

Climate Change Concerns Prompt Court to Block Vienna Airport Expansion

Citing its accompanying rise in greenhouse gas emissions, an Austrian court says a new runway will work counter to the country's pledge to Paris climate agreement

Bob Berwyn, InsideClimate News | FEB 15, 2017



Planned expansion of the Vienna airport was blocked by an Austrian court because of increased greenhouse gas emissions. Credit: Getty Images

VIENNA—An Austrian court has blocked construction of a new runway at Vienna's airport mainly on the grounds that the project would increase climate-changing greenhouse gas emissions in violation of Austrian and European environmental laws.

The decision was seen as affirming Austrians' constitutional rights to a clean environment, including protection from climate change impacts. It may be the first time a court anywhere in the world has blocked a major public infrastructure project based heavily on climate-related laws or considerations, according to several legal experts.

"We have had some other big cases in Austria where projects were blocked for other environmental reasons, but this was the first time it was about climate change," said Berthold Lindner, a prominent Austrian environmental lawyer who was not involved in the case.

The ruling by a three-judge panel at the federal administrative court in Vienna on Feb. 2 said that the harmful impacts of added carbon dioxide emissions from the airport's expansion would outweigh the public benefits of the project. Austria's constitution requires the country to reduce greenhouse gas emissions; the new runway would unavoidably increase them. The judges also said the project would make it difficult to reach the greenhouse gas cuts targeted by the Paris climate agreement.

The 2011 Climate Protection law that's included in the Austrian Constitution includes emissions reductions targets, broken down by sector. By 2020, the law requires the transportation sector to reduce its share of Austria's total emissions by 2.25 percent. But construction of the runway would increase emissions by 1.79 percent, the judges said.

"Through construction of the third runway and the increased air traffic, CO2 emissions in Austria would see a distinct increase," the panel said. "In the court's view, the additional CO2 emissions can't be justified, even though the proposal has positive economic aspects." Increased particulate air pollution and the loss of productive agricultural lands were also cited as considerations in the ruling.

The court's decision could serve as a reference point for climate-related cases nationwide, Lindner said. However, since Austrian law is not based on precedent, the decision, if it withstands appeal, would not compel other courts to make similar rulings.

Legal experts around the world will be watching closely to see if the decision stands, said Michael Gerrard, an expert on climate law who works at Columbia University's Sabin Center for Climate Change Law.

"This is part of a growing phenomenon of climate cases not based on statutes, but on overarching constitutional or human rights," he said. "This really is the fourth decision in this category. I think this may be the first case to stop a project because of climate impacts."

Similar cases focusing on citizens' constitutional rights to a clean environment and a livable future include the 2015 Urgenda decision in the Netherlands, in which a court ordered the Dutch government to reduce greenhouse gas emissions to protect citizens.

That same year in Pakistan, a judge ordered the regional government of Lahore to do more to adapt to climate change in the Leghari case. Gerrard also cited a lawsuit filed by 21 children in the U.S., which alleges that the federal government is violating the Constitution by not doing enough to protect future generations from global warming.

"I think the great impact is that these decisions may embolden some judges around the world to use similar theories when deciding climate cases," he said. "It's always easier to be fifth or tenth at something than first."

The airport expansion has been in the works for 10 years and won approval from the state government of Lower Austria in 2012. The approval was appealed by a coalition of 14 community and citizen groups concerned about increased noise, air pollution and climate change. In their appeal, the groups cited the estimated increase in particulate pollution from the project as a concern, claiming it could lead to an 8 percent increase in lung cancer, according to court documents. They also said the runway's proponents failed to include an accurate analysis of greenhouse gas emissions in the environmental analysis.

Vienna airport authorities and regional government officials, in a joint statement, said they were likely to appeal the ruling to higher courts.

"This unreasonable decision will cost thousands of jobs exactly at a time when half a million Austrians are unemployed. If the airport can't grow, it will become a sputtering machine that can't lift the economy any more," Interior Minister Wolfgang Sobotka said in the statement.

In Austria, the federal administrative law court decides cases involving state or federal permits by weighing competing public interests, including the economy and the environment.

"Honestly, the environmental law community has long been waiting for a step like this," said Erika Wagner, chair of the Institute for Environmental Law at the University of Linz in Austria who was not involved in the case. The court essentially said the third runway would "torpedo the climate goals of the Paris agreement that Austria has signed," she said.

"This does appear to be a rather groundbreaking decision," said University of Denver environmental law professor Kevin Lynch. "Here in the U.S., we have some potentially groundbreaking climate change cases based on theories related to the public trust doctrine...But even in those cases, which are still in their early stages, I believe the plaintiffs are hoping simply for a ruling that state or federal governments need to take action and develop a plan to address climate change."

One of them is the novel lawsuit filed against the federal government in Oregon by 21 children, including the granddaughter of former NASA scientist and climate activist James Hansen. A federal judge ruled last year that the case can proceed to the discovery phase.

A similar lawsuit to the Austria case is underway in Norway. Activists in that case are asking a court to block a government permit for offshore oil drilling, basing their arguments on new climate protection provisions in the Norwegian Constitution that guarantee a healthy environment for citizens.

Legal action may be the last, best hope for averting catastrophic climate change, Hansen said, discussing the Norway drilling lawsuit.

"Just in general, this has to be the approach, is the conclusion I've come to," he told InsideClimate News. "I've gone to more than a dozen countries, and to my surprise, it's not much different than the U.S. The fossil fuel industry is incredibly powerful worldwide. They have the ability to influence the executive and legislative branches of governments in all countries, so we have to plan on using the judicial branch to take action."