

Can civil courts save the climate? Strategic climate change litigation before civil courts

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Climate change is an urgent global problem and national legislatures must enhance their efforts to reduce carbon dioxide emissions drastically. Public law actions have been filed by NGOs and individuals in international courts, the European Court of Human Rights and several Constitutional Courts alleging that legislators and public regulators do not actively participate in a global effort for the reduction of the carbon impact and thus violate constitutional and human rights. It is a more recent development that also civil courts are seized with climate change litigation. In 2021, the Hague District Court in an action filed by a Dutch NGO against the Royal Dutch Shell Group held that Shell is obliged to reduce its CO₂ emissions by net 45 % at the end of 2030 relative to 2019. The judgment was based on general tort regulations of the Dutch Civil Code and it has triggered a wave of similar actions before German courts. Individual plaintiffs, supported by NGOs, sue private companies for damages or for an immediate reduction of emissions. They are examples of “strategic litigation” that aims to bring about broad societal changes beyond the scope of the individual case at hand. Climate change is a complex, multistakeholder issue that requires a difficult process of balancing social, legal and economic interests – which is the task of democratically legitimized parliaments, not primarily a task of courts. The lecture will analyse the political implications, raise the question whether general tort law is a suitable instrument to cope with the climate change problem and discuss how civil courts are expected to handle these cases.