

Ghent, 31 January 2024
EU Climate Envoys Meeting

The Belgian Climate Case

Klimaatzaak

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- Court of Appeal **Brussels**
- 30 November 2023 (first day of COP28)
- Breach of human rights
- Breach of Civil code
- Judicial relief: the Court **orders** the Federal State and two Regions to cut their GHG emissions by 55% in 2030 compared to 1990
- Pending appeal to the Supreme Court



Strategic climate litigation A typology

Before Paris Agreement

2015 Paris Agreement

New Climate laws

Questioning **Ambition and Governance**

- In the face of scientific data
- In the face of soft law
- In the face of « non-specialized law » (duty of care, human rights)
- in relation to governance
- in relation to former pledges

Questioning **Compliance and Implementation**

- Legality of climate laws
- Legality of climate plans
- Legality of carbon budgets and trajectories
- Legality of permits

Strong Civil Society

Citizens
NGOs
(Academia)
(Lawyers)

v. States
v. Private actors

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"L'Affaire Climat peut jouer un rôle important pour le futur de mon enfant. Et du vôtre."

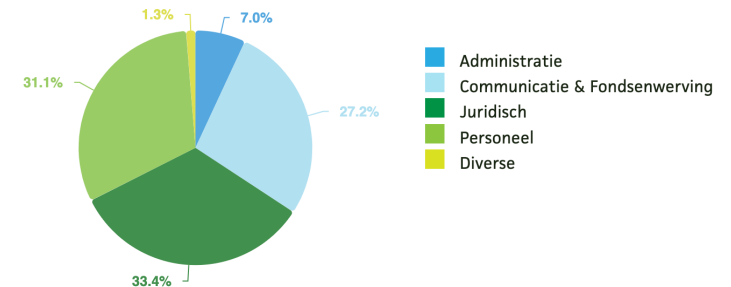
— Selah Sue

JE FAIS UN
DON

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Who is « klimaatzaak »?



- 11 BV's als founding members (known citizens from medias, etc)
- « Ambassadors » and volunteers

Lawyers: C. Billet, A. Baeyens, R. Cox

94% of 75 000

70.816 co-claimants and supporters

Thanks to Marc

Become a supporter, if you still want to support the Climate Case. The more co-claimants and supporters we have, the more pressure we put on our governments.

I SUPPORT (IN DUTCH)

I SUPPORT (IN FRENCH)

less than 2 minutes and my data is secure

DONATE

Give our case the best chance of success

Our legal and other costs are financed entirely by donations.

- Support us for the cost of one coffee a month
- Pay safely via direct debit or PayPal
- You can stop your payment at any time

I'LL DONATE (IN DUTCH)

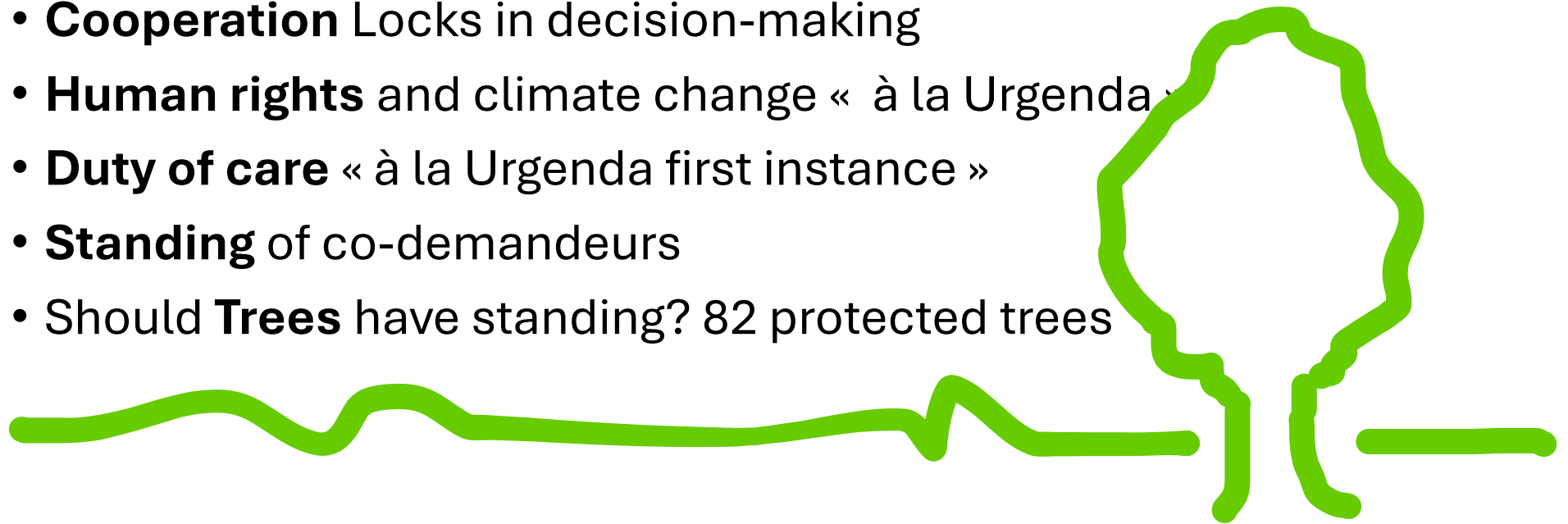
I'LL DONATE (IN FRENCH)

First judgment

- First steps: 2014 ! Lawsuit starts in June **2015** (before Paris Agreement)
- Inspiration: Urgenda (« copy-paste »)
- Reached the Supreme Court on procedural/language-related issues – April 2018: « no problem »
- **17 June 2021** (six years later): the Tribunal decides that the Belgian **State and three Regions are in breach** of their duty of care under Civil Law and in breach of fundamental rights under the ECHR, art.2 (life) and art.8 (housing)
- But does not foresee any follow-up. No judicial order. « Symbolic »
- Klimaatzaak appeals

Issues were

- Climate **governance** in Belgium: weaknesses of federalism, where institutions are not yet fit for embracing the climate challenge
- **Cooperation** Locks in decision-making
- **Human rights** and climate change « à la Urgenda »
- **Duty of care** « à la Urgenda first instance »
- **Standing** of co-demandeurs
- Should **Trees** have standing? 82 protected trees



Court of Appeal

- Issues were:
Standing
Competence
Relation to human rights
Fault
Judicial order
Enforcement
Who is « Belgium » ?



Aarhus effect

Crucial advances of law on public participation

- Klimaatzaak has **standing**
- the co-plaintiffs (thousands of individuals) have **standing**
- A Court of Appeal is the right place to discuss climate liability

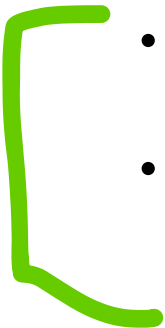




- The Federal State, the Brussels Region and the Flemish Region **do not behave diligently** in their climate policies = FAULT under the **Civil Code**
- They are in breach of respecting the **fundamental rights** of the physical persons, when not taking all necessary measures to prevent effects of climate change with a possible impact on their life (art.2) and private life (art.8)



- There is a **damage** with **causal link** (effect of past emissions for now and the future: progressive realisation, *continuum*): loss of a chance, ecoanxiety, moral damage, diminution of remaining carbon budget, **impact on the position of Belgium in the international cooperation**



- **Remedy:** they must take appropriate measures to take their share in a diminution of -55% GHGs by 2030 in comparison to 1990
- = the *minimum minimorum*, according to best science – also the EU consensus

- 
- The **Walloon Region** is exempted – Because she could convince that she reduced emissions by 2020, has since 2004 a Climate Law and commitments for 2030: - 55% (no negligence)
 - **EU Law.** Can Belgium be imposed a specific target by the judiciary, where the EU only impose a collective target at the scale of the Union? NB. Environmental Chapter of the TFEU: a country can always enhance the level of protection – But does it have to?
 - **What next ?**
 - Does the ruling help solving deep issues that are not only about numbers but about **coordination and governance**? Is the global legal framework fit for purpose?
 - How shall it create **pressure on enforcement** (penalty payment decision postponed after 2024)

Towards the Supreme Court

- The Flemish Region goes to Cassation
- Not the Federal State (« focus on implementation ») nor the Brussels Region



Belgian court orders 55% emissions cut from 1990 levels

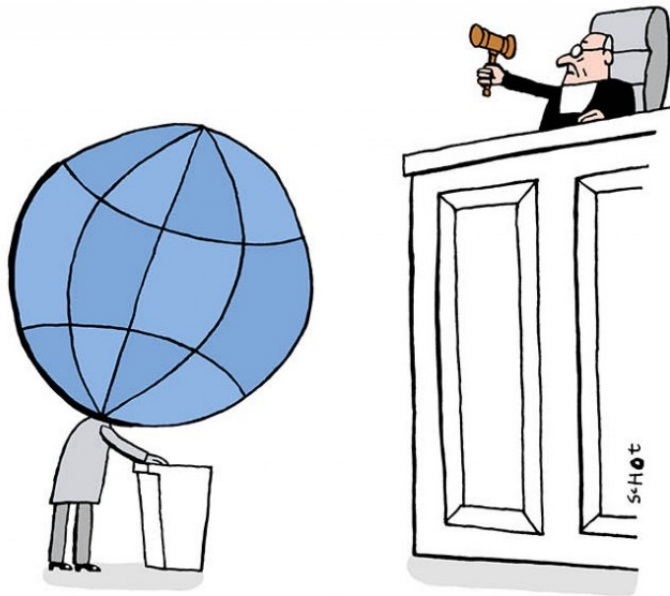
Court of appeal ruling means government has only until 2030 to reach target



Per person, Belgians are some of the biggest polluters on the planet. But their ambitions to clean up their economy have lagged behind their neighbours. The Netherlands is shooting for a 49% cut in emissions by the end of the decade, France 50%, Germany 65% and the UK a 68% cut.

But scientists have also praised Belgium for its offshore windfarms, which are among the biggest in the world, and its efforts to electrify company car fleets, which are an important lever to cleaning up the transport sector.

Big picture



- Climate Treaties

There is no « small country »

Paris: global spin and challenge of a positive emulation

- **How do you unlock a bad will?**

Will that case help shifting back the focus towards mitigation and good cooperation?

- Ambition in climate governance is a **matter for judicial control.**
- Confirms that **human rights** and climate change connect
- More to come from the Strasbourg Court in case Agostinho (also a « Belgian » climate case !)

Thank you

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