

The Role of Court in the Normative Competition and Political Confrontation in Climate Change Era: The Case C-366/10 of European Court of Justice and its Implication

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Abstract

Climate change has triggered the development of a multiple normative structure and climate change litigations. Courts around the world have to deal with cases with serious political confrontation in a multiple normative structure. Should the court objectively interpret the law and deal with only legal issue, or it should reconsider its role, discourse and strategies in the dynamic social context, is one important issue concerns legal scholars.

With the lights shed from the theory of global administrative law, this article examines the political context and normative discourse of Case C-366/10 made by the European Court of Justice.

The article argues that, the emergence of global administrative law has undermined the role of the court and the basis its decision relies on. In the structure of global administrative law, the court is a political actor who has political agenda and pursues them through judgments and normative arguments. In order to deal with highly political issue in the structure of multiple normative structure, the court should develop judicial strategy in the between of norms and politics. The Court in C-366/10 fails to take the emergence of global administrative law seriously, thus fails to recognize its proper role and develop the best judicial strategies.

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