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Key Developments In Greenhouse Gas (Ghg) Emission Reduction Cases

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Introduction:

Global warming, or climate change, is a phenomenon that occurs naturally, but over time, human activities have tripled the amount of greenhouse gases (GHGs) released into the atmosphere. There have been contemporary intentional legal actions to reduce GHG emissions; these actions signify continuous endeavours to tackle the obstacles presented by greenhouse gas emissions and alleviate their effects on the ecosystem and community to effectively prevent climate change. This article examines several notable developments in climate action for GHG emission reduction. It also acknowledges the effect of these actions on reducing GHG emissions.

Key Developments in Greenhouse Gas Emissions Reduction Cases:

1. Vertical Climate Claims:

Vertical Climate Claims refer to actions that concern the relationship between private individuals and the government; they usually address the issue of sufficient climate policy. An eminent case is ***Urgenda Foundation v. The Netherlands,***[2] the first case in the world where a court has ruled that the state should limit greenhouse gas emissions for non-statutory reasons. This case sets a major precedent for vertical claims.

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[2] Urgenda Foundation v The Netherlands [2015] HAZA C/09/00566899

Urgenda Foundation, a Dutch environmental group, sued the Dutch government to require it to do more to prevent global climate change. The court in Hague ordered the Dutch state to limit GHG emissions to 25% below 1990 levels by 2020, finding the government's existing pledge to reduce emissions by 17% insufficient to meet the state's fair contribution towards the UN goal of keeping global temperature increases within two degrees Celsius of pre-industrial conditions.[3] The court cited but did not directly invoke Articles 2 (right to life) & 8 (right to private life) of the European Convention on Human Rights (ECHR), among other laws, in its ruling. The Dutch government appealed the case, and Urgenda cross-appealed contesting to directly invoke Articles 2 & 8 of the ECHR. In 2018, the Hague Court of Appeal upheld the lower court ruling and directly invoked Articles 2 & 8 of the ECHR. The Dutch government appealed at the Netherlands Supreme Court, and the same was also upheld in 2019.

2. Horizontal Climate Claims:

Horizontal Climate claims seek to protect health or property and are brought by individuals against companies. They centre on the issue of how many private emitters of greenhouse gases are accountable for the effects of man-made climate change. These lawsuits may allege that these companies knew about the risks of their products and actively misled the public about the dangers of climate change.

In ***Milieudefensie et al. V. Royal Dutch Shell Plc,***[4] 2019, the environmental group Milieudeensie/ Friends of the Earth Netherlands sued Shell, alleging that Shell contributes to climate change and has violated its duty of care under Dutch law and human rights obligations. The claimants sought that Shell reduce its CO2 emissions

[3] https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands-/ >>>> accessed 15th March 2024

[4] Milieudefensie et al. V. Royal Dutch Shell Plc C/09/571932/HA ZA 19-379

by 45% by 2030 compared to 2010 levels and to zero by 2050, in line with the Paris Climate Agreement.[5] They argued that because of the goals of the Paris Agreement and the dangers of climate change, Shell must act, and they relied on Articles 6:162 of the Dutch Civil Code and Articles 2 and 8 of the ECHR. Shell argued that no legal standard conflicts with Shell's inactions to comply with emissions caps and that the general claims are not within the scope of Articles 2 and 8 of the ECHR. In 2021, the court, in a provisionally enforceable decision, ordered Shell and all companies forming the Shell group to reduce their carbon emissions crucially by 45% across both emissions from their operations and emissions from the use of the oil they produce by 2030. This horizontal case also reinforced the Urgenda case.

3. **GHG Emissions Reduction**:

The increase in climate change activities has made many countries and corporations set ambitious targets to reduce their greenhouse gas emissions as part of their sustainability initiatives. Emission targets may be on a short-term or long-term basis. Although target setting varies, some standard practices include publicly declaring targets, involving a base year in targets, setting achievable target reductions, covering all GHG emissions operations, and aiming for GHG emission reduction.[6]

A major challenge with target setting is that climate change is promoted as being quickly achievable. Although companies implement emission targets, some climate activists demand absurd GHG emission reduction targets. These desperate demands have led companies to deceive investors, customers, and the public with impractical targets.

[5] www.climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/ >> accessed 15th March 2024.

[6] https://www.epa.gov/climateleadership/target-setting >>>accessed 15th March 2024

This logic brought a twist to climate litigation. In ***Exxon Mobil Corporation v. Arjuna Capital LLC,***[7] an environmental and social governance investor group was sued for pushing for fast climate change. ExxonMobil sued an environmental and investor group for wanting them to quicken their steps towards reducing greenhouse gas emissions. With this lawsuit, ExxonMobil aims to remove some extreme agendas by blocking climate activist investors' votes from the ballot at its annual shareholder meetings.

4. **Carbon Finance:**

Carbon pricing recognizes the result of pollution and accounts for those costs in daily livelihood. Governments and international organizations use carbon pricing mechanisms to incentivize emission reductions. The Kyoto Protocol of 2005 facilitated cost-effective greenhouse gas emission reductions through international emissions trading (IET), joint implementation (JI), and the clean development mechanism (CDM).

Carbon pricing can be through carbon taxes, emissions trading systems (EST), or purchasing permits to emit carbon within a capped limit. The EST Carbon market is divided into compliance and voluntary carbon markets.[8] The Compliance Carbon Market (CCM) is a statutory requirement, while the voluntary carbon market (VCM), whether national or international, is the elective issuance and trading of carbon credit to companies.

The European Union Emissions Trading System Scheme, a CCM that limits the emissions of 11,000 power stations and big industrial plants[9] had an issue regarding

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[7] 4:24-cv-00069-P

[8] https://climatepromise.undp.org/news-and-stories-/what-are-carbon-markets-and-why-are-they-important >> accessed 16th March 2024

[9] www.activesustainability.com/climate-change/carbon-pricing/?_adin=02021864894# >>> accessed 16th March 2024.

activities relating to natural gas processing installations and the production of electricity and heat. The problem was whether a business operating a natural gas processing facility could obtain a free allocation of emissions permits under the EU GHG emission trading programme for a certain type of installation.

In ***ExxonMobil Production Deutschland GMbH v. Bundesrepublik Deeutschland,***[10] ExxonMobil challenged Germany's application for free greenhouse gas emission allowances at a natural gas processing facility in Germany.[11] In 2019, the court interpreted Article 3(u) and Article 10a of Directive 2003/87/EC and Commission Decision 2011/278/EU, determining that an installation must be considered an 'electricity generator' when even a small portion of electricity is continuously fed into the public electricity network. The Court concluded that the installation was not entitled to free emission allowances for heat produced for purposes other than electricity production.

5. Renewable Energy:

Electricity used in the functionality of our daily activities requires the burning of fossil fuels and contributes to the release of plenty of greenhouse gases. There is a huge increase in electricity demand, and renewable energy can ensure sustainable power. Renewable energy sources[12] are adopted to mitigate GHG environmental impact and address climate change concerns. Renewable energy infrastructure investment projects have doubled the reduction in reliance on fossil fuels, decreased greenhouse gas emissions, and increased energy efficiency, making them deployable not only across industries but also in households.

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[10] 2018/C 112/15

[11] https://climatecasechart.com/non-us-case/exxonmobil-v-germany/ >> accessed 15th March 2024

[12] solar, wind and hydro

In ***R. (on the application of McLennan) v. Medway Council,***[13] the local planning board approved development permission for a solar panel installation on a claimant's property without considering the impact on his neighbour's solar panel production. The claimant complained about the development obstructing the sun and negatively affecting his solar system. The court found the board's decision unimportant, as the British National Planning Policy Framework and Medway Local Plan acknowledge the benefits of renewable energy in combating climate change. The court invalidated the permission and ruled that considering the contribution of solar energy to the reduction of greenhouse gases, the planning board erred in determining that the claimant's objection was solely a matter of private interest rather than public interest.[14]

6. **Sustainability Investment:**

GHG emissions are a general concern in the corporate world, and sustainability practices are implemented to ensure all operations foster environmental, social, and governance (ESG) by setting zealous sustainability goals. It initially started to manage risk around the three factors that meet at the workplace, which are environment, social, and corporate governance professionally. This evolving trend has grown to be an investment and sustainability standard because it considers the positive and negative impacts of those investments.[15]

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[13] [2020] Env. L.R. 5 (2019)

[14] https://climatecasechart.com/non-us-case/r-on-the-application-of-mclennan-v-medway-council/ >>accessed 15th March 2024

[15] https://www.pionline.com/ESG-guide?utm_source=google&utm_medium=paidsearch&utm_campaign=pictet_guide_20240215_search&gad_source=1&gclid=Cj0KCQjwn7mwBhCiARIsAGoxjaIHwjfIN28L3f4eWdGCbHFgeKqkIh5uRlFLYT3bWKXFF0mvdxAQvFQaAsEyEALw_wcB >> accessed 15th March 2024

In ***Métamorphose v. TotalEnergies,*** Shareholders of TotalEnergies sued for unlawful dividends and insincere accounts, claiming that the company has erroneously evaluated the future price of carbon and not properly accounted for its GHG emissions. They argued that Total Energies has over-evaluated its assets due to the company's erroneous calculations, which have led to an over-evaluation of profits. They claim that Total Energies should depreciate many of its assets, leading to an over-evaluation of profits and an unlawful distribution of dividends. The plaintiffs argued that Total should void the resolution that distributes dividends and claim reimbursements for those dividends.[16]

7. Human rights:

Climate change impacts global human rights; therefore, it is important to ensure all humans can adapt to the climate crisis. To prevent the negative impact of climate change on human rights, climate justice requires international cooperation, available resources, and accountability.

In ***KlimaSeniorinnen v. Switzerland,*** Senior Women for Climate Protection Switzerland filed a case with the European Court of Human Rights in 2020, alleging that Switzerland's Inadequate climate policies violated their rights to life and health under Articles 2 and 8 of the ECHR.[17] The ECHR granted the case priority status and called for Switzerland to respond by July 16, 2021. The International Commission of Jurists and the Swiss Section of the ICJ submitted a third-party intervention, while the European Network of National Human Rights Institutions

[16] https://climatecasechart.com/non-us-case/metamorphose-vs-totalenergies/ >> accessed 15th March 2024

[17] https://climatecasechart.com/non-us-case/union-of-swiss-senior-women-for-climate-protection-v-swiss-federal-council-and-others/ >> accessed 10 April 2024

also submitted a third-party intervention. The petitioner argued that the Swiss government failed to protect the rights to life and private life under Articles 2 and 8 ECHR. The case was relinquished in favour of the Grand Chamber of the Court, and hearings were held in March 2023. The European Court found a violation of Article 8 of the Convention, stating that Switzerland failed to comply with its positive obligations under the Convention concerning climate change. The Court also found that Articles 6 & 1 of the Convention applied to the applicant association's complaint concerning the effective implementation of mitigation measures under existing domestic law.

Conclusion:

These notable advancements in GHG emissions reduction cases demonstrate the growing awareness of the critical need to reduce greenhouse gas emissions and lessen the effects of climate change globally. Global efforts to reduce greenhouse gas emissions have seen significant developments across various judicial fronts, reflecting a multifaceted approach to combating climate change. However, in contrast to the preceding ten years, there is a current significant increase in greenhouse gas emissions, despite improvements in efforts to mitigate greenhouse gas emissions. Regardless of the different outcomes, these cases are setting legal precedents, spurring policy changes, enforcing laws, and fostering accountability for contributing to climate change. Globally speaking, there is a continuous commitment to taking legal action to address the pressing problem of reducing greenhouse gas emissions, emphasizing the importance of coordinated action at all levels to protect our planet for coming generations.