Book Review

Les dynamiques du contentieux climatique. Usages et mobilisations du droit, edited by Marta Torre-Schaub

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Climate change litigation is embedded in different contexts. According to each jurisdiction, claimants and judges refer to distinct legal provisions and may rely on a body of case law of varying scope.¹ At the same time, climate change litigation is a phenomenon that invites for a comparative look at judicial decisions from foreign jurisdictions in framing a claim as well as in deciding upon a case: while, certainly, each case is unique, climate change is a global issue both in its causes and consequences.² The book *Les dynamiques du contentieux climatique*, edited by Marta Torre-Schaub, sheds light on climate change litigation and its prospects in France. The reviewed volume is a valuable contribution to existing debates on climate change litigation as it delivers profound insights into the French context, inspired by a comparative look at other selected jurisdictions.

As the title indicates, the focus of the book is on the dynamics of French climate change litigation. Only recently have the first climate cases been brought to court in France. Therefore, the legal assessment of this kind of judicial decisions is necessarily still nascent. This invites the authors of the presented volume to shed light on future developments and processes of climate change litigation in France. The '*climatisation du droit*', the becoming a subject of law of the global climate, runs like a red thread through the book and unites the various contributions.

The reader discovers a broad range of ways in which the authors approach the volume's topic. Some axes that may structure the book and guide its understanding shall be proposed here: one can approach the book with a focus on the jurisdiction or the deciding forum (see the contributions by Jean-Pierre Marguénaud and Séverine Nadaud as well as by Mario Pagano on the European Court of Human Rights or by Nathalie Hervé-Fournereau on the Court of Justice of the European Union). Another distinction may be

drawn between the different avenues of climate change litigation in French law, be they of administrative (see for example the contributions by Sabrina Robert-Cuendet, Pauline Marcantoni, Blanche Lormeteau and Marthe Lucas), constitutional (see the contribution by Marine Fleury), or private character (see for example the contributions by Mireille Bacache, Luca d'Ambrosio as well as the contribution by François de Cambiaire and Sébastien Mabile). Finally, the contributions vary as to their methodological focus: some authors look at the strategic use of law in climate change matters from a sociological point of view (see for example the contributions by Stefan C. Aykut and Jean-Philippe Tonneau), while elsewhere a historical perspective on the legal protection against natural disasters is introduced (see Thomas Thuillier). All these different stances read together reveal in how many ways French law (shaped by international and European legal provisions) embraces or may embrace the protection of the global climate. This is how the authors fulfil the volume's promise to find new avenues for the ecological transition of the law.³

Two French climate change cases occur throughout the book: the case of the community Grande Synthe and the case supported by NGOs and individuals framed as the *Affaire du Siècle*, the Case of the Century. In the first case, the mayor of Grande Synthe, a coastal town in northern France, together with the municipality brought an action before the highest administrative court, the Council of State (*Conseil d'État*). In their reasoning, the plaintiffs relied on in-

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1 See Stefan C. Aykut 'Le contentieux et le politique. L'activisme judiciaire sur le climat, entre moyen de pression et stratégie de contournement' in Marta Torre-Schaub (ed), *Les dynamiques du contentieux climatique. Usages et mobilisations du droit* (Mare & Martin 2021) 49, 52 et seq.

2 Sandrine Maljean-Dubois 'Climate Change Litigation' in Hélène Ruiz Fabri (ed), *Max Planck Encyclopedia of International Procedural Law* 3, <<https://opil.ouplaw.com/view/10.1093/law-mpeipro/e3461.013.3461/law-mpeipro-e3461>>.

3 Marta Torre-Schaub 'L'émergence d'un contentieux climatique comme réponse à l'urgence climatique: dynamiques, usages et mobilisations du droit' in Torre-Schaub (n 1) 25, 27.

ternational, European, constitutional, as well as other domestic provisions to request sufficient climate action by the public authorities.⁴ Their omissions, the plaintiffs argued, would result in an increased risk of marine flooding for the town, which lies below sea level. On 1 July 2021, the court found that the public authorities unlawfully refused to act.⁵ It ordered the Prime Minister to take, within nine months, all necessary measures to reduce GHG emissions to ensure that the climate protection objectives will be met.⁶ The reviewed volume was published before this decision was taken; Blanche Lormeteau nonetheless discusses in her contribution how the reduced normativity of such (climate) objectives may be invoked in court.⁷ The author takes a cautious stance towards this question and concludes that climate objectives may be both, a possibility, and a hurdle to legal mobilisation for climate action.⁸

The second case, the *Affaire du Siècle* case, was brought by four NGOs (with the support of more than two million signatures) before the first instance Administrative Court in Paris. As in the famous Dutch *Urgenda* case,⁹ the claimants asked the court to hold the government accountable for insufficient climate

action, with regard to mitigation and adaptation.¹⁰ Procedurally, the case is embedded into an action for failure to act: in a first step, the plaintiffs addressed the government and continued the judicial proceedings only after its rejection. The plaintiffs relied, *inter alia*, on a general principle in law to protect the climate. Such an obligation, they argued, would stem from international climate change law, the European Convention on Human Rights, and the French Environmental Charter. In February 2021, the court ordered the government to pay – as requested by the claimants – one symbolic euro recognising that the inaction in relation to climate change has caused damage to the environment.¹¹ In relation to this legal reasoning, Marine Fleury's contribution on the protection of the climate in the French constitution is particularly interesting. The author questions the form(s) and function of the "climate argument" in the decisions issued by the Constitutional Court and concludes that, despite increasing references to climate protection in the process of interpretation, there is room for further strengthening the protection of the climate through constitutional law.¹² The awaited decision by the Administrative Court on whether the government has to take further action to protect the climate will be read in light of Fleury's conclusion.

The reviewed volume draws a colourful picture of future avenues for French climate change litigation and the process of anchoring climate protection in different legal instruments. As the two discussed decisions illustrate, this process is taking place at the time of writing of this review. Therefore, the book's focus on the dynamics of climate change litigation is particularly valuable. It develops tools to shed light on future climate change cases and, thereby, helps making legal research a companion of climate change litigation. Future research, for example on the question of liability for ecocide, which is not covered by the volume, will be able to draw on the book's overall methodological approach.

4 Christian Huglo 'La dynamique du contentieux climatique: les ressources du droit français' in Torre-Schaub (n 1) 137, 138 seq. See also Marta Torre-Schaub 'Vers un droit de l'urgence climatique: les dynamiques du contentieux dynamique en France' in *ibid* 169, 180 seq.

5 *Commune de Grande Synthe* (Conseil d'État) 427301, [2021] at 6.

6 *ibid*.

7 Blanche Lormeteau 'Les contentieux nationaux de la planification climatique' in Torre-Schaub (n 1) 381.

8 *ibid* 388, 398.

9 *Urgenda* (Hoge Raad), 19/00135, [2019].

10 Christel Cournil, Antoine Le Dyllo and Paul Mougeolle, 'L'affaire du Siècle: French Climate Litigation between Continuity and Legal Innovations' (2020) 1 CCLR 40.

11 *Affaire du Siècle* (Administrative Court Paris), 1904967, 1904968, 1904972, 1904976/4-1, [2021].

12 Marine Fleury 'Le climat: un objet du droit constitutionnel de l'environnement?' in Torre-Schaub (n 1) 239, 253.