

EU Forum for Judges for the Environment 2017
Climate Change and Adjudication Questionnaire
Merton College, Oxford, 22 and 23 September 2017

Danish report

Climate Change in Legislation

1. How (if at all) has climate change and issues related to it been incorporated into legislation in your jurisdiction?

- Do they feature in the constitution; legislation; delegated acts?
- Which levels of government have been involved in these legislative processes?
- What have been the catalysts for these legislative developments (i.e. EU law, international law, political agitation etc.)?

Answer: The Danish legislation on restriction on emission of greenhouse gasses is mainly based on implementation of EU-legislation. The most important legislative Acts adopted by the Danish Parliament are:

The Act on Biofuels from 2008 last amended by legislative Act no 1754/2016 and implementing EU Directive 98/70 as amended by Directive 2008/30

The Act on CO₂ Allowances from 2012 implementing EU Directive 2003/87 on emission trading with greenhouse gas emission and later amendments of the Directive 2003/87

The Act on Improving of Renewable Energy last amended by Act no 1705/2016 implementing partly EU Directive 2009/28 on renewable energy and Directive 2011/72 on internal market regarding electricity

The Act on Energy Performance of Buildings from 2005 last amended by Act no 1876/2015 implementing Directive 2010/31 on energy performance of buildings with its later amendments

The Act 716/2014 on Climate Council and national climate goals establish an institutional set up to address the goal that Denmark in 2050 becomes a low-emission state mainly based on renewable energy.

2. How do the structures of government affect legislation related to climate change?

- Is one or several institutions assigned to act on climate change within your legal system? To what extent do these overlap and diverge?
- Is the separation of legislative, executive and judicial powers in initiating and implementing climate policy clear in your jurisdiction?
- Is climate change legislation affected by the legal powers of different levels of government in your jurisdiction?

Answer: The Ministry of Climate and Energy and the Energy Agency is responsible for the compliance with the Danish legislation on reduction of greenhouse gas emission.

Climate Change Litigation

3. Can climate change laws in your jurisdiction serve as basis for judicial action?

- Is this basis, or the lack of such basis, seen as legally novel or not?
- What role does European Union law play in this regard?

Answer: No cases on climate change and obligation on reducing greenhouse gas emission have been raised before Danish Courts or tribunals. Based on civil procedural law and other case law, NGO litigations with such allegation must be expected to be dismissed by the court because of lack of standing.

The only cases regarding climate change related issues raised before a Danish Court or tribunal have been on permits to windmill farms and sun-energy installations and regarding access to public aid for renewable energy projects or compensation for nuisance from windmill farms.

4. Has climate change, and related issues, given rise to court cases in your jurisdictions?

- If so, what type of cases (i.e. are they related to specific pieces of legislation or to something else)?

- How frequently do climate change claims come to court by comparison with other environmental law cases in your court?
- What types of legal issues are raised in these cases (i.e. matters of private law, constitutional law, administrative law, international law etc.)?
- Does the type of legal issue affect, if at all, which court hears the case?
- Do rights-based claims feature in these cases?
- How central is the issue of climate change when it is raised in these cases?

Answer: No cases have been reported or (as far as I know) initiated before a Danish court regarding climate change obligations.

Climate Change Adjudication

5. How easily resolvable are the legal questions raised in these different cases?

- Do these cases involve the application of conventional legal concepts? If so, how straightforward is the application of these concepts to climate change?
- Do these cases involve the application of new legal doctrines? If so, from where have these doctrines been derived?
- How do concepts of causation affect climate change actions in your jurisdiction?
- Has your court issued any preliminary ruling concerning climate change laws, or to relates issues to the EU court? If not, why not?

Answer: No cases have been raised on climate change before a Danish Court.

6. How straightforward is the resolution of factual issues in cases on climate change?

- Is there disagreement among the parties over the factual issues? If so, what types of disagreements are there?
- Do the factual issues require reference to specialist evidence? If so, how is that evidence submitted to the court?
- How do the rules evidence affect climate change actions in your jurisdictions?
- How do the factual issues affect the resolution of legal questions in these cases?

Answer: No cases have been raised on climate change before a Danish Court.

Climate Change and Access to Justice

7. Who are the parties bringing climate change actions?

- What role do individuals play in bringing actions relating to climate change?
- What role do NGOs play in bringing climate actions?
- What role does industry play in bringing actions relating to climate change laws?
- Does industry make claims under different or the same set of laws as NGOs?

Answer: No cases have been raised on climate change before a Danish Court.

8. How do legal rules in relation to the bringing of an action affect the ability to bring these cases?

- How do domestic rules on standing affect climate change litigation?
- How do costs rules affect climate change actions?
- Are there any other impediments to parties bringing climate change claims?

Answer: Since standing of NGOs regarding climate change cannot be expected before Danish Courts, these 3 questions don't arise.

Climate Change and Remedies

9. What is the range of remedies available to national courts in climate change cases?

- What is the breadth of the court's discretion in choosing a suitable remedy?
- What is the availability and level of financial penalties?
- What types of injunctive relief are available?

Answer: Since standing of NGOs regarding climate change cannot be expected before Danish Courts, these three questions don't arise.

10. What types of issues are raised about remedies in climate change cases?

- How straightforward is the application of remedies in these cases?
- Does the relationship between private law and public law affect remedies in climate change-related claims?

Answer: Since standing of NGOs regarding climate change cannot be expected before Danish Courts, these two questions don't arise.