We cannot go back and we cannot linger any longer over lifetime extension or other bridge modes for non-sustainable energy sources. It is time to say goodbye and we might need to help Member States, regions and the local level, as well as industry and commerce in the transition – away from dependence of unsustainable energy towards a 100% renewable and a climate neutral European Union by 2050.

Only recently a new groundbreaking judgement was added to a series of cases in the European Union urging for change: the order by the German Constitutional Court (Bundesverfassungsgericht-BVerfG) of 24 March 2021 (1BvR 2656/18, 1 BvR 97/20, 1BvR 78/20, 1BvR 288/20, 1 BvR 97/20, 1 BvR 78/20). The BVerfG held that provisions of the German Federal Climate Change Act of 12 December 2019 on the execution of national climate targets and the annual emissions amounts allowed until 2030 are incompatible with fundamental rights so far as they lack sufficient specifications for further emission reductions from 2031 onwards. This offloading of major emission reduction burdens onto periods after 2030 under the Act violates in view of the BVerfG the constitutional duty under the German Basic Law (Grundgesetz) to protect the complainants - mostly young people – and infringes their freedom. The fact, that greenhouse gas emission must be reduced follows directly from the German constitutional Basic law under its Article 20a and in clearer definition under the Paris target. In this order, the BVerfG held that the current German Climate law on adjusting the reduction pathway for GHG emissions from 2031 onwards is not sufficient to ensure the necessary transition to climate neutrality in time.

This order will have certainly repercussions on other jurisdictions in the EU. We already had a first important judgment – in a case submitted by Urgenda, a Dutch NGO – where the Dutch Supreme Court (Hoge Raad) on 20 December 2019 ruled that the Dutch State is obliged to reduce, by the end of 2020, its greenhouse gas emissions by at least 25% compared to 1990.

The order of the BVerfG came just a month after the Court of Justice of the European Union (CJEU) -backing the order of the Generals Court (GC) from 2019 (T-330/18 ) – finally dismissed the plea for stronger climate targets as being inadmissible. The case, known now as the People’s Climate case was introduced by ten families from Europe, Kenia and Fiji as well as a Swedish association representing the indigenous Sami youth (Sáminuorra), all particularly affected by climate change. Albeit, the CJEU again missed the boat to finally recognise its standing as an higher administrative court and shied again away to do its full judicial work.

On the other hand, the European Court of Human Rights in Strasbourg is currently deciding on a plea introduced by six children and youth from Portugal against 33 European States. The German
might also influence this Court. We also see cases in Belgium, France, Italy and Spain, so it might well be that the time for hiding behind targets, partly inambitious, partly without sound executive instruments, might be over. We have to thank our youth wholeheartedly for this.

In this Edition of RELP you can read more on the quest and discussion on transition of our energy systems.

I wish you an interesting reading.

Dr. Dörte Fouquet