Social Movements and State Accountability: A case study on legal and policy transfer between the Dutch Urgenda and the Belgian Klimaatzaak

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Chapter 1. Introduction

This master's thesis takes a closer look at the role of social movements in the climate court cases where the social movements Urgenda and Klimaatzaak sued the Dutch and Belgian governments, respectively, considering its insufficient actions and inadequate policies against climate change (Urgenda, 2021). Where the Dutch court case was the first one, their central argument was that the state should not be allowed to act this carelessly toward its citizens concerning the dangerous challenge of climate change. Through litigation, they held their government accountable for their actions. Using legislation as a tool to mobilise a government is an idea introduced by Roger Cox in his book "Revolution Justified" (Cox, 2012). Based on a set of general principles and norms, Urgenda and its lawyers turn international agreements, such as the Paris Agreement, into an understanding where the government should act towards its own goals and propositions. The judge ruled in favour of Urgenda on June 24th of 2018 (Urgenda, 2021). This marks the first time in the world that a case against a government is ruled in the context of climate change. This set a precedent for other countries. The case has inspired a multitude of organisations in the European Union (EU) and globally, to do the same and sue their governments for inadequate climate policies. Social movements in Belgium, France, Germany and Ireland etc. have tried the same (M. Wewerinke-Singh, personal communication, February 28, 2022; Urgenda, 2021). In 2014, the Belgian social movement Klimaatzaak started its project with help from Roger Cox (Interview 1). Later, other actors from Urgenda were involved in helping other countries, including Belgium, to form similar climate court cases (Urgenda, 2021). Subsequent to a series of judgments, on June 17 of 2021, a Belgian judge ruled in favour of Klimaatzaak by saying that the state was not acting adequately considering its climate policies. However, the judge did not order a strict and clear change from the Belgian governments, in contrast to the Dutch judge who did (Klimaatzaak, 2022). To understand why the Belgian court case has resulted in such a differing outcome in comparison with the Dutch court case, an in-depth case study is necessary. Through this thesis, an inductive qualitative case study in the form of a process-tracing methodology offers the opportunity to learn and find an explanation for these developments.

As the developments of climate litigation are relatively young, there is not much literature about the theoretical reasoning behind the outcome yet, especially about the Belgian court case. However, the amount of research is recently growing extensively (Interview 2; M. Wewerinke-Singh, personal communication, February 28, 2022). To understand the implications and meaning of the actions of social movements in the transfer from the Dutch climate court case to the development of the Belgian case, a deeper case study is necessary. Considering scientific relevance, this thesis will bring new detailed insight into the role of social movements in the transfer of legal components such as litigation and rulings, and the transfer of policy from one European country to another: from the Netherlands to Belgium. The current literature on the main concepts of social movements, legal transfer and policy transfer offers an introduction on how these concepts develop separately. However, there is a literature gap about the relationship between the three concepts. There is no specific and clear understanding that can explain how social movements influence the transfer of legal components and policy from one context to another. Therefore, this research will form an inductive case study through process-tracing. By doing this, as much as possible information about the case developments is disclosed. Consequently, an explanation can be formed to clarify and understand the outcome. Together with the analysis, a valuable new insight will be formed. This understanding is not possible to be formed without an in-depth case study, here in the form of process-tracing by outcome explaining.

From a public administration perspective, it is interesting to analyse the effect of public representation on the decision-making processes through litigation (Hofmann et al., 2020; Launer, 2020). More specifically, the perspective of citizens that hold their government responsible for its

actions shows where there is space for participation and involvement. Accordingly, considering the societal relevance, this research brings up the importance of advocacy in the policy process of a democratic system, through litigation. Additionally, the climate cases themselves have substantial significance for the sake of sustainable development. By raising awareness on state responsibility towards dangerous climate change and its consequences, the citizens of a nation can be informed about their rights. Additionally, sustainability in general could receive a more important place in the global decision making agenda. Sustainable development is very valuable for society, as it aims for a liveable future for the current and coming generations (UN DESA, 2022).

To guide this research, a focus is put on a few specific actors and factors which play a meaningful role in the development of the litigation as well as the transfer thereof. Important actors are the social movements and the citizens they represent. Important factors are the global context, climate science, political agreements, and the legal principles of the rule of law. These factors are important to analyse the consequential effect of litigation on eventual legal and policy transfers. Accordingly, the research question in this master's thesis is:

How can the role of social movements in the transfer of climate policy from one national political context to another national political context be understood? In this case, it considers the transfer of climate policy and litigation from the Netherlands to Belgium.

A case study on the Dutch and Belgian climate court cases will help illustrate the consequential transfer of legal components and policy from one case to the other. Because this thesis is mainly inductive research, through process-tracing, it starts with a closer look at a case review before enriching the analysis through more theoretical aspects. This enables the study to involve more relevant theory which can explain the rationale of the developments. At the start of the research, only the outcome of the court cases is known, which is the dependent variable. The independent variables are the influences on the outcome of the transfers between the two climate court cases. The independent variables are thus unknown, and therefore searched for to identify in the following chapters.

The thesis is structured by six chapters. The first chapter is this introduction. After this introduction, in chapter 2 the main concepts of the thesis are presented through an introductory and brief literature review. Subchapters 2.1, 2.2, and 2.3 discuss social movements, legal transfer, and policy transfer, respectively. Following, chapter 3 consists of the methodology. In the methodology, the approach of the research is laid out. First, process-tracing is explained, together with the causal mechanism, and then the process of each step is gone through to make clear how this inductive study came upon the results, analysis, and final conclusions. Next, chapter 4 consists of all the empirical data from the case study. The first subchapter introduces some of the main important principles to understand before going into the extensive information about the court case developments. Subchapter 4.2 then delineates the Dutch climate court case from the beginning to the final judgement. Through information gathered from legal texts and interviews a story line is formed. Subchapter 4.3 follows the same structure, but then about the Belgian climate court case. Then, chapter 5 presents an analysis of the empirical data, substantiated by theoretical literature. The theory is included again in chapter 5 as, after a more introductory presentation of the main literature of the concepts in chapter 2, this research continued with creating a thorough understanding of the case developments first. Resulting in inductive research. The analysis in chapter 5 includes an explanation about isomorphism and the role of social movements in the first subchapter 5.1. In the second subchapter 5.2, legal transfer is explained. In subchapter 5.3 policy transfer is explained. Followed by a discussion on three reasons that explain the outcome of the transfers from the Netherlands to Belgium, in subchapter 5.4. The final subchapter, 5.5, covers the European context as another external influence on the outcome of future climate court cases. To conclude, chapter 6 forms the conclusion. In this conclusion, an answer to the research question is formed. Additionally, some recommendations for future research are mentioned.

Chapter 2. Concepts

There are a couple of main concepts in this thesis. The three main concepts are legal transfer, policy transfer, and social movements. This chapter gives a further introduction to these concepts and clarifies the importance of the relationship between them. To answer the research, question the existing literature is reviewed. However, while there is a considerable amount of literature about each of the three concepts, there is not enough literature that combines the concepts to explain the case which is studied here. There is a knowledge gap regarding the role of social movements in the implementation and elaboration of the transfer of legal components and policy. The existing literature is reviewed first in this chapter. Afterwards, chapter 3 explains how the research in this thesis is carried out to search and find an answer to the research question, by filling in the knowledge gap.

2.1 Social movements

The first and most central concept of this research considers social movements. A social movement is a non-state group of people gathered by a common goal. This goal is to mobilise society in a certain way. In the case of the Belgian social movement Klimaatzaak for example, it considers a group of people who join forces to sue the Belgian governments for their inadequate climate policies. The goal of this court case is to influence the governments to change their climate policies to a more adequate level. A main feature of a social movement is that it mobilises ideas and people in a society. Mostly, they mobilise in the political context. It is therefore also mainly discussed in social and political science literature. The actions taken by social movements are highly dependent on the social actions of a specific time frame and regional, national or international context (della Porta et al., 1999). For the movements to have an impact, they should be part of and build a network with other movements who have similar structural and cultural environments (della Porta et al., 1999; Snow et al., 1999; Touraine, 1985). In an era of globalisation, social movements are also influenced by international developments on a global scale, e.g., international conflicts, the increasing role of supranational political institutions and of international political relations. Globalisation makes developments and actors all over the world to be interdependent, directly or indirectly (della Porta et al., 1999; Pradhan et al., 2017; Rodgers, 2014). One of the manners in which social movements create mobilisation is called diffusion. Diffusion hence happens on a national or cross-national level. Additionally, the increase of multilevel governance systems makes the processes more complex, and social movements are inherently part of this complex system (Alter et al., 2009; della Porta et al., 1999; Maggetti et al., 2019). Thus, the relationship between the national context and mobilisation goes both ways. On the one hand, the changing global context steers the possible interaction and consequences at the national level. On the other hand, the national political context still influences or constrains the impact of international mobilisation that occurs and emerges within the national level. More about the mobilisation and diffusion exerted by social movements is explained in subchapter 2.3 and later in chapter 5.

The two social movements discussed in this research are the Dutch Urgenda and the Belgian Klimaatzaak. Urgenda is an organisation formed by Jan Rotmans and current director Marjan Minnesma. It originally emerged from the Erasmus University of Rotterdam and the Dutch Research Institute for Transitions, with the aim to give more attention to strategies and targets by forming an urgent agenda (Urgenda, 2020). Urgenda is an organisation which aims to accelerate sustainable action and transition by working together with companies, societal organisations, private individuals, and governmental institutions. Through cooperation, Urgenda aims for innovation and sustainability. In their vision, the transition towards sustainable energy supply is achievable in a much quicker and easier

way than generally expected. The urgency and speed of the developments will drive the acceleration and is in fact needed to create ambitious goals. If society strives for this sustainable condition, it will make for resilience and ability to change. This way, together it is possible to build a healthy economy for now and for the future (Urgenda, 2020). The organisation has grown in the past years and has therefore created a diverse package of projects and visions, all related to innovation and sustainability. The climate court case is only one of their projects (Urgenda, 2020). This project initiated when Marjan Minnesma and the lawyer Roger Cox discussed the idea of using the law and litigation as a tool to hold governments accountable for their lacking climate policies (Interview 3; Interview 4). It later grew to an important project with a lot of media attention. A more detailed description of the case development is written out in chapter 4 below. Later, the Climate Litigation Network was formed. This new social movement aims to help other people in countries across the world to recreate similar court cases as the one Urgenda carried out (Interview 3). One of the successive climate court cases was carried out in Belgium by Klimaatzaak.

Klimaatzaak is the second social movement studied in this thesis. Klimaatzaak was formed in 2015 by eleven well-known Belgian artists. When a couple of founders learned about the Dutch climate court case, they were immediately inspired to realise and carry out the same action. The main and sole goal of Klimaatzaak is therefore to carry out a successful court case and subsequently serve as a form of incentive for the Belgian governments to improve their climate policies (Interview 1; Klimaatzaak, 2021). A further lay out of the developments and motivation of the Belgian climate court case is written below in chapter 4.

2.2 Legal transfer

The next concept is legal transfer. Because the two climate court cases have a lot in common, it is interesting to look at what exactly has been transferred between them, from a legal perspective. To start with the definition of legal transfer. Legal transfers are mostly studied in comparative law academics. The term legal transfer refers to the relocation of legal components from one context to another. The literature predominantly considers the transfer of constitutional legal components, for example how different Western European national constitutions have a similar structure. Another example is how the Charter of Fundamental Rights of the European Union is incorporated into the EU law bodies and the EU member states (Eckert, 2013; Hendry, 2013; Seckelman, 2013; Tohidipur, 2013). The focus is on law-making, and in the EU law-making context it mostly refers to the adoption and application of EU law in the member states (Hendry, 2013; Seckelman, 2013). However, the interpretation of legal transfer as described above does not seem to apply to the selected case, as this thesis does not compare or study the legal transfer from the Dutch constitution to the Belgian constitution. The transfer looked at here is the transfer of litigation and the transfer of the rulings. A greater understanding of the cases themselves is necessary to create a clearer direction for where to search and find more relevant and specific theories that can help explain the developments between the two climate court cases. Without a clearer direction, the amount of available literature is too abundant to carry out an efficient study in the available time period. Therefore, the first phase of literature review considering legal transfer is sufficient for now. Later, in chapter 5, more and more relevant theories will be introduced.

2.3 Policy transfer

The third main concept is policy transfer. The goal of the social movements is for their governments to enhance their climate policies. If the Belgian governments decide to indeed enhance

their climate policies, after the Dutch government enhanced its climate policies, this could be called a policy transfer. A policy transfer is defined as "the process by which actors borrow policies developed in one setting to develop programmes and policies within another" by Dolowitz et al. (1996, p. 357). In their paper (1996), policy transfer is explained as a part of policy developments. Actors involved in the policy making processes look at other policy systems for inspiration on how to tackle common problems. This is because the challenges with which an administration must deal with, are seldom unique to the regional or national context. Most of the time there is another administration, in the same nation or elsewhere in the world, that is dealing or has dealt with the same challenge. Therefore, it can be helpful to learn from other practices. Hence, another way to describe policy transfer is lesson drawing (della Porta et al., 1999; Dolowitz et al., 1996; Rose, 1993; McAdam et al., 1993). Due to globalisation, communication between countries has increased and consequently policy transfer has also increased (della Porta et al., 1999; Dolowitz et al., 1996; Snow, 1999).

Considering the actors, most of the literature about policy transfer discusses political parties and bureaucrats as the main actors to carry out the transfer. Other actors that can transfer policy are policy experts and pressure groups. Policy experts have a network based on policy developments which make them key for transferring inspiration from one government and context to another (Rodgers, 2014; Rose, 1993; Rowat, 1987). But also, governments can influence other governments, as well as international and transnational organisations. The EU is a great example of a supranational institution that influences its member states to implement similar policies. This is explained largely by the structure of the EU and its member states, which invites comparison between policies. More comparison consequently leads to a higher knowledge share, inspiration, and coherence between the member states' policies. All that happens through the transfer of policy from one institution to another (Dolowitz et al., 1996; Rose, 1993).

The literature also makes a distinction between voluntary policy transfer and coercive policy transfer. Voluntary transfer happens when the actors consciously choose to be inspired by other approaches and search for solutions elsewhere. Studies about policy transfer mostly consider this voluntary form of transfer where the actors are rational actors that decide to carry out the transfer, to find a solution for a policy failure for example (Dolowitz et al., 1996; Rose, 1993). Coercive policy transfer, on the other hand, happens through pushing or forcing through institutional structures by other governments or organisations. A great example is the influence that the EU plays on its member states. Yet, this coercive transfer can happen through indirect influence as well. This occurs when external factors influence the actors to realise similar policies, indirectly and in a way which is not voluntary and rationally decided upon by the receiving actors. In general, it is understood that the complexity of a policy makes the transfer thereof more difficult. For example, if it considers a simple challenge with a straightforward policy as an answer, a transfer is easier carried out.

Another approach of studying policy transfer is to look at policy diffusion. While both terms describe very similar processes and are in some cases used interchangeably, diffusion focuses more on explaining the actors, time period and geographical determinants of a policy development (della Porta et al., 1999; Dolowitz et al., 1996; Snow, 1999; Walker, 1969). In diffusion, the influence can also happen directly or indirectly. Another condition for diffusion to be successful is cultural similarity which means that both social movements are close to each other on an ideological level and, according to proximity models (della Porta et al., 1999).

Altogether, similar to the literature about legal transfer, the available information is too broad for this research to find a specific reason and explanation for the outcome of the climate cases. The actors discussed are political actors and administrators, other actors are mentioned but no specific focus is laid on social movements. Nor is there a clear path leading to a link between transfer of legal

components causing policy to be transferred afterwards. Therefore, the literature review on policy transfer will be continued in chapter 5 after the case description of chapter 4.

2.4 Missing link between the concepts

The literature discussed above offers a great insight to understand each concept on its own. However, while going through the academic literature about social movements, legal transfers, and policy transfers it is difficult and nearly impossible to find a complete explanation for the developments studied in this thesis: the climate court cases in the Netherlands and Belgium, and the role of social movements considering the legal and policy transfer. While the literature of social movements touches upon the political context in which the social movements act, it does not explicitly define or resolve the transfer of legal components from the Netherlands to Belgium. Nor does it justify the outcome of policy transfer from the Netherlands to Belgium, after a similar court case was carried out. Ergo, a gap in the literature is found. Due to a literature gap about the relationship between the role of the social movements and its effect on policy and legal transfers, it is difficult to formulate expectations to explain this case. Therefore, it is not possible to define a hypothesis a priori of the case study. Thus, inductive research in the form of process-tracing is necessary to formulate an answer to the research question.

In the following chapter it is explained how this research methodology offers an appropriate approach to understand and explain the developments of the climate cases, and how it discloses the role of social movements on the policy and legal transfer.

Chapter 3. Methodology

In this chapter, the methodology of this thesis is set out. The research is inductive research. After a literature review of the existing academic insights, a conclusion is made that inductive research is necessary to explain the outcome of the studied cases. Therefore, the next main step in the research is an in-depth case description through process-tracing, based on an analysis of legal texts and interviews. Afterwards, a better understanding of the links between the concepts is made. Consequently, a more oriented and steered literature review can be formed with an overview of academic theories that can explain the developments of the case. This way, a deeper understanding of the climate cases is given without an explicit expectation of what can explain developments. By going deeper into the theory only after this step, it is possible to create a more open approach and apply a better fitting theory.

This chapter continues as follows: first, the subchapter of introductory concepts is presented. Second, the method of process-tracing is introduced. Third, an explanation is given about the way the research is approached and about why this approach is chosen to be the best fitting methodology for this research. Next, an explanation is given about the causal relationship between the potential causes of the outcome, and the outcome in the researched cases. Afterwards, the resources and data selection are explained. Followed by a more practical illustration of how the analysis proceeded.

3.1 Introductory concepts

The first step of this thesis is to review the available literature of the main concepts discussed in the cases. For this, each concept is studied. A first introduction of social movements, legal transfer, and policy transfer is given. While the literature offers a great understanding of each concept, it is insufficient to form a clear expectation of what can explain the outcome of the case. After the realisation that the existing literature is lacking to create an explanation, the decision is made to continue this research in an inductive manner. The case is studied thoroughly, and only later the literature will be brought back in to analyse the developments of the case.

3.2 Process-tracing

Subsequently, the methodology of process-tracing is applied. Process-tracing is a single case study method in which the researcher traces the causal mechanisms of a case through a thorough analysis of a specific case (Beach et al., 2019; Toshkov; 2016; Vanhala, 2017). This thesis considers the transfers between the Dutch and Belgian social movements. To find explanatory reasoning about the transfers, a large amount of qualitative information is gathered and analysed. Through interviews, legal texts, public opinion, formal and informal media posts, and policy documents an outline of the context is formed (Toskhov, 2016). In this procedure, the emphasis is put on the causal mechanism which is considered a process in its entirety and not as a single cause. A causal process is seen as a chain of links between events as a consequence of causes and not as the cause itself. Thus, the focus is on the process or mechanism between the causes and the outcomes, which adds causal value to the research (Beach et al., 2019; Toshkov, 2016).

Process-tracing is used frequently in the field of environmental politics. This is because it offers the opportunity to study the outcome of a development thoroughly through qualitative research. It offers the opportunity to carefully take into consideration the historical and social local context of the developments. It looks at the causal mechanisms to link motives to their outcomes (Vanhala, 2017). By doing this, it traces all potential actors and factors that may affect the outcome. It is therefore also an appropriate method to assess and study the effectiveness of international policies and institutions

(Vanhala, 2017). In this thesis it considers the effect of the actions of social movements by transferring policy from the Netherlands to Belgium. By applying process-tracing as a method for the causal process in a real-world case, the case is analysed and understood better. It also allows for greater insight and comprehension of the context of the process (Beach et al., 2019). However, this method can be criticised for being too descriptive and not being generalizable because it is a single-case study. According to critics, the method does not show enough causality for it to indicate legitimate results (Beach et al., 2019; Vanhala, 2017). Nevertheless, these critics do not consider the rich information buildup produced by single-case process-tracing. The research is in many cases more than just descriptive and adds a high value of explanatory information. One of the main strengths of qualitative methods is that they offer in-depth research of causal pathways (Vanhala, 2017).

To expand a bit on the causality question, the following sentences explain why in this thesis, process-tracing offers the most legitimate method for considering ontological causality. While some scholars see causality as a pure (one-way) relationship between the cause (X) and the outcome (Y), such a rigid and one-way relationship can be very effective for many disciplines, but not for all. Therefore, in a discipline such as public administration considering environmental policies, paying attention to a broader scope of causality adds a significant value. It leaves the opportunity open to notice new variables and influential factors. In this way, focus and emphasis are thus on the process where the cause (X) causes the outcome (Y) in a form of a mechanism. Because it takes into consideration many aspects and tries to study the circumstances as inclusive as possible, it can also offer a view on alternative reasons for an outcome to come about as it does (Beach et al., 2019; Vanhala, 2017).

This methodology has an approach. Where a deductive study starts by studying a theory and tests this theory by applying it to a case, an inductive study analyses one specific case thoroughly to search for a reason why it developed this way. The latter is more relevant in this thesis. This is because, at the start of the research, there is no obviously well-fitting theory to fit the case. The developments of the case cannot directly nor easily be clarified with an explanation based on the existing academic literature (Beach et al., 2019). Although there might be enough literature to explain the developments, there is not one single direction to look at. Therefore, first, a deeper look is taken at the case to find which theory to focus on later. Then, in inductive research, the outcome - as the dependent variable - is studied precisely to find out what the causes - as the independent variables - can be. The aim is thus to build a new explanation for the developments (Beach et al.,2019). Only when an explanation for the developments is found, the case study can be linked to the existing literature. Eventually, the existing blocks of information from existing literature can be brought together and combined to form a fitting new interpretation and explanation specifically for this case (Toshkov, 2016).

In figure 1 below, a causal relationship is illustrated. The three blocks on the left are the independent variables. The block on the right is the dependent variable. In this research, the dependent variable is the outcome of legal transfer and policy transfer from the Netherlands to Belgium, through the activities of social movements. The independent variables are yet unknown. The aim of this research is to define the independent variables that influence the outcome. The arrows in between the blocks illustrate the influence of the independent variables on the dependent variable. To add to the explanation above, in this figure (Figure 1) the right block is thus known, and this research is searching for the left blocks. The arrows can be influenced by other variables. These other variables are illustrated by the dotted blue arrows. In the path dependence methodology, there is extra care to notice and include as

many other variables as possible in the analysis of the causal relationship (Beach et al., 2019; Vanhala, 2017).

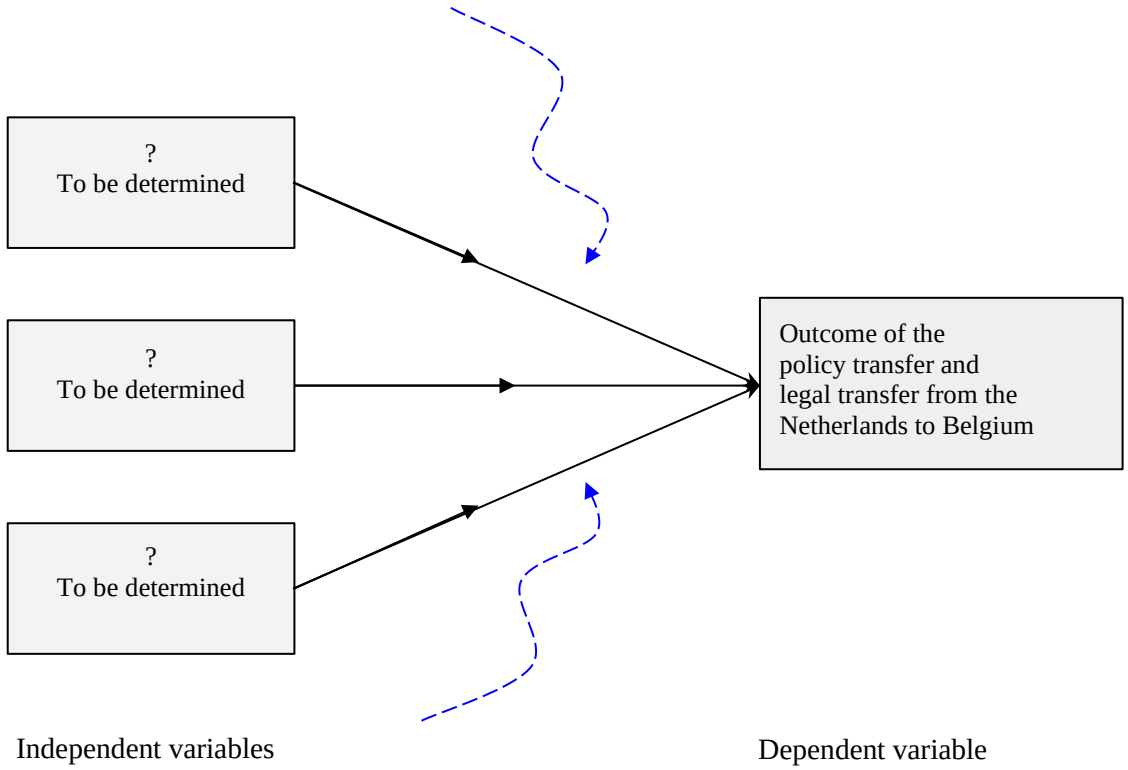

Figure 1: The causal path between the independent variables on the left, and the dependent variable on the right. Under influence of other undefined variables as blue dotted arrows.

In their book, Beach et al. (2019) explain that there are three variants of process-tracing. There is theory testing, theory building and outcome explaining. In this thesis, the outcome explaining process-tracing is applied. This variant focuses on the case instead of on the theory. This way, it forms a mechanistic explanation specific to the case with attention to the most important and meaningful elements of the case. The aim is to form an inclusive and comprehensive explanation of a specific case, which in this thesis is the transfer of policy and litigation carried out by social movements. The aim is thus not to create a generalizable theory but to create an explanation for the developments of this case (Beach et al., 2019). However, this approach is only relevant when the researcher and reading audience understand and accept that it is different from the neo-positivist and criticalist understandings which are based on and solely aim for theory-building and testing (Toshkov, 2016). In an analytic understanding, theories are seen as instruments to separate the observation of the object being studied from the researcher's own place in this context. In a more pragmatic approach, as here, the theory is not something to be assessed but is used as an instrument to explain specific case developments. Because only one theory is not sufficient, a combination of multiple and various theories from a wide-ranging background is necessary (Beach et al., 2019; Sil et al., 2010; Toshkov, 2016). This approach is similar to historians who search for an explanation about how a specific case developed and why precisely this way. To do this, the research includes many mechanisms from extensive and varying fields that study society to explain the causal mechanism. This creates and builds up to a complex compilation of narratives (Sil et al., 2010; Toshkov; 2016).

This fits the complex system aspect of environmental policy systems. To study them, an adequate method is necessary to be able to understand the developments appropriately. Governance

dealing with sustainability challenges demands an interactive approach considering complex systems (Alter et al., 2009; Vanhala, 2017). These systems contain feedback effects and multilevel dependence between the different actors and factors. This complexity demands research to consider the multilevel governance aspect while studying the causality. The policies that manage environmental challenges are also dependent on their temporal and spatial context, and so do the institutions who are responsible for them. Even more challenging is the fact that these environmental and sustainable challenges are difficult to assign to a delineated administrative department, as they consider a significant amount of overlap with different areas and their belonging departments (Vanhala, 2017). Considering the climate court cases discussed in this thesis, the institutions responsible to manage them are also not clearly delineated. More about this will become clear in chapter 4. Another reason for process-tracing to be a valuable method to study this topic is that the variety of actors involved in these governance processes is large, if compared to other governance topics such as trade or security. In governance processes related to environmental policy, actors can be non-governmental agencies, state actors, social movements, and business corporations. Therefore, this method offers a context-specific way to approach the analysis (Vanhala, 2017). The value of outcome explaining process-tracing is that it pays special attention to the unique context of time and place. While this can be seen as a probabilistic approach, in contrast, this provides for a full and exhaustive analysis. Yet, it is important to take this contextuality and its possible influences on the actual research methodology into account. A large part of this research is based on interviews. While interviews give a splendid opportunity to learn a lot of rich information, the actors involved in the interviews are very depending on their context as well. This means that except for collecting a large amount of valuable information about the context, the information given by the interviewees can be purposely or unpurposely biased (Toshkov, 2016). Also important is to avoid ex-ante assumptions about the causal mechanisms (Gerring, 2006; Vanhala, 2017). Another asset of outcome explaining through process-tracing is that the explanation is updated each step to make it the best fitting explanation of the case.

In the end, this method is an approach where existing theories are combined in a way to fit the current case and offer the appropriate explanation (Beach et al., 2019).

3.3 Case selection and data utilisation

For process-tracing, case selection principles like those generally known in research are not applicable. This is because the study does not consider a case of a general article or an example of a theory to be analysed. By contrast, it is specific research about a single particular case (Beach et al., 2019). In this case, an analysis is done about the transfer between the Dutch Urgenda climate court case and the Belgian Klimaatzaak climate court case. Because the outcome of this exact case needs explanation, the case selection is already made.

The data

More practically, for this research, the following data resources have been used. From both countries, the legal cases were studied. To do this, all written documents of the written phase were read through. This consists of the summons and all phase conclusions and replies of both parties. Also, the court rulings were analysed. Additionally, to form a complete overview of the developments in the cases, extra internet web pages were consulted. In total, it considers around 7 to 10 documents per case, which results in about 20 documents in total. The legal documents had varying sizes, starting from 15 pages and ranging to 270 pages. Thus, the amount of text that is qualitatively analysed is abundant.

On top of that, to include as much information as possible about the cases, interviews were carried out. The interviewees are persons that were present during the execution of the court cases and had a prominent role in them. For each court case, two persons were interviewed. The roles of the interviewees were: the founder of the social movement, the main lawyer of the climate court case, the lawyer and founder of another social movement, and the lawyer and legal advisor. Each interview took between 40 and 60 minutes. The interviews were semi-structured. A list of main and general questions was prepared in advance of the interview to give subtle direction, but there was plenty of room for the conversation to continue naturally based on the answers of the interviewees. A list of the interviewees and their organisation is included in the appendices (Appendix A). To form an overview of which topics were looked at, a topic list is presented below. In this topic list, the topics of questions are summed up which were used to search for and find explanations for the outcome and what the causes could be for this outcome.

Topic list:

- Who was involved in the Dutch court case
- Who was involved in the Belgian court case
- Who was involved in the transfer of information between the Dutch case and Belgian case
- How did the Dutch social movement get inspired to start this court case
- How did the Belgian social movement case get inspired to start this court case
- What are the external factors influencing the judgements of the court case in the Netherlands
- What are the external factors influencing the judgements of the court case in Belgium
- How does litigation move from one country to another,
- and is this possible from the Netherlands to Belgium
- How is litigation legitimate in another country and context
- What are the conditions for a legal transfer to be complete/successful
- What are the external factors influencing the actual policy consequences of the judgements in the Netherlands
- What are the external factors influencing the actual policy consequences of the judgements in Belgium
- How is the Dutch political environment
- How is the Belgian political environment
- How is the Dutch state/ institutional structure
- How is the Belgian state/ institutional structure
- How is the Dutch cultural environment and media attention on this topic
- How is the Belgian cultural environment and media attention on this topic
- Are there significant differences in the contexts of the two court cases
- How does policy move from one country to another,
- and is this possible from the Netherlands to Belgium
- What are the conditions for a policy transfer to be complete

For the processing of all the information, first, a translation was made. This is because the majority of the documents were originally published in Dutch and some in French. After the translation, each legal text was summarised. All summaries of the legal texts were merged into one larger storyline of developments. This thorough storyline resulted in a timeline of the court cases consisting of events and decisions.

After the written legal texts have been summarised and the main developments were described, the interviews took place. Through each interview, a lot of information was acquired. The interviews were recorded and afterwards transcribed. Because the interviews took place in Dutch, the first step after transcription was to translate the content. Then, the transcriptions were summarised one by one.

After having a rich and large amount of information summarised in multiple smaller summaries, now the integration could start. For each case, one for the Dutch climate court case and one for the Belgian climate court case, an extensive all-including storyline was made. This text of information is written out in chapter 4 below. The data was now arranged and ready to be analysed.

The research strategy

Because there was no hypothesis set ex ante the analysis, it was not defined what to search for in the rich body of texts. Therefore, there was also not yet a clear set of coding terms to help structure the analysis. Only afterwards, when all the information was gathered and processed for the first time, an expectation of the underlying relationships could be formed.

Based on the developments described in the written data, in combination with the developments explained by the interviewees, some main important occurrences were observed. There were some events and scenes that were discussed more extensively. This led to be aware of them during the analysis. As will become clear in the chapters below, some principles will be discussed more broadly than others, for example, the principle of duty of care or the separation of powers. But also, some major differences in developments between the two court cases came to light. The difference between the political context and culture of each court case was discussed in the interviews as well.

These lead to a starting point for the research to further develop its analysis. It set the direction of what theories were necessary to explore to find and analyse the independent variables. Then, based on these main lines of consensus, the theory was introduced again, now with a more oriented understanding.

The main developments of the court cases were legitimised through theoretical literature. The academic literature employed was literature considering legal transfers, policy transfers, climate litigation, the role of social movements, diffusion, public law, public administration, liability and accountability, state and policy effectiveness, advocacy, et cetera. Then, the research question was approached through this literature. The theoretical literature could explain and legitimise the transfers that happened from the Netherlands to Belgium. Even more importantly in this research, the theoretical literature could explain and legitimise the way in which these transfers happened.

Eventually, this way the court cases were approached through a thorough outcome explaining the process-tracing method. Only after collecting and going through a large amount of qualitative data, an idea of what the independent variables can be is formed. And then, as a final step, the theory was introduced again in a more oriented manner to explain and legitimise the role of the independent variables.

Chapter 4. Case description

Climate cases in two EU member states: the Netherlands and Belgium

In this chapter, the results of the empirical research on the two climate cases are described. Subchapter 4.1 starts with a background introduction of a number of regulations and principles which are essential to understand in these cases. Then in subchapter 4.2, the empirical data of the Dutch case is discussed. An overview of the important steps in the case is complemented by rich information gathered from interviews. Through the explanation of the case, each phase of the process is studied through a descriptive lens. By going through each step, important information is gathered about which factors and actors influence which developments in the case. There is no hypothesis set beforehand, which makes the opportunity to be open and learn very honestly from the information itself. Next, in subchapter 4.3, the same method is applied to the empirical data of the Belgian case.

4.1 Background

To have a better understanding of the data presented in the case description and analysis, in this subchapter, an explanation is given about some important principles and notions used in the main arguments in the climate cases. Both cases use similar or the same legal standards of the Human Rights, the duty of care principle and the summed causation. First, the Human Rights are introduced: where they stand for and what their implications are in international law. Second, the separation of powers, also called the trias politica, is introduced. The separation of powers plays an important role in this thesis because the outcomes of the cases and their legitimacy are questioned from different perspectives of society. Then, an explanation is given about what duty of care is and what this means in the context of this thesis. Together with the summed causation, these principles constitute the basis of a new form of accountability mechanism. A broader explanation of this accountability mechanism is given further in this chapter, in the case description. Below, the three main concepts are introduced.

The European Convention on Human Rights

The European Convention on Human Rights is the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, 2022). It is a declaration established in 1950 and implemented in 1953 as the first tool to carry out and enforce the Human Rights. These Human Rights are stated in the Universal Declaration of Human rights, and through this tool of the European Convention, the Human Rights become binding. Initially, the Human Rights were enforced by three European institutions: the European Commission of Human Rights, the Committee of Ministers of the Council of Europe, and the European Court of Human Rights (ECHR). The two articles used in the climate cases are Article 2 and Article 8.

Article 2 considers “Right to life” whereas paragraph 1 starts by stating “Everyone’s right to life shall be protected by law.” (European Court of Human Rights & Council of Europe, 1952, p.6-7).

Article 8 considers “Right to respect for private and family life” where paragraph 1 states “Everyone has the right to respect for his private and family life, his home and his correspondence” (European Court of Human Rights & Council of Europe, 1952, p.11) and paragraph 2 states:

> There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of the

> country, for the prevention of disorder or crime, for the protection of health morals, or for the protection of the rights and freedoms of others. (European Court of Human Rights & Council of Europe, 1952, p.11)

Based on these principles, the lawyers of the social movements were able to argue about a lack of adequate governing by the state, as its actions were breaching the Human Rights. More elaboration on the employment of Human Rights and the corresponding articles is written out in the case description below.

The separation of powers

The climate cases have had public and political attention due to their controversial move: holding a government accountable for its actions through a court case. This is in the context of climate change, which was until now considered a challenge to be discussed in and by politics only. Therefore, the principle of the separation of powers, also referred to as the trias politica, is mentioned extensively. The separation of powers consists of three different powers: the legislative body, the executive body, and the judicial body (Belgian House of Representatives, 2014; Prodemos, 2017). This principle, initially noted by Montesquieu, can be understood by reading the following direct citation:

> When the same person or the same public office simultaneously holds both the legislative power and the executive power, there is no freedom. There is also no freedom if the power to the judge is not separated from the legislative and executive power. (Montesquieu, 1748, cited in Belgian House of Representatives, 2014)

This implies that each body is responsible for a part of the authority of a state. One body should not take the authority of the other, and by separating the authorities the bodies keep each other in balance. This balance can prevent or diminish the abuse of power. In both the Netherlands and in Belgium the separation of powers is a valid and fundamental principle (Belgian House of Representatives, 2014; Prodemos, 2017). Considering the climate court cases, many interpretations and perspectives formed a controversy in public opinion. One side interprets the case as an infringement of the balance of powers as it disrespects the role of democratic politics. In this understanding, it is not the role of the judge to decide upon the making and implementation of policies, but it is the role of the democratically elected parliament (Thijssen, 2022). This interpretation is also mentioned in the arguments of the state in the cases as illustrated below. Another side interprets the case as essentially necessary for a democratic state and its rule of law to function properly (Cox et al., 2022). This interpretation is a significant contribution to the motivation of the social movements to sue their state for inadequate administration. How this discussion is spelt out in the climate cases is shown in the case study below.

Duty of care & causality (condicio-sine-qua-non)

Duty of care is a concept defined by the Cambridge Dictionary as “a moral or legal responsibility not to allow someone to be harmed” (2022). In the legal cases discussed in this thesis, duty of care is an important principle. In both cases, the government’s duty of care to mitigate climate change is discussed. However, for the duty of care to be applicable it must be based on regulations. In the case analysis below, it will be explained that in this case, the duty of care can become imperative if

it is based on a duty derived from obligations stated in the ECHR and reduction targets mentioned in international agreements. Not following the reduction targets that are internationally accepted as the standard and backed up by climate science, could therefore breach the duty of care (Stein et al., 2017).

Another principle discussed below is the condicio-sine-qua-non principle. This principle is used in cases where there must be proof to show that certain damage is the consequence of a certain action of the counterparty. The principle refers to a causal relationship between the cause and the consequence. This relation demonstrates and determines to which extent the damage can be allocated to the causing party. The counterparty cannot be charged for the damage if such a causal relation is missing (Rechtspraak, 2020). Hence, if there is no condicio-sine-qua-non relationship, the cause of the damage is not related to the developed damage. Then, the damage cannot be allocated to the causing party. Thus, the causal relation is a condition for liability (Rechtspraak, 2020). Below, the analysis explains how this principle is applied in the climate court cases.

4.2 Urgenda case in the Netherlands

In this subchapter, the results of the empirical research are presented. In the following texts, the Dutch court case developments are described. Data from legal texts and interviews are combined to form a storyline of developments. Later, in subchapter 4.3, similar information is described about the Belgian court case.

How did the Urgenda case develop?

The verdict of the Urgenda case is a result of years of effort. In the following text, a timeline of the developments in the Dutch climate case is explained.

In 2013, the organisation Urgenda together with 888 co-plaintiffs filed a lawsuit against the Dutch government. In 2015 the District Court of The Hague ruled in favour of the plaintiffs. This decision was confirmed later by the Supreme court in 2018 after the government went on appeal. The Dutch state appealed the decision once more, whereafter the Supreme Court ruled in favour of Urgenda on December 20th, 2019 (Urgenda, 2013). Underneath, a more detailed overview of the case proceedings and dates is spelt out and complemented with information gathered from two interviews with persons involved in the Dutch case. Both persons have a significant role in the case, and both have legal expertise. In Figure 1, the timeline of the written phase is illustrated.

The main goal of Urgenda in this case was to ameliorate the political system that got stuck through a judgement. One of the interviewees is also part of the Climate Litigation Network. They describe the goal of this Climate Litigation Network as being to help others all over the world to carry out the same legal case. Urgenda came to the idea of suing the state after reading the book “Revolution Justified” by lawyer Roger Cox (2012). This book explains how to unblock the political system that has become stuck, through a court case and a consequential judgement. Members of Urgenda and Mr Cox approached another lawyer to ask if the idea described in the book was realistic and achievable. The lawyer suggested that addressing the government would be more achievable than addressing a large oil company (Interview 3). The group decided to put the idea into practice and in the years 2012 and 2013, they started by preparing a campaign and later the summons (Interview 3).

Overall, Urgenda managed the case with a group of individual lawyers and an external law firm as advisors. From the beginning, Urgenda made sure to explain the importance of this case not only in the Netherlands but also internationally. They provided every document and step of the process with an English translation (Interview 4). The interviewees noted that as the court case progressed, their

argumentation and explanations improved as their understanding of the facts and the link to the legal basis also became better by the end (Interview 3).

Written phase

On November 12 of 2012, Urgenda sent a letter to the Dutch State, demanding more action. In this letter, Urgenda (2012) explains the urgency of the climate issue, and the dangerous consequences it is causing, as proven by the 2007 Intergovernmental Panel on Climate Change (IPCC) report (2007). To prevent such devastating events, Urgenda asks the Dutch state to take action by reducing its greenhouse gas emissions. Urgenda wants to help the state achieve these goals by approaching them together (Stichting Urgenda, 2012).

The government sent a letter of response on December 11 of the same year (Mansveld, 2012). In their letter, they recognise the urgency of the climate issue, and additionally, the State (2012) said that they are showing efforts in this global challenge. However, they also highlight the global responsibility of this challenge. They believe that the Netherlands should not go ahead and take the lead as an individual and will therefore not take extra action (Mansveld, 2012).

Due to the lack of a serious reaction by the state, Urgenda decided to go to court and sue the Dutch State together with 888 co-plaintiffs on November 20 of 2013. In the summons of Urgenda (Stichting Urgenda, 2013), Urgenda writes that Dutch emissions have reached an unacceptably high level and that they must be reduced as soon as possible. They write that the Dutch State has a special duty of Care and hence the responsibility to reduce emissions. They claim that the State is failing significantly to carry out its duty of care. This duty of care entails that emissions must decline by 25 to 40% compared to emissions in 1990, at least by 2020 (Stichting Urgenda, 2013). These numbers are deeply rooted in international agreements. Based on calculations from the IPCC, the Paris Agreement states a goal of a 25% to 40% decrease in emissions by 2020, compared to 1990. The Paris Agreement is not legally binding. However, the two interviewees explain that, because all countries signed the agreement, there is a norm built on a global political consensus about what the goal is. To prove this political consensus, the summons includes extensive information. This is information about the IPCC and conclusions from their reports, conclusions from Dutch sources and institutions such as the Netherlands Environmental Assessment Agency and the Netherlands Court of Audit, and international organisations such as the World Health Organisation and the International Energy Agency. The document also contains information about the United Nations (UN) Climate Change Convention and the European Convention on Human Rights (Stichting Urgenda, 2013).

On April 2 of 2014, the State responded with the Statements of Defence. In the Statements of Defence (Pels Rijcken & Droogleever Fortuijn, 2014b), the State writes that it is not the role of a judge to decide how and at which tempo the Netherlands should reduce its emissions. This discussion belongs in the First and Second Chamber, not in the courtroom because this endangers the trias politica. Furthermore, the state highlights the complexity of this discussion as it considers what the IPCC says. They highlight the uncertainties of the IPCC models, which make the discussion even harder. In addition, they argue that the discussion should be handled on an international level. However, while Urgenda is referring to international agreements like the Kyoto protocol, the State writes that these agreements are not legally binding by international law. Even more, these agreements cannot be enforced by a civil court. They agree that a global temperature rise of 2°C is undesirable. Nonetheless, they refute that the State has acted unlawfully. Urgenda is not precise enough in their claims due to a lack of scientifically referred to substantiation. Hence, Urgenda fails its obligation to furnish facts. The

main conclusion is that the State is liable and Urgenda's summons are not legally well-founded (Pels Rijcken & Droogleever Fortuijn, 2014b).

Together with the duty of care, Human rights, and unlawful acts, Urgenda tries to find a legal basis to build their arguments on. While there is a legal obligation, it is difficult to put these expectations in the context of climate change and have a legally founded basis. Thus, a translation of the goals of the Paris agreement into a more legal understanding is necessary. Here, the lawyers of Urgenda found a similarity with the Kalimijnen arrest which is used in many other international judgments to address international competence (Interview 3). There is a summed causation of the damage. Nonetheless, everyone is still liable for their own contribution. The legal principle of condicio sine qua non plays an important role in defining the causal relationship between the state's actions as a cause and the consequential damage created. This way, the government can be held accountable for complying with its legal obligations. One of the interviewees described this approach as an accountability mechanism (Interview 4). Below, more will be explained about this accountability mechanism.

In the Statements of Reply of September 10 of 2014 (Stichting Urgenda, 2014), Urgenda says that even if the State is right about not being precise enough in its argumentation, Urgenda has the feeling that the State is not willing to understand their arguments. With that, they explain why these statements are 214 pages long. The State recognizes the IPCC and its reports, including the science about greenhouse gas emissions causing global warming and climate change. However, the State denies any legal rights and responsibility for this issue. Urgenda's main demand towards the State is to reduce its emissions by 25 to 40% by 2020, taking both parties' understanding of the issue into account. Urgenda counters that the State is meeting international agreements considering emission reductions and is already doing a lot to fight climate change. There is a large contrast between what the State wishes to accomplish and what it is achieving. There are specific obligations in the UN Climate Agreement, like Article 2 about the maximum temperature rise (The Economist, 2021; United Nations, 2015). Preventive protection against threatening injustice is the highest priority of law enforcement.

Considering the separation of powers, Urgenda wishes to receive judicial protection, not to do politics. Nonetheless, if a government is incompetent to handle a well-recognised issue, it is the role of the judge to offer judicial protection, without regard to the political implications thereof (Stichting Urgenda, 2014). The trias politica is an important principle in this case. Both interviewees explain that the trias politica represents the balance between the three powers. Here, the role of the government is to decide upon norms. The role of the judge is to hold onto these norms and to check whether the government is doing what they say is necessary. Hence, if a judge forms a decision, the government must follow that decision. If a judge's decision is not adhered to, the trias politica is broken which means that the rule of law is broken (Interview 3; Interview 4). As explained by the two interviewees from the Dutch case as follows: "The trias presumes a balance. And the moment the judge has spoken, and all the legal remedies are in place and the highest court has said so, if you then ignore that, then you are really breaking down the rule of law." by Interviewee 3 (phone interview, May 13, 2022). And by interviewee 4 as follows:

> In a state governed by the rule of law, you may assume that if a judge says something about what and how the government should behave, then the government will do so.

> That is what justice is: that you make agreements about what you do. And if you no longer keep to those agreements, then you are no longer a constitutional state, are you? (Interviewee 4, phone interview, May 24, 2022)

Regarding this climate case, the government has to act to conform to the norms and national duties. However, one interviewee emphasises that there is no accountability mechanism to assess an individual country's contributions to international agreements (Interview 4). For example, there is no assessment in the Paris Agreement that measures each individual country on its individual efforts, not even a non-binding one. Notwithstanding, a government should be held accountable for its legal duties. Thus, at this moment, this accountability mechanism is the best imperfect system to hold a country accountable and demand a state to explain its actions, through a legal procedure. Hence, in the context of international climate agreements, litigation on the national level is currently seen as the strongest tool to incentivise a government towards action (Interview 4). Next to the condicio-sine-qua-principle which makes that the State can be held liable, the State also holds the role of guardian of its population (Stichting Urgenda, 2014). Following Articles 2 and 8 of the ECHR, the state has the legal obligation to protect its citizens from the consequences of dangerous climate change (European Court of Human Rights & Council of Europe, 1952). Here too, it is the primary task of national judges to monitor a state's obligations to the ECHR (Stichting Urgenda, 2014).

In response, the State wrote the Statements of Rejoinder on February 19 of 2015. This is the last written pleading of the case before the oral pleadings start. The state denies and contests all arguments mentioned in the Statements of Reply by Urgenda and requests rejection of their arguments (Pels Rijcken & Droogleever Fortuijn, 2014a). The State agrees with Urgenda that they should reduce greenhouse gas emissions. However, this must happen on the European and global levels, not only on the national level. This is because this challenge is characterised as a Tragedy of the Commons where taking action results in positive effects for everyone, while the costs are only carried by one actor. Furthermore, these decisions should be taken in and by the government, as the government is democratically legitimised to do that. Urgenda's approach, therefore, interferes with the democratic decision-making process. Moreover, they state that the reductions demanded by Urgenda for 2020 are unachievable and do not serve any juridical purpose. Firstly, because making policies and adjusting regulations are prone to receiving resistance and the process thereof takes longer. Secondly, a greater reduction in Dutch emissions will result in fewer reductions of other EU member states, it being a shared goal. Moreover, the state does not see any advantage in saving time by acting more rapidly. The State also wants to prevent 'Carbon leakage', which would cause companies to leave the Netherlands due to very strict environmental norms. Furthermore, the State denies having a legal obligation considering the UN Climate agreement. The 'No Harm' principle is recognized as a principle of international common law by the International Court of Justice and is hence part of Dutch rule of law, according to Urgenda. The Dutch State says it complies with its duty of Care. Nor does it breach Articles 2 and 8 of the ECHR, as the ECHR is directed to natural persons and not legal persons. This way future generations do not receive legal protection, as Urgenda is demanding (Pels Rijcken & Droogleever Fortuijn, 2014a).

The interviewees noted that during the process, while translating these arguments into comprehensible and legally based norms to make them legally mandatory, the structure of the case became so comprehensible that it also became legally significant in other countries (Interview 3; Interview 4). That is hence the reason why the structure of this case is so accessible to be repeated in other contexts. Firstly, it concerns the same facts. Secondly, the construction of this case is built on

open norms. Namely, the unlawful act and Human rights. Human rights are universal and are applicable in all jurisdictions (Interview 4).

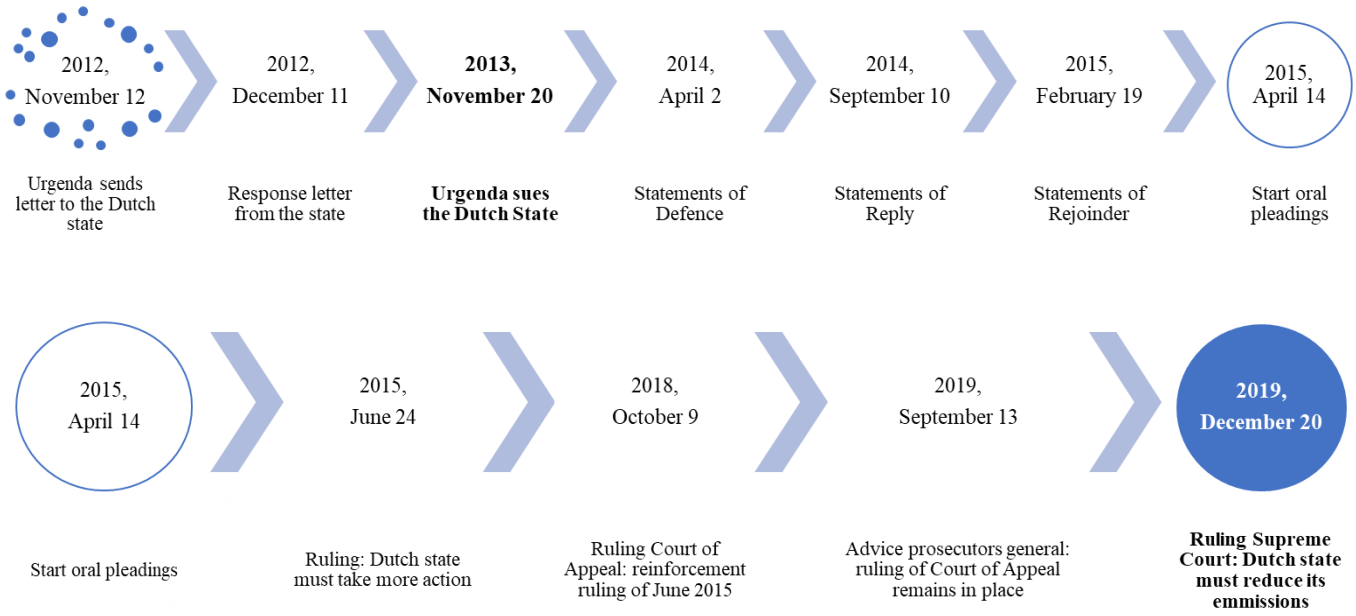

Figure 2: Timeline part I: the important dates in the written phase. Part II: the important dates in the oral pleadings. Dutch case.

Oral pleadings

One month later, on April 14 of 2015, the oral pleadings started in The Hague. Both parties said their word. There was a large public interest in the trial. Each one of the three rooms of the Court were full of people and there were many others following a live stream online. On June 24 the District Court in The Hague decided that the Dutch state must take more action to reduce the emission of greenhouse gases. The State must ensure that by 2020 the emissions will be at least 25% lower compared to the emissions in 1990 (Rechtbank Den Haag, 2015), as called for by the Urgenda Foundation (Urgenda, 2021). From that moment, the obligation was valid, explains one interviewee (Interview 3).

Because the state did not agree with this ruling, as they did not believe they could be obliged, they appealed the decision. Nevertheless, on October 9 of 2018, the Court of Appeal decided the government has individual responsibility. Thus, it reinforced the ruling of the court in The Hague and decided that the Dutch state must reduce its emission of greenhouse gases in the short term (Gerechtshof Den Haag, 2018). One interviewee (Interview 3) explains that in civil court, the case did not win through argument based on the Human Rights, but on the argument of duty of Care and unlawful act. However, the Human rights are laws of the highest order in the Dutch legal system, they are undisputed. Under constitutional law, this has a stronger stance in comparison to the unlawful act. Thus, in the Court of Appeal, the perspective changed and the case was based on Human rights. The interviewee also says that the judge gave the order, thus consequently, the government simply has to meet it (Interview 3). This ruling was confirmed when, on September 13 of 2019, Prosecutor General Langemeijer and Advocate General Wissink advised the Supreme Court that the judgement made in the Court of Appeal in The Hague must remain in place (Parket bij de Hoge Raad, 2019).

Consequently, the final judgement was issued on December 20 of 2019 (Urgenda, 2021). The Supreme court states that the Dutch State must reduce its greenhouse emissions by 25% by the end of 2020. This is the final decision of this court case where the Dutch State was decided to be insufficiently

capable in protecting its citizens from the dangerous consequences of climate change. Hence, Urgenda won the case against the Dutch state (Urgenda, 2021).

The main consequence of this ruling is that after the case, the topic of climate was not exclusively a challenge governed by politics anymore. The results are that since 2019 the government has made some effort. The state started by releasing a package of 2 billion euros for climate related developments. When Urgenda doubted the consecutive efforts and expressed plans to start an appeal, the state reacted with a new package of 7 billion euros, without the necessity of Urgenda actually going to appeal. The latest package released consists of 35 billion euros. To enforce change by means of periodic penalty payment has always been the latest option for Urgenda. Urgenda emphasises that the case is not about the money, but that they aim for the discussion to be and stay clear (Interview 3).

The Urgenda case has had an immediate impact on the development of climate cases worldwide (M. Wewerinke-Singh, personal communication, February 28, 2022). From the moment the court ruling was decided upon, it sent a clear message in the legal sphere and beyond. The highest judges of Europe opened the legal year twice, mentioning and referring to the Urgenda case. This sets the common values and norms. The case has a direct impact on similar cases in Ireland, France, Denmark and Italy. But also beyond Europe, e.g. in South-Korea or the Juliana Case in the US. Moreover, a similar court case against Shell would not have been this successful without the ruling of Urgenda as a precedent. Another direct consequence is that the Climate Litigation Network was formed, with the main goal to help other similar cases. This can be done by connecting people to each other, advising them about their own experiences but also by sharing others' experiences. It is a significant knowledge sharing network (Interview 3).

Important developments and points of the Dutch case

Following are the most important points about the case, derived from the legal texts and interviews.

Urgenda was the first case to carry out and succeed using this approach in a climate court case. It came with and carried out the legal argument to sue its governing state. This was achieved together with 888 co-plaintiffs. To make the case legally grounded, the organisation together with its lawyers translated the challenges into a legal comprehensible structure. While searching for legally recognisable norms, the case resulted to be based on very open norms: the unlawful act and causality, and the universal Human rights. Additionally, the arguments are based on scientific reports which are based on scientific consensus and international agreements which represent a political consensus. This made the case easily replicable. In other words, the case became appropriate as well as accessible to be transferred. The case resulted in determining litigation as a new sort of accountability mechanism which enforces governments to justify their actions, through litigation. Considering the consequences the case has on climate policies in the Netherlands, it can be determined that there are direct actions by the government after the ruling. Being held accountable for its actions, the state has been confronted with its own incoherence between what it considers and says to be important measures against climate change, and the actual measures against climate change it carries out. Consequently, the Dutch government has released multiple packages of billions of euros to commit to climate policies.

4.3 Klimaatzaak case in Belgium

In this subchapter, the results from the empirical research about the Belgian court case are presented. The texts below are constructed by a compilation of information gathered through legal text research and interviews.

How did the Klimaatzaak case develop?

Just like the Urgenda case, the Belgian Klimaatzaak has filed a case against the Belgian Government. Also here, the climate case is a process of years of effort. The Belgian case has more steps and has not been concluded completely, as Klimaatzaak went to appeal. Below, an overview of the developments of the case are described from the beginning towards the final steps of the process. The following text is constructed by legal conclusions and information from interviews with two engaged people from Klimaatzaak.

To orient where Klimaatzaak is coming from, the interviewees were asked about the goal of the organisation. The goal of Klimaatzaak is to tackle climate change by stimulating the government by taking the same approach as Urgenda and suing the state (Interview 1, Interview 2). Klimaatzaak hopes to encourage people in the government to see this as an opportunity to change (Interview 1). This trial is therefore used as a tool to trigger more appropriate and urgent action. The goal is also to inspire the government to realise that a soon transition can strengthen the nation's wealth and economy and to not only act on short term values. The case does not have a personal motivation, it is for the larger good (Interview 1). As already mentioned above, Klimaatzaak takes the same approach as Urgenda did by suing the state. The inspiration of this case is therefore completely based on the Dutch climate case as also said during one of the interviews: “We should do that in Belgium too” (Interviewee 1, phone interview, May 6, 2022). This, in its turn, was based on the book “Revolution Justified” of Roger Cox where the idea is explained of using litigation as a tool to stimulate governments to act more correctly towards climate change (R. H. J. Cox, 2012). One interviewee describes Mr Cox’s work to be pioneering work, directly quoted “It is pioneering work to some extent, certainly what Roger has done in the Netherlands, so he was the first to really delve into it from that legal perspective to that extent” (Interviewee 2, phone interview, May 11, 2022).

To prepare for the case, the group of founders of Klimaatzaak invited Mr Cox for a meeting to discuss the possibilities for a similar case in Belgium. From that moment the preparations began (Interview 1). To translate the basics and principles into the Belgian legal context, Klimaatzaak called assistance from a team of lawyers (Interview 1, Interview 2). Interestingly, there were a lot of specialists included who do not want to be publicly related to the lawsuit, as they do not want to be seen as an activist and prefer to stay neutral to protect their brand. At the beginning there were a lot of insecurities, and the case was not taken seriously in the public debate (Interview 1).

Written phase

To start off, on December 1 of 2014, Klimaatzaak sent a notice of default to the four Belgian governments in place. Which are the Federal government, the government of the Brussels Capital Region, of the Flemish Region, and of the Walloon Region (Klimaatzaak, 2022). The Belgian governmental system is federal and consists of four governments. More specifically, the competency being discussed in this case is divided over four governments (Dienst Klimaatverandering, 2021;

Interviewee 2). Interviewee 2 states that this made the case very different as they had to address four different defendants. Hence it is more challenging if compared to the Dutch case.

In response to the letter, Klimaatzaak was invited to a meeting by the federal minister to discuss the matter on March 1 of 2015. Together with the four competent ministers a conversation is built. However, it seems difficult to find a consensus between the representatives of Klimaatzaak and the ministers (Klimaatzaak, 2022).

Klimaatzaak sued the four Belgian governments on April 27 of 2015 by sending the summons to the bailiff. The written court proceedings start when the competent ministers receive the summons on June 2 of 2015 (Klimaatzaak, 2022). The legal arguments for the lawsuit were entirely copied from the Dutch case, as far as possible. Certainly, the litigation of the Dutch case had to be adapted to the Belgian context. "Drawing up the summons is almost largely copied from the Urgenda case. We have actually used the Urgenda case as... The principles of the Urgenda case have been completely transposed to the Belgian context, but of course, we had to adapt that to Belgian law." (Interviewee 2, phone interview, May 11, 2022). The main accusation is an explanation of how the governments are not complying with the goals that are acknowledged by the governments themselves. This is a reduction in emissions of 40% by 2020 and 87,5% by 2050, which is based on multiple scientific studies (Philippe & Partners, 2015). The claims start with requesting recovery and preventive measures. An important note is that damage does not have to be fostered for a judge to order preventive measures against the damage. Klimaatzaak (2015) continues by explaining that the negligence of the governments is violating the law. The principles and rights that are violated are Articles 2 and 8 of Human Rights (European Court of Human Rights & Council of Europe, 1952), the principle of prevention, and the precautionary principle. The principles and articles are also supported by the national constitution. This negligence implies an unlawful act as it is a violation of the standard of care. A healthy and careful government should prevent dangerous climate change (Philippe & Partners, 2015). After clarifying the accusations and claims, the text has a chapter about the judiciary and its role as a separated power in the trias politica. It concludes with a response to each of the four replies Klimaatzaak received on its notice of default (Philippe & Partners, 2015). After the first instance, it all became serious. Yet, there were some difficulties during the case (Interviewee 1).

Important to notice is that the assigned court in Brussels uses French as its language of instruction. The current national language legislation determines that this case must be introduced in French because one of the defending parties is located in the Walloon Region, which is French speaking (Klimaatzaak, 2022). Because the Flemish Region does not accept that the case is handled in French, they requested a language change from French to Dutch on June 11 of 2015. If this is not possible, the Flemish Region wishes to split up the case: one in French and one in Dutch. This request initiates a period of three years of rulings and appeals. The important rulings are shortly discussed below.

On September 25 of 2015, the French speaking Court of First Instance dismissed the language change (Tribunal de première instance francophone de Bruxelles, Section Civile, 2015). Because the Flemish Region did not agree, it contested the decision of the Court of First Instance and moved to the District Court on October 23 of 2015 (Klimaatzaak, 2022). They determine whether the national language legislation has been violated by the Court of First Instance. On February 8 of 2016, the District Court confirmed the judgement of the Court of First Instance, confirming French as the language of instruction in the case. In addition, the case may not be split up but must remain one whole (Tribunal d'arrondissement francophone et nerlandophone de Bruxelles, assemblée réunie, 2016). The Flemish Region still does not agree and appeals the judgement by going to the Supreme Court. The Supreme Court postponed the verdict twice and took two years to handle the case. Finally, on April 20 of 2018, the Supreme Court rejected the Appeal and confirmed the verdict of the District Court made on February

8th 2016, which in its turn confirmed the verdict of the Court of First Instance made on September 25th 2015 (Klimaatzaak, 2022).

This delay of around three years caused a lot of money to be lost. Additionally, it was difficult for Klimaatzaak to stay motivated and provide financial support (Interview 1). Also considering the large group of co-plaintiffs and the public in general it was difficult to keep them involved (Interview 1; Interview 2).

At this point, the actual case can continue. On February 1 of 2019, Klimaatzaak received the main conclusions of the four Belgian governments. While they do not contest the challenges in light of climate change, both governments argue against the claim that the Belgian climate policies are inadequate (Het Brussels Hoofdstedelijk Gewest, 2019; Het Waalse Gewest, 2019). An important note here is that the conclusions of the Brussels Capital Region and Walloon Region are publicly released, while the conclusions of the federal and Flemish Region are not public (Klimaatzaak, 2022).

As a response, Klimaatzaak filed its main conclusions on June 28 of 2019. Here, they claim that the competent governments are maintaining inadequate climate policies. Klimaatzaak demands a decline of at least 42 to 48% of greenhouse gas emissions on the Belgian territory by 2025 and a decline of at least 55 to 65% by 2030, in comparison to the emissions of 1990. The aim is to reduce the emissions to net-zero emissions by 2050. Next to the emission reductions, Klimaatzaak asks for a fine of 1 million euros per month for delay of the actualisation and implementation of the judgement (Equal-Partners, 2019). However, one interviewee (Interview 1) emphasises that the focus and goal of the case is and has never been about personal interest or money. It is solely for the overall good of climate action and the protection of citizens from the devastating consequences. The arguments in the main conclusions are based on scientific evidence which states that these reductions are necessary to prevent global warming of 1,5°C which has dangerous consequences (Equal-Partners, 2019a; IPCC, 2022).

Supplementary conclusions from the four governments were received by Klimaatzaak on October 1 of 2019. Only the conclusions of the Brussels-Capital Region and the Walloon Region are public (Klimaatzaak, 2022). The Brussels-Capital Region highlights that they are aware of the risks of climate change for a while already and are therefore taking a large number of measures to reduce their greenhouse gas emissions. They are thus not disputing the facts about climate change. Nevertheless, they do not agree with the approach of Klimaatzaak of going to court as there are no legal grounds for it. Additionally, they believe that the climate debate is very difficult to hold in the federal structure of Belgium. That is why they do not see how this request through court can aid in finding an agreement on the topic between the federated entities (La Région de Bruxelles-Capitale, 2019). Similarly, the Walloon Region (2019) writes that they do not question the climate challenges, which is why they are also taking action to limit global warming within the prescribed frameworks. The Walloon Region disputes the legal discourse Klimaatzaak is carrying out because it is of opinion that Klimaatzaak is avoiding correctly basing their arguments on legal norms (La Région Wallonne, 2019).

Klimaatzaak filed its definitive conclusions on December 16 of 2019. The insufficient climate policies of the Belgian governments are a violation of the due diligence standards and human rights and children's rights. In their final conclusions, Klimaatzaak highlights the danger of 1,5°C global warming. The danger of reaching this limit in temperature rise is the actual reason why the international community, including Belgium, decided to stay below that limit. Unfortunately, the Belgian governments are lacking any competence to handle this correctly. The Belgian climate policy furthermore continues to diminish, resulting in a degradation on an international level (Equal-Partners, 2019b; Klimaatzaak, 2022).

The team of Klimaatzaak dives deeper into the scientific reports of the IPCC to find their arguments (Interview 1). Because of their peer-reviewed nature, they have a high value as legitimate argumentation. Klimaatzaak also introduces a new notion: the carbon budget. The target of achieving a reduction is important as there is a difference in build-up carbon between a concave or convex reduction (Interview 1). They introduced science in the legal field (Interview 1, Interview 2). If ultimately the judges decide that the reductions must be realised using this methodology, it could create the opportunity for the same methodology to be used in other countries. This would establish a whole new dynamic. This would effectively be the difference between the approach of Urgenda and Klimaatzaak. Where Urgenda legally established a new political minimum, Klimaatzaak legally established the scientific minimum (Interview 2).

In general, the two main pillars are the Human Rights and the principle of duty of Care (Interview 2). For admissibility, also two separate paths are distinguished. Firstly, Klimaatzaak argues for the admissibility of Klimaatzaak as an organisation. This was expected to be easily achievable, having clear ground in the Aarhus Convention. Secondly, they argue for the admissibility of the individual co-plaintiffs. This one was expected to be less achievable as for it to be recognized it is necessary to prove personal interest and Klimaatzaak did not plan to do that (Interview 2).

On March 16 of 2020, Klimaatzaak received the synthesis conclusions of the Federal and Walloon governments (2020; 2020). The federal and Flemish ministers maintain their objection to the publication of their arguments. They describe in detail what their plans are to address climate change, on a regional and European level to prove they are in fact taking serious measures. They write that the plaintiffs are not admissible and therefore the request is inadmissible (La Région de Bruxelles-Capitale, 2020; La Région Wallonne, 2020). This is the last step of the written phase of the case. In Figure 3 below, a timeline of the written and oral phase is presented.

Oral pleadings

The oral pleadings start on 16 March. In the first seven days, Klimaatzaak and the four Belgian governments presented their plea. In the last two days, all parties have presented their reply (Klimaatzaak, 2022). On 17 June 2021, the judge ruled in favour of Klimaatzaak. The Court of First Instance condemns the four Belgian governments collectively for their inadequate climate policies. The judges decide that the climate policies are so inadequate that they violate the legal duty of care and human rights (Tribunal de première instance francophone de Bruxelles, Section Civile, 2021).

Eventually, both admissibilities (described above) were recognized. This second admissibility is significant for other cases as it can serve as a precedent. “The court has indeed recognised the two, the admissibility of both the non-profit association and those individual co-plaintiffs. And that is especially important as a precedent internationally, where that admissibility for non-profit organisations does not apply.” (Interview 2, phone call, May 11, 2022). For example, in jurisdictions where there is no admissibility for non-profit organisations and where there are fewer legal instruments. And this is also possible for individuals. Others can now rely on that ruling as a precedent (Interview 2). Even though this was not the result that Klimaatzaak hoped for, the judgement is a principally interesting verdict. Some of the main points can serve as a significant precedent, also internationally. That the ultimate goal has not been reached does not take away that the Belgian case is valuable for the international ecosystem of climate litigation (Interview 2). On another note, the judges said that it is not their role to enforce reduction targets as they do not believe it is their competence and highlight the separation of powers. Because no concrete objectives were stated, Klimaatzaak is not very satisfied with this result (Interview 1; Interview 2). Additionally, they notice the lack of any reaction from the

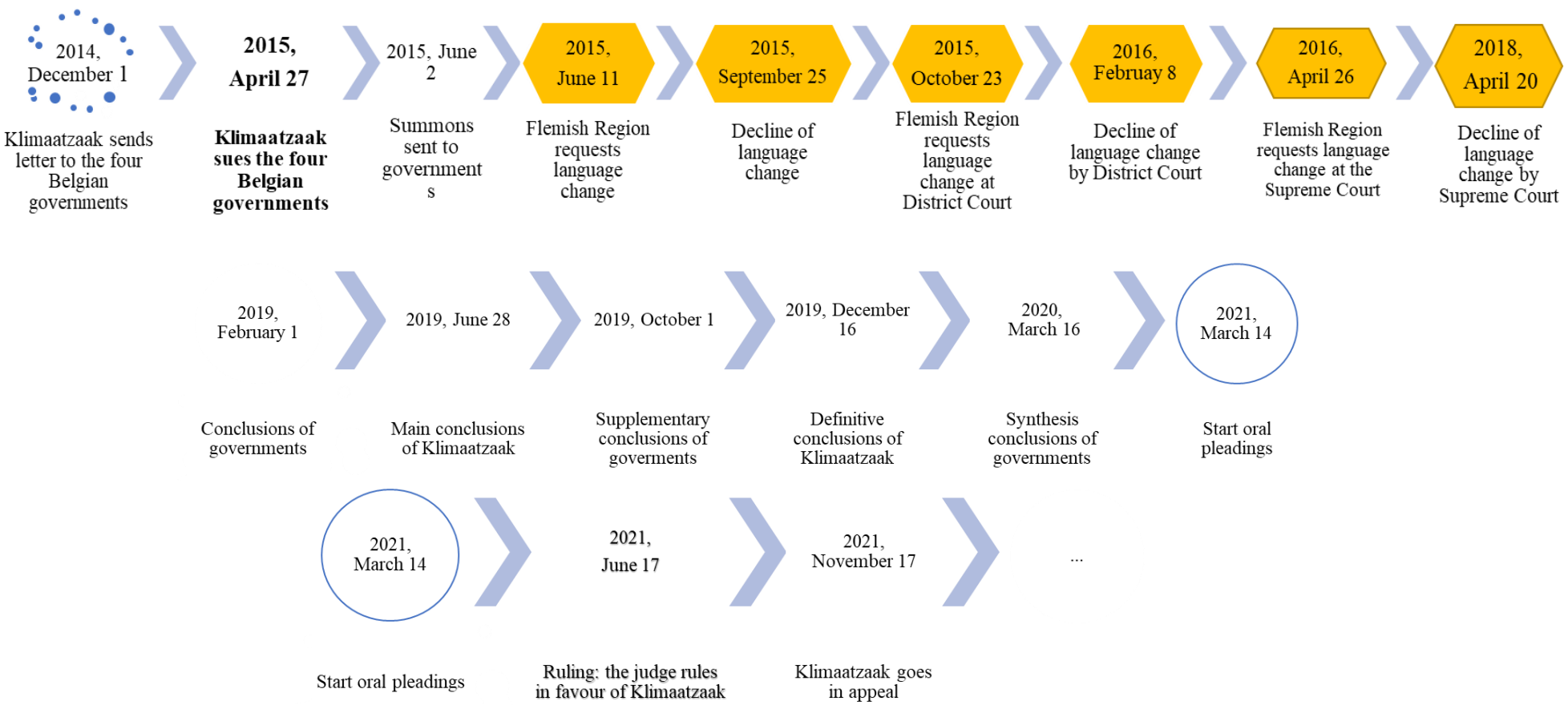

Figure 3: Timeline part I: Written phase, from the notice of default to the language judgement. In yellow are the rulings about the language change. Part II: Written phase, from the language judgement to the start of the oral pleadings. Part III: Oral pleadings and consecutive decisions. Belgian case.

governments or signs of taking the case seriously after the ruling. Therefore, in November 2021 Klimaatzaak decided to appeal. They demand binding targets considering the emission reductions that oblige the governments to contribute to the prevention of dangerous global warming (Equal-Partners, 2021; Interview 2; Klimaatzaak, 2022). Klimaatzaak sees the ruling as a misinterpretation of the separation of powers and hopes that the judges will correct their decision in the appeal (Interview 1; Interview 2).

Another important outcome of the case is the admissibility declaration of the 68.000 citizens that filed as co-plaintiffs. This is the first and up until now the only case where all co-plaintiffs are declared admissible. The judge decided that all their rights are being violated. This is a significant ruling as it involves human rights violations on a very large scale (Interview 2). In the end, Klimaatzaak hopes for the court to order binding reduction targets in the ruling of the appeal, and more importantly for the government to pay attention to it.

A final update about the appeal is that the Brussels Court of Appeal decides to give the case priority. This shows that the Belgian judges understand the urgency of the case. The concluding phase of the case will take 16 months through written conclusions and twelve pleadings. Klimaatzaak faces the court from September 14th 2023, until October 6th 2023 (Klimaatzaak, 2022).

Important developments and points of the Belgian case

Here, a summary of the main points of development of the Belgian case is made based on the legal texts and the interviews.

The Belgian climate court case has been largely based on the Dutch climate court case. Klimaatzaak has frequent and intense contact with Urgenda. More precisely, the lawyer who started the Dutch lawsuit is one of the main lawyers in the Belgian case. Similar to the Dutch case, Klimaatzaak filed the lawsuit together with a large group of co-plaintiffs. In the Belgian case, the co-plaintiffs were declared admissible, which is an outstanding ruling. Considering the legal basis of the arguments, most of the principles are transferred or even copied from the Urgenda litigation, with the necessary adaptations to the Belgian context. A key element in this transposition is that the Belgian governmental system is structured differently than the Dutch governmental system. Therefore, the legal authorities of who is responsible to act with climate policies are also divided separately. Another different point is that due to the length of the process, Klimaatzaak cannot consider the goal of 2020 and shifts its arguments towards 2030 as the target year. Because there is less clarity on political standards about 2030, the team of Klimaatzaak has to dig deeper into the scientific evidence and international agreements to achieve the same point as Urgenda did. For this they made detailed calculations based on the IPCC science. Ultimately, the Belgian governments have not paid much attention to the judgement and no direct effect on climate policies has been seen. Therefore, Klimaatzaak now went on appeal to demand more prompt and urgent action from the state.

Chapter 5. Analysis and theory

In this chapter, the data presented in chapter 4 will be analysed. The analysis will be substantiated by theoretical literature to make a legitimate explanation. The reason why the theory is brought back now is that a thorough understanding of the development of the cases was necessary before being able to add the fitting theories, as explained in the methodology chapter. At this point, a deeper understanding of the developments is achieved and an explanation can be given of how they happened. Two transfers are analysed on whether, how, and by whom they were made between the two countries. A transfer of legal components and a transfer of policy. First, in subchapter 5.1, an interpretation of isomorphism in this context and its relevance here is explained. Complemented with the role of social movements in the transfers from the Netherlands to Belgium. Second, in subchapter 5.2, clarification is given about what a legal transfer is, followed by an interpretation of how this looks in the case of these court cases. Third, in subchapter 5.3, clarification is given about what a policy transfer is. Followed again by an interpretation of how a policy transfer looks in the cases considered in this research. Then, in subchapter 5.4, the analysis continues with a discussion of why in this case, the legal transfer of the litigation can be defined as complete and the policy transfer as incomplete. Three reasons are given to explain the incomplete policy transfer. Lastly, in subchapter 5.5, other possible external influences on the transfer outcomes, such as the European context, are disclosed.

To create an overview, this paragraph recapitulates the developments of the climate court cases. Overall, what has happened is the following. In the Netherlands, Urgenda sued its government for inadequate climate policy. They won the case based on legal arguments that proved the government to be accountable for its actions. These arguments have a basis in well-known and general legal principles. The main norms and principles of the case were Human rights Articles two and eight, the duty of care and the condicio-sine-qua-non principal in combination with the multiple causality principle. With those, Urgenda and their lawyers were able to prove that the Dutch government could not show that its efforts considering climate policy were sufficient. A group of people in Belgium got inspired and wanted to do the same. Because the case in the Netherlands was won based on open and universal norms and considered the same facts, the case was very accessible for replication. The Belgian Klimaatzaak, therefore, used the same legal arguments to start their case. Here, a transfer took place. Klimaatzaak copied the legal argumentation and adapted it to its national legal context to make it fit. Other than translating the legal argumentation to the local context, the transfer was as good as completely exhaustive. However, the final rulings of both cases were similar but not the same. In the Dutch case, the judge clearly ruled for the Dutch government to act adequately. On the contrary, in the Belgian case, the judge ruled that the government is not doing enough, however, the Belgian judge did not strengthen this with an order for action. Therefore, the transfer of the ruling is only partly completed. Until the judge will rule for adequate action, the legal transfer is not successfully completed. The following subchapters will explain why.

5.1 Isomorphism and the role of social movements

This subchapter first delineates how the development of institutional change and policy making is influenced by its surroundings. The surrounding environment of an institution plays an important role in its development, as well as the actors who provoke the influence.

Actors and institutions tend to be influenced by their environment to develop more similarities with their environment. In social sciences, homophily refers to the development where actors develop

towards looking like their surroundings the more time they spend there. So, a person or group of persons will start resembling its surroundings. At the same time, the actors also influence their surroundings in the same way. Thus, consciously or unconsciously actors develop in the same direction as their surroundings (Kadushin, 2011). Similar progress occurs with institutions studied in public administration. Isomorphism explains how institutions and organisations are influenced by their environment to evolve in a similar way to each other (DiMaggio et al., 1983; March et al., 1983). The process of isomorphism makes institutions such as international organisations or governments that operate in the same field and topic end up growing towards similarity. There are multiple types of isomorphism, but the best fitting type here is an institutional isomorphism. Institutional isomorphism can be driven by three factors: mimetic, normative, and coercive isomorphism. Mimetic isomorphism considers institutions to become alike due to structural and organisational ambiguity. As a way of coping with this ambiguity, the organisation looks at other organisations for inspiration and guidance. This is not the case here, while the Belgian governments might look at other governments for inspiration, their governmental state structure has not much to do with the Dutch state structure if considering the climate court cases. Normative isomorphism considers institutions to become alike due to the shared values and norms of the administrative bodies (DiMaggio et al., 1983). This could be the case if the Dutch government would morally inspire the Belgian governments to act more responsibly regarding climate policy and goals. However, from the data gathered in this research, this is not the case here. However, the social movements did share moral values with each other. Klimaatzaak got inspired by Urgenda's approach and therefore decided to act. Hence, the next type of institutional isomorphism fits this case the best. Coercive isomorphism considers institutions to become alike because of influences of societal and cultural assumptions and beliefs exerted by other organisations (DiMaggio et al., 1983). To come back to theories about diffusion by social movements (della Porta et al., 1999; Snow, 1999), this is also explained by the condition of cultural similarity. This is a way to explain the role of social movements in exerting influence on their governments to carry out more adequate climate policies. The social movements sued their governments for inadequate state responsibility with the single goal of stimulating the governments for action.

An important development that is identified in this research is the role of social movements in the transfer of legal components and policy. In advance, there was no clear expectation of which actors were of influence during the implementation of a transfer. However, general policy and legal transfer literature mainly discussed the key actors to be politicians and bureaucrats (Dolowitz et al., 1996). Nonetheless, during the study, the role of the social movements became very clear. The actors implementing the transfer were in fact the social movements and not the governments themselves. The social Dutch social movements support the Belgian social movement to pressure their government. Della Porta et al., (1999) call this transnational or cross-level mobilisation. Urgenda and the Climate Litigation Network can help Klimaatzaak as they are more experienced and resourceful in this case. Without the in-depth case study, seemingly logical reasoning based on the general literature available about the concerning concepts, could form an expectation for the Belgian governments to be inspired directly by the Dutch government to improve their climate policy. However, from this analysis it can be seen that it is not the Belgian government that is, consciously or unconsciously, being influenced by the actions of the Dutch government. In fact, the Belgian government is being influenced by its own population which is represented by Klimaatzaak. The governments are being forced through the law to act more adequately. Yet, the citizens of the Belgian population, in their turn, did get influenced by the Dutch citizens. Therefore, if the Belgian governments decide to carry out more ambitious climate policies, this is a result of being influenced by the social movements representing the Belgian population. They would not act more ambitiously because they were directly inspired by the actions of the Dutch government. Figure 4 below illustrates the direction and flow of transfer. In the figure (Figure

4) can be seen how the transfer does not go from the Dutch government to the Belgian government directly, as illustrated with the red discontinued arrow. On the contrary, the transfer moves from Urgenda to Klimaatzaak, and then afterwards reaches the Belgian government. In the same way Urgenda influenced its government to act more adequately considering climate policy, Klimaatzaak influenced its governments to act more adequately. The transfer happens from Urgenda to Klimaatzaak. This makes clear how the transfer goes via the social movements first to move and influence the governments later, as illustrated by the black arrows.

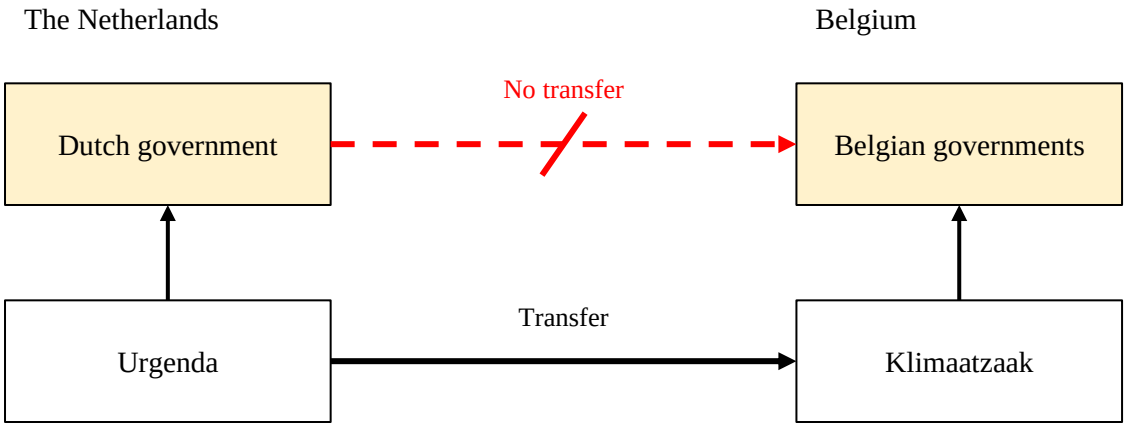

Figure 4: An illustration of how the transfer moves through the social movements to the governments, via the black arrows. The red discontinued arrow shows how the transfer does not go from the Dutch government directly to the Belgian governments.

5.2 What is a legal transfer here

It is important to look at what has been transferred in these cases. To understand and analyse the transfer between the cases, the following questions must be answered by means of a theoretical study. What is a legal transfer? What is a complete legal transfer?

As already introduced in chapter 2.2, legal transfer is mainly studied in constitutional and comparative law. However, in this thesis, a legal transfer does not consider the transfer of constitutions. Here, the term legal transfer refers to the transfer of legal components such as the litigation and the rulings from one case and context to the other case and context. Other terms to describe a legal transfer are transplant, migration, borrowing, and influence (Frankenberg, 2010; Seckelman, 2013). They all refer to a legal component that moves from one context to another, this can be as an inspiration solely or as a literal copy. Because the law is part of a larger social construct of society, it evolves together with changes in society. Constitutions and the corresponding law and legal components are thus also enduring globalisation. In terms of legal transfer, this explains why norms and practices are increasingly becoming resemblant to each other on an international level (Frankenberg, 2010). Many groups in society, like social movements, turn to the Human Rights to attain a globally common shared value. Additionally, utilising litigation as a tool to hold governments accountable for their policies and responsibilities is becoming an increasing form for advocacy groups to represent their interests (Hofmann, 2020; Launer, 2021). These norms and legal duties enable people to express this feeling of universal morals and standards. The principles discussed in the Human Rights are relevant in many cultures across the globe because they concern societal challenges occurring everywhere, which makes them recognisable. The legal solutions to approach them are therefore also the same (Frankenberg, 2010). This explains why the court case first carried out in the Netherlands formed a replicable precedent. In the studied court cases, mostly the arguments of the litigation are taken over. As explained

in the chapter above, most of the reasoning in the Belgian case has directly been inspired by the reasoning of the Dutch Case. From the legal texts as well as those confirmed by the interviewees, it can be determined that a large part of the litigation in Belgium is a copy of the Dutch litigation provided with the necessary adaptation. One interviewee (Interview 4) explains that this was achievable because of two main reasons. The first reason is that both cases concern the same facts: insufficient climate policy was carried out by the government. The second reason is that the legal norms on which the reasoning is built are open and some of them even universal, like the duty of care principle and Human Rights. Because these norms and principles are general and present in both countries, the same legal structure makes it possible to approach a different case in the same way.

Watson has also pointed out in his paper on legal transplants (1975) that legal developments are commonly initiated by borrowing and adaptation of legal components and therefore well tolerated with regard to society. However, he highlights the importance of the intervention of authority in law as a variable (Watson, 1975). Thus, authorities may play an important influence in the transfer of a legal component. Additionally, different ways of legal thinking and other traditions may also form a reason for similar court cases which are based on the exact same litigation to result in differing judicial interpretations. The transferred item, in this case, the ruling of the Belgian judge, can thus become something new and different in the new context if compared to what it was in the first context (Watson, 2000a; 2000b).

To transfer legal components from one context to another, the legal components must undergo a process. To describe this process, a comparison with the IKEA retail company is made by Günter Frankenberg (2010). In the IKEA theory, legal components that go through a transfer process are compared to the products sold at the IKEA stores all over the world. The products are designed in such a way that they are dismantled in packages of pieces so that they can be sold globally in the same form. This way, the products can be sold in an identical form and later set up at the customer's home, in a way that fits their home and the new context. Following this theory, there are four steps to comply for a transfer to take place. The first one is to locate the point of origin. The second one is to decontextualize the component from its surrounding circumstances. In step three, the components can move from the local context to the global reservoir. Here, actors such as social movements or lawyers can "shop" ideas and arguments that are already proven in other countries. In a similar way, the Belgian social movement Klimaatzaak employed the Human Rights in their court cases. One of the conditions for legal components to be good for the global reservoir is that they should be independent of any context. Then, the fourth step concerns the recontextualization and adaptation of the item to the new environment. The largest challenge here is the resistance to acceptance. In the case of the transfer studied here, this can explain the result of the Belgian judge not ruling in the same strict order as in the Netherlands. The relation between the giving and receiving context is thus very important. There is a risk that the host environment shows an immune reaction to the transfer. Another, more common and less harsh risk is that the transfer becomes very complicated because the adaptations are very time demanding, the political environment is unfavourable, or the culture of the new environment is resisting (Frankenberg, 2010). In the legal transfer between the Netherlands and Belgium, all three reasons for complication are present: there has been a significant time delay due to a language dispute, the Belgian political environment is different from the Dutch one, and the culture is different in handling public debate. As will be explained further below, this complication will relate more to the ruling of the judge and less to the transfer of the litigation.

In this thesis, a complete transfer is defined as a transfer in which the legal components are completely taken over. The fact that there is an adaptation necessary to fit the legal components to the host environment does not take away for the transfer to be complete. Thus, a transfer where all legal

components are taken over, with or without necessary adaptation, and with or without complementary legal components, is a complete legal transfer. However, when the transfer of the components is only partly, the transfer is labelled incomplete in this paper.

Important here is the distinction between the litigation carried out by the plaintiffs (in this case the social movements) and the legal ruling by the judges. Thus, the legal transfer between these cases can be divided into two different parts. On the one side, the legal arguments that the plaintiffs used to sue the governments, are also referred to as litigation. On the other side, is the ruling of the judges. So, there is a complete transfer of the litigation because the argumentation was copied in its entirety, with some adaptations where necessary. However, the transfer of the ruling is not complete. While the Belgian judges ruled similarly compared to the Dutch judge by saying that the state has not fulfilled its responsibilities considering climate policies, they did not order a clear and strict change and responsibility. Thus, there is a complete legal transfer of the litigation and an incomplete legal transfer of the ruling.

5.3 What is a policy transfer here

In this subchapter, policy transfer is explained and applied on how it looks in the climate court cases. While legal and policy transfers consider two different and separate transfers, both have an overlapping character as they develop from an entangled process of transfer. The goal of the Belgian court case was to create a policy change in the climate policy of the Belgian governments. To do this, the Belgian social movement did the same as the Dutch social movement did in their court case. Here, the litigation was transferred. Thus, the social movements created a legal transfer first, to eventually result in a policy transfer. Ultimately, the goal would be for the Belgian governments to improve their climate policies and implement a more ambitious plan.

Therefore, in this research, policy transfer refers to the transfer of an improved climate policy. The improved climate policy in the Netherlands is part of a broader change that happened because of the strict order in the ruling of the judge. It is a mindset switch where the government must agree to improve their climate goals and policies, so that they align with their previously stated values and norms. However, as seen above, this strict order in the ruling is missing in the Belgian court case. Klimaatzaak has started an appeal demanding a stricter ruling from the judge. If the judge decides to specifically order adequate action, then there is also a complete transfer of the ruling. Consequently, the Belgian governments will have to improve their climate policies. In fact, for the policy transfer to be established and later completed, first, the ruling has to offer a strict order. However, at the moment no policy transfer has taken place.

Going back to the literature that suggested for policy transfers to be voluntary or coercive (Dolowitz et al., 1996), here the case shows a clear distinction of coercive policy transfer. Including the literature of diffusion, which also determines whether influence happens directly or indirectly (della Porta et al., 1999; Snow, 1999), the following can be determined. As already explained above, the policy transfer or diffusion is not voluntarily carried out by the Dutch government, nor is it voluntarily and rationally searched for and followed up by the Belgian governments. On the contrary, it is the pushing of the social movements (della Porta et al., 1999) which makes all governments to be held accountable through the legal cases in court. Interestingly, the governments have not been influenced by the international consensus about necessary climate action, or the agreements they signed to approve this consensus, to act more adequately. A reason for this could be that the action is not yet taken in many other countries on a global scale, as the Dutch climate court case is the first of its kind to be successful. The community has thus not yet been of influence to implement climate policies through this way of

climate litigation as an accountability mechanism, as there are not many examples to learn from yet. Similar to the process of legal transfer, the policy transfer process allows for the receiving country to borrow or copy from a range of more general inspirations to very specific instruments and designs (della Porta et al., 1999; Dolowitz et al., 1996; Snow, 1999). Still, all the efforts of Urgenda, the Climate Litigation Network, and Klimaatzaak did not result in the Belgian governments choosing to search or find inspiration in the improved Dutch climate policies. A couple of barriers for successful policy transfer are the perceived side effects of the policy transfer expected by the administrators, and the amount of available information and knowledge about the challenge being tackled (Dolowitz et al., 1996). The Belgian judges foresaw difficulties if they would order strictly for more adequate policy, which constrained them to do so. This will be further explained in the following subchapter 5.3. Considering the available knowledge about climate change and adequate policies, both governments were sufficiently acknowledged by their responsibilities and how to carry them out, as they have signed the international agreements. Nonetheless, the understanding of the issue of climate change did not result in a complete policy transfer from the giving nor the receiving governments. Another barrier is that the solutions for the tackled challenges are very time specific (Dolowitz et al., 1996). This third barrier will also be further explained in the subchapter 5.4 below.

This leads the research to look at why there was no similar ruling in the Belgian case if the social movement copied the litigation entirely from the Dutch case. Finding an explanation for that will help explain why there was no transfer of policy possible (yet). Analysing the data from the legal texts and interviews with stakeholders can explain a couple of reasons.

5.4 Complete transfer of litigation vs. incomplete transfer of ruling resulting in no policy transfer

Why is there no similar ruling if the litigation was exactly copied? The incomplete transfer of the ruling makes it impossible for the policy transfer to be complete. Three reasons can be identified for the ruling to be different in Belgium. In general, it can be noticed that all reasons are related to the difference in the giving and receiving context. The receiving context must not be too different from the giving context (della Porta et al., 1999; Dolowitz et al., 1996; Snow, 1999). The first reason is the difference between the institutional governmental structure of both countries. The second reason is the difference in the cultural (political) environment. The third reason is the different time periods in which the transfer occurred. Partly due to a language dispute, the Belgian case endured a delay and therefore the ruling happened in a later time frame. Subsequently, this subchapter goes through the three reasons one by one. To conclude with a preliminary conclusion about why the host context does not allow for the transfer of the ruling to be complete.

Institutional government structure

To start with the governmental and institutional structure of the countries. Interviewee 2 of the Belgian case explains that she promptly realised and foresaw the challenge of carrying out the same litigation in Belgium as used in the Netherlands. More even, she realised what a challenge it could become to achieve similar outcomes considering the ruling, like illustrated from the following direct quote: “I am sure that at the time there was a real underestimation of what it means to carry out such a process in a country like Belgium, where climate policy is distributed as a competence among the 3 regions and the federal government.” (Interview 2, phone call, May 11, 2022). Belgium has a federal governmental system where the competences considering climate policy are divided over the different

regions (Dienst Klimaatverandering, 2021; Interview 2; Popelier, 2021; Van Nieuwenhove, 2020). Popelier writes in her paper (2021) that federal cooperation is crucial for a working federal system, and this quickly comes down to governmental accountability. If that does not work out due to distrust and inadequate coordination between the different responsible governments, fragmentation, and consequently also delays can occur (Popelier, 2021; Van Nieuwenhove, 2020). The language delay described above in the Belgian case is a prime illustration thereof.

Belgium is a dual federal state. This implies that each region has its own competences which are exclusive. However, in reality, this exclusiveness is difficult to attain as societal challenges are not delimited by judicial demarcations (Popelier, 2021). The climate crisis and the necessary climate policies are an example of a societal challenge which covers topics that are in theory managed by different regions but are in practice covered by a number of different and overlapping responsibilities. When constitutional courts are resolving complications around these competences, like in the court cases discussed here, they are in fact creating a centralising impact. In these cases, the judge is not dealing with how the competences should be interpreted. In fact, the judge is dealing with the question of whether there is a duty of care. More specifically, the judge is dealing with whether this duty of care implies enforcement of cooperation. A government that is unable to cooperate due to political circumstances can cause a situation which leaves the citizens unprotected and that in turn creates a problem (Popelier, 2021). This problem is the problem which Klimaatzaak identifies and addresses in its litigation. Yet, this complication with cooperation and unclear competence division also creates an opportunity for the Belgian governments to hide behind. This in its turn hinders and slows down the progress of the court case. However, this matter is not only political but also leads to unjustified concerns regarding government liability. Popelier (2021) and Van Nieuwenhove (2020) explain that a very clear and urgent crisis like the COVID-19 pandemic enables the governments to cooperate right, but a climate crisis is too complex and untouchable to incentivize such a goodwill reaction. In such a case, when the natural goodwill to work together is missing, as with the climate crisis, the judge can come in between to point out the responsibility. In this case, the judge is involved through the action of the social movements in using litigation as a tool to demand accountability of their governments (Hofmann, 2020; Interview 1; Interview 3; Interview 4; Launer, 2021).

Ideally, cooperation does not need such a call out to function. In the case in which a call-out is necessary, like in the climate cases discussed here, the courts advocate for the federal sake which entails the right of each citizen to have a well-functioning government. This should include a good working legal system and effective crisis management, be it for the short-term as well as long-term challenges (Popelier et al., 2021). This in fact explains the balance of the separation of powers, as already discussed before in chapter 3. If the administrators lose the balance due to being submerged in a short-term political mindset, luckily the citizens stay alert and the judges can attend the administrators to their responsibilities. Here it is seen that the judge is indicating the responsibility of the governments, but nevertheless, due to the complex governmental structure in Belgium, the judge did not decide to rule a specific and strict order on who must carry out what exactly. This can also be substantiated by Eckhard et al. (2016) who explain that (international) bureaucracies exert influence on the process of policy making. More specifically, they (Eckhard et al., 2016) refer to neo-institutionalism to explain how institutions form a significant impact on the actors in policy making structures. The judges also said that it is not their role to enforce reduction targets. The judges do not believe it is their competence and highlight the separation of powers. Looking at the literature review by Dolowitz et al. (1996), this can be explained by the fact that perceived side-effects constrain policy transfer. Here, the Belgian judges were very aware of the controversy their order could trigger in the federal system and were thus influenced by their administrative environment to not order more strictly. Klimaatzaak sees this as a misinterpretation of the separation of powers and hopes that the judges will correct their decision in the appeal (Interview 1; Interview 2).

Cultural environment

Furthermore, the fact that the Dutch judge ruled a stricter order is also due to the different national cultures, explains interviewee 4. In the Netherlands, politicians and members of the parliament asked a lot of questions about the case to the government, or directly quoted as: "The Parliament in the Netherlands, which has also constantly questioned the Government, said 'We have this ruling. What are we going to do with it?'" (Interview 4, phone call, May 23, 2022). In addition, there was extensive media attention and newspapers wrote a lot about it. Interviewee 4 stated:

> And the media has also written a great deal about it, so it's not just the judge, but it's also those actors who play a very big role in it. And what does the editorial staff of a newspaper say about it, for example, a lot of newspapers in the Netherlands had written very much (phone call, May 23, 2022).

In such a way, there are other factors that play a role in this, other than only the state institutional structure. In Belgium, on the contrary, Klimaatzaak does not perceive that much attention from the governments. Despite that, the organisation receives a lot of offers from academics and lawyers to help in the case. Again, here the national cultural environment influences whether the transfer will be complete or not. However, this is not very helpful as it demands a lot of coordination and does not improve the outcome of the case directly (Interview 2).

Time period

Another difference between the Dutch and the Belgian case is that the Belgian case cannot argue about goals for 2020 anymore and is now directed towards goals for 2030. This is because the case is taking longer than expected, mostly due to the delay caused by a language dispute. A challenge about having 2030 as the target year was that, at first, there were not many clear and pronounced goals for that year. Therefore, the interviewees explain that the team in the Belgian case had to be more detailed in their scientific evidence by looking closer at the IPCC reports (Interview 2; Interview 3; Interview 4). Time difference creating a barrier for smooth transfer is also defined by Dolowitz et al. (1996) before. However, since the Conference of the Parties (COP) 26 in Glasgow at the end of 2021, all countries have agreed on a new reduction goal of 45% and maximum global warming of 1,5° C. These new numbers create a larger gap between the goals and the actual emissions. Even so, to make a clear stance, the Belgian litigation by Klimaatzaak is now more focused on pure science to prove their point, if compared to the Dutch litigation by Urgenda (Interview 1; Interview 2; Interview 3; Interview 4). Interviewee 1 deliberately explained the calculations of a notion called the carbon budget where the reduction targets of CO2 were estimated, and said they came to the idea as quoted in the following sentence: "… I then looked, together with Roger, at that notion of carbon budget and that it had not yet been called that. … it is a reduction trajectory" (Interview 1, phone call, May 6, 2022).

Preliminary conclusion

Thus, the new host environment of the legal transfer is too different compared to the original environment. The Belgian judge is surrounded by a different institutional structure, cultural environment, and time period which influence the outcome of the ruling. Figure 5 below is an adapted version of Figure 1 in chapter 3. Here, the independent variables are identified and represented in the left boxes. These being institutional government structure, cultural environment, and time period. The arrows represent the influence of the independent variables on the outcome, which is represented by the

box on the right side. The outcome is thus that there is a complete transfer of litigation, an incomplete transfer of ruling, and no transfer of policy from the Netherlands to Belgium. Following the explanation above, while the litigation is principally the same, the ruling cannot result the same due to the external influences. Consequently, without the strict order for more adequate climate policy making, the government will not undertake large efforts yet. The policy transfer is therefore not complete. Thus, the role of social movements is of major importance in the transfer of litigation. However, social movements are not able to control the receiving country's context (della Porta et al., 1999). Hence, here, the institutional and political (cultural) character and environment are blocking the policy transfer to be completed. The national political context therefore influences the way in which mobilisation and international exchange takes place, while on the other hand, the changing global context exerts influence on the national policy making systems. Thus, for social movements to actually enable and bring forward mobilisation it is necessary for them to create approaches and strategies which are directed to and tailored for multilevel governance systems (della Porta et al., 1999).

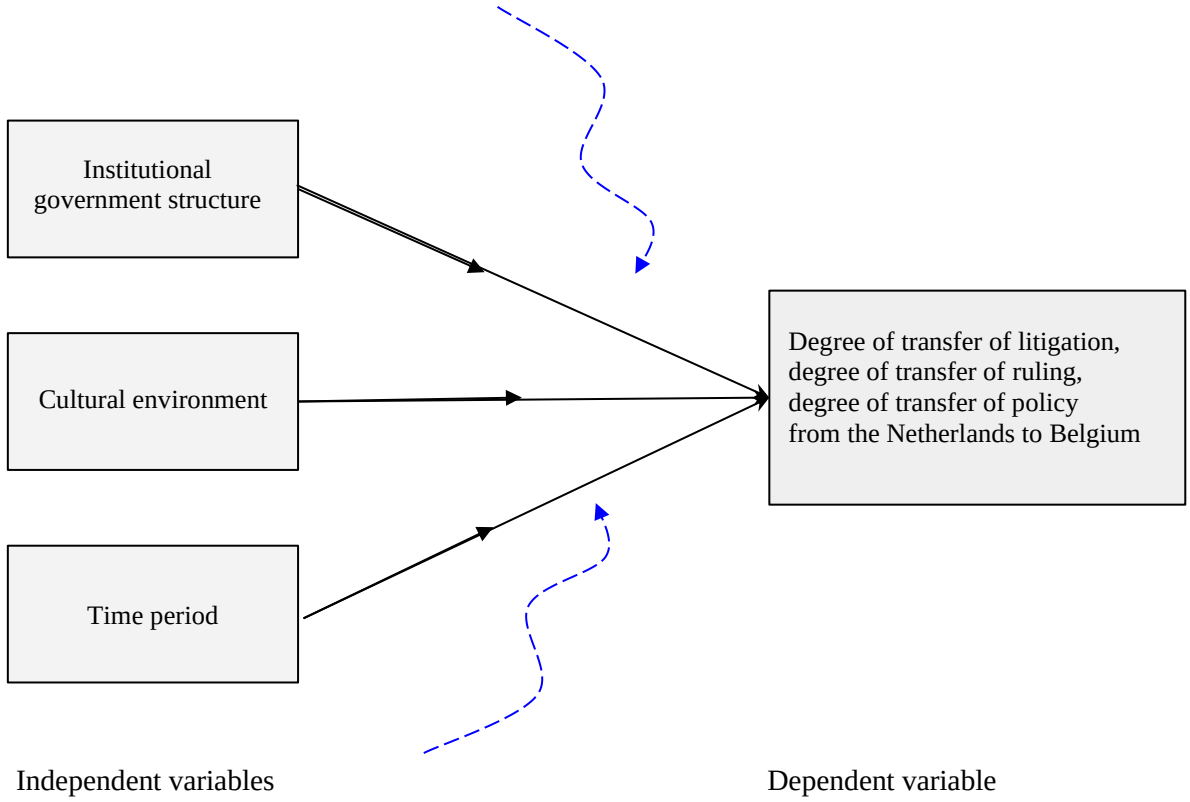

Figure 5: The causal path between the independent variables on the left (institutional government structure, cultural environment, and time period) and the dependent variable on the right. Under influence of other undefined variables as dotted blue arrows.

5.5 European influence

Lastly, this subchapter discusses other influences that play a part in the development and outcome of the transfers. While the influences discussed in the subchapters above have played the most important role on the development of the two court cases, there are other influences that can play an important role on the eventual outcome of the appeal of the Belgian court case, as well as in future climate court cases. All interviewees say they are experiencing influence from the developments in the legal context (Interview 1; Interview 2; Interview 3; Interview 4). The Urgenda case verdict has caught the attention of many. One interviewee noted that the opening of the judicial year has started twice with

a talk by prominent European judges mentioning the Urgenda case. This sets the tone for the year and shows the overall norms and values of the European judicial atmosphere (Interview 3). The fact that the prominent judges use Urgenda as an example in their opening speech shows the importance of the case for future cases. This is going as far as several lawyers grouping together and publishing a guide on how to handle climate court cases (Interview 1). Additionally, the developments of other climate cases worldwide exert a significant influence on each other (Interview 1; Interview 2; Interview 3; Interview 4). From a neofunctionalist and intergovernmentalist point of view, European integration will continue to grow this way. Their thinking says that governments and involved stakeholders come together and search for solutions to cooperate in approaching common challenges in a climate crisis (Hooghe et al., 2019; Schimmelfennig, 2018). This is what the judges are doing by building an expertise network to share climate litigation practices, as well as how the Climate Litigation Network is formed by a climate lawyer to share Urgenda's approaches as well. Rodgers (2014) also notes the trend of the increasing role of social policy experts and bureaucratic elites, next to the role of social movements, in the process of policy transfer. Additionally, the number of cases is growing extensively which also is of large influence (Interview 2; M. Wewerinke-Singh, personal communication, February 28, 2022). With every new judgement being ruled, the following cases have a supplementary precedent to build further on. In overall, a tone is set by what the general norm is considering climate litigation. Figure 6 below shows the causality path again, this time with the European legal environment as one of the external influences identified in the blue box and dotted arrow.

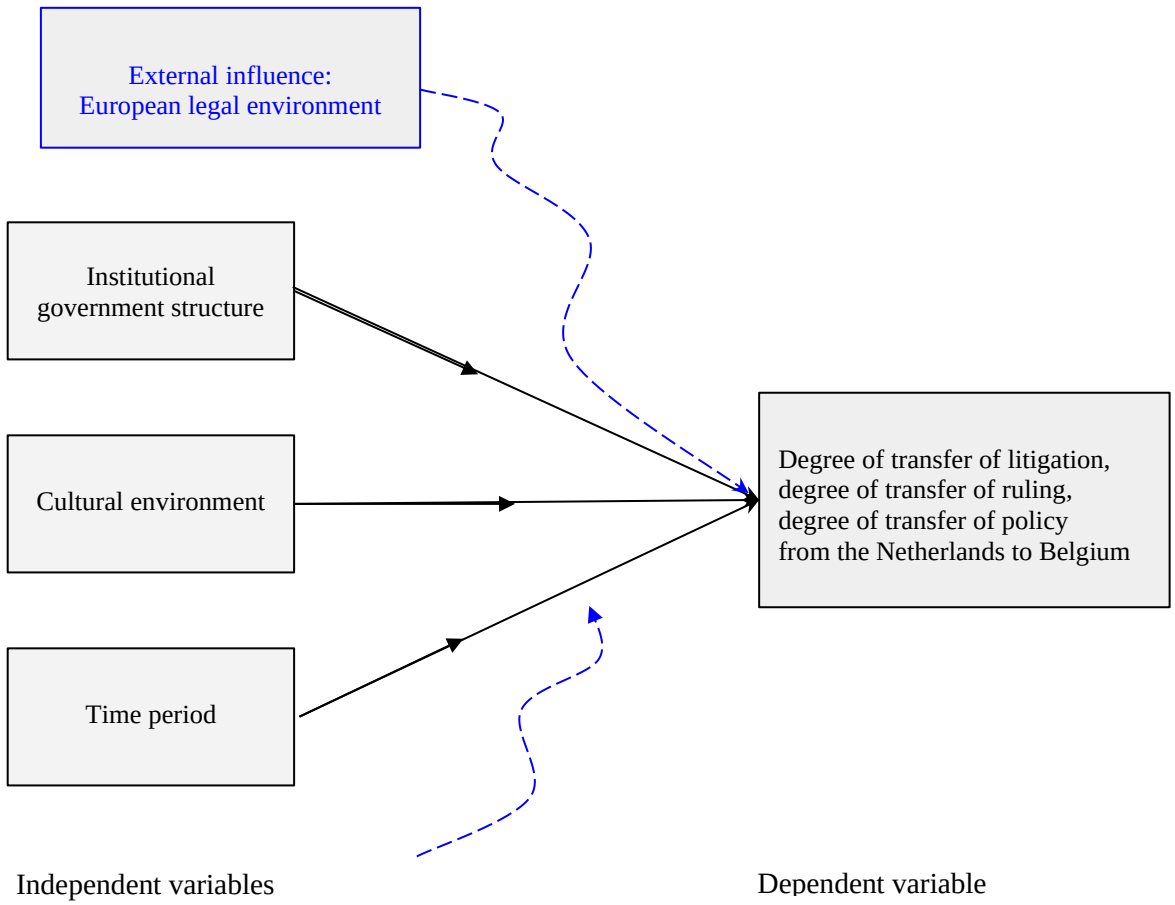

Figure 6: The causal path between the independent variables on the left (institutional government structure, cultural environment, and time period) and the dependent variable on the right. The European legal environment is defined as one of the other variables as dotted blue arrows.

Chapter 6. Conclusion

To conclude, in this chapter an answer to the research question is formulated. By presenting an overview of the research, each important actor and factor that has a significant value to the cases is discussed. The research question tries to find an answer to what the effect is of social movements on the legal and policy transfer on the outcome of the Belgian court case. First, an overview of the court case developments is given, to start with the Dutch case and followed by the Belgian case. Then, the causal mechanism of the cases is made clear. The dependent and independent variables are explained, and other external influences are defined. Then, a concrete answer to the research question is formulated. An explanation is thus given about why there was no policy transfer from the Netherlands to Belgium while the litigation was almost exactly taken over. Finally, some limitations of this research are disclosed and recommendations for future research are suggested.

Thus, this research took a closer look at the transfer of legal components and policy from the Dutch climate court case to the Belgian climate court case. These court cases were carried out by the Dutch social movement Urgenda and the Belgian social movement Klimaatzaak, respectively. Urgenda was worried about the insufficient climate policies of the Dutch government and decided to sue the state in court. In the court case, principles such as the duty of care and multiple causality in combination with the principles from the Human Rights formulated an argument that set out the accountability of the state. While the government acknowledges the necessity of action against climate change its actions do not align with its words. This, regardless of the international agreements which represent the international values and norms considering goals for climate and sustainable development. The judge ruled in favour of Urgenda. This was the first time in which a government was sued for its inadequate climate policies and lost the case. The judge ordered immediate and serious action. The Belgian Klimaatzaak got inspired by the Dutch court case and started a similar court case. Both social movements were in contact and a lot of information about the case was shared. The Belgian court case resulted in very similar litigation. Nevertheless, the Belgian judge did not order immediate and serious action. The difference between both rulings is remarkable.

To understand why there are the different outcomes even though the process was very similar, an in-depth case study was carried out. The research resulted to be an inductive study, as the general literature about the main concepts of legal transfer, policy transfer, and social movements could not offer a clear and specific link to explain the outcome of the cases. There was a gap in explaining the role of social movements on both legal transfer and the consequential policy transfer. Thus, through the method of outcome explaining process-tracing, as much detail as possible is gathered and studied about the court cases, this way all possible factors that can influence the outcome are delineated. Through qualitative research of legal texts and interviews with prominent persons involved in both court cases, some important influences were defined. The major explanation for the ruling to be different in Belgium compared to the ruling in the Netherlands is that the receiving context is too different than the giving context. The contextual environment of an institutional development is very influential on the development itself. The outcome is therefore dependent on its surroundings. More specifically the main three influences are the institutional government structure, the cultural environment, and the time period. Belgium is a federal state where the competences for climate policies are, in theory, divided exclusively over different regional governments. However, in practice, policies regarding climate challenges are very difficult to manage separately. Therefore, there is uncertainty on who is responsible to carry out the relevant climate policy making. This therefore made it an inconvenient context for the judge to rule on a strict and clear order for action. Additionally, the cultural environment in Belgium

offers more distrust towards the government, and the public debate was less interested in the climate court case. Therefore, there was not much attention paid to the rulings in the case developments and there were not a lot of critical questions to incentivise the government to act more responsibly. Lastly, the time period of the Belgian court case occurs later than the Dutch court case. Naturally, the case was started later. However, the largest time delay is due to a language dispute. This caused the court case to have several years of delay. Consequently, the litigation could not be directed towards international climate goals for 2020 anymore. This formed an extra challenge because at first there were no clear targets for 2030 yet. The argumentation of the litigation therefore had to become more precisely and scientifically focused.

These three context related influences explain why the ruling of the Belgian judge was not strict in ordering adequate action from the government. Consequently, the Belgian government did not improve its climate policy. This explains why there is no policy transfer, even though there is a complete transfer of the litigation. The role of the social movements is very valuable. Urgenda and Klimaatzaak were the founders and developers of these climate court cases, where Urgenda was the very first. Through litigation, they demanded their governments to prove their responsibility. The court cases are seen as a new accountability mechanism to hold the governments accountable for their actions. This way, the social movements represent the population and demand state responsibility.

Because this research is a master thesis, there are time limitations. Therefore, there was no space for even more potential influences to be determined. There were four interviews carried out with persons from the social movements, however, more interviews with other people from the social movements could have brought additional information. Furthermore, the interviews were limited to persons from the social movements, so no persons from other institutions such as for example the state were carried out. This could have offered a supplementary point of view to the case description and analysis. However, for the time available, this study has managed to formulate a rich amount of text where clear causal relations were defined. Furthermore, the results of this research imply that governments sign international agreements and can therefore be held accountable to carry out the stated goals and targets mentioned in these agreements. Consequently, one could question the fact whether governments will be keen to sign international agreements in the future, now knowing that they can be held accountable for it. Yet, the research has also made clear that even though the agreements would not be binding, the values and norms discussed in these agreements represent a common shared global consensus. Therefore, governments would probably not hesitate to sign future international agreements. However, future research could study the effect of the climate litigation and its state responsibility through accountability mechanisms, as well as the consequential relation between international agreements and the governments' motivation to sign them.

In conclusion, the role of social movements is highly relevant in the mobilisation of civil society to hold their governments accountable for their duties. However, the analysis of this thesis revealed that for effective mobilisation, in this case a complete policy transfer, the social movements should be aware of the barriers formed by national contexts. If the social movements prepare adequate strategies and structure, they will be able to address and significantly impact multi-level governance systems.

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Appendix A: List of interviews

Interview	Organisation	Function(s)	Date	Location	Duration
1	Klimaatzaak	Director, co-founder	Friday 06/05/2022	Video-call via Zoom	44 minutes
2	Klimaatzaak	Lawyer, legal expert	Wednesday 11/05/2022	Video-call via Microsoft Teams	34 minutes
3	Urgenda	Independent lawyer	Friday 13/05/2022	Video-call via Microsoft Teams	50 minutes
4	Urgenda, Climate Litigation Network	Lawyer, co-founder	Monday 23/05/2022	Video-call via Microsoft Teams	42 minutes

Appendix B: Direct quotes from the interviews and translations

This is a list of the direct quotes used in the thesis, translated from the transcripts of the interviews. In cursive, the original text in Dutch is presented first, then an English translation is presented underneath.

1. *De Trias veronderstelt een evenwicht en op het moment dat de rechter gesproken heeft en alle rechtsmiddelen klaar staan en de hoogste rechter het gezegd heeft, Als je dat dan naast je neerlegt, dan ben je echt bezig de rechtsstaat af te breken.*

   The trias presumes a balance. And the moment the judge has spoken, and all the legal remedies are in place and the highest court has said so, if you then ignore that, then you are really breaking down the rule of law.

2. *In een rechtsstaat mag je ervan uitgaan dat als een rechter iets zegt over wat en hoe de regering zich zou moeten gedragen, dat de regering dat dan ook doet.*
   Dat is namelijk wel een rechtspraak: dat je afspraken maakt over wat je doet. En als je je niet meer aan de afspraken houdt, dan ben je geen rechtsstaat meer, hè?

   In a state governed by the rule of law, you may assume that if a judge says something about what and how the government should behave, then the government will do so.
   That is what justice is: that you make agreements about what you do. And if you no longer keep to those agreements, then you are no longer a constitutional state, are you?

3. *We moeten dat ook in België doen.*

   We should do that in Belgium too.

4. *Het is voor een stuk pionierswerk, zeker wat Roger heeft gedaan in Nederland, dus hij heeft, Daar heeft hij daar als eerste echt vanuit dat juridisch perspectief echt in die mate in verdiept*

   It is pioneering work to some extent, certainly what Roger has done in the Netherlands, so he was the first to really delve into it from that legal perspective to that extent

5. *Het opstellen van de dagvaarding voor een groot stuk is gekopieerd bijna van de Urgenda zaak. We hebben eigenlijk echt de Urgenda zaak als, de principes van Urgenda zaak zijn helemaal getransponeerd naar de Belgische context, Maar dat hebben we natuurlijk moeten aanpassen aan de aan aan Belgische rechts.*

   Drawing up the summons is almost largely copied from the Urgenda case. We have actually used the Urgenda case as... The principles of the Urgenda case have been completely transposed to the Belgian context, but of course we had to adapt that to Belgian law.

6. *De rechtbank heeft inderdaad de twee, de ontvankelijkheid erkent van zowel de VZW als die individuele mede eisers. En Dat is vooral als precedent belangrijk internationaal, waar dat het voor jurisdicties, waar dat die ontvankelijkheid voor vzw's niet geldt.*

The court has indeed recognised the two, the admissibility of both the non-profit association and those individual co-plaintiffs. And that is especially important as a precedent internationally, where that admissibility for non-profit organisations does not apply.

7. *Ik ben er zeker van dat er toen echt een onderschatting is gemaakt van wat het betekent om zo'n proces te doen in een land als België, waar klimaatbeleid als bevoegdheid is verdeeld over de 3 gewesten en federale overheid.*

   I am sure that at the time there was a real underestimation of what it means to carry out such a process in a country like Belgium, where climate policy is distributed as a competence among the 3 regions and the federal government.

8. *Het Parlement in Nederland, wat ook constant vragen aan de regering heeft gesteld van 'We hebben die uitspraak. Wat gaan we ermee doen?'*

   The Parliament in the Netherlands, which has also been constantly questioning the Government of 'We have this ruling. What are we going to do with it?'

9. *én de media heeft er ook heel erg veel over geschreven, dus het is niet qlleen de rechter, maar het zijn ook die actoren die daar een hele grote rol in spelen. En wat zegt de redactie van een krant erover, bijvoorbeeld. heel veel kranten in Nederland hebben heel erg veel geschreven*

   And the media has also written a great deal about it, so it's not just the judge, but it's also those actors who play a very big role in it. And what does the editorial staff of a newspaper say about it, for example, a lot of newspapers in the Netherlands had written very much

10. *… Ik heb dan Samen met Roger, gekeken naar die notie van carbon budget en dat dit nog niet zo genoemd was. … het is een reductie traject*

    … I then looked, together with Roger, at that notion of carbon budget and that it had not yet been called that. … it is a reduction trajectory

Appendix C: List of commonly used translations

This is a list of commonly used translations during the empirical data description. Because the majority of the texts analysed are originally in Dutch and the texts contain some specific legal terminology, a list was drawn up to use the same translation and create coherence throughout the results.

Stichting urgenda= Urgenda foundation
Plaintiff, claimant vs defendant, respondent
Onrechtmatige daad= unlawful act**,** tort, wrongful act

NL en BE dagvaarding= summons
NL conclusie van antwoord= statements of defence
NL conclusie van repliek= statements of reply
NL conclusie van dupliek=statements of rejoinder

NL burgerlijke rechter= civil court
NL gerechtshof, beroep= court of appeal
NL gerechtshof den haag, beroep= the Court of Appeal in The Hague.
NL hoge raad, BE hof van cassatie= supreme court
NL ontvankelijkheid= admissibility

BE arrondissementsrechtbank= district court
BE rechtbank van eerste aanleg = court of first instance