

Climate Action as a Legal Duty: Reassessing State Accountability in German States

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Slowing down the progression of climate change is one of the most significant challenges of our time. With existing environmental threats projected to intensify over the next few decades, along with new challenges that are sure to arise, many institutions, namely the United Nations Framework Convention on Climate Change (UNFCCC), have emphasized the necessity for every state worldwide to have a climate action plan at every level of governance.² In Germany, and specifically in the major state of Baden-Württemberg, climate action is a legally enforceable obligation, giving courts authority to compel state compliance when states fail to meet their climate responsibilities. This article aims to examine how Baden-Württemberg's violations of the legally binding obligations in its 2013 Climate Protection Act demonstrate that climate action constitutes a legal duty for German states and that courts play an essential role in enforcing climate mitigation accountability.

Introduction

Germany's federal system is composed of an existing relationship between the national government and the government of individual German states, making addressing climate change a shared responsibility between these two players.³ The states in particular play an important role because

¹ Brandeis University, Class of 2027; *Brandeis University Law Journal*

² United Nations Framework Convention on Climate Change (UNFCCC), *Climate Action*, <https://unfccc.int/climate-action> (Nov. 17, 2025).

³ Klaus Detlef Schnapauß, *The Federal System of the Federal Republic of Germany*, in *INTERGOVERNMENTAL RELATIONS IN FEDERAL COUNTRIES* 24, 24–32 (2001).



they regulate many of the sectors that produce greenhouse gas emissions that contribute to global warming, including transportation, energy usage in buildings, and regional infrastructure planning. As a result, Germany's overall advancement towards their goal of achieving total climate neutrality by 2045 depends heavily on whether states fulfill the legal duties assigned to them. One of Germany's primary states, Baden-Württemberg, offers a clear illustration of this dynamic. In July of 2013, the state enacted the Climate Protection Act, a statute designed to mitigate the effects of climate change by creating binding obligations such as submitting regular monitoring reports and adopting long term climate action plans.⁴ These duties were meant to act as a legally enforceable accountability system meant to ensure continuous and measurable progress towards statewide reduction of greenhouse gas emissions. Yet the state's failure to adhere to its own obligations has raised significant questions about the enforceability of climate laws and the roles of German states in the country's goal to slow down the progression of climate change.⁵

History and Overview of Climate Policy in Baden-Württemberg

Germany has long been recognized as a leader of environmental law, which is anchored by Article 20a Germany's Basic Law, a state objective mandating that the state protect its natural environment.⁶ Because of this, German states uphold climate policy trajectories that reflect both their industrial legacy and their evolving commitment to

⁴ Bundes-Klimaschutzgesetz (KSG), *Federal Climate Change Act*, https://www.gesetze-im-internet.de/englisch_ksg/englisch_ksg.pdf

⁵ Cosima Rade, et al. v. Baden-Württemberg (BaWü), Petition (filed Dec. 6, 2021), https://www.climatecasechart.com/document/cosima-rade-et-al-v-baden-wuerttemberg-bawu_8b65

⁶ Basic Law for the Federal Republic of Germany, Art. 20a (English translation), *Gesetze-im-Internet*



environmental protection. As one of Germany's most economically productive states and the birthplace of the modern automotive industry, Baden-Württemberg historically has generated substantial amounts of greenhouse gases, which amounted to an estimated 17.7 million tons of carbon dioxide in 2019 alone.⁷ Because of this, the state arguably has the biggest responsibility to reduce its emissions, and policymakers must now halve the state's greenhouse gas emissions in just seven years. This will be a major feat, as nothing like this has ever been done by another state or country.

The state of Baden-Württemberg has been taking measures in the past decade towards mitigating climate change through reducing energy consumption in buildings, expanding transit-oriented development, and increasing renewable energy. Baden-Württemberg's 2013 Climate Protection Act outlines the core principles, overall goals, and requirements set by the state for the purpose of making a meaningful impact on climate protection by reducing greenhouse gas emissions and contributing to sustainable energy supply. The original 2013 legislation aimed to achieve net greenhouse gas neutrality by the year 2030 through gradual reductions of greenhouse gas emissions. While home to several major automotive firms, the state has also made measurable strides in public transit through its railroad systems, subways, and local buses, despite delays in sustainable mobility. The EU as a whole has been more successful than the US in the expansion and accessibility of public transportation, and Baden-Württemberg is certainly no exception.⁸ In order to decrease transport-related emissions, the original Climate Protection Act states that more than half of the cars on the road must be powered by renewable energy by 2030. The state has already begun to do so by selling more

⁷ Sebastian Steuer & Julia Hertin, *Climate Policy in Germany: Pioneering a Complex Transformation Process*, in *CLIMATE GOVERNANCE ACROSS THE GLOBE* 160, 160–81 (Routledge 2020).

⁸ United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107



electric vehicles through advertising and campaigning; electric vehicles now account for 20% of new registrations. Additionally, more charging stations for these cars have been built, and expanded charging infrastructure has further encouraged EV ownership and use.

With the goal of shifting towards a climate-neutral heat supply in buildings and keeping in line with the German energy transition, Baden-Württemberg introduced a mandatory heat planning incentive for all towns in 2020, making it the first state in the country to do so. Despite this progress, significant challenges still remain. As the warmest state in Germany, Baden-Württemberg faces heightened risks from heatwaves, drought, and other extreme weather events, and with the added industrial emissions, this growing climate vulnerability explains why the state's statutory obligations matter and why failure to meet these legally binding obligations have profound legal and environmental consequences.

Legal Framework: Statutory Climate Duties Under the 2013 Climate Protection Act

Baden-Württemberg's 2013 Climate Protection Act establishes a set of mandatory statutory obligations, signaled by the legislature's use of the binding language, most notably the word "shall." This integrated plan must be based explicitly on monitoring reports described in Section 9, which obligates the state governments to compile and publish periodic assessments of data relevant to achieving the country's goal of achieving total climate neutrality by 2045. Under German administrative law, such statutory commands constitute public law duties binding on state authorities, and failure to comply with these mandatory tasks therefore constitutes an unlawful administrative omission (*Rechtswidrige Unterlassung*), which is referred to in the official Act. The structure of the Act makes it clear that its purpose is to ensure continuous progress towards the reduction of statewide greenhouse gas emissions by imposing enforceable planning cycles and accountability



mechanisms that prevent the state from delaying its climate obligations. The Act therefore operationalizes climate mitigation as an ongoing legal duty rather than a discretionary policy preference. The failure to follow these guidelines outlined in the Act in turn allows plaintiffs, in this case environmental organizations, to compel the administration to fulfill its legal duties.

2021 Deutsche Umwelthilfe (DUH) v. Baden-Württemberg (BaWü)

Germany's commitments under international climate treaties have also shaped its domestic climate legislation, including Baden-Württemberg's 2013 Climate Protection Act. In 2021, the environmental organization Deutsche Umwelthilfe (DUH) filed suit against Baden-Württemberg for violations of its own Climate Protection Act and sought amendments to the legislation. DUH alleged that the state government had not issued any monitoring reports since the Act's inception in 2013, despite a statutory obligation to do so, according to the current Climate Protection Act. Section 6, sentence 1 of the Climate Protection Act states the following: "In 2020 and every five years thereafter, the state government shall adopt, on the basis of the monitoring reports pursuant to Section 9 sentence 1 and 2 and after consulting with associations and organizations, an integrated energy and climate protection concept that specifies key objectives, strategies, and measures for achieving the climate protection targets pursuant to Section 4." This requirement matters from a legal point of view because it creates a fixed, recurring deadline that the state is obligated to meet. DUH argued that such reports were not available as of January 2021 – well past the 2020 deadline. The justification for this claim stems from the failure to present these reports in court, as was challenged by the plaintiff in 2021. This omission alone constituted a clear violation of the Act's transparency and reporting framework, but even more significantly the state failed to adopt the integrated energy and



climate protection concept that was required by Section 6 for the year of 2020. Since no monitoring reports existed, the state could not fulfill this required 2020 plan, and DUH confirmed in court that no such concept had been produced by the statutory deadline.⁹

In response, the Federal Administrative Court of Germany ordered the government to adopt a new, integrated plan with more ambitious targets: achieve carbon neutrality by 2045; and reduce emissions by at least sixty-five percent by 2030.¹⁰ This ruling affirmed that the state's statutory climate obligations were enforceable through judicial review. The court found that the state had indeed not fulfilled its mandatory duties listed under Sections 6 and 9, and held that failure to perform them constituted an unlawful omission. As a result, the court not only ordered the state to complete the overdue monitoring reports and adopt the integrated climate plan, but it also required a more rigorous updated plan, with the purpose of ensuring that Baden-Württemberg is able to keep up with other German states after this setback. By imposing these requirements, the court demonstrated its willingness to ensure that state authorities adhere to statutory expectations, and signals to other states what Act violation consequences may look like.

Implications for Multilevel Climate Governance in Germany

Although national legislation establishes overarching emissions reduction commitments, individual states are responsible for implementing the most consequential mitigation measures, even though Germany's climate

⁹ Klaus-Dieter Schnapauff, *THE FEDERAL SYSTEM OF THE FEDERAL REPUBLIC OF GERMANY*; R. Bodle & S. Sina, *The German Federal Constitutional Court's Decision on the Climate Change Act*, 16 *CARBON & CLIMATE LAW REVIEW* 18 (2022).

¹⁰ *Roadmap for a Climate and Greenhouse Gas Neutral Federal Administration*, supra note 1, at 1



governance structure relies on the cooperation between the federal government and individual states, meaning that under constitutional and statutory climate law, German states are to be co-bearers.¹¹ This poses the challenge of creating a divergence between states, as states adopting different policies based on economic and political interests can cause regions that rely heavily on fossil fuel usage to lag in advancement towards meeting climate policy goals compared to other states. The violations identified against Baden-Württemberg therefore have implications beyond a single jurisdiction, considering that national progress in Germany is dependent on individual states meeting their own statutory climate obligations. This raises questions of whether gaps in state-level implementations could potentially jeopardize Germany's ability to meet both domestic and EU climate targets, and has set the stage for what legal accountability mechanisms will look like in the future. As courts become more willing to scrutinize whether states are fulfilling their mandatory climate duties, judicial review is likely to become an increasingly important tool that German states may utilize to enforce climate obligations. This increased legal pressure is likely to prompt more careful administrative planning, greater transparency, and more consistent documentation of greenhouse gas emission reduction strategies. As far as for the legal evolution of climate governance in Germany, these developments reflect a broader shift happening in that climate action is no longer treated merely as an aspirational policy goal, but as a legal duty that binds state governments. As a result of this, courts are emerging as essential players in ensuring that long term climate goals are progressing, being regularly updated, and effectively implanted.

¹¹ Karen Jörgensen, Arunabha Jogesh & Anil Mishra, Multi-Level Climate Governance and the Role of the Subnational Level, 12 *J. Integrative Envtl. Scis.* 235 (2015)



Conclusion

Baden-Württemberg's climate obligations under its 2013 Climate Protection Act create binding, enforceable legal duties, not just simply discretionary policy goals.¹² The state's failure to issue required monitoring reports and integrated climate action plans therefore constitutes an unlawful administrative omission. When assessed together with the Federal Constitutional Court's 2021 climate ruling, which requires balanced emission reduction plans with the purpose of avoiding burdening future generations with reversing much of global warming, these statutory omissions demonstrate that Baden-Württemberg has failed to engage in timely and transparent climate mitigation measures.¹³ Courts therefore not only may but must intervene when states fail to meet their legally mandated climate obligations. Based on this case, the evolving legal landscape in Germany demonstrates that state governments must now anticipate judicial oversight and treat climate planning as a core component of their constitutional and statutory responsibilities.

¹² Christine Godt & Ulrich Meyerholt, Obligations for Owners to Climate-Proof Buildings in Germany, 13 *Eur. Prop. L.J.* 77, 77–103 (2024)

¹³ Stefan Theil, Cautious Scrutiny: The Federal Climate Change Act Case in the German Constitutional Court, 86 *Mod. L. Rev.* 263, 263–75 (2023)

