

## **EU Forum for Judges for the Environment 2017**

### **Climate Change and Adjudication**

Merton College, Oxford, 22 and 23 September 2017

#### **UK Report**

Whilst climate change related issues affects the policies of other government departments (for example the policies relating to the control of development by the Department for Communities and Local Government, and in relation to flood risk by the Department for the Environment and Rural Affairs) the principle lead within the UK government on climate change and its related international obligations the Department for Business, Energy and Industrial Strategy. There is a clear separation between the roles of the legislature, executive and judiciary; the executive is responsible for making policy in relation to addressing climate change and for decision-making in relation to strategic projects. The executive is, therefore, a prime mover (at a national and local level) for the implementation of action on climate change. The judiciary's supervisory jurisdiction in environmental cases (see below) is exercised in England and Wales through a specialist part of the Administrative Court, the Planning Court. The environment is a devolved matter, and legislation in relation to climate change can be enacted by the devolved national legislatures. For example, the Welsh Government recently enacted the Environment (Wales) Act 2016 contains a chapter on climate change containing commitments to emission reduction targets and carbon budgeting.

#### **Climate Change Litigation**

1. There has, as yet, been no case successfully directly applying the provisions of the Climate Change Act 2008, which has been described by a judge in one case as creating “a broad duty” on the Secretary of State. Climate change laws do not serve in the UK as a basis for judicial action: the court exercises a supervisory jurisdiction to ensure that decisions, which may involve a climate change related dimension, have been reached lawfully and in the light of a correct interpretation of relevant policy.

2. Climate change cases are relatively infrequent. They are public law or judicial review cases, and the arguments are based around errors of law in the decision-making process. The cases are not rights-based (in the ECHR sense) and climate change is generally the policy setting or factual context for the application of well-known legal principles.

### **Climate Change Adjudication**

1. The cases involve, as set out above, the application of well-known legal principles and no new legal doctrines. Questions of causation do not arise: judicial review proceeds on the basis that the facts on which the decision was based are established and not controversial in the litigation. No issues in relation to climate change laws (as opposed to air quality issues) have arisen which have required reference to the CJEU.

2. For the reasons set out above factual disagreements in this type of case do not arise. They will have been resolved as part of the decision-making process which is under challenge.

### **Climate Change and Access to Justice**

1. Both individuals and NGO's can bring claims which are related to climate change. In fact, most of the cases have been brought by NGO's or local authorities concerned about decisions taken by national government. Climate change cases brought by industry are presently unknown; were they to bring a claim it would be governed by the same set of laws as any other claim.

2. The relatively liberal UK laws on standing do not operate as any constraint upon the bringing of climate change litigation. There are bespoke costs rules for environmental cases to endeavor to ensure that costs are not a disincentive to bringing environmental cases.

### **Climate Change and Remedies**

1. If the court is satisfied that there has been an error of law then the remedy of quashing the decision being challenged is the usual result. There is a jurisdiction to issue both interim injunctions (pending the hearing of the case) as well as final injunctions in appropriate cases. Financial penalties do not feature as part of the available remedies in these cases.

2. The available remedies are straightforward and represent the application of well-established principles. Private law claims in relation to climate change are not known: the cases brought have been solely in public law.