

The Belgian Climate Case: a case with a view*

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*E.M. Forster, *A room with a view*, 1908.

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KNOWLEDGE IN ACTION

Overview

1. The parties to the case
2. The course of the procedure
3. What the plaintiffs demanded
4. Legal grounds
5. The first instance judgment
6. The appeal

“Klimaatzaak vzw & al. v. the Belgian Federal State, the Brussels Region, the Flemish Region, and the Walloon Region”

1. The parties to the case

June 1st 2015

- vzw Klimaatzaak
- 8.429 citizens

3 May 2019

+ 82 protected trees

3 July 2019

+ 50.164 citizens

June 1st 2015

- Belgian Federal State
- Brussels Region
- Flemish Region
- Walloon Region

A view on



A typology of climate change litigation (CCL)

Systemic cases and other cases



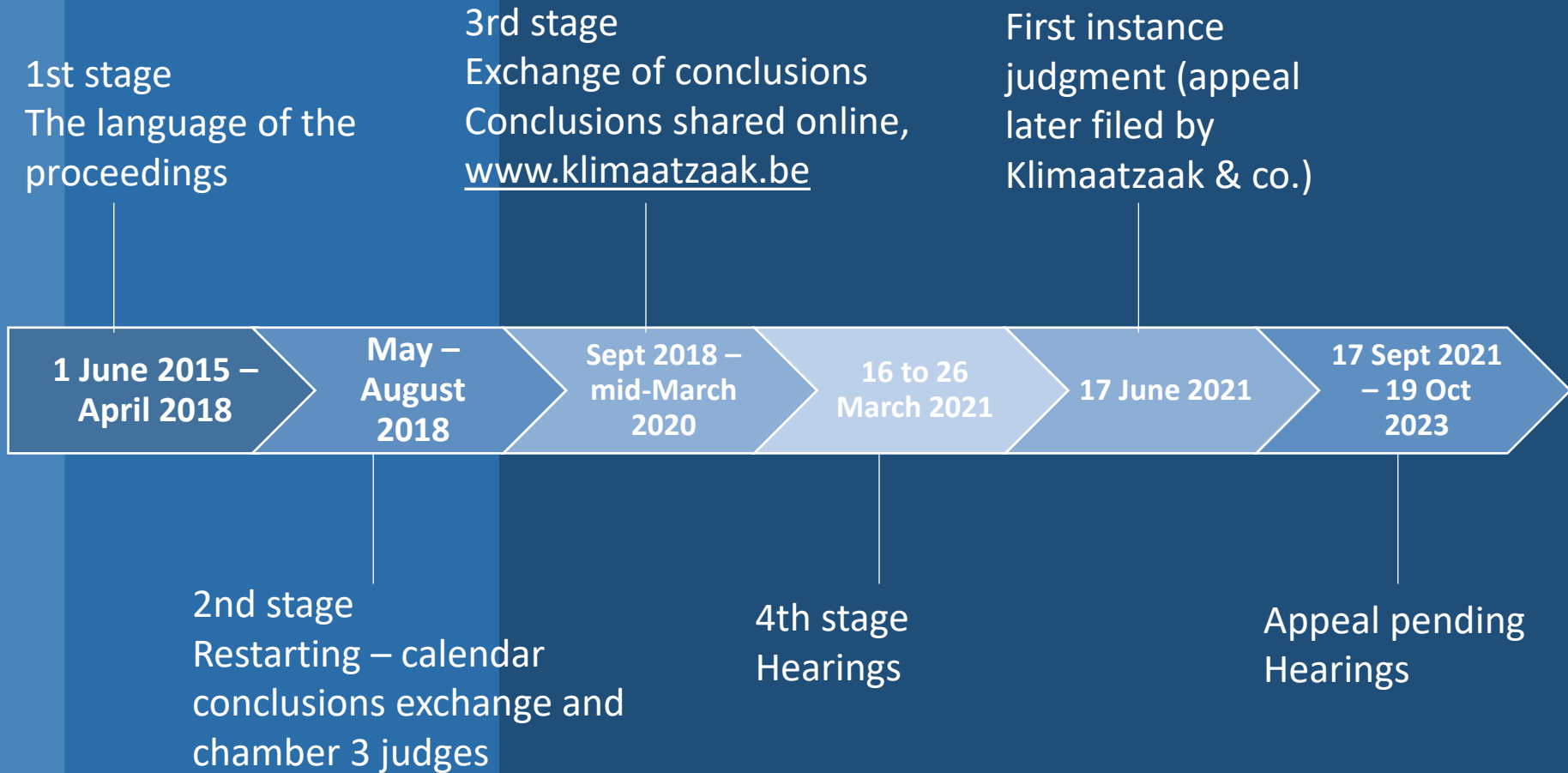
CCL and the development of legal narratives

E.g. feeding the debate regarding the attribution of moral personality to natural entities (trees, rivers, mountains, ...)



Asymmetry in financial resources

2. The course of the procedure



Verdict: 30 November 2023?

... And next?

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The time of justice $> <$ the climate emergency



CCL and an evolution in the modalities of access to justice

3. What the plaintiffs asked for

June 1st 2015

Reductions of the annual volume of GHG emissions from the Belgian territory

- 2020: 40%, minimum 25%, as compared to 1990
- 2030: 55%, minimum 40%, as compared to 1990
- 2050: 87,50%, minimum 80%, as compared to 1990

July & December 2019

More important emission reductions

- 2025: 48%, minimum 42% as compared to 1990
- 2030: 65%, minimum 55%, as compared to 1990
- 2050: a net zero emission

- "mammoth file"
Gallopig pace of new facts, policies and law

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The role of climate science in climate change litigation



The advantages of IPCC Climate science in climate change litigation


4. On what legal grounds?

Private Law

- Extracontractual liability (articles 1382-1383 (Old) Civil Code)
 - Faulty negligence

Public Law

- Violation of fundamental rights, specifically the Right to life and the Right to respect for private and family life (articles 2 and 8 European Convention on Human Rights)



The gap between knowing and acting

- Covid policies
- Energy crisis

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The champions of systemic climate change litigation



Open standards in law

5. The First instance judgment: three major wins

Regarding the 58.500+ citizens: *"...each of them has a direct and personal Interest in the liability action they have brought"* (p.50 and 56)

Regarding the federal structure: *"...the federal structure does not exempt the federal state or the federated entities from their obligations, be they internal, European or international."* (p. 74)

The climate policy of the defendants is illegal: *"... the Court, ruling in the presence of both parties, hereby ... holds that, in pursuing their climate policy, the defendants violate the fundamental rights of the plaintiffs, and more specifically Articles 2 and 8 of the ECHR, by failing to take all necessary measures to prevent the effects of a climate change that attacks the life and privacy of the plaintiffs"* (p.83)

IPCC, AR.6 SYR, SPM – the intergenerational dimension limited to this century (2100)

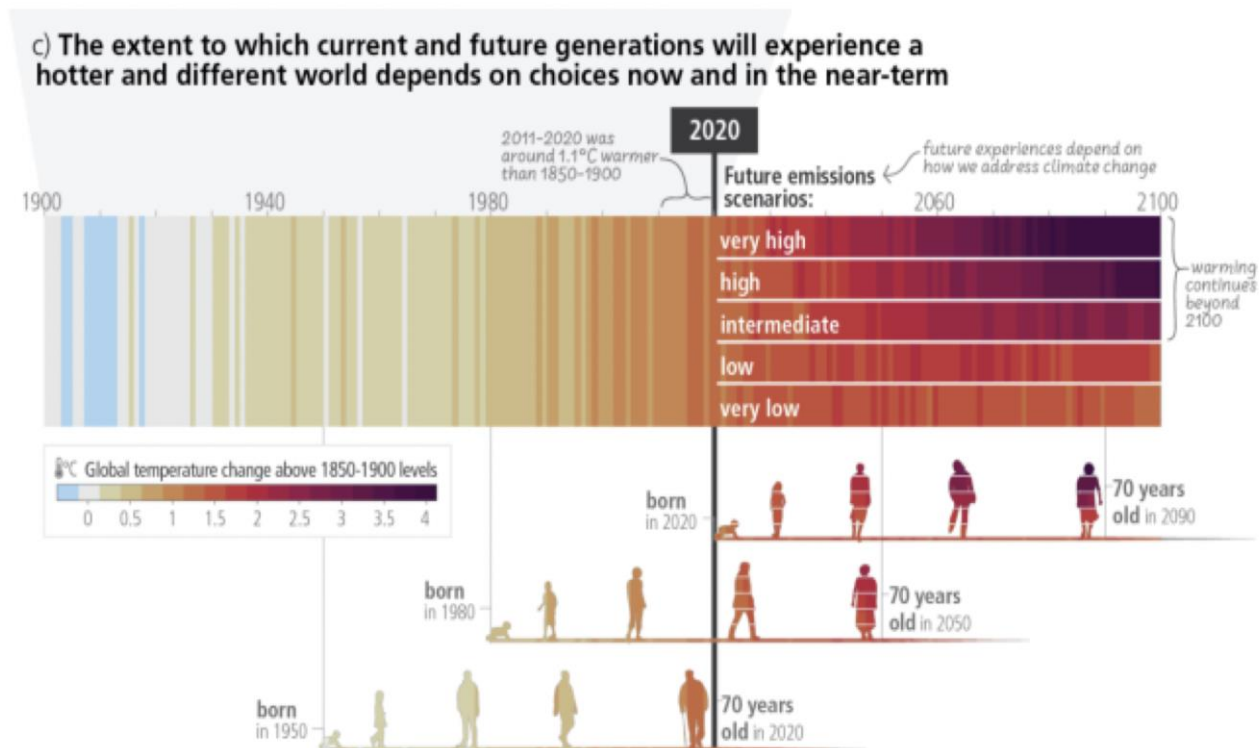


Figure 7.c. Impact sur la santé des générations futures

The First instance judgment: one loss

No emission reduction order:

"However, this request for an injunction cannot be granted without infringing the principle of the separation of powers." (p. 80)



Does it matter?

No emission reduction order: does it matter?

Germany



24 MARCH 2021:
VERDICT
BUNDESVERFASSUNGS
-GERICHT



12 MAY 2021:
AMENDMENT PROPOSAL
KLIMASCHUTZGESETZ,
FROM -55% GHG TO -65%
GHG IN 2030



24 AND 25 JUNE 2021:
APPROVAL GERMAN
PARLIAMENT



31 AUGUST 2021:
EFFECTIVE

Belgium

- 17 June 2021: verdict First instance tribunal Brussels
- 17 September 2021: open letter to the Prime Minister
- 17 November 2021: appeal

Le Soir: "La Belgique fait le mort"

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The tranquility of the courtroom



What is a successful case?

- > Direct dimension
- > Indirect dimension



The impact of legal culture

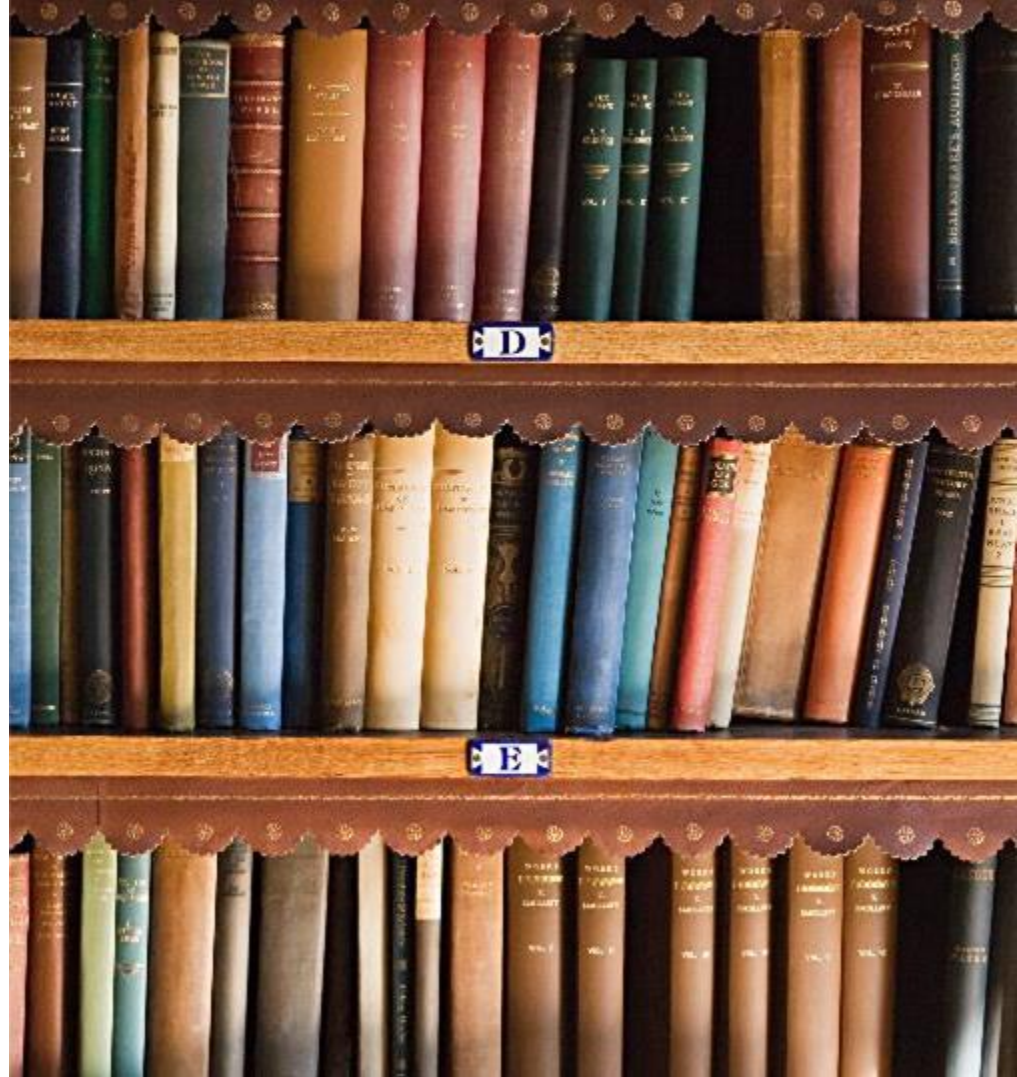


6. The appeal

- Pending with the Brussels Court of Appeal
- Exceptional priority in processing – the emergency argument and the Court
- Main claim: *"In the present case, the judge can impose the requested emission reduction order without violating the principle of separation of powers"*

Perspective?

- 36 hours of hearings
- Over 6 weeks
 - Until 19 October
- Verdict 30 November?
- And next?



Conclusions

Climate change is in court

An extreme set of facts

To be handled within the boundaries of the law

The exacerbation of the possibilities and limits of legal systems & social systems

Thank you for your attention!



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