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Some recent developments in climate litigation in Ireland and Europe

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What do we mean by climate litigation?

- Climate change as the driving force behind the litigation? Climate change as a peripheral issue? Climate change as a relevant consideration within litigation concerning a broader conception of protection of the environment?
- Paris Agreement, December 2015: binding international agreement to limit the increase in the global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit to 1.5°C
- Challenges to governments re international law obligations: ***Urgenda v The Netherlands***
- Challenges to decisions of individual public bodies
- Challenges on the basis that authorities have gone too far: ***ANVR v Municipality of The Hague***
- Challenges to private companies: ***Milieudefensie v Royal Dutch Shell***
- Basis for litigation: infringement of provision of national law / rights-based?
- Challenges brought by whom / who has standing? Does the Aarhus Convention apply?



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Challenges to plans/policy in Ireland

- ***Friends of the Irish Environment v Government of Ireland*** [2020] IESC 49, [2021] 3 IR 1
- Requirements of section 4(1) of the Climate Action and Low Carbon Development Act 2015 that the Minister make a national climate mitigation plan
- The level of specificity required of a compliant plan was that it was sufficient to allow a reasonable and interested member of the public to know how the respondents intended to meet the national transition objective over the 5-year span of the plan
- Quashed as *ultra vires*
- No standing to bring a claim of breach of constitutional / ECHR rights



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Challenges to plans/policy in Ireland

- Climate Action and Low Carbon Development (Amendment) Act 2021 - amendment of section 4 to provide for Climate Action Plan (“CAP”)
- Annual plan with an annex of actions
- ***Friends of the Irish Environment v Minister for the Environment, Climate and Communications*** [2025] IEHC 61: challenge to CAP 23 on the basis that it was inconsistent with the carbon budget
- Rejected by High Court: CAP 23 complied with the Act itself and sufficient reasons given (including in supporting material) to enable a reasonable person to evaluate the plan – failure by the applicants to show that the plan itself was deficient by way of pleadings and/or expert evidence.
- Appeal heard by Court of Appeal in June 2025 (judgment awaited)
- New separate case challenging CAP 24, relying on *KlimaSeniorinnen*



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Challenges to individual decisions in Ireland

- Section 15(1) of the 2015 Act as amended:

A relevant body shall, in so far as practicable, perform its functions in a manner consistent with—

- (a) the most recent approved climate action plan,
- (b) the most recent approved national long term climate action strategy,
- (c) the most recent approved national adaptation framework and approved sectoral adaptation plans,
- (d) the furtherance of the national climate objective, and
- (e) the objective of mitigating greenhouse gas emissions and adapting to the effects of climate change in the State.

- “relevant body” defined elsewhere in the Act – almost all public bodies



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Challenges to individual decisions in Ireland

- ***Coolglass Wind Farm Ltd v An Bord Pleanála* [2025] IEHC 1**
 - Whether An Bord Pleanála (“ABP”) had erred in refusing permission for a strategic infrastructure development (“SID”) consisting of 13 wind turbines where 12 of the turbines were in areas where such development would be contrary to the Laois county development plan.
 - Express statutory power to grant permission for an SID even if permitting the development would be a material contravention of a development plan
 - ABP’s position was that it was acting consistently with the climate objectives and policies at section 15(1)(a)–(e) if it had regard to them
 - Coolglass successfully argued before the High Court that effect of section 15(a) was that ABP could only exercise its discretion to refuse permission for a renewable energy development if it was not practicable to grant permission
 - Appeal heard by the Supreme Court in July 2025 (judgment awaited)



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Challenges to individual decisions in Ireland

- ***Friends of Killymooney Lough v An Coimisiún Pleanála*** [2025] IEHC 407, *obiter* findings at paragraph 172:

All consent functions have to be exercised as far as practicable in a manner consistent with climate goals – as required by s. 15 of the 2015 Act as amended by the 2021 Act.

Compatible essentially means contributing to the goals set out. Thus a project has to be either climate-neutral (not causing emissions, or any emissions being balanced by off-sets), or else provided for in the relevant climate action plan (either as a specific project or as part of a category of projects which are sufficiently identifiable by size and number such that the commission can determine whether any individual grant of permission would be compatible with the plan). The commission is not a catch-all national policy-making body – Government has to be specific enough to allow the commission to make individual decisions. In the absence of specificity the commission may not be able to come lawfully to a conclusion of consistency.

[...].

Only the additional GHG emissions of the project are crucial, bearing in mind that the scenario of no consent is not normally one of no emissions but of an alternative (sometimes higher) level of emissions. Displacement effects such as relocation of projects may be relevant in some cases but in other cases relocation may not lead to higher emissions given the continually intensifying global focus on renewable energy and the many areas of the world where renewables are more readily accessible than here (solar energy in the tropics, geothermal power in Iceland, and so on).

[...].



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Recent developments at the CJEU

- Case T-120/24 ***Global Legal Action Network and CAN-Europe v Commission***
- Direct action challenging the Commission's refusal to carry out an internal review of Commission Implementing Decision (EU) 2023/1319
- Substantive challenge relates to the 2030 emissions targets set in the Commission Implementing Decision and whether they are consistent with a reasonable measure of a fair share of the global emissions reductions that are necessary to hold global warming to 1.5°C / the impact on fundamental rights



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Recent developments at the ECtHR

- April 2024: ***KlimaSeniorinnen v Switzerland*** (app. no. 53600/20)
- Significance of the finding on standing: NGOs may have standing / victim status even if their individual members do not (paragraph 502):

In order to be recognised as having locus standi to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.
- Finding of an obligation on Member States in relation to climate change arising from Articles 2 and 8 ECHR
- Dissenting judgment of Judge Eicke – well worth a read on standing and the substantive “new right” (and on the potential inadvertent negative effects of climate litigation)
- ***Duarte Agostinho v Portugal and 32 other states*** (app. no. 39371/20): inadmissible
- ***Carême v France*** (app. no. 7189/21): inadmissible



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Which emissions count? Upstream and downstream effects

- Issue cropping up in relation to environmental assessments / permits
- ***An Taisce v An Bord Pleanála*** [2022] IESC 8 (the “Kilkenny Cheese” case): Irish Supreme Court rejected contention that agricultural emissions arising from the production of the milk that would supply a cheese factory had to be taken into account as indirect effects for EIA
- Case E-18/24 ***Norway v Greenpeace***: EFTA Court advisory opinion in context of Norway’s granting of permits for oil and gas extraction in the North Sea without assessment of emissions arising from end-use of the fossil fuels by third parties
- ***R (Finch) v Surrey County Council*** [2024] UKSC 20: UK Supreme Court ruled that not only the effects of extracting crude oil needed to be considered, but also emissions from the inevitable refinement and combustion of that oil



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Thank you for listening

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