

Climate Litigation Before the German Federal Court of Justice - “Too Complex” for Private Law instruments?



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On 2 March 2026, the German Federal Court of Justice (*Bundesgerichtshof*; “BGH”) held an oral hearing in two proceedings concerning the civil liability of companies regarding climate change. The authors of this blog post attended the hearing as members of the audience.

The German NGO *Deutsche Umwelthilfe (DUH)* is suing the car manufacturers *BMW* and *Mercedes Benz*, requesting a legal order obliging both companies to refrain from placing combustion engine cars on the market beyond 2030. These two proceedings join the club of (strategic) climate change lawsuits in Germany. Crucially, they are the first of their kind based on tort law to reach the German Federal Court of Justice. Accordingly, the hearing was eagerly awaited by many. The decision, which will be rendered on 23 March 2026, will undoubtedly have an impact on future climate lawsuits.

While no issues of international jurisdiction or applicable law arose in the proceedings in question - as all Parties are seated in Germany -, the judgment of the BGH could further motivate foreign parties to bring claims against German companies, thereby giving rise to questions of international jurisdiction and the applicable law (see for more details *Weller/Weiner*, Corporate Climate Liability in Private International Law, in: Japanese Yearbook of Private International Law, Vol. 26 (2024), 2). In this context, one may refer to the deliberations of the Higher Regional Court (OLG) Hamm in *Lliuya against RWE* (OLG Hamm, 28. Mai 2025, 5 U 15/17).

1. Legal Framework

The climate goal of the German Constitution (*Grundgesetz*; GG) derived from its Art. 20a was specified by the German Constitutional Court (*Bundesverfassungsgericht*) in line with the Paris Agreement, namely, to limit the rising global average temperature to well below 2°C and preferably to 1.5°C above pre-industrial levels. Combustion engine cars contribute to the global CO₂ emissions and hence to the greenhouse gas effect and the global warming. Against this background, the question arises whether the constitutional climate goal can (additionally) be enforced through private lawsuits against companies, notwithstanding the fact - as emphasized in the present case - *BMW* and *Mercedes* are acting in accordance with the existing public regulatory framework in Germany.

In both proceedings, the claim of *DUH* relies on Section 1004(1) of the German Civil Code (*Bürgerliches Gesetzbuch*; BGB) in conjunction with Section 823(1) BGB.

Section 1004(1) BGB allows an owner of an absolute individual right (like property or health) to demand that a disturbing party (“Störer”) - i.e. the party interfering with the individual right - remove an interference or *refrain from future interferences*. Section 823(1) BGB provides claims for damages in the event of a violation of such a right.

DUH bases its claim - to prevent the manufacturers from placing combustion engine cars on the market from 2030 onwards - on an infringement of the so-called “General Right to Personality” (*Allgemeines Persönlichkeitsrecht*), which is provided for by the German constitution (Art. 2(1) in connection with Art. 1(1) GG) and which is recognized as protected right within the meaning of Section 823(1) BGB and Section 1004(1) BGB. Hence, infringements of that personality right can be stopped via an injunction based on Section 1004(1) BGB.

In the proceedings against *BMW* and *Mercedes-Benz*, the claimants want to activate an intertemporal dimension of that “General Right to Personality” called “Right to greenhouse gas-related freedom” (*Recht auf treibhausgasbezogene Freiheit*). This approach would be new in private law. It builds upon the famous “Klimaurteil” (climate judgment) of the *Bundesverfassungsgericht* from 24 March 2021. In this judgment, the Constitutional Court established a new legal figure

called “eingriffsähnliche Vorwirkung”. It extends the basic rights protection to a protection against infringements *by the state* in the future that are grounded in present state omissions or insufficient actions (in the sense of a right to intertemporal freedom). By analogy to this legal concept in public law, *DUH* argues that the legal figure “eingriffsähnliche Vorwirkung” should also apply in tort law to actions by private companies (such as BMW and Mercedes).

The claims of *DUH* were rejected in the previous instances (LG München I, 07 Feb 2023, 3 O 12581/21, OLG München, 12 Oct 2023, 32 U 936/23 for the claim against *BMW* and LG Stuttgart, 13 Sept 2022, 17 O 789/21, OLG Stuttgart, 08 Nov 2023, 12 U 170/22 for the claim against *Mercedes*).

2. Inside the courtroom: key legal arguments

In the oral hearing before the BGH, the arguments focused on two legal aspects:

(1) Does the legal figure of intertemporal protection of basic freedoms in the form of an “eingriffsähnliche Vorwirkung” apply also to private actors if – as is currently the case in Germany – the national CO₂ budget has not yet been attributed among industrial sectors, the federal states, or even single actors? According to the Constitutional Court, the state has the obligation to concretize the remaining national budget (“Konkretisierungsauftrag”) by assigning CO₂ budgets to the different actors. What does this mean for the duties of private actors if the state fails to comply with this obligation by not assigning specific reduction targets? May civil courts assign specific reduction targets?

According to the claimant (*DUH*), the intertemporal protection of basic freedoms subsidiarily applies to such private actors that considerably contribute to global greenhouse gas emissions. The less reduction measures were taken now, the more strenuous reduction measures would be needed in the future, which would interfere in the basic rights freedoms more severely. CO₂ budgets for private actors such as the car manufacturers could in that case be measured by scientific data (such as attribution science), so even without state-allocated CO₂ budgets.

In the opinion of the defendants (*BMW* and *Mercedes*), it would exceed the competences of the courts if they were to allocate individual CO₂ residual budgets to companies in such climate lawsuits. The counsels for the defendants relied on the argument of separation of powers and the complexity of climate change requiring multi-level solutions. Climate change would be a topic too

complex to be solved by courts and by private law - instead, a mixture of legal instruments and a balancing of interests by the democratic legislator was needed. Any private law based litigation, being bilaterally restricted to the involved parties, would be arbitrary and could not solve the climate challenge which was a problem of societal scale. Courts would put themselves at the place of the legislator or at least thwart the legislator's concept or solution. The defendants' counsels also argued with the margin of appreciation granted by the German Federal Constitutional Court in its 2021 decision.

The defendants also raised the argument that a CO₂-budget for civil actors would be ineffective, as the climate reduction goals could only be achieved globally - as such, if in other states major emitters did not comply with their obligations, the national emitters had to make "extra" efforts to make up for the gaps. Besides, "national solo runs" would endanger international cooperation.

(2) Can private actors, such as *BMW* and *Mercedes*, be treated as "disturbing" within the meaning of Section 1004(1) BGB for contributing to the risk of future state climate protection measures? The BGH raised the question whether the manufacturers could be qualified as indirect disturber by action ("*mittelbare Handlungstörer*"). This was argued to result from an evaluative tailoring of the manufacturers' responsibility ("*wertender Zuschnitt von Verantwortungsbereichen*"). A main point in the arguments in that respect revolved around the question if a private actor can be a disturber within the meaning of Section 1004(1) BGB if it complies with all legal requirements and duties. This was at least an indicator against a disturbance triggering liability under Section 1004(1) BGB.

The defendants argued that Section 1004(1) BGB as a *bilateral* claim was per se not suitable for resolving issues like climate change, which is a problem concerning our society *as a whole*, not only two parties in a civil proceeding. Civil law could not provide for protection if the threat caused concerned a mass of persons, not only another party.

Furthermore, according to the defendants, the disturber and the affected party would coincide since everyone contributed to climate change. It therefore would remain unclear where a distinction was to be drawn between who qualifies as a disturber and who does not. Besides, there was neither a general duty of care ("*Allgemeine Verkehrspflicht*") nor specific CO₂-budgets that the defendants are

currently violating. Where the contested conduct was currently lawful, it could not be prohibited under civil law through the mechanism of Section 1004(1) BGB.

The claimant's counsel argued that formal concerns against emitters being disturbers in the legal sense had to remain unapplied, as otherwise private law in general could not provide legal protection in the field of climate change.

The defendants relied finally on the argument that private law based litigation such as the given proceedings were arbitrary for the reason that (1) it was "random" which emitter would be the target of such litigation and (2) that there could be no redress in a bilateral two party relationship as this would lead to the same emission being litigated in several proceedings (e.g. car manufacturers, car rental agencies and car drivers).

III. Assessment and outlook

The final decision of the German Federal Court of Justice will be rendered on 23 March 2026. The Court will implicitly decide whether combating climate change primarily falls within the responsibility of the legislator, or whether civil courts can also play a meaningful role in addressing this global challenge.