

German farmers unsuccessful in bid to challenge German Government's failure to reach its own 2020 emission targets

Attempts to compel climate action through environmental litigation accelerate, strategies take shape, first successes have been recorded. Often these cases are David vs Goliath scenario: a Peruvian farmer takes on a German multinational energy generator or the Climate Kids the US Government. A new chapter was added last week when the Berlin Administrative Court (10 K 412/18) rendered judgment in a complaint made by three German farmers against the German government.

A unique case

The plaintiffs challenged the German Federal Government's failure to meet its own 2020 emission targets of 40% reduction over 1990 levels. These levels were set in form of a cabinet approved Climate Protection Plan. The levels did not receive legislative recognition. The legal status of such plans is debated among German legal experts. Some afford them legal status, other consider them to be mere expressions of political intent which escape justiciability. The uncertainty surrounding the legal status of such cabinet-approved plans made this case unique.

The plaintiffs' case

The plaintiffs argued that the Government's carelessness endangered the existence of farmers. Two arguments underpinned their complaint: first, the Government is bound by the targets and breached them, being only able to reach a reduction of 32% over 1990 levels. Moreover, they plead that the climate policy of the Government a violation of the plaintiffs' basic right to "life and health" (Art of the German Constitution), "freedom of occupation" and their "property guarantee". Specifically, the plaintiffs argued that the government had failed to take a certain level of action to ensure the protection of those fundamental rights ("the Untermassverbot"). In evidence, they led that the effects of climate change are already felt in form of crop losses that are the result of increasing occurrences of pests and extreme weather conditions.

The court's decision

The plaintiff's challenge was comprehensively rejected by the Berlin Administrative Court. In relation to the first argument, the Court held that the Climate Protection Plan is an expression of political intent by the Government and thus not justiciable. The targets are self-imposed goals and the Government is able not to adhere to them. The executive, so the court, has room to maneuver in this regard. In relation to the second argument, the Court found that the plaintiffs failed to establish how the Government's climate protection actions had in fact failed, noting that these actions had achieved a reduction of 32 % over 1990 levels. While it had not reached its own targets, the Government's climate change policies were not a complete failure.

Next steps

Having failed in their bid to compel the German government to do more to reduce the CO2 emission levels by 2020, it will need to be seen whether the plaintiffs will continue to pursue their complaint through the instances.

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