

## Opponent's review of the dissertation thesis

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| Dissertation title                 | The Human Rights Dimension of Climate Change                          |
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| Programme of study:                | Theoretical legal sciences – law and legal theory in European context |
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### Introduction

Candidate Xin Li's dissertation titled "The Human Rights Dimension of Climate Change" explores the interlinkages between human rights and climate change, and seeks answers to the research questions of whether human rights instruments have been sufficiently integrated into the international climate protection regime and whether their application makes the enforcement of that regime more effective. This subject is highly topical. Indeed, climate change is evolving faster than expected, according to climate science, and its impacts are and will be enormously complex – including impacts on biodiversity or on reaching irreversible changes at tipping points. It is thus essential to address it. At the same time, the international climate change regime itself is not sufficiently effective. It can be seen from the fact that the nationally determined contributions (NDCs) announced so far, although in line with the Paris Agreement, are not sufficient to meet the global warming target of 1.5 or 2 degrees Celsius.

This is why there is now such a strong demand for the engagement of human rights instruments that can be expected to work more effectively in pushing states to a more vigorous reduction of GHG emissions and faster transition to a low-carbon economy. The topic chosen by the candidate fits perfectly into the current global context, and is thus very productive. The current turbulent shifts in the geopolitical landscape do not change that in principle.

### To the structure and design of the thesis

The 158-page thesis is divided into five parts, which deal step-by-step with the nature of the climate change problem and its impacts on human society and the environment; human rights instruments per se, their nature and entrenchment; the relationship between human rights and climate change; climate litigation; and the assessment and comparison of how the Paris Agreement has affected climate change legislation in China and Germany; followed by a conclusion. The chapters are further divided into subchapters and that structure of chapters and subchapters seems logical.

What I am critical of, however, is first the lack of balance between the main line of explanation, which relates directly to the topic of the dissertation, versus other issues that are relevant to the topic of the dissertation only as background issues. In my opinion, these supporting issues are given an excessive amount of attention that is not necessary; it would be sufficient to address them more concisely and using references to the literature sources. I advocate an approach where the dissertation keeps focused on the main line (the main research question), and any necessary supplementary or background information is addressed by references, not by separate explanations that take up space from the main topic. What I mean is that in a thesis focusing on the human rights dimension of climate change it is not necessary to explain in detail, for example:

- what the physical nature of climate change and the mechanisms of its impacts are;
- what human rights are and where they are enshrined;
- how climate litigation (the whole, not just human rights litigation) has evolved;
- what the nature of tort law litigation is (this question seems completely off-topic to me in the thesis).

The problem that is connected with this excessive attention to the underlying themes, in my opinion, is the insufficient attention to the main line of the argument, which could have been discussed in more detail and more depth. The core parts of the explanation I would therefore personally see be subchapters 3.1 – 3.2; a subchapter directly dedicated to human rights-based climate litigation (not present under 4.1 – possibly should have been instead of 4.2 about tort law); 4.3–4.5 and 5. On the contrary, I was disappointed with the little depth of explanation in these key parts, which would have deserved more study of the literature and its more thorough elaboration in the thesis.

As an example, I would mention the description and analysis of the appearance of human rights in the Paris Agreement, which is in itself a very interesting issue, much discussed in the literature, and very important for the topic of the thesis, but only two paragraphs on p. 44 are devoted to it. There are numerous questions that are calling for answers, for instance: Why are human rights only mentioned in the preamble and how this came about (during the course of the negotiations)? Why is the wording what it is (unusual for human rights language)? Is the list of human rights mentioned there demonstrative or exhaustive? And what exactly does all this mean for the interpretation of the Paris Agreement and for the possibility of using human rights arguments in climate litigation? There is only one reference to the literature there by the author, which leads to a non-legal journal (the other two citations are to reports by international organisations). Yet, plenty of literature exists on this issue.

My second general reservation to the design of the thesis concerns the organization of the explanation and ordering of the arguments. The explanations in the course of the work often look like a mere sequence of information one after another, like a succession of sub-ideas, all of which are somehow related to the topic, but there is no deeper examination of their relationship, no evaluation of their relevance to the main topic, and above all no author's own reflections, his evaluation of the facts presented. This approach of sequencing information from different sources one after the other without more deeply considering them risks resulting in contradictions. For example, on p. 45 above, there is a statement that "Taken as a whole, the UNFCCC, the Kyoto Protocol, and the Paris Agreement illustrate a historical progression in which human rights considerations have begun to enter the lexicon of international climate law". Two paragraphs further, we find a colliding claim that "In sum, the 'absence of human rights considerations' in international climate law tends to be not an absolute void but a reflection of decades-long tension between environmental goals and the recognition of their profound social consequences."

Third, I can't avoid the impression that the author doesn't call some things by their proper names, perhaps because he missed some part of the broad spectrum of literature in some of the sub-questions. For example, the text in 3.4.1 seems to me to be about "just transition", but that word does not appear there. Similarly, p. 68 C. a) seems to be about the CBDR principle, but it is not explicitly mentioned. Finally, 4.5.2 on p. 100 is presumably about "attribution science", or should be, I suspect, pointing towards that.

## To formal aspects of the thesis

First, in terms of language, it should be noted that the thesis is written excellently, without any typos or errors. The language used is readable and, as far as I can judge as a non-native speaker, very good.

Second, if we consider the explanation of the methodology as a formal aspect of the thesis, then it must be said that the thesis does not contain any description of the methodology. It does not define the geographical space it focuses on (the text shows that it has no particular focus – it uses literature, sources, case law and legal circumstances of various continents and countries) nor does it describe methods used to deal with the research questions. In the field of law research, this can be still considered as a widespread though criticized approach. Me personally I would plead for thinking about the methods and progression of the research. The thesis would be more elaborated if there is a clear and thought-out plan. That would also prevent a situation of just adopting ideas available in various sources instead of targeted examination of planned sub-questions.

Third, I would like to comment on the author's work with sources throughout the thesis. In my opinion, the author too often relies on web sources like reports, blogs, encyclopaedias, explainers or short articles, instead of expert literature of the field, which is very rich. For instance, notes No. 220–221 refer to a very short article rather aimed at presenting the research at the LSE to the public while the author Joana Setzer authored a great number of scientific articles that could have been used instead. Moreover, a high number of references lead outside the expert literature – the author is for example citing NGOs' websites (e.g. note No. 222 and many others).

## Individual comments on the content

Here I list some specific comments or questions to think about:

Why does the list of human rights affected by climate change in 3.2.2 not include the right to respect for private and family life while the only one key case study on *KlimaSeniorinnen* is mostly about violating that right?

I like the author's reflections on the climate regime as a "gesture politics", where global agreements have rather a symbolic nature, while the climate litigation, in contrast, has the potential to bring real results, on p. 83. (Still, I was disappointed with referring here again to policy briefs, instead of scientific literature.)

In the *KlimaSeniorinnen* case study, I cannot agree with the author's approach to refer to environmental and climate cases or aspects interchangeably. On the contrary, the ECtHR explicitly departed in this first climate judgment from its previous environmental case law rules, and for future climate cases, set a different approach with substantial deviations compared to the traditional environmental jurisprudence (para 422). From this perspective, the author's claims in section E on p. 98 are wrong. Moreover, I miss any explanation about "positive obligations of states" in relation to climate change, which I believe is absolutely key in the *KlimaSeniorinnen* judgment (esp. paras 544–

554), and differentiation between the victim status of individuals and associations, which I find crucial for any future strategies of potential applicants to ECtHR.

It is interesting for a European audience to read about the Chinese New Air Law and about the supposed influence of the Paris Agreement on the Chinese economic strategies and legislation. Also I really enjoyed reading the considerations about whether China is a developing or developed country.

## Conclusion

In my review, I raised a number of critical comments, but on the other hand I positively evaluated other aspects of the thesis. Overall, I rate the thesis as slightly below average, but still meeting the requirements for doctoral dissertations. Therefore, in accordance with Article 82 of the Rules for the Organization of Studies at the Faculty of Law of Charles University, I recommend it for defence before the dissertation defence committee.

## Questions for the defence

For the defence, I offer two questions for the candidate to answer:

- 1) What has led him to choose Germany for the comparison?
- 2) In the commentary to the *KlimaSeniorinnen* case, the follow-up response and reaction of Switzerland are not mentioned. Can you add how the Swiss government / parliament reacted to the judgment and evaluate that reaction from the perspective of the state's compliance with obligations arising from membership in supranational organisations, and/or state's compliance with judicial decisions?

In Prague on 8 April 2025



JUDr. Hana Müllerová, Ph.D.