

Avosetta
Climate Litigation
Cork, 28-29 May 2021

BELGIUM

[1] State of play at national level:

In your particular Member State, have cases been decided by the national courts, and / or are there cases pending before the courts, that aim to deliver better climate protection?

Yes, the “Klimaatzaak” is a pending case.

See: [Climate Case, the lawsuit in which everyone wins | Climate Case \(klimaatzaak.eu\)](#)

Are there “horizontal” cases between private parties and / or “vertical” ones between private parties and public authorities – or both? If yes, briefly characterise them.

This is a vertical one of an ENGO founded by 11 “Bekende Vlamingen” (Well Known Flemings – mostly media figures) – vzw Klimaatzaak – supported by + 65 000 co-claimants and supporters, against the federal and the three regional governments.

Actions challenging public authorities could be aimed: (1) at high level target setting for greenhouse gas emission (GHG) reduction; or (2) at the taking of more concrete measures reducing emissions (such as emissions limits for automobiles); or (3) at projects causing emissions as a side effect (such as a new runway or highway).

The current case is a case of category (1). There was a case of category (3) in the making, but after an initial NGO win of a case dealing with the permit to deforest the envisaged plot of land, INEOS decided to postpone the investment ([Ineos cuts major plastics investment in wake of court action, reports say | ClientEarth](#)).

A new development is the case ClientEarth has brought against the National Bank of Belgium, for failing to fulfil environmental protection and human rights requirements when purchasing corporate assets, many of which are from companies that are believed to be fuelling the climate crisis¹. ClientEarth’s lawsuit against Belgium’s central bank was filed in the Brussel Civil Court of First instance, but it asks for a question to be referred to the European Court of Justice. That question would ask the CJEU to decide whether the ECB’s purchase programme is valid or invalid, in order to determine whether the Belgian National Bank’s actions carried out under

¹ [Why ClientEarth is suing the central bank of Belgium for climate failings | ClientEarth](#)

that policy are legal. ClientEarth argues that the ECB's decision establishing the programme failed to assess the climate impact of buying these corporate assets despite its legal obligations to do so.

Briefly indicate who are the claimants; what are the standing requirements; what is the objective of the action, and what is the reasoning on the substance of the case.

Vzw "Klimaatzaak" is an Urgenda-inspired ENGO founded by 11 "Bekende Vlamingen" ("Well Known Flemings" – mostly media figures).

Under influence of the Aarhus Convention and the case law of the Constitutional Court standing requirements have been relaxed over time through jurisprudence. According to the, as of 1 January 2019, Amended Art. 17 of the Judicial Code, NGO's now have standing: 1° if the corporate purpose of the legal person is of a special nature, distinguished from the pursuit of the general interest; 2 ° the legal person pursues this corporate objective in a sustainable and effective manner; 3 ° the legal person takes legal action within the framework of that corporate purpose, with a view to defending an interest related to that purpose; 4 ° the legal person merely pursues a collective interest with its legal action.

They have introduced in 2015 a civil case with the French speaking Court of First Instance in Brussels, meanwhile supported by +65 000 co-claimants and supporters, against the federal and the three regional governments. They want the competent authorities to be condemned for failing to act on climate policy and are demanding a reduction in greenhouse gas emissions on Belgian territory of at least 42 to 48% in 2025 and at least 55 to 65% in 2030, each time compared to the base year of 1990. In 2050, one must continue to move towards zero net emissions. They are asking for a penalty payment of EUR 1 million for every month of delay in enforcing the judgment.

There have been three interlocutory judgments because the Flemish Government asked to refer (their part of) the case to a Dutch Speaking Court, which was refused by the French Speaking Court of First Instance and the District Court of Brussels and this was confirmed by the Supreme Court.

The argumentation is completely parallel with the Urgenda case.

The case has been heard by the Court from 16 to 26 March 2021: ([De rechtszaak: hier staan we vandaag | Klimaatzaak](#)). [Belgian authorities sued over 'inadequate' green targets \(euobserver.com\)](#)

The judgment has been announced for July.

[2] Interconnections between developments at national and supranational level:

Where relevant, please connect the national experience to date with developments in climate litigation at the supranational level (e.g. proceedings before the CJEU and the ECtHR).

The team of lawyers of the case are closely following what is happening on the CJEU and ECtHR ([Verslaggeving uit de rechtszaal + Dagelijkse klimaatvraag \(mjt.lu\)](#)).