

**WP6 Caselaw Databases**

***Introductory document: Scope***

*Project N°101061621*

January 2024

1. Introduction: Scope of case law database

The rule of law has been defined as the backbone of any modern constitutional democracy in the EU and one of the founding principles stemming from the common constitutional traditions of all the Member States of the EU[[1]](#footnote-2). Article 2 of the Treaty on European Union (TEU), Article 49 of the TEU and the Preambles to the Treaty and to the Charter of Fundamental Rights of the EU hence make the rule of law one of the main values upon which the EU is based together with respect for human dignity, freedom, democracy, equality, and respect for human rights.

The rule of law requires all public powers to always act within the constraints set out by law, in accordance with the values of democracy and fundamental rights, and under the control of independent and impartial courts’.

Within this context, dissenting actions brough up by citizens against public institutions’ decisions are at the heart of EU democracies and aim at ensuring necessary progress on issues of public concern. Cases of dissensus may be carried out in line with the rule of law and democratic principles and without breaching the law but there are also examples of dissenting actions by populists or nationalist movements seeking to subvert democratic principles, fundamental rights and the rule of law. For the purpose of this project, “dissensus is understood here as the expression of social, political and legal conflicts which take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, public sphere, technocratic and expert arenas…) driven by political, social, legal actors, including state and non-state actors, seeking to maintain liberal democracy, to replace liberal democracy or to restructure liberal democracy” (Brack and Coman 2023).

The reports carried out under WP4 focus on climate strategic litigation and provide an overview of relevant case law related to litigation actions on climate change, initiated by citizens and NGOs before national courts in order to challenge the lack of ambition of specific measures in relation to EU and national strategic objectives or the lack of implementation of such measures.

On the basis of WP4 reports, the team has developed Case Law Database covering 6 EU Member States, as part of Work Package 6 (WP6). However, the scope of WP6 work has gone beyond the climate strategic litigation purpose of WP4 report, to respond to the needs of the partners in the development of training activities as follows:

* First, the tables collect information on climate strategic litigation cases related to climate change brought by citizens and NGOs against public institutions’ decisions before national courts[[2]](#footnote-3).
* In addition, they include cases initiated by various entities (examples: State authority against another authority; State against a company; private against private; company against the State, etc.) or cases in which the climate arguments were raised by the defendants. These cases go beyond strategic litigation as they have been identified either because they represent a form of dissensus or because they illustrate how climate change initiatives can sometimes clash with other individual rights and economic interests. These decisions underscore the need for a balanced approach that addresses climate change and environmental protection while respecting individual rights.
* Finally, to the request of the consortium team, the case law database also covers cases related to the Rule of Law principle in Hungary and cases on equality in Belgium.

1. COM (2014) 158 final Commission Communication A new EU Framework to strengthen the Rule of Law. [↑](#footnote-ref-2)
2. For the purpose of this work, “dissensus is understood here as the expression of social, political and legal conflicts which take place concomitantly in different institutional and non-institutional arenas (parliamentary, constitutional, public sphere, technocratic and expert arenas…) driven by political, social, legal actors, including state and non-state actors, seeking to maintain liberal democracy, to replace liberal democracy or to restructure liberal democracy” (Brack and Coman 2023). [↑](#footnote-ref-3)