

RESEARCH CLINIC

General information

Supervisor:	Otto Spijkers
Title of clinic:	Climate Litigation for Future Generations
Number of students:	Maximum of 8 students
(Pre)requisites (<i>if applicable</i>):	Basic understanding of law

Research context

In recent years, the domestic courts of the Netherlands have produced pioneering judgments relating to climate change. The first is the Urgenda case, in which the failure of the Netherlands Government to take appropriate measures concerning climate change was held to constitute *inter alia* a breach of Articles 2 and 8 of the European Convention on Human Rights (ECHR). Another is a case initiated by Milieudefensie against Shell. Yet another is between Fossielvrij versus the Koninklijke Luchtvaart Maatschappij (KLM). More cases are to be expected. These cases were all instituted by foundations claiming to act in the common interest, some purporting to represent the rights and interests of both present and future generations, in the Netherlands and elsewhere in the world. Despite the undeniable importance of these decisions, the legal capacity of foundations like Urgenda to bring proceedings before the courts on behalf of all the citizens of the Netherlands and elsewhere (even the unborn ones) raises serious doubts. The alleged legitimacy deficit of these litigating foundations and the alleged democratic deficit of the courts might lead to a “Dikastophobia” or to a “Dikastocracy” – the Greek terms for “fear of judges” and “government of judges”.

Students’ tasks and activities

Students will be asked to choose a particular jurisdiction they are familiar with – preferably not the Netherlands - and look at examples and possibilities for climate litigation on behalf of future generations in that jurisdiction. Depending on the number of students, we may consider having regular meetings – once a week perhaps - in which we discuss judgments and ongoing legal proceedings based on the research done by the students. The Clinic is planned for blocks 1 and 2 of academic year 2023-2024.