Climate Litigation, Human Rights, and Paris Agreement: The Example of Germany

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History of the German lawsuit

- difficult term „climate litigation“
- several legal opinions for SFV (driving force) since 2010 >>> goal: lawsuit at German Federal Constitutional Court (FCC)
- Lawsuit alliance formed in early 2018 - almost no environmental association wanted to join, general skepticism
- November 2018 lawsuit filed by Göppel, Jaenicke, Quaschning, SFV, FoE et al.
- August 2019: acceptance for decision by FCC
- with it change of mood - January 2020 three further constitutional complaints filed by FFF activists, farmers etc., supported by NGOs
- FCC verdict from 24/03/2021, published on 29/04/2021
Basic findings

- First successful lawsuit aiming at MORE env. protection before the FCC
- Extensive differences to earlier constitutional interpretations
- Arguably the most far-reaching ruling by a supreme court on climate
- **Core statement:** balance between intertemporal spheres of freedom must be fair; climate targets must be regulated in the long term; parliament must regulate what is important
- Innovations adapted from our lawsuit: intertemporal & global concept of human rights; precautionary principle; right to the fundamental preconditions of freedom; human rights applicable even without „prominent encroachment“
- Above all: model of double threat to freedom
- Paris target = 1.5 degrees = legally binding
Weak points of the verdict

- Double threat to freedom misconstrued: Climate policy as a primary threat to freedom?

- Right to elementary preconditions of freedom underscored
  - Adaptation (besides mitigation) really an option?
  - Respect vs. protect freedom - what is climate policy about?
  - Separation of powers still not understood by FCC (litigation based on protection rights = no "do just this" claim but "not like this anyway" claim)

- Paris target, however, more ambitious (GHG budget)
  - FCC correctly sees = (a) legally binding, (b) 1.5 degrees, (c) overshoot and geoengineering maybe unlawful
  - Probabilities
  - Base year
  - Further empirical uncertainties: IPCC budgets as the lowest common denominator
Political consequences

- new German climate targets of June 2021 still not ambitious enough
- Consequences on EU level, since the FCC stressed the international obligation of Germany (and all countries)
- Interaction with COM proposals for improved EU policy instruments (7-2021) and new EU climate targets
- Relevant at all levels of statehood
- Transferability to other environmental problems?
New Publications (Selection)

2. Ekardt: Sustainability: Transformation, Governance, Ethics, Law, Springer 2019 (Springer Link)