**Judges for climate**

**Is it up to the courts to save the planet?**

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2015 was the year of the renowned judgement in the Dutch climate case, the first of its kind, started by the Urgenda Foundation. The judgement inspired several citizens and (non-governmental) organizations around the globe to litigate against their governments in order to achieve a more ambitious climate policy and to seek concrete actions to combat climate change, e.g. the Belgian and German climate cases or the New Zealand Thompson case in 2017. In the latter case, the High Court held that the government did not review climate change targets and therefore acted unlawfully. The High Court, however, did not issue an injunction as a new government had already introduced stricter targets.

Six months before the UN Conference on climate change in Paris on December 2015, in the Urgenda judgement, the district court in The Hague issued an injunction against the Dutch government to reduce greenhouse gas emissions with 25% compared to the level of 1990 by 2020, in spite of the government’s policy to pursue a reduction of not more than 17%. The Court held that the State had to take necessary, more far-reaching measures in order to prevent a violation the State’s duty of care towards its citizens, which could provoke civil liability. In an inventive way, the Court referred to several international and European obligations in order to determine wrongfulness under Dutch tort law, after analyzing the available scientific knowledge.

Recently, this decision of the district court was upheld in appeal and will now be handled by the Supreme Court of the Netherlands in cassation. Regardless of the future decision of the Supreme Court, the impact of the Urgenda case is undeniable, both in The Netherlands and in many other jurisdictions.

These climate cases require us to undertake a renewed analysis of separation of power arguments, either criticizing so-called activism of judges who would exceed their powers or stressing the importance of the fight against climate change in order to emphasize and defend the important role of judges when governments fail to undertake necessary measures. This paper will analyze recent climate change litigation and deconstruct the arguments used in the judgements and societal debates about the necessity and legitimacy of the role of courts in the fight against climate change. Subsequently, the paper will tackle questions about methods of judicial law making in the global legal order, with a focus on the use of scientific evidence in judicial proceedings. It should not be forgotten that the Dutch Urgenda case is a civil proceeding in which the hands of the judge are tied by the evidence and arguments delivered by the involved parties. In a self-confident way, the Dutch district court did not use a traditional method of judicial interpretation of clear, positive legal norms court, but used a vague, open norm in Dutch tort liability in order to establish a duty of care based on a variety of international treaty obligations, policy goals, foreign case law, as well as – more controversially – empirical data and scientific evidence about greenhouse gas emissions and global climate change. On the one hand, the decision was severely criticized and considered as a violation of the separation of powers. On the other hand, arguments were made to defend the necessity of this – rather innovative and remarkable – mode of judicial lawmaking in a global legal order.