

# Public interest litigation in Europe – The case of climate change

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# **EUFJE Annual Conference 2017 Oxford**

## **Oxford 2017: Climate change and the judiciary**

Conference EUFJE — 21-23 September 2017

Venue: Merton College, Oxford



**Gradual development of climate justice in  
some EU MS and at EU level**

# EUFJE Annual Conference 2017

## Oxford

- Mostly very specific, often quite technical aspects of climate legislation:
  - EU ETS, support mechanism for renewable energies, incentives for more sustainable mobility, permits for projects with major impact on climate, permits for climate friendly projects
    - E.g. Vienna Airport Extension Case: Supreme Administrative Court Decision of 2 February 2017 quashed by Constitutional Court 29 June 2017

# EUFJE Annual Conference 2017

## Oxford

- Already some strategic cases introduced
  - Nature & Youth and Greenpeace Nordic v. Government of Norway
    - Against 13 new oil and gas licences in new areas of the Arctic Barents Sea
    - Final decision: Supreme Court of Norway, 20 December 2020 – case dismissed – future emissions from exported oil too uncertain to prevent granting of these licenses on basis of constitutional rights



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Supreme Court of Norway > Judgment in the "climate lawsuit"

**Judgment in the "climate lawsuit"**



# Urgenda case

- Urgenda Foundation + 900 individuals
  - Introduced in 2013 (before Paris Agreement)
  - Civil procedure against State of the Netherlands
  - Civil Code - Fault based civil liability
  - Claim: State has acted wrongly and negligently by not taking sufficient measures to reduce CO<sub>2</sub> emissions
  - Injunction requested: reduction of 25 to 40 % compared with 1990 levels (EU effort sharing obligation – 16 %)
  - Judgment of the Tribunal of The Hague of June 24, 2015: state must reduce emissions with 25 % before end of 2020

# Urgenda Appeal

- Judgment has been criticized
- Mainly “separation of powers”
- Scientific foundation

(why – 25 % for the Netherlands ?)



Appeal – Judgment confirmed by Court  
of Appeal of The Hague

9 October 2018

- But another legal basis



# Urgenda Appeal

- Art. 2 and 8 ECHR
- State has a positive obligation to protect life of citizens under its jurisdiction
- Applicable to all activities, public and non-public, certainly to inherent dangerous industrial activities
- Based on IPCC reports & UNFCCC COPs: we face a dangerous climate change crisis – serious risks for life and health for current generation of residents of The Netherlands
- State acted contrary to the duty of diligence by failing to further reduce emissions; injunction confirmed

# Urgenda Cassation



- Criticism stayed – Separation of Powers
- Case appealed to the Supreme Court (*Hoge Raad*)
  - Very detailed opinion of Advocate-generals
  - 20 December 2019
    - Decision confirmed
    - Art. 2 and 8 ECHR + UNFCCC
    - Broad consensus that developed countries should reduce – 25 % by the end of 2020
    - No violation of separation of powers by imposing a result based injunction; judges should provide legal protection as an essential element of the democratic rule of law



# Strategic cases in other countries

## GERMANY



## BELGIUM



# Strategic cases in other countries

## SPAIN

### Greenpeace targets Spain with climate change lawsuit

EURACTIV.com with AFP

📅 16 sep. 2020

## FRANCE



**L'AFFAIRE  
DU SIÈCLE**

# Strategic cases in other countries

## IRELAND

*Friends of the  
Irish Environment*

**Supreme Court  
31 July 2020**

National Climate Change Plan largely insufficient -  
Violating Climate Change Act 2015 – National Transition  
Objective 2050 – New Plan must be adopted



# European Courts

- General Court of the EU

- Case T-330/18 *Armando Carvalho and others v EP and Council* – dismissed for lack of standing (“Plaumann”- test)
- Appeal before CJEU pending - C-565/19 P

- ECtHRM

- *Duarte Agostinho and others v. Portugal and 33 other states* – case communicated to member states + 3 questions put to them on 30 November 2020



Swiss Court Rejects  
Grannies' Climate Plea

## Swiss grannies case



# French Climate Cases



- Grande-Synthe Case

- Council of State, November 19, 2020
- Coastal Community has standing because particularly vulnerable
- Intervention of NGOs (Oxfam, Greenpeace, *Notre Affaire A Tous*, *Fondation pour la Nature et l'Homme*) and cities (Paris & Grenoble) accepted
- On the basis of French (Energy Code) & EU Law, read in conformity with the Paris Agreement
- France has committed itself to - 40 % by 2030

# French Climate Cases



- Carbon budget 2015-2018 overshoot (reduction of 1 % in stead of 2,2 % per year)
- Next carbon budgets not on track for reaching the 2030 objective (- 40 % (1990) - 37 % (2005))
- Data used: French High Climate Council
- IPCC Report & EU Green Deal – 55 % is necessary
- Reopen debate on requested injunction:  
government should indicate within a period of 3 months how it will shape its climate policy towards 2030

# French Climate Cases



- *L'affaire du siècle*

- Administrative Tribunal of Paris, 3 February 2021
- 4 ENGOs
- Based on Articles 1246-1248 French Civil Code (ecological damage – 2016 – specific action for claiming redress – ENGOs under certain conditions)
- Reference to IPCC reports, UNFCCC, Paris Agreement, EU directives and regulations
- Energy Code objectives 2030/2050
- State should comply with own objectives

# French Climate Cases



- - 40 % in 2030, carbon neutrality in 2050
- Demand for imposing more ambitious objectives rejected (the French one are more ambitious than the EU ones for France – but what if EU Climate Law will be adopted ?)
- To determine the content of injunction, the debate reopen for 2 months
- 2 more judgments are thus attended



# Other cases

- Big project cases

Heathrow third runway ruled illegal over climate change

Appeal court says decision to give go-ahead not consistent with Paris agreement



Lord Justice Lindblom said: “The Paris agreement ought to have been taken into account by the secretary of state. The national planning statement was not produced as the law requires.”

- Court of Appeal (England and Wales), 27 February 2020

## Top UK court overturns block on Heathrow's third runway

Earlier ruling said expansion plan was illegal as government had not considered its climate commitments

UK Supreme Court, 20 December 2020



Section 1 of the Climate Change Act 2008 (the “CCA 2008”) sets a national carbon target. Section 4 obliges the Government to establish carbon budgets for the UK. These are already more demanding than the limits which the UK is currently obliged to have in place under the Paris Agreement. The Court holds that, at the point the ANPS was designated in June 2018, there was no established “Government policy” on climate change beyond that already reflected in the CCA 2008.

## Other cases

- Conduct of major companies

**Shell faces Dutch court in case testing how Paris climate goals apply to businesses**

Published on 17/12/2020, 5:23pm

Climate campaigners say Shell is violating human rights by continuing to invest billions in fossil fuels, calling for a much faster shift to clean energy

## **The Netherlands Rejects Greenpeace Request To Stop KLM Aid**

by **Graham Snelgrove** · December 9, 2020 · 7 shares · 3 minute read

# Conclusion

- Decades to come: national courts will be increasingly confronted with climate cases
  - Projects, policies, public & private
- Judges will have to learn from each other
- Will ECtHR bring clarity on use of art. 2 and 8 ECHR ?