

## **14:30-15:45 RECENT CASES OF CIVIL ACTION**

### **14:30 Climate Change - Serge de Gheldere, Denis Philippe, Klimaatzaak**

- Will the change to low carbon economy happen fast enough? Things are happening and ultimately we will switch to 100% Renewable Energy Systems (RES). Question is whether this will happen within our limited carbon budget.
- In the last few years, we have seen a number of important developments on the national and international level that seriously advance climate action:
  - Huge leaps forward in RES and Electrical Engineering (EE) deployment;
  - Paris Agreement;
  - National roadmaps and targets.
- Implementation, however, remains a major issue.
- This is where litigation comes in. It is a way of demanding better implementation and support for climate friendly technological shifts (RES, EE) from governments.
- Two successful case examples: Urgenda in the Netherlands and Klimaatzaak in Belgium.

### **14:50 Air Pollution - Amy Rose, ClientEarth**

- Example of long and arduous cases before national court (UK) and European Court of Justice (ECJ).
- Clean Air cases, with the EU Air Quality Directive as baseline.
- The first line of action against Member States (MS) are the EU Commission's infringement procedures; they are, however, long, slow and present gaps.
- Litigation in national courts is an alternative, which fills in the gaps.
- UK air quality case: despite multiple forums (UK courts of various instances and ECJ), the outcome, namely the UK government's new air quality plans from 2015 still do not go far enough.
- EU wide problem: air quality directive presents massive implementation gaps across Europe. Importantly, pollution limits, which are in place in EU, are lower than the WHO thresholds. This means MS who are in breach of EU standards are not even close to meeting those of WHO.
- Pan-EU rollout: right now the fight continues in multiple EU MS where ClientEarth is partnering with local NGOs to institute proceedings (CZ, BE, IT, ES. Scoping in PL, HU, SK, BG).
- German court's judgments show there is a reason to be positive: so far, the court rulings have been quite radical. Hopefully they will result in action from the Fed gov't and not just regional plans and decisions.

### **15:05 Endocrine Disruptors - Ida Edwertz, Permanent Representation of Sweden to the EU**

- Endocrine disruptors: a micro-scale topic compared to climate change.
- This case is not about citizens going against the government but the government representing its citizens vis-à-vis the EU Commission. It is a response to the Commission's failure to act within time limits.
- EU Commission didn't adopt a delegated act with scientific criteria for the determination of endocrine disruptors within the deadline agreed on by co-legislators (which was 2014).

- Swedish government sets its own ambitious targets for a non-toxic environment. But in case of endocrine disruptors, it could be taken to court for taking unmandated action at national level prior to adoption of the delegated act.
- Key takeaways:
  - Small MS can win against the Commission if they prepare the case well. But there are consequences to the decision to pursue a case against it;
  - Effect of the ruling not very forceful (act still not adopted and not much can be done about it now that the court has ruled).

### **15:20 Questions from the audience and discussion**

Sirpa: What legislation can be used to sue governments and how? Human rights? Suggests setting up a working group made up of lawyers from various organizations.

Q: What about action against people's consumption practices (water, resources, energy, driving cars, etc.)? Not just government practices and failures

Serge de Gheldere: attitude changes are not enough. We need a systemic shift to fossil free economy. In countries with a high percentage of RES (DK – no fossil fuels for individual heating) such shift has already happened. The climate challenge is seen mainly in terms of opportunities.

Q: Example cases: (1) are they coming from people themselves, with the organizations acting as representatives? (2) Is there anything that can be done systematically within EU environmental legislation to create avenues for people to take governments to court on their basis?

Amy Rose: cases brought in the UK come from ClientEarth. In other countries, ClientEarth teams up with other organizations. Environmental justice program aims to advance the access to justice mechanisms for citizens and NGOs.

Q: standing in court. ECoJ cases have the obstacle of direct and individual concern. How do you get around that and does it also apply in national courts?

Denis Philippe: private persons can join the case and NGOs can intervene.

### **16:00 -17:50 OPPORTUNITIES FOR CIVIL ACTION**

Gist: standing requirements are very (too?) restrictive, which has been recognized by the Aarhus committee, the ECoJ and national courts.

### **16:00 Paris Agreement & Human Rights - Matthew Happold, University of Luxembourg**

- Climate change cases are different from other environmental causes with respect to litigation.
- Human rights language has gradually become the basis of climate litigation; embedded in international decisions including Paris Agreement. Paris Agreement follows a trend.
- Problems with the Paris Agreement: obligation to respect and consider parties' obligations with respect to human rights. Different states view their obligations differently.

- Implications of Paris Agreement:
  - Provides advocates and legal activists with a well-established body of law as a basis for their cases (human rights);
  - Encompasses both substantive rights and procedural rights;
  - Stresses rights of people in the most vulnerable position. Big on non-discrimination.
- Using human rights as a tool in court: need for raising the questions of justice in the debate on the environment.

#### **16:15 Aarhus Convention - Anaïs Berthier, ClientEarth (EU Aarhus Centre)**

- Convention on access to justice in environmental matters. Purpose is to ensure that environmental law is actually being implemented and gives citizens the opportunity to hold governments accountable.
- Legally binding both for EU institutions and MS public authorities.
- Strict legal standing rules before EU courts which exclude many actors.
- Individual concern requirement is the major obstacle, nearly impossible to meet in environmental and health cases but it is hardly ever a single person that is affected
- As a result, no individual person has ever been able to challenge legislation at EU level. NGOs also not allowed to challenge decisions.
- Groundbreaking ruling of the Aarhus Committee: EU too restrictive in granting citizens access to justice; Aarhus Convention does not provide sufficient access:
  - System of preliminary ruling does not constitute access to justice;
  - Excessively narrow and restrictive approach: “Regulatory acts not enabling implementing measures” and “direct concern”;
  - Citizens, including but not only NGOs (also individuals), should have access to justice;
  - Committee recommended that the Aarhus Convention be amended to reflect the above.
- Consequence of insufficient access to justice for citizens: unaccountable EU institutions.

#### **16:30 Justiciability & Legal Standing – Wybe Douma, Asser Institute**

- Case law shows that the ECJ has recognized the need for less restrictive standing requirements for citizens to access justice in environmental issues. But it places the ball in the national courts’ court.
- Fear of the EU courts is that environmental NGOs will start bombarding them with cases.
- Non-environmental case law suggests a relaxation of rules on standing.

#### **16:45 The role of NGOs - Sophie Yule-Bennett, European Climate Foundation**

- NGOs have recently been successful in taking “action against inaction” challenging governments and regulators.
- Action against companies more tricky than governments.
- NGOs may be uncomfortable to start using market tools to disrupt vested interests.

#### **17:50-18:00 CONCLUSION – Sirpa Pietikäinen MEP**