

Brussels Court Issues Judgment against Belgian Government in Climate Change Litigation



On 17 June 2021, the French-speaking Brussels Court of First Instance (the **Court**) handed down its judgment in the so-called “*Klimaatzaak*” case, in which it found that the federal government as well as the governments of the three Belgian regional entities (*i.e.*, Flanders, Wallonia and Brussels-Region) breached Article 1382 of the Belgian Civil Code on tort liability and Articles 2 and 8 of the European Convention on Human Rights (the **ECHR**) by failing to take the necessary measures to limit the adverse effects of climate change on the country’s population.

On 27 April 2015, the environmental non-profit association “*Klimaatzaak*” representing 58,000 Belgian citizens (the **claimants**) filed a lawsuit against the Belgian federal government as well as against the governments of the three regional entities, alleging that these authorities breached their general duty of care and the citizen’s human rights by failing to implement their commitments in terms of fighting climate change.

In its judgment, the Court first addressed the admissibility of the claim brought by the claimants. It held that the 58,000 Belgian citizens showed a personal and direct interest in the legal action in view of the real threat of climate change and of its present and future adverse consequences on the daily lives of citizens in Belgium and elsewhere. In addition, the Court considered that the non-profit association "*Klimaatzaak*" had an independent personal and direct interest in the legal action in accordance with its statutory object, clearly aimed at combating climate change.

On the merits, the Court considered that both the federal government and each of the governments of the three regional entities were individually liable for failing to implement their climate obligations. The Court based its reasoning on three findings.

First, Belgium showed mixed results in terms of reducing greenhouse gas emissions (the ***GHG emissions***) and therefore failed to meet international, European and national GHG emissions reduction targets. More specifically Belgium failed to comply with:

- international targets laid down in the 2012 Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change of 1997;
- European targets set out in the Decision No 406/2009 of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions;
- internal targets that Belgian authorities have set for themselves.

In addition, experts projected that Belgium will also not meet the targets for 2030 set by the EU Regulation 2018/842 of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030, even if additional

internal policies were implemented.

Second, the Belgian authorities failed to implement a strong climate governance. In particular, the Court considered that since climate policy is a competence shared between the federal government and the governments of each of the three regional entities, these authorities should have taken appropriate coordinated actions to ensure that their climate obligations were met.

Third, the Court noted that Belgium received repeated warnings from the European Union concerning its failure to meet its climate commitments.

These findings, together with the fact that the Belgian authorities had full knowledge of the risks of climate change on the country's population led the Court to conclude that neither the federal government, nor the governments of the three regional entities acted with the degree of care and diligence required by Article 1382 of the Belgian Civil Code. In addition, the Court considered that the same authorities breached the claimants' rights to life and right to privacy enshrined in Articles 2 and 8 of the ECHR. In that respect the Court stressed that the authorities did not take appropriate measures to prevent the risks and adverse consequences of climate change on the claimants' life and privacy.

The Court nonetheless rejected the claimants' request for an injunction to further reduce the GHG emissions by 48% (or at least by 42%) in 2025, by 65% (or at least by 55%) in 2030, and by 100% in 2050. In particular, it found that whilst it could be determined that the federal government and the government of the three regional entities were liable for breach of their legal obligations, the principle of separation of powers did not allow the Court to intervene in political decisions and set specific GHG emission reduction targets. The claimants communicated their intention to appeal this part of the judgment before the Brussels Court of Appeal and to bring

the case before the European Court of Human Rights.

*This article was kindly drafted by Charlotte De Meeûs
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