CLIMATE CASES IN THE PRACTICE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION AND THE IMPACT OF ITS DECISIONS ON THE NATIONAL LEGISLATION OF THE EU MEMBER STATES AND UKRAINE

DESHKO L. M.

УДК 341.229
DOI: https://doi.org/10.71404/LAW.UA.2025.4.20

The article provides a comprehensive analysis of key "climate cases" in the practice of the Court of Justice of the European Union and shows their impact on the national legislation of the EU Member States and Ukraine. The decisions of the Court of Justice of the EU in the cases of "C.Z. and Others v. Ilva SpA", "Société Arcelor Atlantique et Lorraine v. Premier ministre", "Air Transport Association of America v. Secretary of State for Energy and Climate Change", "Armando Carvalho and Others v. European Parliament and Council" and "Commission v. Poland (Energy Policy)" are analyzed.

It is concluded that the Court of Justice of the EU is developing an approach according to which the principles of environmental protection and sustainable development are included in the very "constitutional" basis of the legal system. It is established that the decisions of the Court of Justice of the EU determine legal guidelines for the EU Member States regarding the implementation of climate and energy obligations, the development of emission control mechanisms, the regulation of extraterritorial aspects of the activities of economic entities, and the integration of sustainable development principles into national legislation. The impact of the decisions of the Court of Justice of the EU in climate cases on the national law of Italy, Spain, and Poland is illustrated. For Ukraine, the decisions of the Court of Justice of the EU in these cases have practical significance - the adaptation of the national legislation of Ukraine to EU standards is underway (the norms of Ukrainian legislation must be comparable with EU law and the decisions of the Court of Justice of the EU, which are sources of EU law); this is required by the principle of the rule of law; mechanisms of control and judicial protection in the field of ecology and climate are being developed.

It is noted that the decision in the case of C.Z. and Others v. ILVA SpA and Others (2024) marks a transition to a new level of climate responsibility: now the state can no longer limit itself to formal compliance with directives, it must act precisely taking into account current scientific data on climate risks.

It is shown that the Court of Justice of the EU has become one of the central actors in the formation of European climate governance. Its decisions are gradually transforming climate policy from a declaration into an imperative, when EU Member States bear legal responsibility for violating climate and energy obligations.

Keywords: EU Court of Justice, climate law, energy policy, environmental law, rule of law, access to justice, directive, regulation, proportionality, implementation, protection in court, source of law, right to a healthy environment, climate risks.

Problem statement

As global climate change becomes increasingly important, judicial authorities in the EU and neighboring jurisdictions are increasingly considering whether and under what conditions states or companies can be held liable for insufficient measures to reduce emissions, protect the environment and adapt. The decisions of the Court of Justice of the European Union (hereinafter referred to as the CJEU) create important guidelines for the EU Member States and other legal systems, such as: on the legal

obligation of states, the legal nature of climate obligations and access to justice procedures for climate claims. Ukraine is integrating with the EU [1], and therefore must bring its legislation into line with EU law [2], one of the sources of which is the decisions of the Court of Justice of the European Union. Moreover, Ukraine shares the values of the EU [3], and therefore the given vector of development of regulatory and legal regulation, the case law of the Court of Justice of the European Union are compatible with the national legislation of Ukraine. They are a guide for its development.

Therefore, the study of climate cases that were in the case law of the Court of Justice of the European Union is relevant.

Research

Joanna Setzer is a leading researcher in the field of climate litigation, particularly in Europe. She is actively studying the impact of human rights on climate law and the role of courts in ensuring climate justice. Her work covers the analysis of strategic climate litigation, the interaction between national courts and the CJEU, and the impact of international law on national judicial systems [4]. Christina Eckes examines the use of EU law as a tool in national climate litigation. She analyses how national courts can apply EU law to protect climate rights, and discusses the limitations and possibilities of this approach [5]. Maxime Bennemann is co-author of a study analysing the transformation of European climate litigation. He examines key innovations and opportunities emerging in the case law of the CJEU on climate cases [6]. Analisa Savaresi examines the role of human rights in climate litigation, particularly in the context of national courts. She examines how indigenous peoples' rights can be used to protect against climate change, and the role of international law in this process [7]. Ekaterina Aristova is the editor of a study that analyses climate lawsuits against states and corporations in Europe. She examines how these lawsuits can stimulate action on climate change and what legal strategies are used in such cases [8]. Tiffany Chan is the co-author of a study that assesses the transformation of European climate justice. She analyses key decisions such as the "KlimaSeniorinnen", "Duarte Agostinho" and "Carême" cases, and explores the innovations and opportunities they open up in the case law of the CJEU [9]. These studies provide a theoretical framework that explains why case law can be an effective tool for influencing climate policy, and also provide a conceptual framework for analysing the role of human rights, EU law and international law in climate disputes.

The purpose of this article is to reveal the role of the decisions of the Court of Justice of the EU in climate cases, their impact on the national legislation of the EU member states and Ukraine.

Presentation of the main material

Climate change is one of the most pressing global problems of our time. It affects the economy, social spheres and law enforcement.

In the EU, the so-called «climate regulation» is based on such sources of law as: Art. 191 of the Treaty on the Functioning of the European Union [10], which enshrines EU environmental policy, directives and regulations (Directive 2003/87/EC on the greenhouse gas emissions trading scheme, Directive 2010/75/EU on industrial emissions, other regulatory acts, etc.), the Charter of Fundamental Rights of the EU (Article 37 ("Environmental protection") and Article 35 ("Health protection"). It is the Court of Justice of the EU that plays a key role in the interpretation and application of this legislation, which makes its practice an important object of scientific research.

The decisions of the Court of Justice of the EU are dynamic and often involve complex interrelationships between EU directives, national legislation and international norms.

In the case of Armando Ferrão Carvalho and Others v. European Parliament and the Council the CJEU [11] dismissed the applications due to the applicants' failure to meet the criterion of specific individual interest (standing). The further – the more this criterion will become key in deciding the admissibility of the application.

«In C.Z. and Others v Ilva SpA» the CJEU [12] held that Member States, when granting permits for an installation, must take into account not only the expected emissions but also those pollutants which are already scientifically recognised and which can be linked to the op-

eration of the installation. The Court's judgment in the case of «C.Z. and Others v Ilva SpA» underlines the obligation of national authorities to ensure compliance with environmental standards, even in disputes between private individuals and operators of industrial facilities. The Court confirmed that EU directives have direct effect and their requirements must be integrated into national processes. This judgment strengthens the role of national courts in ensuring the realization of the right to a healthy environment. Ukraine, when integrating with the EU, must take into account the principles of direct effect of directives in its national legislation. This includes ensuring effective judicial protection of citizens' environmental rights and integrating EU environmental standards into national practice.

In «Arcelor Atlantique et Lorraine and Others v. Premier Ministre» (2008) [13] a steel company challenged Directive 2003/87/EC for alleged infringement of the principle of equality, as CO_2 emissions were not regulated in the same way for all sectors. The Court's legal position was that it confirmed that the ETS Directive was consistent with the principle of equality, as Member States had scope to differentiate measures by sector, provided that this was objectively justified. The Court's judgment helped to establish the primacy of the principle of effectiveness of climate policy over formal equal treatment.

It should be noted that in this case the Court of Justice of the EU confirmed that Member States have the right to establish their own rules within the framework of the emissions trading system, provided that they do not contradict the objectives of the EU climate policy. The Court of Justice of the EU also emphasized the importance of the principle of proportionality and the need to ensure a balance between environmental objectives and economic interests. Ukraine, integrating with the EU, must develop its own emissions trading system, taking into account the principles of proportionality and ensuring a balance between environmental and economic interests. This also includes the adaptation of national legislation to EU standards in the field of climate policy.

In «Air Transport Association of America v. Secretary of State for Energy and Climate Change» (2011) [14] US airlines challenged the application of the ETS to flights between the EU and third countries. The Court found that the application of the ETS did not violate international law and the principle of territoriality, as part of the flight took place in EU airspace. The Court's decision legitimised the extraterritorial effect of EU climate mechanisms, which became the basis for stricter regulations in the transport sector.

We emphasize: the decision of the Court of Justice of the EU confirmed the right of the EU to regulate greenhouse gas emissions from aviation transport, even if part of the flight takes place outside the EU. The Court of Justice of the EU also emphasized the importance of achieving the EU climate goals and ensuring the efficiency of the internal market.

Ukraine, integrating its transport policy with the EU, must take into account the principles of regulating greenhouse gas emissions in the aviation sector. This includes adapting national standards to European requirements in the field of climate policy.

In «Carvalho and Others v. Parliament and Council» ("People's Climate Case") (2021) [15] families from Portugal, Germany, Kenya and Fiji sought to have EU regulations setting climate targets declared invalid on the grounds that they were insufficiently ambitious. The action was dismissed by the Court for lack of individual concern (Plaumann standard). The Court emphasised that the damage caused by climate change is of a general nature and does not create individual status for the claimant.

We would like to emphasize: The Court of Justice of the EU confirmed that citizens have the right to challenge EU regulations if they violate their fundamental rights, and also emphasized the importance of ensuring access to justice in cases related to environmental and climate protection. Ukraine must ensure effective access to justice for citizens in cases related to environmental and climate protection. This includes developing the institution of an environmental ombudsman and ensuring transparency in environmentally significant decision-making.

CJEU limited the possibility of mass climate litigation at Union level, which maintains the priority of political mechanisms over judicial ones in setting climate targets.

In the case of «C.Z. and Others v. ILVA SpA and Others» (2024) [12], Italian citizens complained that a steel company had been granted a permit to operate without due account being taken of emissions harmful to health. The Court found that Member States are obliged to take into account all scientifically known pollutants when granting permits, even if they are not expressly listed in the directives. The CJEU introduced an extended standard of scientific justification for environmental decisions: the State must act proactively, not formally. This judgment effectively brings the CJEU's approach closer to the doctrine of due diligence in climate law.

In «Commission v. Poland (Energy Policy)» (2023) [16], the Commission challenged Polish measures on coal-fired generation as incompatible with Directive 2010/75/EU on industrial emissions. The Court found a violation and ruled that a State cannot justify non-compliance with obligations on the grounds of economic interests if they conflict with EU climate rules. The Court in this judgment established the priority of environmental and climate obligations over the energy sovereignty of Member States.

«Commission v. Poland (Energy Policy)» shows that some States see the practice of the CJEU as a threat to their sovereignty or as excessive interference in national energy/climate regulation. This stimulates further debate: should States have more freedom to choose climate policies or should EU case law regulate such matters more strictly?

The CJEU rulings state that Member States should take into account climate commitments not as a political choice but as a legal obligation. For example, in the case of «C.Z. and Others v. ILVA SpA and Others», an EU Member State (Italy) had to take into account all emissions, including those that were not initially assessed, setting a precedent that the implementation of permits should be climate-oriented. This practice leads to increased responsibility of national authorities: they should take into account scientific data, climate risks, pollution, and not only formal criteria.

As can be seen, the CJEU adheres to the classic Plaumann doctrine of individual standing and does not open the way to "mass climate claims" without individual elements. This encourages EU Member States to review national procedural law in order to provide effective remedies.

The decision of any judicial institution must be enforced [17].

The impact of the above-mentioned judgments of the Court of Justice of the EU on the national legislation of the EU Member States is as follows: first, states had to introduce stricter environmental impact assessment procedures; requirements for issuing emission permits were strengthened; climate risks began to be taken into account as part of the permitting procedures. This means that states should not only make political decisions, but also enshrine them in legislation. For example, national laws on permitting procedures (e.g. Italy, Spain, Poland) were amended to take into account the principle of precaution and proper environmental assessment after the ILVA and Arcelor judgments. There was a tendency to integrate climate considerations into all areas of public policy: transport, energy, construction. National administrative courts began to directly refer to the judgments of the CJEU, in particular in cases concerning emission permits (Conseil d'État, France, 2024; Verwaltungsgericht Berlin, 2025). The powers of environmental impact assessment bodies have also been expanded: they are now required to take into account cumulative climate effects.

Although the Court of Justice of the EU deals with so-called climate cases, the reality is that it is difficult to prove that a specific act or omission of a state or company caused harm to a specific applicant. The CJEU follows strict procedural criteria, which complicates cases.

Today, there is a risk that EU Member States will interpret court decisions as pressure on their policies or as interference with national sovereignty. This could lead to diplomatic or political opposition. There is also the challenge of how to combine the democratic process (policy choice) with legal accountability (should the court "dictate" climate policy or only monitor its compliance with the law?).

The Court of Justice of the EU has therefore become one of the central actors in shaping European climate governance. Its decisions are gradually transforming climate policy from a declarative sphere into an objectively binding legal field in which Member States bear concrete

legal responsibility. Case law may develop new doctrines: for example, on the "realization of the right to a healthy environment", on the obligation of States to "anticipate" climate risks, rather than just react.

Conclusions

The CJEU's decisions in climate cases are gradually shaping the legal framework according to which EU Member States must implement climate policy not only as a matter of policy but as a legal obligation. The CJEU is developing an autonomous "climate doctrine" of EU law, combining environmental principles, administrative accountability and the balance between the freedom of states and their obligations. The Court does not only interpret norms, but also effectively creates standards for state conduct in the climate field.

The CJEU's decisions are increasingly influencing national law, administrative procedures and permitting practices. At the same time, there are also the following challenges: in terms of reconciling democratic choice and policy, on the one hand, with legal accountability, on the other; overcoming barriers to access to justice.

The CJEU judgment in C.Z. and Others v. ILVA SpA and Others (2024) marks a transition to a new level of climate responsibility: now the state can no longer limit itself to formal compliance with directives, it must act precisely taking into account current scientific data on climate risks. The impact of this decision on EU Member States and Ukraine is manifested in three areas: adaptation of legislation (especially permitting procedures); strengthening of judicial control over executive bodies; paradigm shift: climate policy is not a political declaration, but a legal obligation.

References

1. Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони від 27 червня 2014 р. URL: https://zakon.rada.gov.ua/laws/show/984_011#Text.

2. Deshko L., Vasylchenko O., Sherbak I., Galai V., Medvid A. Ukraine's international liabilities on initiation of measures for public health protection and the role of local au thorities in implementation of health care policy. Georgian medical news. 2021. Vol ume 312. P. 163–168.

3. Дешко Л.М. Про галузеву належність медичного права України. Право України. 2006. № 1. С. 120-124.

4. Setzer J. Mapping the Whole of the Moon: An Analysis of the Role of Human Rights in Climate Litigation. URL: https://www.lse.ac.uk/granthaminstitute/profile/joana-setzer/

5. Eckes C. Strategic Climate Litigation before National Courts: Can European Union Law Be Used as a Shield? German Law Journal. 2024. URL: https://www.cambridge.org/core/journals/german-law-journal/article/strategic-climate-litigation-before-national-courts-can-european-union-law-be-used-as-a-shield/DBB864D1A4A833253EA43E3E8E0116AD

6. Bönnemann M., & Tigre M. A. The Transformation of European Climate Litigation. Sabin Center for Climate Change Law. 2024. URL: https://scholarship.law.columbia.edu/sabin_climate_change/235/

7. Savaresi A. Human Rights-Based Climate Litigation, National Courts, and the Role of International Law. URL: https://www.tandfonline.com/doi/full/10.1080/14754835.2025.2567271

8. Aristova E., & Lim J. Climate Litigation in Europe Unleashed: Catalysing Action against States and Corporations. URL: https://www.law.ox.ac.uk/sites/default/files/2024-07/Climate%20Litigation%20in%20Europe%20Unleashed_Catalysing%20Action%20against%20States%20and%20Corporations.pdf

9. Chan T., Higham, C., & Setzer J. The Transformation of European Climate Litigation. URL: https://www.lse.ac.uk/granthaminstitute/publication/the-transformation-of-european-climate-litigation/

10. Консолідовані версії Договору про Європейський Союз та Договору про функціонування Європейського Союзу з протоколами та деклараціями. URL: https://zakon.rada.gov.ua/laws/show/994_b06#Text.

11. Armando Ferrão Carvalho and Others v. European Parliament and the Council CJEU

12. Judgment of the Court (Grand Chamber) of 25 June 2024, C.Z. and Others v. Ilva SpA in Amministrazione Straordinaria, Case C-626/22, ECLI:EU:C:2024:542. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62022CJ0626

13. Judgment of the Court (Grand Chamber) of 16 December 2008, Arcelor Atlantique et Lorraine and Others v Premier ministre, Case C-127/07, ECLI:EU:C:2008:728. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62007CJ0127

14. Judgment of the Court (Grand Chamber) of 21 December 2011, Air Transport Association of America and Others v Secretary of State for Energy and Climate Change, Case C-366/10, ECLI:EU:C:2011:864. URL: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62010CJ0366

15. Judgment of the Court (Grand Chamber) of 25 March 2021, Armando Carvalho and Others v European Parliament and Council, Case C-565/19 P, ECLI:EU:C:2021:252. URL: https://curia.europa.eu/juris/liste.jsf?num=C-565/19P

16. Judgment of the Court (Grand Chamber) on Commission v. Poland (Energy Policy), Case C-204/09 (and related rulings).12. Deshko L. Criteria for the court's compli ance with the obligation to provide justifi cation of its decisions. Teise. 2016. № 99. P. 186–193. www.zurnalai.vu.lt/teise/arti cle/view/10121.

17. Deshko L. Criteria for the court's compli ance with the obligation to provide justifi cation of its decisions. Teise. 2016. № 99. P. 186–193. www.zurnalai.vu.lt/teise/arti cle/view/10121.

Дешко Л.М.,
доктор юридичних наук, професор, професор кафедри конституційного права Київського національного університету імені Тараса Шевченка
https://orcid.org/0000-0001-5720-4459

КЛІМАТИЧНІ СПРАВИ В ПРАКТИЦІ COURT OF JUSTICE OF THE EUROPEAN UNION ТА ВПЛИВ ЙОГО РІШЕНЬ НА НАЦІОНАЛЬНЕ ЗАКОНОДАВСТВО ДЕРЖАВ-УЧАСНИЦЬ ЄС ТА УКРАЇНИ

У статті здійснено комплексний аналіз ключових «кліматичних справ» у практиці Суду Європейського Союзу та показано їхній вплив на національне законодавство держав-учасниць ЄС і України. Проаналізовані рішення Суду ЄС в справах «C.Z. and Others v. Ilva SpA», «Société Arcelor Atlantique et Lorraine v. Premier ministre», «Air Transport Association of America v. Secretary of State for Energy and Climate Change», «Armando Carvalho and Others v. European Parliament and Council» та «Commission v. Poland (Energy Policy).

Зроблено висновок, що Суд ЄС формує підхід, відповідно до якого принципи захисту довкілля та сталого розвитку включаються в саму «конституційну» основу правової системи. Встановлено, що рішення Суду ЄС визначають правові орієнтири для держав-членів ЄС щодо виконання кліматичних і енергетичних зобов'язань, розвитку механізмів контролю за викидами, регулювання екстериторіальних аспектів діяльності суб'єктів господарювання, інтеграції принципів сталого розвитку в національне законодавство. Проілюстровано вплив рішень Суду ЄС у кліматичних справах на національне право Італії, Іспанії, Польщі. Для України рішення Суду ЄС у цих справах мають практичне значення – йде адаптація національного законодавства України до стандартів ЄС (норми законодавства України мають бути спів мірними з правом ЄС і рішеннями Суду ЄС, які є джерелами права ЄС); цього вимагає принцип верховенства права; відбувається розвиток механізмів контролю та судового захисту у сфері екології та клімату.

Зазначено, що рішення в справі C.Z. and Others v. ILVA SpA and Others (2024) знаменує перехід до нового рівня кліматичної відповідальності: тепер держава вже не може обмежитись формальним дотриманням директив, вона повинна діяти саме з урахуванням актуальних наукових даних про кліматичні ризики.

Показано, що Суд ЄС став одним із центральних акторів у формуванні європейського climate governance. Його рішення поступово перетворюють кліматичну політику з декларації на імператив, коли держави-члени ЄС несуть юридичну відповідальність за порушення кліматичних і енергетичних зобов'язань.

Ключові слова: Суд ЄС, кліматичне право, енергетична політика, екологічне право, верховенство права, доступ до правосуддя, директива, регламент, пропорційність, імплементація, захист в суді, джерело права, право на здорове довкілля, кліматичні ризики.