Public interest litigation in Europe – The case of climate change



Prof. Dr. L. Lavrysen

President Constitutional Court of Belgium – Centre for Environmental & Energy Law Ghent University – President EU Forum of Judges for the Environment



EU FORUM OF JUDGES FOR THE ENVIRONMENT UE FORUM DES JUGES POUR L'ENVIRONNEMENT

EUFJE Annual Conference 2017Oxford

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 2017Oxford

- Mostly very specific, often quite technic 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 2017Oxford

- 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

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 CO₂ 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?)



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

FRANCE





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

FLEI SE SI

Swiss grannies case

Swiss Court Rejects Grannies' Climate Plea





- Grande-Synthe Case
 - Council of State, November 19, 2020
 - Coastal Community has standing because particulary 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



- 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



- 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



- 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 wat 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

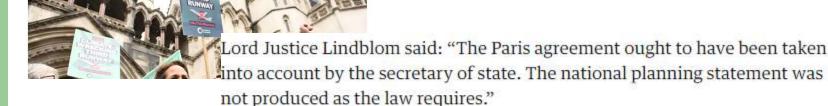
Big project cases

Heathrow third runway ruled illegal over climate change

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

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

Paris agreement



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



2008 (the "CCA 2008") sets a national carbon target. Section 4 obliges the Government to establish re already more demanding than the limits which the UK is currently obliged to have in place under ds that, at the point the ANPS was designated in June 2018, there was no established "Government at 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

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?