

Invitation to virtual DK Guest Lecture

Climate science in the courts: some fundamental observations

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Abstract

Expertise in the form of climate change science plays – or at least should play - an indispensable role in governmental decision-making regarding the reduction of greenhouse gases and adaptation to new climatic circumstances. In order to make the (peer-reviewed) climate science accessible for policy-making, an important task is given to the Inter-Governmental Panel on Climate Change (IPCC). However, reports from the IPCC – together with other scientific documents - may also be used in the courtroom. If courts are willing to follow statements from the IPCC - or from specific peer reviewed articles - in such a way that this amounts to standard-setting, like a specific emission pathway, the rule-making power of the legislative and executive branch may be overturned. While this can be an enormous victory for climate protection, the implied shift of power still needs to be objectively identified and discussed, also in view of helping to avoid contestation of climate science. Hence, this lecture explores how scholarship could provide a better understanding of how climate science plays or could play a role in the courtroom. A first major research effort is to map, identify and critically analyse how science is actually used in the courtroom in climate change related cases. This is an enormous challenge given the emergence of many different climate related claims and the need to understand the specific characteristic of the legal system in which adjudication happens. Moreover, the notion of the precautionary principle – dealing with scientific uncertainty - is one of the most difficult principles of environmental law. A second major research effort would be to delve into the question of how law can help to make climate science even more credible and legitimate, including discussing issues of transparency and accountability of scientific work.

Note: The lecture is based on the research for the chapter 'Climate Science in the Courts', published in V. Abazi a.o, The Contestation of Expertise in the European Union, Palgrave Macmillan, 2021, and is of an explorative nature, aiming to discuss the further development of academic research.