

Neubauer, et al. v. Germany¹

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Case Categories:

- [Suits against governments](#)
- [GHG emissions reduction and trading](#)
- [Other](#)

Jurisdictions:

- [Germany](#)
- [Federal Constitutional Court](#)

Principal Laws:

- [Germany](#)
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- [Federal Climate Protection Act of 2019 \(KSG\)](#)

Summary:

In February 2020, a group of German youth filed a legal challenge to Germany's Federal Climate Protection Act (“Bundesklimaschutzgesetz” or “KSG”) in the Federal Constitutional Court, arguing that the KSG's target of reducing GHGs by 55% until 2030 from 1990 levels was insufficient. The complainants alleged that the KSG therefore violated their human rights as protected by the Basic Law, Germany's constitution.

The complainants alleged that the KSG's 2030 target did not take into account Germany's and the EU's obligation under the Paris Agreement to limit global temperature rise to "well below 2 degrees Celsius." The complainants argued that in order to "do its part" to achieve the Paris Agreement targets, Germany would need to reduce GHGs by 70% from 1990 levels by 2030. Their claims mainly arose out of alleged violations of the fundamental right to a future consistent with human dignity enshrined in Article 1 (1), and the fundamental right to life and physical integrity enshrined in Article 2 (2) of the Basic Law, both in conjunction with Article 20a of the Basic Law, which binds the political

¹ <https://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>

process to protect the natural foundations of life in responsibility for future generations. Complainants argued that by requiring insufficient short and medium term GHG reductions and allowing for the transfer of emission allocations between Germany and other EU Member States, despite the inadequacy of the overall EU emissions reduction target, the KSG allowed for climate impacts that violate their fundamental rights.

The complainants asked the Federal Constitutional Court to declare that the German legislature violated the Basic Law by only requiring a 55% reduction in GHGs from 1990 levels by 2030 and to declare that the legislature was required to issue new reduction quotas to ensure that Germany's emissions are kept as low as possible, taking into account the principle of proportionality.

Three other groups of claimants filed simultaneous constitutional complaints targeting the government's climate protection measures: (i) BUND (Friends of the Earth Germany) and the Association of Solar Supporters and Others in November 2018; (ii) Yi Yi Prue and other individuals from Bangladesh and Nepal in January 2020; (iii) Steinmetz and other individual German youths in January 2020. The Constitutional Court decided jointly on these complaints.

On April 29, 2021, the Federal Constitutional Court published its decision striking down parts of the KSG as incompatible with fundamental rights for failing to set sufficient provisions for emission cuts beyond 2030. The Court found that Article 20a of the Basic Law not only obliges the legislature to protect the climate and aim towards achieving climate neutrality, but "also concerns how environmental burdens are spread out between different generations". For the first time in its jurisprudence, the Court stated that "the fundamental rights - as intertemporal guarantees of freedom - afford protection against the greenhouse gas reduction burdens imposed by Art. 20a of the Basic Law being unilaterally offloaded onto the future". It further stated that the KSG's emission provisions in question constituted an "advance interference-like effect", which possibly violates the complainants' fundamental rights and thus renders the complaints admissible.

Accepting arguments that the legislature must follow a carbon budget approach to limit warming to well below 2°C and, if possible, to 1.5°C, the Court found that legislature had not proportionally distributed the budget between current and future generations, writing "one generation must not be allowed to consume large portions of the CO2 budget while bearing a relatively minor share of the reduction effort, if this would involve leaving

subsequent generations with a drastic reduction burden and expose their lives to serious losses of freedom”. The Court also noted that the fact that “no state can resolve the problems of climate change on its own (...) does not invalidate the national obligation to take climate action.”

The Court ordered the legislature to set clear provisions for reduction targets from 2031 onward by the end of 2022. In response to the decision, the federal lawmakers passed a bill approving an adapted KSG that requires, at a minimum, reduction of 65% in GHGs from 1990 levels by 2030. It has been in effect since August 31, 2021.

At Issue: Youth argued that Germany's GHG reduction goals violated human rights.