

## THE BELGIAN CLIMATE CASE: FROM FEDERALISM IDIOSYNCRASIES TO ARBOREAL NOVELTIES

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### Abstract

*VZW Klimaatzaak v. Kingdom of Belgium & Others* is a climate lawsuit brought in Belgium in 2015. It was modelled on the famous Dutch *Urgenda* case. In this groundbreaking judicial procedure, over 60.000 plaintiffs argued that Belgian public authorities have undertaken insufficient climate action and called for its enhancement. On June 17, 2021, the Tribunal of First Instance of Brussels rendered its decision in partial favour of the plaintiffs, consolidating a climate 'duty of care' for public authorities. This article puts forward a succinct summary of the complaint introduced by the NGO Klimaatzaak and the main findings of the Tribunal. In doing so, it attempts to make the idiosyncrasies of Belgian federalism intelligible to an international audience. It also highlights a number of notable features of the case, including the Tribunal's reliance on the Aarhus Convention to interpret broadly the provisions on legal standing for environmental NGOs, and a third-party intervention request introduced on behalf of over a hundred trees with long lifespans. Finally, the article focuses on an apparent flaw in the reasoning of the Tribunal in its 2021 Judgment and points out what to look out for in the appeal proceedings that are ongoing at the time of writing.

### Key words

Climate Litigation – Belgium – Klimaatzaak – Strategic Litigation – Aarhus Convention – Duty of Care – Human Rights – Rights of Nature – Trees as Legal Subjects

### 1 Introduction

In 2015, a Belgian non-governmental organization (NGO) called 'Klimaatzaak' ('climate case' in Dutch) launched a far-reaching lawsuit against four Belgian public authorities in what has since become known as the *Belgian Climate Case*.<sup>1</sup> This climate lawsuit is modelled on the famous

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<sup>1</sup> *VZW Klimaatzaak and Citizens v. Kingdom of Belgium & Others*, 2015, available on the Sabin Center Climate Litigation Database: <<http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/>>. This database entry also contains links to a number of documents related to the dispute, referred to throughout the commentary. For a general overview of the case as of late 2021, see also: Matthias PETEL and Antoine DE SPIEGELEIR, 'Guest Commentary: Lessons from the Belgian Climate Case: The Devil Is in the Details' (*Climate Law Blog - Sabin Center for Climate Change Law - Columbia Law School*, 15 November 2021) <<https://blogs.law.columbia.edu/climatechange/2021/11/15/guest-commentary-lessons-from-the-belgium-climate-case-the-devil-is-in-the-details/>>. For a more detailed overview of the Belgian legal background, see: Sébastien VAN DROOGHENBROECK and others, 'Urgenda : quelles leçons pour la Belgique?' [2021] *Administration publique*

*Urgenda* case,<sup>2</sup> which took place in the Netherlands. In the *Belgian Climate Case*, more than 60.000 citizens joined Klimaatzaak in arguing that Belgian public authorities have failed to undertake sufficient climate action in violation of the plaintiffs' human rights and of the general 'duty of care' embodied in provisions of the Belgian Civil Code on civil extracontractual liability (articles 1382 and 1383). On June 17, 2021, the Tribunal of First Instance of Brussels found in partial favour of the plaintiffs.<sup>3</sup> Its ruling consolidated a climate duty of care for public authorities while echoing the common view according to which substantive remedies in climate lawsuits run counter to the sacrosanct principle of the separation of powers.

This article begins by summarizing the basis of the complaint. Among other things, the third-party intervention request introduced on behalf of more than a hundred 'trees with long lifespans' is startling and yet often-ignored. Although the request was not successful, or perhaps precisely because it could not have been successful, the text and underlying framing of this request deserves academic attention, at least in that it raises questions about *unsuccessful* strategic litigation. Then, a few words are said about the somewhat puzzling structure of the Belgian State and how this structure affected the content of the lawsuit and its first three years of procedure. In the next section, the Tribunal's findings are examined. Because of the limited space and to draw attention to those findings that are more likely to be of relevance to an international audience, I focus on issues relating to standing, to civil liability, human rights, and a climate 'duty of care,' and to remedies. This discussion notably highlights the role played by the Aarhus Convention in shaping the interpretation of Belgian legal provisions on legal standing for environmental NGOs. Although not fundamentally new or original, the Tribunal's reliance on the Convention to recognize Klimaatzaak's legal standing as lead plaintiff is an important reminder of the role of international conventions in the realm of national law, and a confirmation of the importance of the Aarhus Convention in climate litigation matters. This discussion also shows what the author believes to be the Tribunal's failure to give full effect to its finding of a breach of human rights by Belgian authorities.

Overall, the *Belgian Climate Case* is an important new member of the growing family of climate lawsuits around the world that is yet to fully tell its tale, as the appeal proceedings are underway at the time of writing.

## 2 Complaint

In its complaint lodged in 2015, the NGO Klimaatzaak, alongside 60.000+ citizens who joined the lawsuit in their individual capacity, argued that the Belgian Government and the Governments of the Regions of Brussels, Wallonia, and Flanders have breached their general duty to act as 'prudent' and 'diligent' authorities in violation of three sets of provisions: (i) articles 1382 and 1383 of the Belgian Civil Code, which provide the foundation of civil extracontractual liability in Belgium by establishing a duty to repair any harm caused by an individual or entity under three

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36; Nicolas CELIS, 'De Belgische klimaatzaak vanuit globaal perspectief: rechtsontwikkeling middels justitiële communicatie?' [2021] Milieu- en energierecht 14.

<sup>2</sup> *Urgenda Foundation v. State of the Netherlands*, 2013, accessible on the Sabin Center Climate Litigation Database: <<http://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>>.

<sup>3</sup> Tribunal of First Instance of Brussels, Judgment of June 17, 2021, *VZW Klimaatzaak and Others v. Kingdom of Belgium and Others*, available in French and in English (unofficial translation) in the database of the Sabin Center: <<http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/>>.

cumulative conditions (a wrongdoing, a harm, and a causal relationship between the two); (ii) articles 2 and 8 of the European Convention on Human Rights (ECHR), which respectively guarantee the right to life and the right to respect for private and family life; and (iii) articles 6 and 24 of the Convention on the Rights of the Child (CRC), which establish the child's right to life and to 'the highest attainable standard of health.'<sup>4</sup>

As a remedy, the plaintiffs asked the Tribunal to impose binding targets for greenhouse gas emissions reductions on the defendants. Specifically, they sought an injunction establishing the obligations to reduce greenhouse gas emissions originating on Belgian territory:

- by 48% (at least 42%) compared to 1990 by 2025;
- by 65% (at least 55%) compared to 1990 by 2030; and
- by 100% (zero net emissions) by 2050.

This somewhat complicated request flowed from the plaintiffs' thorough review of the existing scientific literature on anthropogenic climate change, which they set out in detail in their original complaint.

Finally, on May 3, 2019, a request for intervention as third parties was introduced by two Belgian attorneys in support of this complaint on behalf of more than a hundred trees with long lifespans. In their request, they repeatedly emphasized that the trees they purport to represent are living beings in need of protection in the face of grave harm caused by climate change, both in their personal capacity as 'legal subjects' and in their capacity as valuable 'common goods' in the general interest of humankind'. They argued:

7. The Applicants are living beings whose average lifespan far exceeds that of the human being. They must be respected throughout their lives, with the right to develop and reproduce freely, from their birth to their natural death, whether they are urban or rural trees. The Applicants must therefore be considered as subjects of law, including in the face of the rules that govern human property.

8. Because of their patrimonial values recognized by the Defendants, the Applicants also enjoy provisional or definitive protection in the general interest of humanity, decreed by the Defendants. Therefore, the Defendants must, directly or indirectly, adhere to the principle of preservation (of assets and liabilities) enshrined in their laws for the protection of their monuments and/or heritages.<sup>5</sup>

This intervention request was bound to fail because Belgian law does not recognize the rights of nature. Its introduction is intriguing, as discussed further below when summarizing how the Tribunal dealt with issues of standing.

### **3 Idiosyncrasies of Belgian federalism**

A feature of the case that is perhaps surprising to a foreign audience is that there are four public authorities acting as defendants: the Belgian Federal Government as well as the Governments of the three Belgian Regions, Brussels, Flanders, and Wallonia. To understand this, it is necessary to

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<sup>4</sup> The reliance on European and international human rights law echoes the so-called 'rights turn' in climate change litigation; see inter many alia: Jacqueline PEEL and Hari M OSOFSKY, 'A Rights Turn in Climate Change Litigation?' (2018) 7 *Transnational Environmental Law* 37.

<sup>5</sup> Page 6 of the Intervention Request of May 3, 2019 (author's translation from the original French).

recall that Belgium is a federal civil law country comprised of three Communities, three Regions, and four 'Linguistic Regions,' and that Belgium's Communities and Regions have legislative and executive powers on an equal footing with those of the Federal Government in the subject matters attributed to them throughout a series of constitutional reforms since the 1970s. The Communities have powers relating to culture, education, and languages, among others, while the Regions have powers in fields relating to their territory or region broadly speaking, including environmental matters. However, climate change is a cross-cutting issue that goes beyond the environment itself, as it relates to transport, taxation, energy, and many other policy areas. As a result, Belgium's various public authorities have overlapping and shared responsibilities, which spurs the need for coordination.<sup>6</sup>

Another astonishing aspect is that in a little more than seven years, only one ruling was rendered on the substance of the case. The complaint under study in this commentary was filed not long after the original *Urgenda* complaint in the Netherlands. Yet Belgium does not have anything like a full-fledged 'Klimaatzaak saga' comparable to its northern neighbour's world-famous *Urgenda* saga. One of the reasons behind this disparity lies in the significant backlog plaguing the Belgian judicial system. Another is to be found in the three years that were spent—'wasted,' some would argue—on determining what should be the language of the procedure. Indeed, a thorny question that sometimes arises in Belgian litigation is that of the language of the procedure in a country that has three official languages: French, Dutch, and German. In this case, the complaint was filed in French. Thereafter, the Region of Flanders requested that the language be changed to Dutch or, if such change could not be made, that the case be split into two distinct, parallel lawsuits. This request was rejected by the Tribunal of First Instance, the Court of Appeal, and eventually, the Court of Cassation, Belgium's highest judicial organ. So much for sparing judicial resources.<sup>7</sup>

#### 4 Findings of the Tribunal of First Instance of Brussels

On June 17, 2021, the Tribunal of First Instance of Brussels found in partial favour of the plaintiffs. Of particular interest was the Tribunal's treatment of three sets of issues: (i) standing, including that of an environmental NGO, individual citizens, and trees with long lifespans; (ii) civil liability, human rights obligations, and a climate 'duty of care'; and (iii) substantive remedies and their potential conflicting with the separation of powers principle.

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<sup>6</sup> For more detailed information on these shared multi-level responsibilities, see Belgium's latest (2022) National Communication under the United Nations Framework Convention on Climate Change (p. 49-55): <<https://climat.be/doc/nc8-br5.pdf>>.

<sup>7</sup> Incidentally, the author notes that he only had access to the submissions of two of the four Defendants for the purposes of this commentary. Disappointingly, the Federal Government and the Government of Flanders did not accede to *Klimaatzaak's* request to publish their submissions, which thus remain unavailable to the public (and academics). See *Klimaatzaak's* related statements on its website: 'We can share with you the main conclusions of the Brussels-Capital and Walloon Regions. Unfortunately, the federal and Flemish ministers objected to the publication of their arguments' (<<https://affaire-climat.be/en>>). This refusal by public authorities involved in public-interest litigation undoubtedly prompts questions in terms of accountability and transparency.

#### 4.1 Standing

The Tribunal found that it had jurisdiction to entertain the case and that the NGO *Klimaatzaak* as well as all 60.000+ individual plaintiffs<sup>8</sup> had standing to bring the case before it. With regard to the former, the Tribunal read Belgian legal standing requirements in light of article 9(3) of the Aarhus Convention<sup>9</sup> after recalling the long and complex process through which this Convention was implemented in the Belgian legal landscape after Belgium ratified it in 2003. Article 9(3) reads as follows:

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, *where they meet the criteria, if any, laid down in its national law*, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities *which contravene provisions of its national law relating to the environment*. [emphasis added]

The Region of Brussels had argued for a narrow interpretation of the notion of 'provisions [of] national law relating to the environment' in order to exclude the provisions relied upon by the plaintiffs from the coverage of article 9(3). However, the Tribunal rejected such a narrow interpretation and found that articles 1382 and 1383 as well as provisions of European and international law 'received within' the Belgian legal system are covered by this provision. The crux of the issue was thus to determine whether *Klimaatzaak* effectively met 'the criteria [laid] down in [Belgian] national law.' The relevant provisions of national law are articles 17 and 18 of the Belgian Judicial Code according to which one must show a direct, personal, real, and 'ongoing' interest for one's lawsuit to be admissible. The Tribunal read these conditions relatively loosely in light of the Aarhus Convention, Belgian case law, and European Union case law in order to conclude that *Klimaatzaak* was effectively entitled to bring the case against the defendants.<sup>10</sup>

Similarly, the Tribunal considered that the harm of climate change (effective or potential) was sufficiently clear and serious for the 60.000+ plaintiffs to meet the conditions laid down in the Belgian Judicial Code in their individual capacity. Of particular interest in light of the highly restrictive legal framework for class actions (*actio popularis*) in Belgium is the finding that 'the fact that other Belgian citizens may also suffer their own harm, in whole or in part comparable to that of the plaintiffs as individuals, is not sufficient to reclassify the personal interest of each of them as a general interest.'<sup>11</sup> As far as this author is aware, this is the largest number of complainants allowed to act jointly in their individual capacity in a climate litigation case to date.

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<sup>8</sup> There were about 58.000 individual plaintiffs at the time of the Judgment in question, but the number has increased since.

<sup>9</sup> Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted on June 25, 1998, 2161 UNTS 447, 38 ILM 517 (1999): <<https://unece.org/DAM/env/pp/documents/cep43e.pdf>>.

<sup>10</sup> On the issue of legal standing for environmental NGOs in the Belgian context, see: Roxane DELFORGE, 'L'intérêt à Agir Des Associations Dans Le Contentieux Environnemental et Climatique et Le Cas de *Klimaatzaak*' [2021] *Annales de Droit de Louvain*: revue trimestrielle 194. For the European context, see: Elena FASOLI, 'Legal Standing of NGOs in Environmental Disputes in Europe' in Nerina BOSCHIERO and others (eds), *International Courts and the Development of International Law: Essays in Honour of Tullio Treves* (T.M.C. Asser Press 2013) <[https://doi.org/10.1007/978-90-6704-894-1\\_27](https://doi.org/10.1007/978-90-6704-894-1_27)>.

<sup>11</sup> Page 51 of the Judgment of June 17, 2021 (author's translation from the original French).

Conversely, the Tribunal found the request for intervention introduced on behalf of trees to be inadmissible. This is unsurprising, since Belgian law does not recognize the rights of nature, as the Tribunal clearly noted:

In the state of Belgian positive law, trees are not 'subjects of rights', i.e., beings capable of having and exercising rights and obligations. With the exception of legal persons to whom the law expressly recognizes legal personality, only human beings have this capacity, and only their interests are subject to regulation by the law. If they are not recognized as legal entities, trees do not have the right to bring a legal action. Their voluntary intervention will therefore be declared inadmissible.<sup>12</sup>

Still, the Tribunal was compelled to address the question of the legal subjecthood of trees explicitly in a highly visible (and widely consulted) decision. Hence, the request was successful in rendering the debate on the rights of nature in Belgium 'legally legible' and, at the very least, to lend plausibility to the idea. Viewed in this way, it is suggested that it achieved what was probably its primary goal. Understanding further the impact of clearly inadmissible claims in court is well beyond the scope of this commentary, of course, but there may well be much more to say about 'winning through losing' in climate change litigation.<sup>13</sup>

#### 4.2 *Belgian civil liability, human rights, and a climate 'duty of care'*

On the substance, the Tribunal recalled the large scientific consensus on anthropogenic climate change as well as the extensive number of environmental policies adopted at the Belgian, European, and international level, which all point to the urgent need to reduce greenhouse gas emissions. Remarkably, the Tribunal spent about thirty-five pages out of an eighty-page decision laying out the 'factual background' of the dispute in great detail.

Thereafter, the Tribunal considered that the defendants effectively failed to act with 'sufficient prudence and diligence' in light of three particular parameters. First, their policies produced mixed results in reducing greenhouse gas emissions. Second, they received multiple warnings from the European Union since 2011, which indicates that Belgium was lagging behind in climate action.<sup>14</sup> Third, they failed to establish a system of effective climate governance. In relation to that last point, the Tribunal made the following remark, which may please federalism *aficionados*:

Admittedly, the implementation of climate policy, which is necessarily cross-cutting in nature, is a real challenge in a State structure such as Belgium, in which competences are distributed according to a logic of enumeration of matters attributed to the federated entities or reserved for the federal authority, and not on the basis of a distribution of public policy objectives among the various

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<sup>12</sup> Page 56 of the Judgment of June 17, 2021 (author's translation from the original French).

<sup>13</sup> Comp. '[m]oreover, even unsuccessful cases can contribute to articulating climate change as a legal and financial risk, which may help to guide climate change-responsive adjudication in the longer term' (Geetanjali GANGULY, Joana SETZER and Veerle HEYVAERT, 'If at First You Don't Succeed: Suing Corporations for Climate Change' (2018) 38 Oxford Journal of Legal Studies 841). On the topic, see *mutadis mutandis*: Douglas NEJAIME, 'Winning through Losing' (2010) 96 Iowa Law Review 941; Ben DEPOORTER, 'The Upside of Losing' (2013) 113 Columbia Law Review 817.

<sup>14</sup> On this point, the Tribunal's tone displayed a little frustration: 'as indicated in the above factual statement, every year since 2011, the European Union has highlighted Belgium's difficulties in achieving the climate objectives assigned to it and in defining a coordinated action between all entities. The systematic and almost repetitive nature of the remarks and warnings of the European authorities to Belgium for almost ten years is thus clear' (page 79 of the Judgment of June 17, 2021 (author's translation from the original French)).

entities. However, *the federal structure does not exempt the federal State or the federated entities from their obligations*, whether domestic, European or international.<sup>15</sup>

The Tribunal found that the defendants' failures amounted to a violation of the Belgian rules on civil extracontractual liability as well as a breach of articles 2 and 8 of the ECHR. However, it decided to set aside the plaintiffs' complaint as to articles 6 and 24 of the CRC because it considered that this Convention does not create positive obligations for the State. This was not unexpected but remains a little disappointing, notably in light of the recent views issued by the Committee on the Rights of the Child in relation to climate change.<sup>16</sup> Indeed, although it found the complaints of sixteen children from five countries inadmissible because they did not exhaust national remedies, this Committee did hint at the existence of states' individual responsibilities under the CRC for greenhouse gas emissions.<sup>17</sup>

### 4.3 Remedies and the separation of powers

Based on the previous developments and the famous remedies obtained by the plaintiffs in *Urgenda*, one might have expected the Tribunal of First Instance of Brussels to proceed unencumbered with awarding *Klimaatzaak* and the individual plaintiffs the specific remedies they sought, namely, the imposition of binding greenhouse gas emissions reduction targets set for 2025, 2030, and 2050. Nevertheless, the Tribunal refused to impose specific targets as doing so, it argued, would amount to going beyond the prerogatives of the judiciary, thereby trespassing on the discretionary power of the legislative and executive branch and ultimately, flouting the separation of powers principle. This centuries-old principle is of course an important obstacle to navigate for climate litigation activists, and it has been dealt with in different ways before different national judicial bodies.<sup>18</sup> Typically, courts decide either to set aside the dispute altogether, considering that the policy at issue is beyond the powers of review of the judiciary, or they accept to entertain the dispute and provide an effective remedy in case of a finding of a breach even if their decision may have significant political consequences.

In this case, the Tribunal embarked on an awkward third path: after establishing the existence of a serious breach of *both* Belgian civil law and (European) human rights law in unequivocal terms, it failed to provide the victims of this breach (*Klimaatzaak* and the individual plaintiffs) with an effective remedy:

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<sup>15</sup> Page 74 of the Judgment of June 17, 2021 (author's translation from the original French, emphasis added).

<sup>16</sup> Committee on the Rights of the Child, Decision adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning Communication No. 104/2019, November 11, 2021, CRC/C/88/D/104/2019. The decision can be accessed at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1351&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1351&Lang=en).

<sup>17</sup> For more information, see Aoife NOLAN, 'Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in *Sacchi v Argentina*' (*EJIL: Talk!*, 20 October 2021) <https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/>.

<sup>18</sup> See Christina ECKES, 'Separation of Powers in Climate Cases' (*Verfassungsblog*) <https://verfassungsblog.de/separation-of-powers-in-climate-cases/>; Jasmina NEDEVSKA, 'An Attack on the Separation of Powers? Strategic Climate Litigation in the Eyes of U.S. Judges' (2021) 13 *Sustainability* 8335; Christina ECKES, 'Tackling the Climate Crisis with Counter-Majoritarian Instruments: Judges between Political Paralysis, Science, and International Law' (2022) 2021 6 *European Papers - A Journal on Law and Integration* 1307; Laura BURGERS, 'Should Judges Make Climate Change Law?' (2020) 9 *Transnational Environmental Law* 55.

In other words, while it is the role of the Tribunal to find that the federal Government and the three Regions have failed to act, this finding does not authorize the Tribunal, by virtue of the principle of separation of powers, to set targets for reducing Belgium's GHG emissions.<sup>19</sup>

As argued in a 2021 blog post,<sup>20</sup> this approach seems to confuse two sources of obligations on the part of the defendants: the duty to meet existing commitments, to which the Tribunal referred in its findings; and the duty to act diligently and prudently and to guarantee the effective protection of the plaintiffs' human rights, which potentially goes beyond existing climate action commitments and should be informed by climate science. This tension lies at the heart of the ongoing debate on whether national courts can impose binding targets on public authorities. If the principle of the separation of powers makes it impossible for a judicial organ to impose targets that are necessary to uphold and preserve the human rights of the plaintiffs according to the available evidence, one wonders what good a finding of a human rights breach would achieve, and how different would the decision have been had the plaintiffs relied exclusively on the Belgian rules of civil liability (spoiler: not much).<sup>21</sup>

Of course, blind reliance on scientific evidence to bypass the discretionary power of the executive and legislative branch is a dangerous path on which to embark. But the Tribunal did rely on this evidence in its interpretation of the long-lasting Belgian legal notion of a 'prudent and diligent person' under articles 1382 and 1383 of the Belgian Civil Code, so that it is difficult to understand why the same evidence could not be used to determine what is the correct remedy in this case. The Tribunal's argumentation relied on the idea that it must avoid turning scientific 'information' into legally binding standards. But that is not what the plaintiffs asked for; rather, they requested the Tribunal to impose enhanced climate objectives on the defendants based on the 'duty of care' of public authorities and the need to protect human rights, both read in the light of an overwhelming scientific consensus.

## 5 Concluding remarks

On November 17, 2021, Klimaatzaak appealed the Judgment of the Tribunal of First Instance of Brussels. In its appeal, the NGO has alleged that the Tribunal was mistaken in refusing to impose binding targets for greenhouse gas emission reductions, pointing to the ambivalence of the Judgment noted above. On the one hand, the Tribunal considered that the defendants failed to act as prudent authorities in view of the weight of scientific evidence pointing to the dangers of climate change, which indicates that public authorities are bound to a standard of behaviour informed by climate science irrespective of existing, legally binding commitments. On the other hand, the Tribunal eventually focused on the defendants' failure to respect the binding climate targets adopted at the Belgian, European, and international level, and declined to impose stronger targets informed by the science on climate change. It remains to be seen how the Court of Appeal of Brussels will deal with the matter. Whatever the outcome of the Belgian climate litigation saga,

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<sup>19</sup> Page 82 of the Judgment of June 17, 2021 (author's translation from the original French).

<sup>20</sup> PETEL and DE SPIEGELEIR (n 1).

<sup>21</sup> After all, the principle of the separation of powers cannot be used to prevent the protection of fundamental rights by the judicial branch, as Olivier DE SCHUTTER points out: O DE SCHUTTER, 'Changements climatiques et droits humains: l'Affaire Urgenda', CRIDHO Working Paper 2020/1, UCLouvain, January 2020, <[https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP-2020-1\\_ODeSchutter\\_Urgenda-commentaire.pdf](https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP-2020-1_ODeSchutter_Urgenda-commentaire.pdf)>.



the *Belgian Climate Case* will leave at least a threefold mark on the Belgian, European, and international legal landscape: the question of the standing of environmental NGOs and private citizens, the doctrine of a climate duty of care for public authorities, and the tension between substantive remedies and the separation of powers. One may also hope that the unsuccessful arboreal third-party intervention request will kickstart a conversation about the rights of nature, which have yet to receive the attention they deserve in Belgium as well as in many other jurisdictions.