

Editorial Comments: The German and the Hungarian Constitutional Court's Climate Decisions

Similarities and Differences

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1. Introduction

About 25 years ago, my grandfather – a keen industrialist and mining engineer handed me a book. He said that this book is extremely important and I should keep a copy of it on my shelf. The book was titled '*The Limits to Growth*'¹ and was published in 1972. Half a century later, two groundbreaking European constitutional court decisions were brought which have the potential to effect change not only in the realm of climate change mitigation and adaptation, but also in the legislators' approach to the environment and the interests of future generations.

In what follows, I make a rough comparison of the German *Klimabeschluss*² and the Hungarian *Klímahatározat*,³ without delving deeply into the individual decisions.⁴ I will first describe the importance of the German

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1 Donatella H. Meadows *et al.*, *The Limits to Growth*, Club of Rome, Potomac Associates, 1972.

2 BVerfG, Beschluss des Ersten Senats vom 24. März 2021 – 1 BvR 2656/18, Rn. 1–270, at https://www.bverfg.de/e/rs20210324_1bvr265618 (hereinafter: *Klimabeschluss*).

3 Decision No. 5/2025. (VI. 30.) AB.

4 For a more comprehensive study on the *Urgenda* decision and the *Klimabeschluss* and their impact on the Hungarian petition, see Petra Lea Lánkos, 'The Possible Impact of *Urgenda*

Constitutional Court's jurisprudence for the development of Hungarian constitutional thinking. Then, I will briefly compare the petitions submitted in the German and the Hungarian case, and finally, I shall compare the two decisions on the basis of a limited set of aspects gleaned from scholarly literature discussing the *Klimabeschluss*. It is worth noting that the German petitioners' petitions were only available in summary through the text of the *Klimabeschluss*, while the Hungarian petition is publicly available on the Hungarian Constitutional Court's website.⁵

2. Why Compare the German and the Hungarian Constitutional Courts' Decisions on the Climate Acts?

Just 6 months after the *Klimabeschluss* was rendered in Karlsruhe, petition No. II/3536/2021 was submitted to the Hungarian Constitutional Court by 50 members of the Hungarian National Assembly. Similarly to the petitioners before the *Bundesverfassungsgericht*, the Hungarian petition challenged the national Climate Change Act for its insufficient and non-specific emission reduction targets. Indeed, the Hungarian petition expressly referred to the *Klimabeschluss* of the German Constitutional Court, and the constitutional legal bases invoked, arguments made by the petitioners also showed similarities.

In general, it is safe to say that Hungarian constitutional jurisprudence is inspired by the *Bundesverfassungsgericht*'s rulings. The reasons for this are manifold: (i) the development of Hungarian law within the Austro-Hungarian Monarchy; (ii) the German language as an official language and then an important minority language within Hungary, and later, a popular foreign language among Hungarian speakers, making law and jurisprudence in the German language accessible to Hungarian lawyers; (iii) and finally, the focus of the first members of the Hungarian Constitutional Court on the practice of the *Bundesverfassungsgericht* afforded German constitutional law and jurisprudence a special place in the sources of inspiration for the development of Hungarian constitutional thinking.⁶ When perusing Hungarian

and the *Klimabeschluss* on Climate Litigation on the Example of the Petition Pending Before the Hungarian Constitutional Court', *Wroclaw Review of Law, Administration & Economics*, Vol 13, Issue 1, 2023, pp. 1–23.

5 See at <https://alkotmanybirosag.hu/ugyadatlap/?id=6E82DC86EA198AF3C12587640033C9F2>.

6 László Sólyom, 'Az alkotmány Őrei', in *Mindentudás Egyeteme* 6., Kossuth Kiadó, Budapest, 2006, p. 331.

Constitutional Court decisions, one can frequently find references to, and citations from, *Bundesverfassungsgericht* decisions. (Perhaps the new Hungarian constitution's title: Fundamental Law is also an allusion to the Basic Law of Germany.)

One can only speculate, but it is perhaps this strong connection with German constitutional law and jurisprudence (and the success of the German petition) why the Hungarian petitioners also sought inspiration from the *Klimabeschluss*, including both the German petitioners' arguments and the findings of the *Bundesverfassungsgericht*. While these tendencies in themselves would suffice as a reason for comparison, a brief look at the main pillars of the two constitutional courts' reasoning reveals similar structures, that may serve as a model for other courts in developing their environmental jurisprudence for the benefit of future generations.

3. Petitions and Legal Bases

There are important differences underlying the two decisions, which have to do with standing and the constitutional legal bases available for environmental related claims. While the petitioners before the *Bundesverfassungsgericht* proceeded in the framework of an *actio popularis*, with standing afforded to even petitioners residing outside of Germany, the Hungarian petitioners were 50 Members of Parliament, proceeding under their constitutional right to seek constitutional review of norms – without having to substantiate any impairment of rights or interests [Article 24(2)(e) of the Fundamental Law and Section 32(2) of the Act on the Constitutional Court]. Owing to the lack of *actio popularis* under contemporary Hungarian constitutional law, it was most expedient for the Hungarian MPs to make use of their privilege to initiate the procedure before the Hungarian Constitutional Court.

The petitioners proceeding before the *Bundesverfassungsgericht* sought the annulment of the German Climate Protection Act for an unconstitutional restriction of the right to life and limb, human dignity, the right to property and the non-fulfillment of the state's obligation to protect the environment. Meanwhile, the Hungarian petitioners sought the "examination of whether the Climate Act conflicts with international treaties", namely the Paris Agreement, as well as the review of the unconstitutional restriction of the right to human dignity, physical and mental health, the right to a healthy environment and Article P(1) foreseeing a general duty to protect natural resources, and to ensure legal certainty.

In fact, the Hungarian MPs expressly referred to the *Klimabeschluss*, noting the largely similar German and Hungarian constitutional provisions and related constitutional court practice. The Hungarian petitioners further referred to the findings of the *Bundesverfassungsgericht*'s ruling on the state's obligation to protect the climate, the need to balance the increasingly important climate protection against other constitutional interests and principles, as well as the impossibility of avoiding liability for climate protection by pointing to scientific uncertainties or other states' violations.

Constitutional provisions referred to in	
the German petition <i>Grundgesetz</i>	the Hungarian petition <i>Fundamental Law</i>
Article 1(1) – human dignity	-
Article 2 – the right to life and physical integrity	Article XX – right to physical and mental health
-	Article XXI – right to a healthy environment
Article 14 – right to property	-
-	Article B) – clarity of norms, legal certainty (rule of law)
-	Article Q) – compliance with international law
Article 20a – state's obligation to protect the environment	Article P) – state's and everyone else's obligation to protect the environment

4. Similarities and Differences

In what follows I will concentrate on the main aspects of the two constitutional court's decisions, as highlighted in the (predominantly German scholarly) literature on the *Klimabeschluss*. In particular, the literature on the *Bundesverfassungsgericht*'s decision highlighted the novelty of extending constitutional review to address future fundamental rights violations, the relevance of science as a legislative requirement and a yardstick of review, and the obligation of the state towards future generations. When comparing

the two constitutional decisions along these aspects, they do show slight nuances in phrasing, however, the similarities between them are clear.

4.1. Framing Future Risks as Restrictions on Fundamental Rights

The *Bundesverfassungsgericht* frames the omission to set clear targets and measures in the German Climate Act as a fundamental rights violation through the figure of the so-called *Eingriffssähnliche Vorwirkung* (advance interference-like effect), stating that present fundamental rights are affected by legislative omission since this omission puts processes in motion which will cause irreversible harm to these fundamental rights.⁷ Owing to the fact that when the restriction on the fundamental rights will be actually realized all remedies taken will be futile, claims regarding (future) fundamental rights restrictions in such situations are admissible.⁸

The Hungarian Constitutional Court does not explicitly state that the lack of clear and effective targets amounts to a (future) restriction of the fundamental rights invoked, however, it does arrive at the conclusion that the legislator's failure violates Hungary's constitutional obligation to safeguard fundamental rights.⁹ In this regard, while side-stepping the issue of temporality, the Hungarian Constitutional Court does accept that restrictions, while not current, can lead to a finding of unconstitutionality.

4.2. Balancing the Rights of Present and Future Generations

Both the *Bundesverfassungsgericht* and the Hungarian Constitutional Court refer to the obligation to take into consideration and balance the rights and interest of present and future generations when considering legislative options for the protection of the climate. However, as the *Bundesverfassungsgericht* points out, future generations' interests do not take precedence over those of others but must be balanced against other constitutional interests and principles. That is, freedom of action should be distributed propor-

⁷ Anna-Julia Saiger, 'The Constitution Speaks in the Future Tense: On the Constitutional Complaints Against the Federal Climate Change Act', *Verfassungsblog*, 29 April 2021; Petra Minnerop, 'The 'Advance Interference-Like Effect' of Climate Targets: Fundamental Rights, Intergenerational Equity and the German Federal Constitutional Court', *Journal of Environmental Law*, Vol. 34, Issue 1, 2022, pp. 135–162.

⁸ *Klimabeschluss*, marginal note 130.

⁹ Decision No. 5/2025. (VI. 30.) AB, Reasoning [130].

tionately between the generations.¹⁰ This approach still ensures ample room for political choice in framing national environmental policy.

As for the Hungarian Constitutional Court, it draws attention to the fact that present generations have three obligations in respect of the environment: to preserve choice, quality and access for future generations. This means actual choices in plural; a quality of environment where the natural environment is passed on to future generations in at least the same condition as it was given by past generations, and an actual restriction on access for present generations to natural resources, since their access is dependent on taking the equitable interests of future generations into account.¹¹

While the approach of the two courts is similar, the Hungarian Constitutional Court's requirement that the quality of the national environment must be the same as what we had inherited from the previous generation (prohibition of retrogression or non-derogation principle) is an extremely stringent requirement: it leaves no leeway for contemporary politicians regarding actions which possibly lead to a degradation of the environment.

4.3. The Constitutional Relevance of Science

An important aspect of the two decisions is the role of science in legislating against climate change and – incidentally – in reviewing the constitutionality of the respective legislative act. The German Constitutional Court's reasoning is that while

“there is scientific uncertainty regarding causal relationships of environmental relevance, [the *Grundgesetz*] places constraints on the legislator's decisions – especially those with irreversible consequences for the environment – and imposes a special duty of care on the legislator, including a responsibility for future generations.”¹²

In addition, the *Klimabeschluss* itself cites several scientific findings on climate change when reviewing the climate act.

The Hungarian Constitutional Court emphasizes that the legislator has a duty based on Article P of the Fundamental Law to evaluate the expected impact of its legislation based on the prevailing scientific consensus, the pre-

10 *Klimabeschluss*, marginal note 183.

11 Decision No. 5/2025. (VI. 30.) AB, Reasoning [49].

12 *Klimabeschluss*, marginal note 229.

cautionary principle and the principle of prevention.¹³ This necessarily means a requirement of legislation based on scientifically grounded facts, but also a role for science in the constitutional review of legislation.

4.4. Duty of Care and Public Trust

The *Bundesverfassungsgericht* emphasizes that Article 20a of the *Grundgesetz* imposes a special duty of care on the legislator, who must take into account possible serious and irreversible damage caused by its legislation and in particular, its effect on future generations.¹⁴

This idea finds an expression in the public trust doctrine introduced into Hungarian constitutional jurisprudence with the ‘forest act decision’ [Decision No. 14/2020. (VII. 6.) AB]. According to this approach, the Hungarian state holds in trust the natural environment for future generations as beneficiaries, while present generations use this environment to the extent that these assets are not endangered. The Hungarian Constitutional Court explains that

“[t]he public trust doctrine is a means of enforcing the principle of intergenerational equity: the public trust doctrine implies the responsible stewardship of the values belonging to the common heritage of the nation by the present generation, in accordance with the requirement of fiduciary trust, and intergenerational equity defines the framework for the use and exploitation of these values, taking into account equally and to the same degree the protection of natural, environmental and cultural values for their own sake, as well as the interests of the present and future generations”.¹⁵

According to the constitutional courts, these obligations and guarantees amount to ‘intertemporal guarantees of freedom’ (*Bundesverfassungsgericht*) or ‘intergenerational equity’ (Hungarian Constitutional Court). In addition, both courts refer to international law sources, and arrive at the finding that the national climate acts are unconstitutional due to inadequate targets and lack of specificity regarding measures.

13 Decision No. 5/2025. (VI. 30.) AB, Reasoning [52].

14 *Klimabeschluss*, marginal note 229.

15 Decision No. 5/2025. (VI. 30.) AB, Reasoning [94].

	<i>Bundesverfassungsgericht</i>	Hungarian Constitutional Court
Core Finding	Post-2030 reduction targets lack specificity; violates future freedoms	2030 target (40 %) inadequate; lack of mitigation, adaptation, resilience measures; violates constitutional obligations
Intergenerational Justice	'intertemporal freedom'	intergenerational equity
International Law's Role	Paris Agreement, EU law	Paris Agreement, EU law, ECtHR (<i>KlimaSeniorinnen</i> judgment)

What is clear from this brief comparison is the palpable tendency of 'judicial learning' where courts, but also petitioners are strongly inspired by successful climate cases. Both the *Klimabeschluss* and the Hungarian decision highlight the increasing willingness of courts to interpret constitutional obligations and scientific evidence as requiring concrete action on climate change. In addition, an increasing focus is placed on future generations and their interests. These developments suggest a trend where the judiciary acts as a crucial actor in climate policy, when national legislators fall short of achieving climate goals. The German *Klimabeschluss* has shown that climate obligations are rooted in constitutional rights and must be implemented with specificity and urgency. The Hungarian petition and decision, for their part demonstrate openness to transnational legal learning, and an awareness that courts can correct legislative inertia, when legislative measures are vague, ineffective, and non-compliant with the constitution.