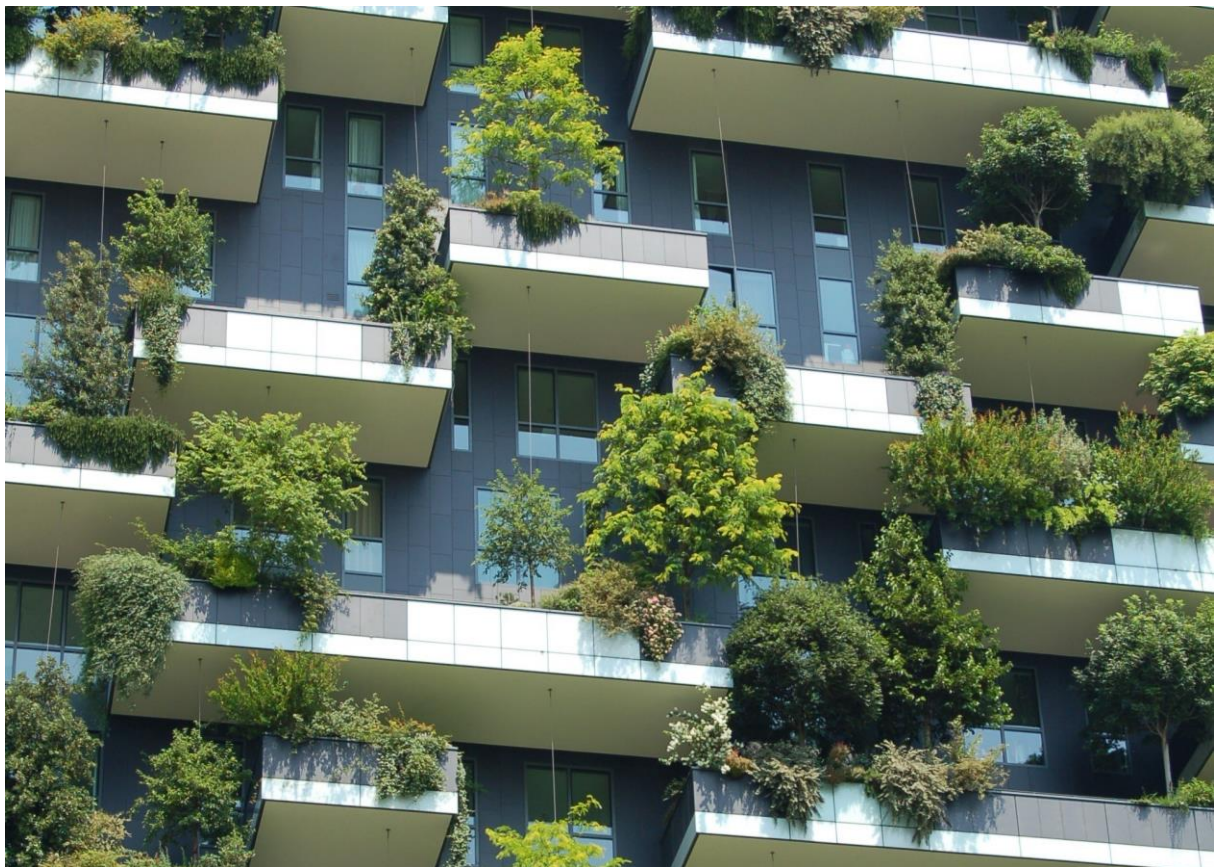




Building towards a just transition: Energy efficiency in residential buildings as an area of strategic climate litigation

Briefing | June 2024



Executive Summary

- This briefing examines the role of climate change litigation in driving the energy efficiency of residential buildings, recognising its impact both on reducing emissions and promoting social justice.
- We have identified over 30 relevant cases in this area, most of which have been recently filed and are still pending, pointing towards a growing trend.
- The intrinsic link between the energy efficiency of buildings, a just transition and human rights is starting to be recognised in climate litigation.
- Energy efficiency in the buildings sector is explicitly mentioned in many of the currently-pending framework challenges to governmental climate change policies.
- The sector-specific compliance of governments with their own climate frameworks is also being scrutinised in litigation.
- Another emerging area of climate change litigation targeting the buildings sector is confronting potential limitations set by central governments on the ability of local governments to implement ambitious energy efficiency measures.
- The energy efficiency of common domestic appliances, such as light bulbs, has emerged as an additional strand of climate change litigation in the United States of America (USA).
- Energy efficiency measures are not just relevant to climate change mitigation, but also to climate change adaptation, and this may become a future growth area for litigation.
- Public and private sector stakeholders should consider the increasing risks associated with litigation in this field.

Introduction

In recent years, litigation has become an important tool in the fight against climate change.¹ Over 2,300 climate change lawsuits have been recorded internationally to date,² targeting various sectors and stakeholders.

The buildings sector accounts for as much as 37% of worldwide greenhouse gas (GHG) emissions,³ and within the sector, residential buildings are responsible for more than half of those emissions.⁴ At the same time, the quality of the built environment affects people's health and wellbeing. Despite this, the buildings sector remains an underdeveloped area in climate change litigation. However, litigious actions in the sector are on the rise, and there is a growing recognition of the significant role that energy efficiency measures will play in reducing emissions.⁵

In this context, this legal briefing provides an overview of climate change cases in the buildings sector, focusing on the energy efficiency of residential buildings. Our research identified four principal categories of litigation relevant to buildings efficiency: first, as a component of general, 'framework' challenges to government climate policies; second, at the interface between central and local government building regulations and laws; third, in respect of specific product/appliance efficiency requirements; and fourth, as a component of human rights / just transition cases (which we have identified as a potential growth area). Each of these categories is considered in turn below.

The research methods used in this briefing paper are set out in the Annex.

Litigation to date

Framework challenges

Several cases brought in the past few years challenge inadequate climate change measures adopted by governments. Such cases tend to be broad in scope, challenging overall government policy in response to climate change on an economy-wide basis (referred to as 'framework litigation').⁶ However, a number of those cases refer to the buildings sector, and energy efficiency in buildings, as part of their arguments.

Whilst the courts have to date generally stopped short of making sector-specific orders, the claims below have been successful in requiring headline action across all sectors:

- In **Notre Affaire à Tous and Others v. France**,⁷ (where several nonprofit organisations, with the support of over 2.3 million members of the public,⁸ challenged the French government's climate change policy), the claimants pleaded, amongst other requests, for the government to take all measures necessary in the building sector, and to make up for the delay in energy efficiency renovations with regard to national objectives. The Paris Administrative Court ordered the French government to offset overall excess GHG emissions by 2022.⁹

¹ United Nations Environment Programme, 'Climate Litigation More than Doubles in Five Years, Now a Key Tool in Delivering Climate Justice' (UNEP, 27 July 2023) <https://www.unep.org/news-and-stories/press-release/climate-litigation-more-doubles-five-years-now-key-tool-delivering> accessed 05 June 2024

² Joana Setzer and Catherine Higham, 'Global Trends in Climate Change Litigation: 2023 Snapshot' (Grantham Research Institute on Climate Change and the Environment, June 2023) https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf accessed 05 June 2024.

³ United Nations Environment Programme, 'Not Yet Built for Purpose: Global Building Sector Emissions Still High and Rising' (UNEP, 7 March 2024) <https://www.unep.org/news-and-stories/press-release/not-yet-built-purpose-global-building-sector-emissions-still-high> accessed 05 June 2024

⁴ According to data from the United Kingdom: Committee on Climate Change, 'Fact Sheet: Buildings' (CCC, 2014) <https://www.theccc.org.uk/wp-content/uploads/2014/08/Fact-sheet-buildings-updated-July-2015.pdf> accessed 05 June 2024

⁵ Emily Parish, 'Energy Efficiency Measures Will Lead the Way to Net Zero Buildings' (The Climate Group, 12 August 2022) <https://www.theclimategroup.org/our-work/news/energy-efficiency-measures-will-lead-way-net-zero-buildings> accessed 05 June 2024

⁶ Catherine Higham, Joana Setzer and Emily Bradeen, 'Challenging Government Responses to Climate Change through Framework Litigation' (Grantham Research Institute on Climate Change and the Environment, September 2022) <https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2022/09/Challenging-government-responses-to-climate-change-through-framework-litigation-final.pdf> accessed 05 June 2024

⁷ *Notre Affaire à Tous and Others v France* (case numbers N°1904967, 1904968, 1904972 1904976/4-1), Administrative Court of Paris decisions dated 14 October 2021 and 3 February 2021

⁸ (n6)

⁹ The claimants allege that the French government has nevertheless failed to comply with the judgment, and enforcement action is currently being undertaken by the nonprofits organisations that brought the claim: *Notre Affaire à Tous, L'Affaire du Siècle saisit le Conseil d'État pour contrer un jugement inquiétant pour l'avenir de la justice climatique* (Notre Affaire à Tous, 23 February 2023) <https://notreaffaireatous.org/laffaire-du-siecle-saisit-le-conseil-detat-pour-contrer-un-jugement-inquietant-pour-lavenir-de-la-justice-climatique/> accessed 05 June 2024

- In **VZW Klimaatzaak v. Kingdom of Belgium & Others**,¹⁰ the Brussels Court of Appeal ordered the Belgian state, as well as the Flemish and Brussels regions, to reduce their GHG emissions by 55% by 2030 compared with 1990. Similarly to **Notre Affaire à Tous and Others** (see above), the buildings sector (though not energy efficiency specifically) was mentioned in the pleadings.

In addition, there are also pending cases which refer to energy efficiency in buildings more prominently:

- In **R (Packham) v Secretary of State for Energy Security and Net Zero and Secretary of State for Transport**,¹¹ the United Kingdom (UK) government's updated Net Zero policy is challenged by environmentalist Chris Packham. One of the grounds is that, in changing its approach to Net Zero, the government failed to consult the public (a requirement under UK law), particularly taking into account ongoing consultations about off-grid heating and minimum energy efficiency in rental properties. This case is currently pending.
- In **Steinmetz, et al. v. Germany**,¹² the claimants argue that Germany's climate protection programme violates fundamental rights, mentioning in particular the lack of action in sectors such as buildings and transport. A similar challenge was recently brought in Romanian courts (**Declic et al. v. The Romanian Government**)¹³. Both challenges are currently pending.

Whilst the cases discussed above do not focus exclusively on the energy efficiency of buildings, its prominence in climate framework cases suggest both that it is seen by civil society as an essential component of compelling governments to take bolder action on climate change and that insufficient action (or inaction) in this area is a target for legal challenges.

BOX 1: Monitoring compliance with existing climate laws

The bulk of the framework cases focus on urging governments to adopt or amend climate strategies. However, it is also important to consider how climate change litigation can impact the enforcement and implementation of already-existing policies. This was the basis of the claim in **DUH and BUND v Germany**, where environmental associations challenged the German government's 'action programmes' on complying with annual emission levels in the buildings and transport sectors. The associations argued that the programmes, and the government's response to them, did not fulfil the requirements of Germany's Federal Climate Change Act. The claim was therefore **based** on administrative issues, not fundamental rights.

The Higher Administrative Court Berlin-Brandenburg held that the government must adopt an immediate (short-term effective) action programme intended to ensure compliance with the annual emission targets for the building and transportation sectors for the years 2024 to 2030.

Significantly, this case **demonstrates** that sector-specific climate policies (which may be perceived as non-justiciable governmental commitments) can nevertheless be successfully scrutinised through climate litigation.

¹⁰ VZW Klimaatzaak v. Kingdom of Belgium & Others, Brussels Court of Appeal Judgment dated 30 November 2023

¹¹ Climate Case Chart, 'R (Packham) v Secretary of State for Energy Security and Net Zero and Secretary of State for Transport: Challenge to the New Approach to Net Zero' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/non-us-case/rpackham-v-secretary-of-state-for-energy-security-and-net-zero-and-secretary-of-state-for-transport-challenge-to-the-new-approach-to-net-zero/> accessed 05 June 2024

¹² Climate Case Chart, 'Steinmetz et al. v Germany II' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/non-us-case/steinmetz-et-al-v-germany-ii/> accessed 05 June 2024

¹³ Climate Case Chart, 'Declic et al. v The Romanian Government' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/non-us-case/declic-et-al-v-the-romanian-government/> accessed 05 June 2024

Removing the roadblocks to local government action

A further set of cases focuses on the interface between central government action and local government action, challenging alleged inadequacies in central government climate policies which may inhibit or restrict local government action.

- In a **recently-commenced case, Rights, Community, Action** (with the support of the Good Law Project) is challenging the UK government's policy on new homes and local energy efficiency standards.¹⁴ The organisation alleges that the policy undermines local authority efforts to set ambitious energy targets by instructing that local proposals exceeding existing building regulations be rejected, unless they pass stringent central government checks.
- In a similar vein, Rights, Community, Action previously challenged a decision by UK government planning inspectors regarding a plan by West Oxfordshire District Council for a new housing development with certain net-zero standards, including energy efficiency measures (**R (Rights, Community, Action) v Secretary of State for Levelling Up, Housing And Communities**).¹⁵ The inspectors concluded that the standards proposed by the Council were too high, as they conflicted with those set out in national policies. Rights, Community, Action was successful in challenging this decision, and the High Court concluded that the inspectors misinterpreted the policies in question. Shortly after the hearing took place, central UK government updated its policy on local efficiency standards.¹⁶ Another indirect effect of the challenge was the removal of a perceived barrier to litigating such questions before the UK courts: the High Court clarified that inspectorial decisions were justiciable, and that the point of inspectorial decision-making in the planning procedure is a crucial moment in which to bring such challenges.¹⁷

Another group of cases has emerged in the USA surrounding the federal Energy Policy and Conservation Act (EPCA) and whether it preempts (i.e., displaces) higher local standards in certain cases.¹⁸

- In New York City, building owners sought to invalidate a local law which set building performance standards to reduce GHG emissions from the city's largest buildings (**Glen Oaks Village Owners v. City of New York**).¹⁹ The New York State Supreme Court dismissed the challenge, finding that there was no conflict between State and local law on GHG emissions. This case has been said to provide useful analysis for local authorities wishing to enact ambitious local climate laws in the USA.²⁰
- However, in **California Restaurant Association v. City of Berkeley**,²¹ the United States Court of Appeals for the Ninth Circuit found that the EPCA preempted the City of Berkeley's ban on natural gas piping in new construction. This is because the EPCA contains a preemption provision which states that, if a federal energy conservation standard is enacted for a 'covered product', 'no State regulation concerning the energy efficiency, energy use, or water use of such covered product shall be effective with respect to such product'. 'Covered products' include consumer products, such as kitchen ovens. The Court found that the provision extended to the on-site infrastructure for the use of natural gas by the products in question.²² The Court subsequently declined to re-hear this matter, despite the City of Berkeley's petition for rehearing being supported by 8 Amicus Briefs from various cities, states, NGOs and other organisations.²³ Although this action was brought by a restaurant industry group, the decision had significant implications

¹⁴ Good Law Project, 'Help Local Communities Build Better, Greener Homes' (Good Law Project, 2024) <https://goodlawproject.org/case/were-challenging-the-government-to-build-homes-fit-for-the-future/> accessed 05 June 2024

¹⁵ *Rights Community Action Ltd, R, (On the Application Of) v Secretary of State for Levelling Up, Housing And Communities* [2024] EWHC 359 (Admin)

¹⁶ House of Lords, 'Planning – Local Energy Efficiency Standards Update' (Parliament of the United Kingdom, 13 December 2023) <https://questions-statements.parliament.uk/written-statements/detail/2023-12-13/hlws120> accessed 05 June 2024

¹⁷ Para 48 of the Judgment (n15)

¹⁸ Federal preemption is a legal concept in the USA, whereby in cases of conflict between state law and federal law, federal law displaces (preempts) state law due to the Supremacy Clause of the Constitution of the USA

¹⁹ *Glen Oaks Village Owners, Inc. v. City of New York*, No. 154327/2022 (Supreme Court of the State of New York, New York County)

²⁰ Amy Turner, 'New York State Court Holds Up Local Law 97' (Columbia Law School Climate Law Blog, 6 November 2023) <https://blogs.law.columbia.edu/climatechange/2023/11/06/new-york-state-court-holds-upholds-local-law-97/> accessed 05 June 2024

²¹ *California Restaurant Association v. City of Berkeley*, No. 21-16278 (Ninth Circuit Court of Appeals)

²² Climate Case Chart, 'California Restaurant Association v City of Berkeley' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/case/california-restaurant-association-v-city-of-berkeley/> accessed 05 June 2024

²³ *Ibid.* However, several judges dissented, stating that the panel opinion 'misinterprets the statute's key terms to have colloquial meanings instead of the technical meanings required by established canons of statutory interpretation. It thereby erroneously holds that Berkeley's ordinance is preempted', and 'needlessly blocks Berkeley's effort to combat climate change, along with the equivalent laws passed by other local governments' – on pp 50-51 of the order (n21)

for the buildings sector as a whole, particularly because the Court of Appeals' decisions are binding on all district courts within the Ninth Circuit.

- Indeed, a group of claimants consisting of homeowners, builders, suppliers, and utilities subsequently filed a similar lawsuit challenging the Washington State Building Code Council's amendments of the State Energy Code to ban or restrict the use of natural gas appliances in commercial and residential buildings (**Rivera v. Washington State Building Code Council**).²⁴ Following the **City of Berkeley** decision, the Council decided to delay the restrictions and reconsider the amendments, as a result of which the claimants voluntarily dismissed their challenge. After its reconsideration, Washington Council adopted a revised version of the amendments, removing language that mandated heat pumps and amending the state building code scoring system.²⁵ Another challenge to the revised amendments was promptly brought by industry representatives and residents (**Northwest Regional Council of National Construction v. State Building Code Council**),²⁶ who requested for the rules to be placed on hold as litigation in this case continued. The Thurston County Superior Court refused this, and the implementation of the code can continue whilst a hearing on the merits will take place later this year.²⁷

This line of litigation is important in establishing the parameters of local government authority to take more ambitious climate action, which goes beyond central government policy or standards. Local authorities tend to have a better appreciation of the needs of local communities, including vulnerable groups. They may therefore wish to adopt ambitious energy efficiency policies to meet their climate and social justice commitments.²⁸

The cases discussed above demonstrate the challenges that local authority climate action can encounter, not only from central government but from other stakeholders as well. The interplay between central government policy and local government policy has become a key area for litigation which seeks to advance bolder climate action (but also counter-climate litigation). This is particularly important in the buildings sector, since local authorities may have significant powers and duties associated with planning laws and regulations, protecting wildlife and heritage, preventing hazards in housing, and enforcement of building regulations.²⁹

Efficiency of appliances

Several cases have been initiated in the USA focusing on the energy efficiency of specific household appliances.

- In **National Electrical Manufacturers Association v. United States Department of Energy**,³⁰ the USA Department of Energy standards for general service lamps (which are the most commonly used light bulbs)³¹ were challenged by the National Electrical Manufacturers Association in the United States Court of Appeal for the Fourth Circuit. Several states, including California and New York, applied to intervene in this action, arguing that the energy conservation achieved through the standards were vital for their GHG emission strategies. The appeal was subsequently voluntarily dismissed.
- The Department of Energy later withdrew the rule that expanded the types of light bulbs subject to backstop energy conservation standards. A challenge to this withdrawal was filed by 15 states, New York City, and the District of Columbia. Another petition was filed by several organisations including

²⁴ Climate Case Chart, 'Rivera v Washington State Building Code Council' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/case/rivera-v-washington-state-building-code-council/> accessed 05 June 2024

²⁵ Jerry Cornfield, 'Washington Makes Another Run at Heat Pump Rules' (Washington State Standard, 28 November 2023) <https://washingtonstatestandard.com/2023/11/28/washington-makes-another-run-at-heat-pump-rules> accessed 05 June 2024

²⁶ Climate Case Chart, 'Northwest Regional Council of National Construction v State Building Code Council' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/case/northwest-regional-council-of-national-construction-v-state-building-code-council/> accessed 05 June 2024

²⁷ Earthjustice, 'Judge Denies Industry Challenge to Delay Implementation of Washington's New Climate and Health-Friendly Building Codes' (Earthjustice, March 8 2024) <https://earthjustice.org/press/2024/judge-denies-industry-challenge-to-delay-implementation-of-washingtons-new-climate-and-health-friendly-building-codes> accessed 05 June 2024

²⁸ In the UK, for instance, over 300 local councils have now declared a climate emergency, and many are assessing risks and developing plans accordingly: the Climate Change Committee, 'Local Authorities and the Sixth Carbon Budget' (CCC, 09 December 2020) <https://www.thccc.org.uk/publication/local-authorities-and-the-sixth-carbon-budget/> accessed 05 June 2024

²⁹ Ibid

³⁰ Climate Case Chart, 'National Electrical Manufacturers Association v United States Department of Energy' (Sabin Center for Climate Change Law, 2023) <https://climatecasechart.com/case/national-electrical-manufacturers-association-v-united-states-department-energy/> accessed 05 June 2024

³¹ Nevada Governor's Office of Energy, 'General Service Lamp Fact Sheet' (Nevada Governor's Office of Energy, March 2021) [https://energy.nv.gov/uploadedFiles/energyngov/content/Pages/General%20Service%20Lamp%20Fact%20Sheet\(1\).pdf](https://energy.nv.gov/uploadedFiles/energyngov/content/Pages/General%20Service%20Lamp%20Fact%20Sheet(1).pdf) accessed 05 June 2024

environmental, consumer, and public housing tenant groups. The motions were subsequently paused due to the Department of Energy's intention to review the withdrawal (**New York v. U.S. Department of Energy; Natural Resources Defense Council v. U.S. Department of Energy**),³² which ultimately resulted in the initial expansive rule being reinstated.³³

- Similarly, several states and New York City, as well as various environmental groups, successfully challenged the Department of Energy's decision to delay the effective date for final energy conservation standards for portable air conditioners, commercial packaged boilers, air compressors, and uninterruptible power supplies (**Natural Resources Defense Council, Inc. v. Perry**).³⁴
- In **Natural Resources Defense Council v. Granholm**,³⁵ the claimants sought to compel the Department of Energy to update energy efficiency standards for 25 consumer and commercial products including air conditioners, furnaces, and coolers, as required by the EPCA. By consent decree, the Department of Energy ultimately committed to publishing the final rules for 20 product categories (as it had already published the other five).

These cases demonstrate the salience of product-specific energy efficiency measures in working towards reducing GHG emissions, and the pivotal role of federal energy standards in state and national environmental strategies in the USA. As state and environmental groups continue to challenge federal standards perceived as not ambitious enough, we expect the courts will continue to be an important forum for interested groups seeking to uphold GHG reduction policies.

BOX 2: just transition

The concept of a [just transition](#) refers to meeting climate goals by ensuring the whole of society – and not just specific groups – benefit from a net-zero future.

Improving the energy efficiency of residential buildings is of vital importance – not only from a climate change perspective, but from the perspective of a just transition as well. Energy poverty (i.e., being unable to afford adequate energy use within one's home) is a significant concern worldwide, driven [in part](#) by the lack of energy efficiency in buildings. The cold and damp conditions resulting from inadequate heating in homes lead to physical and mental [health issues](#), and even an increased [risk of death](#). This is exacerbated by the ongoing cost of living crisis, and [disproportionately affects](#) the most vulnerable population groups, such as the elderly, low-income families and people of colour.

Therefore, the issue of energy efficiency in homes is inextricably linked to [various human rights](#), including the right to life, health, an adequate standard of living, freedom from discrimination, and a healthy environment.

³² Climate Case Chart, 'New York v US Department of Energy' (Sabin Center for Climate Change Law, 2019) <https://climatecasechart.com/case/new-york-v-us-department-of-energy-2/> accessed 05 June 2024; and Climate Case Chart, 'Natural Resources Defense Council v US Department of Energy' (Climate Case Chart, 2019) <https://climatecasechart.com/case/natural-resources-defense-council-v-us-department-of-energy/> accessed 05 June 2024

³³ Peter Weber, 'The US Just Banned Most Incandescent Light Bulbs and Few People Even Noticed' (The Week, 2 August 2023) <https://theweek.com/energy/1025476/the-us-just-banned-most-incandescent-light-bulbs-and-few-people-even-noticed> accessed 05 June 2024

³⁴ Climate Case Chart, 'Natural Resources Defense Council v Perry' (Sabin Center for Climate Change Law, 2017) <https://climatecasechart.com/case/natural-resources-defense-council-v-perry/> accessed 05 June 2024

³⁵ Climate Case Chart, 'Natural Resources Defense Council v Granholm' (Sabin Center for Climate Change Law, 2020) <https://climatecasechart.com/case/natural-resources-defense-council-v-brouillette/> accessed 05 June 2024

Energy efficiency and human rights – a growth area for future litigation?

Human rights and just transition litigation represents a potential future growth area for the buildings sector. The link between the energy efficiency of buildings and just transition is starting to be recognised in climate change litigation. In **R (Friends of the Earth, ClientEarth, Good Law Project) v Secretary of State for Business, Energy and Industrial Strategy**,³⁶ the UK's Net Zero Strategy and the Heat and Building Strategy were challenged. Among other arguments, it was submitted that the UK government failed to consider the impact of the Heat and Building Strategy on vulnerable groups – which the High Court accepted.³⁷ The government subsequently undertook an equality impact assessment of the Heat and Buildings Strategy, acknowledging that not actioning buildings decarbonisation policies would likely cause negative impacts, and committing to monitoring and adjusting the strategy, as appropriate, considering the latest evidence to advance equality.³⁸

In **Verein KlimaSeniorinnen Schweiz and others v. Switzerland**,³⁹ the European Court of Human Rights (ECtHR) found that the right to respect for private and family life (Article 8(1) of the European Convention of Human Rights (ECHR)) includes a right to effective protection by the state from the serious adverse effects of the climate crisis on lives, health, wellbeing and quality of life. Whilst not expressly addressing the buildings sector, this groundbreaking recent judgment is expected to have far-reaching implications for the development of climate change litigation as a whole.⁴⁰ It cements the link between human rights and climate change law – a precedent which we expect will now be followed by national courts in the 46 Member States of the Council of Europe, potentially affecting the pending framework challenges to government climate change policies (outlined above),⁴¹ as well as opening potential new avenues for climate litigants. At the ECtHR itself, there are currently several other climate change applications which have been adjourned until the **KlimaSeniorinnen** judgment, and which will now proceed to be examined.⁴²

³⁶ *Friends of the Earth Ltd & Ors, R (On the Application Of) v Secretary of State for Business, Energy and Industrial Strategy* [2022] EWHC 1841 (Admin)

³⁷ At para 27 of the judgment (n36)

³⁸ Department for Business, Energy & Industrial Strategy, 'Equality Impact Assessment for the Heat and Buildings Strategy' (Department for Business, Energy and Industrial Strategy, 1 March 2023) <https://www.gov.uk/government/publications/heat-and-buildings-strategy/equality-impact-assessment-for-the-heat-and-buildings-strategy> accessed 05 June 2024

³⁹ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECHR 304

⁴⁰ Isabela Keuschnigg, 'KlimaSeniorinnen: Major Win Before the European Court of Human Rights (Opportunity Green, 17 April 2024) <https://www.opportunitygreen.org/blog/klimaseniorinnen-legal-victory> accessed 05 June 2024

⁴¹ Maxim Bönnemann and Maria Antonia Tigre, 'The Transformation of European Climate Change Litigation' (Verfassungsblog, 09 April 2024) <https://verfassungsblog.de/the-transformation-of-european-climate-change-litigation/> accessed 05 June 2024

⁴² European Court of Human Rights, 'Fact Sheet – Climate Change' (ECHR, April 2024) https://www.echr.coe.int/documents/d/echr/fs_climate_change_eng accessed 05 June 2024

BOX 3: Adaptation

Climate change *mitigation* seeks to reduce GHG emissions, whereas climate change *adaptation* refers to actions taken to reduce exposure to, or enhance resilience against, existing and future climate impacts.

In a recent [challenge](#) to the UK's National Adaptation Programme (the country's *adaptation* strategy), one of the claimants is a care home resident who is particularly vulnerable to overheating during seasonal heatwaves. The claim argues that the NAP is so deficient that it breaches the claimant's rights to life (Article 2 ECHR), home (Article 8 ECHR), and possessions (Article 1, Protocol 1 to the ECHR), and that they are discriminated against on account of their vulnerable situation (Article 14 ECHR). The case is currently pending.

Whilst this lawsuit does not mention energy efficiency specifically (although it is at an early stage and further details might emerge in the future), we have included it in this briefing due to the significant connection between energy efficiency and adaptation to changing weather patterns. Insulation is one of the most popular and effective means of increasing the energy efficiency of a building and preventing the loss of heat during cold periods, making it an [important mitigation measure](#). Equally, appropriate insulation is [crucial](#) for keeping excessive heat out during warm periods, which makes it crucial for adaptation.

Adaptation was also a significant aspect of the **KlimaSeniorinnen** judgment. As extreme weather becomes increasingly common around the globe, we expect climate change adaptation (and, by extension, climate change adaptation litigation) to [become](#) an increasingly prominent issue.

Conclusion

This briefing has explored the current landscape of climate litigation relating to the energy efficiency of buildings. Whilst the amount of such litigation has been relatively limited to date, this briefing has shown an upwards trend in such litigation, particularly in respect of government climate policies and action, both at the central and local level.

We have identified four principal areas of buildings efficiency litigation: (i) framework challenges, (ii) challenges based on the parameters of local government powers; (iii) product/appliance efficiency cases, and (iv) human rights/just transition cases. This briefing suggests that governmental policies on buildings, construction and climate change are subject to increasing scrutiny and potential litigation. We expect to see further litigation in these areas, as well as potential new and emerging areas such as adaptation policy and human rights litigation.

Even though litigation in this area has tended to involve challenges to government policies, private sector stakeholders such as developers and landlords should also consider the increasing risks associated with litigation in this field. Energy efficiency targets and standards inform market practice and so businesses are exposed to 'transition risk' to the extent court rulings change such targets and standards. Private sector actors may also be exposed to legal risks if, as has happened in other sectors, climate litigation progresses from a public sector phenomenon to a tool that is used to target private sector actors too.

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Opportunity Green

At Opportunity Green we use legal, economic and policy knowledge to tackle climate change. We do this by amplifying diverse voices, forging ambitious collaborations and using legal innovation to motivate decision makers and achieve climate justice.

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Annex: Methodology

In order to identify cases for inclusion, we primarily relied on the Climate Change Litigation Databases maintained by the Sabin Center for Climate Change Law.⁴³

We sought to identify cases in which the energy (in)efficiency of buildings was at least one of the causes of action. To this end, we used the following key search terms: “efficiency”, “efficient”, “buildings”, “building”, and “construction”. We then examined the summaries of the cases flagged in the key word search and identified relevant cases (utilising a subjective evaluation). This included cases focusing on the efficiency of appliances associated with typical residential building use, such as light bulbs.

Our initial review identified over 30 cases, although it is important to note that there may be many more, as key word searches on the basis of case summaries does not necessarily present a comprehensive overview of all relevant cases. Furthermore, the database itself is not exhaustive,⁴⁴ and general limiting factors of climate litigation research, including public availability of court documents and media coverage, play a particular role in buildings litigation in light of the private interests at play, such as landlord–tenant and developer–purchaser relationships.

This briefing does not seek to provide an exhaustive overview of climate litigation in the buildings sector; rather, it discusses key cases, developments and trends. Preference is given to cases which mention energy efficiency as a separate issue, and to those focusing on residential buildings.

⁴³ Sabin Center for Climate Change Law, Climate Change Litigation Databases <https://climatecasechart.com/> accessed 05 June 2024

⁴⁴ As acknowledged by the curators of the database: Sabin Center for Climate Change Law, ‘About Climate Case Chart’ <https://climatecasechart.com/about/> accessed 05 June 2024