

Refia Kadayifci, LLM (Frankfurt, Legal Theory)

PhD student in Louvain University (Law)

rkadayifci@gmail.com

Can Anti-Discrimination Law be Useful in Climate Litigation?

Climate change and its adverse effects continue to be very significant. Recent climate cases, the environmental justice literature and developments both in the case law and in the theory of anti-discrimination law inspire us in framing environmental issues as discrimination issues.

At present, the U.S. Oregon Youth's Climate Case, proceeding in the U.S., directly invokes anti-discrimination law by introducing young & future generations as the discrimination victims of the State's climate inaction. Moreover, even if no legal action took place, a resolution which proposes 'recognition of the disparate impact of climate change on women' was submitted to the U.S. Congress in 2015. There are numerous empirical data and global commitments to confirm this linkage between gender equality and climate change.

In Europe, the Hague District Court has ordered the Dutch government to cut its greenhouse gas emissions (GHGs) by at least 25% compared to 1990 levels by the end of 2020. Plaintiffs did not claim accountability of the State against the non-discrimination principle but they explicitly point out the discriminatory effect of the climate change on children and future generations. The Court also referred to the adverse effect of the temperature rise resulting from climate change by stating: "the temperature rise will lead to heat related deaths, particularly among the elderly and children." Last but not least, we have the information that, the non-discrimination duty of the State will be invoked in the Climate Case launched in Belgium.

I aim to explore whether anti-discrimination law offers an appropriate, meaningful and effective basis to challenge the adverse effects of climate change. For this, I identify the possible internal limitations of anti-discrimination law that have been preventing environmental discrimination claims. I also scrutinize the evolutions of both the practice and the theory of anti-discrimination law to discover new avenues to overcome such internal limitations. My research mostly focuses on European Anti-Discrimination Law with regard to race, gender and age.

My hypothesis is that the main limitations of environmental anti-discrimination law can come from at least five sources. First, the grounds on which claimants can be protected may not include certain characteristics. Second, anti-discrimination law may be difficult to apply to environmental matters if we don't manage to frame them as e.g. public goods and services issues or housing issues. Third, evidence of discriminatory intent may be an especially challenging requirement. Fourth, comparators may be harder to identify in environmental cases than in other cases. Fifth, requiring a discriminatory action may be a significant obstacle considering that environmental degradation often stems from inaction. I want to explore whether theory and practice open new avenues on these five fronts.