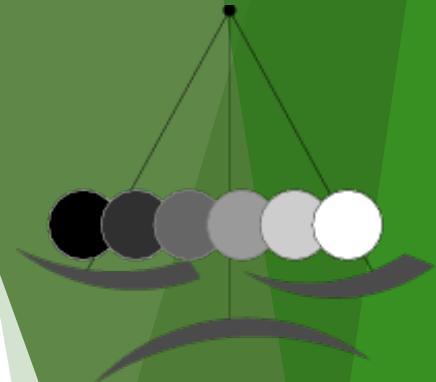


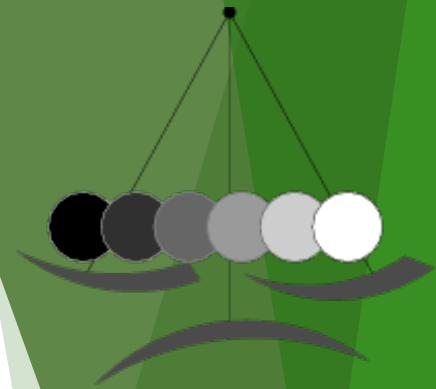
Climate Litigation, Human Rights, and Paris Agreement: The Example of Germany

Prof. Dr. Dr. Felix Ekardt, LL.M., M.A.
Forschungsstelle Nachhaltigkeit und Klimapolitik, Leipzig/Berlin
& Rostock University, Faculty of Law & Interdisciplinary Faculty
& Leibniz Phosphorus Campus Rostock
mail@sustainability-justice-climate.eu
www.sustainability-justice-climate.eu



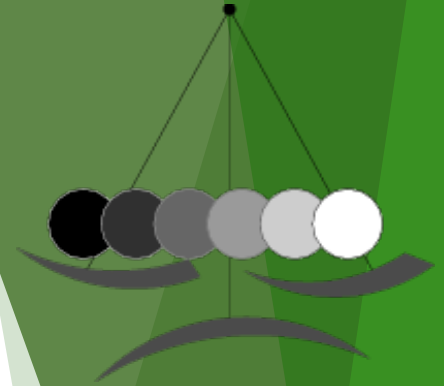
History of the German lawsuit

- ▶ difficult term „climate litigation“
- ▶ Fundamentals of human-rights-based litigation to constitutional courts in „Theorie der Nachhaltigkeit“ / „Sustainability“ (DE 2004/ 2011/ 2016/ 2021 - EN 2019)
- ▶ 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, Quaschnig, 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



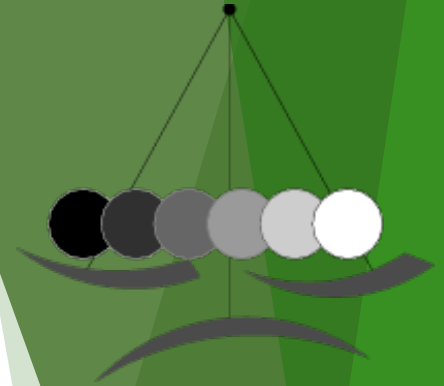
Basic findings

- ▶ 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



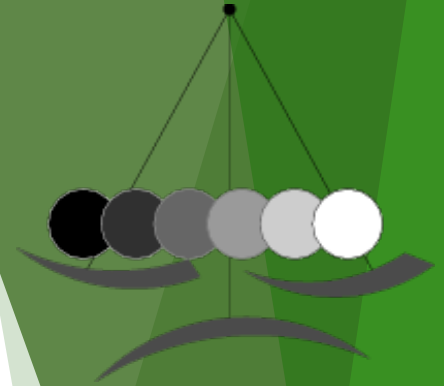
Weak points of the verdict

- ▶ 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)

1. Ekardt, Constitutional Court: Climate Revolution with Weaknesses, On Matters Constitutional, 08/05/2021, www.verfassungsblog.de/climate-revolution-with-weaknesses/
2. Ekardt: Sustainability: Transformation, Governance, Ethics, Law, Springer 2019 (Springer Link)
3. Ekardt/ Wieding/ Zorn: Paris Agreement, Precautionary Principle and Human Rights: Zero Emissions in Two Decades?, Sustainability 2018, 2812, <https://www.mdpi.com/2071-1050/10/8/2812/htm>
4. Wieding/ Stubenrauch/ Ekardt: Geoengineering, Human Rights, and Precautionary Principle, Sustainability 2020, <https://www.mdpi.com/2071-1050/12/21/8858/htm>
5. Weishaupt/ Ekardt/ Garske/ Stubenrauch/ Wieding: Land Use, Livestock, and Quantity Governance, Sustainability 2020, <https://www.mdpi.com/2071-1050/12/5/2053>
6. Ekardt/ Jacobs/ Stubenrauch/ Garske: Peatland Governance, Economic Instruments, and the Problem of Depicting, Land 2020, <https://www.mdpi.com/2073-445X/9/3/83>
7. Garske/ Heyl/ Ekardt/ Weber/ Gradzka: Challenges of Food Waste Governance, Land 2020, <https://www.mdpi.com/2073-445X/9/7/231>
8. Ekardt/ Wieding/ Garske/ Stubenrauch: Agriculture-related climate policies - law and governance issues on European and global level, CCLR 2018, 316 ff., <http://felix-ekardt.eu/files/texts/LULUCF.pdf>
9. Ekardt/Wieding: Defending Environmental Economic Instruments against the Economists and their Opponents, in: Mathis (ed.), Environmental Law and Economics, Springer 2017
10. Stubenrauch/ Garske/ Ekardt: Sustainable Land Use, Soil Protection and Phosphorus Management from a Cross-National Perspective, Sustainability 2018, 1988
11. Ekardt: Economic Evaluation - Cost-Benefit Analysis - Economic Ethics. A Critique with Regard to Climate Economics - about Figures in the Sustainability Discourse, Springer 2021 (in print)

