have a binding force, they contribute to the interpretation and development of international law, as well as its effective implementation. In addition, they will help to prevent the submission of many identical individual applications against states and to unload human rights courts in such a way.

Conclusions. Violations of human rights due to climate change impacts is a novel sphere of jurisprudence for international human rights bodies which has never been addressed before in their case-law. All environmental cases which have ever been decided by these bodies concerned concrete damage caused to the applicants due to the failure of a state to take certain measures, besides, there was always a possibility to prove the existence of 'cause-effect' relationship between human rights' violations and environmental damage. Today those institutions are faced with a new challenge – human rights-based climate litigation, which tries to affirm a state's jurisdiction over persons, with the aim of invoking responsibility of a state for the failure to take mitigation and adaptation measures to combat the effects of climate change, even if those persons are neither its nationals nor residents, in other words, are within the territorial jurisdiction of another state. The expansion of a state's jurisdiction in human rights cases became possible due to the transboundary and global nature of climate change. Though most of these cases passed only admissibility phase and have never been considered on merits, except *Daniel Billy* and *Verein KlimaSeniorinnen Schweiz*, they are very precious source of international jurisprudence on the jurisdiction of states, including the extraterritorial one.

Daniel Billy didn't concern the issue of extrterritorial jurisdiction of a state but it reflected the main arguments of the respondent governments, namely that they can't exercise their jurisdiction over the applicants and be blamed for the violations of human rights since climate change is a global phenomenon attributable to the actions of many states, its effects are beyond the jurisdiction and control of just one state and there is no causation between the alleged violations of the applicants' rights and the state party's activities. In all other cases (*Sacchi, Duarte Agostinho, People's Climate* and *Biomass* cases as well as the *Inuit* and *Athabaskan* cases) the parties disagreed whether respondent states had jurisdiction over each of the authors of the communication, including in relation to the authors who were neither their nationals nor residents. Unlike all other cases, the CJEU cases involved the petitioners who were from states not belonging to the legal regime within which an international human rights body had been established (Kenya and Fiji as well as the United States). *Verein KlimaSeniorinnen Schweiz* concerned another aspect of the extraterritoriality, namely, whether the GHG emissions generated abroad must be attributed to the territorial state. The

international human rights institutions reacted to the challenge of the extraterritorial jurisdiction in climate issues in different ways: some of them accepted it (e.g., the UNCRC in *Sacchi*), while others not (e.g., the ECtHR in *Duarte Agostinho*). The novel concept of 'effects-based' / 'control-over-the-source' / 'impacts' jurisdiction was expressly ruled out by the ECtHR while supported by the UNCRC which creates a certain mismatch between the case-law of these two human rights bodies. The CJEU and the IAComHR were not able to proclaim their positions on the possibility to accept extraterritorial jurisdiction. Meanwhile, we expect that the IACtHR and the ICJ will have an opportunity to interpret the extraterritorial human rights obligations of states in respect of climate change in their advisory opinions.

Comments on the above-mentioned cases are split. Some authors think that a restrictive approach to extraterritorial jurisdiction possesses serious risks for future climate litigation at international courts and human rights bodies. Others are of the view that departure from the traditional 'authority and control' concept of extraterritorial jurisdiction may pose dangers to the current international legal order. Though the extraterritorial jurisdiction is widely used by states and recognized by international courts in such branches of international law as diplomatic and consular law, international criminal and trade law, law of armed conflict and antitrust law, as well as in some spheres of human rights and environmental law, there are still different interpretations of this jurisdiction in face of new challenges climate change poses to human rights.

The author of this article would like to refer to the introduction where it was observed that climate litigation is about cases relating to scientific data on climate change, climate policy, national climate legislation and (or) international climate law. To our mind, the main problem in climate law or policy in general and in climate cases in particular is the lack of reliable scientific data on climate change. Today, the anthropogenic origin of climate change is considered to be the prevailing scientific theory, although we should mention another point of view, namely that the current global warming is the result of solar activity. Since solar contribution to climate change could appear to be significant (*Scafetta, 2023*), it might become unfair to blame either territorial or non-territorial states for climate impacts on human rights. Further research in climate science is needed to clarify the issue of territorial and extraterritorial jurisdiction of states in this sphere.

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