



The “Klimaatzaak” in Belgium

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Centre for
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EU FORUM OF JUDGES FOR THE ENVIRONMENT
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Who? Start of the case in 2014

- Klimaatzaak vzw
- 58.000 citizens co-plaintiffs
- Defendants: Belgian state, Walloon Region, Flemish Region, Brussels-Capital Region





KLIMAATZAAK

De rechtszaak waarbij iedereen wint

Claims

- Violation art. 1382 and 1383 Belgian Civil Code: not acting as bonus pater familias when conducting climate governance
- Belgian climate policy violates human rights of plaintiffs, art. 2 and 8 ECHR and 6 and 24 of the Child Rights Convention
- Court injunction: reducing emissions by 42-48% by 2025 and at least 55-65% in 2030, zero net emissions by 2050
- Judicial follow up of the case : do defendants achieve these targets in 2025 and 2030?
- Penalty payment of 1 million euro per month of delay in achieving the reduction target in 2025 and 2030 (as from 1 January of the following year)



Procedural hurdle

- Language?
- 3 different official languages
- After 4 years (2014-2018) Court of Cassation confirmed: French language
- Hearings in March 2021:



Decision Court of First Instance Brussels 17 June 2021

- Court **competent** to hear the case
- **Admissibility**: 58.000 citizens and ngo
Klimaatzaak have personal and direct interest
- **On the merits**:
 - Federal state and 3 regions in breach of duty of care, despite being aware of the certain risk of dangerous climate change failed to take necessary action and thus, failed to act with prudence and diligence under art. 1382 Civil Code
 - Violation of art. 2 and 8 ECHR
 - No court injunction with reduction targets

Report dialogue Climate Governance in Belgium 2018 PFS Public Health and Environment

“The central question is whether the federal structure in Belgium is adapted to the needs of the people.

The enormous climate challenge demands a radical transformation of our society. The inadequacy of our governance structure in view of the climate challenge is repeatedly raised in scientific analysis.

It is inadequate in view of the climate emergency, the need for decarbonization of the economy, new European standards of governance and the pressure of the citizen.

Notwithstanding the external, international and EU law incentives, internal incentives are absent in federal Belgium. We need a common long term vision which guarantees legal certainty and sustainability. There is a need to objectivise, centralise and prioritise, depolitise climate policy....”

Decision Court of First Instance Brussels 17 June 2021

On the merits:

3 findings:

1. The figures and Belgian results so far
2. The lack of good climate governance
3. The repeated warnings of the EU

In a context in which the Belgian authorities are aware of a risk of dangerous climate change, the defendants :

- Did not act as a careful authority under art. 1382 Civil Code
- Did not take sufficient measures to prevent and remediate the consequences for the lives and private and family lives of the plaintiffs as protected by art. 2 and 8 ECHR.
- state and regions are jointly and individually liable for the lack of climate governance.



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Decision Court of First Instance Brussels 17 June 2021

However:

- Court declined to issue injunctions ordering the government to set specific emission reduction targets requested by the plaintiffs because of separation of powers
- International or European law do not impose the requested specific emission reduction targets
- Belgian scientific report relied on, not legally binding
- Specific emission reduction targets for all sectors are a matter for the executive and legislative bodies to decide



Court of Appeal (pending)

- 17 November 2021 Klimaatzaak appealed the judgment
- Case will be heard in September and October 2023
- Decision is expected end 2023- early 2024.
- Klimaatzaak: set the specific emission reduction targets (42-48% by 2025 and at least 55-65% in 2030, zero net emissions by 2050) + penalty payment of 1 million euro per month delay in reaching the targets
- Duty of care obligation of the Belgian authorities requires this in the light of the knowledge of the imminent danger
- Right to an effective remedy (art. 13 ECHR), adaptation will not be sufficient

The answer
my friend, is
blowin' in the
wind...

Thanks for your attention!



Farah Bouquelle

Teaching assistant Environmental Law

CENTRUM VOOR MILIEU- EN ENERGIERECHT

E farah.bouquelle@ugent.be



Universiteit Gent



@ugent



Ghent University

Network manager EU Forum of Judges for the
Environment (EUFJE)

www.eufje.org