

The Netherlands

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FROM THE NETHERLANDS:
Urgenda wins appeal
in historic climate case

The Hague Court of Appeal 9 October 2018, ECLI:NL:GHDHA:2018:2610

Climate Change Litigation

- Urgenda (on behalf of 886 Dutch citizens) sued the Dutch government over inaction on climate change and won: twice!
- The Dutch State has done too little to prevent a dangerous climate change and is doing too little to catch up, or at least in the short term (up to end-2020).

URGENDA CASE RULING

- Dutch court orders the Dutch government to beef up its climate policies.
 - “Orders the State to limit the joint volume of Dutch annual greenhouse gas emissions, or have them limited, so that this volume will have reduced by at least 25% at the end of 2020 compared to the level of the year 1990.”

Will *Urgenda* survive the appeal?

Non-believers

- The government, not the court, should set climate policies
- We should not take climate science to court
- Scientific disputes belong to the scientific community
- A violation of the separation of powers
- When all is politics, nothing is law
- Undesirable politics ≠ unlawful behaviour
- No legal grounds to require a stricter reduction policy
- Incompatible with EU law
- It is not the Dutch court, but the CJEU who is competent

Believers

- States are meant to protect their citizens and if politicians will not do this of their own accord, then the courts are there to help
- A law suit brought out of love and compassion
- A courageous and visionary ruling
- Spectacular unprecedented landmark ruling
- Victory for the climate
- The first stone that sets an avalanche in motion
- Balanced constitutionalism in the face of climate change

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- “The State is acting unlawfully (because in contravention of the duty of care under Articles 2 and 8 ECHR) by failing to pursue a more ambitious reduction as of end-2020,
- And should reduce emissions by at least 25 % by end-2020.”

Assessment of the court

- No infringement of the principle of separation of powers
- Obligation to protect the lives of citizens and their right to home and private life
- ECtHR principles:
 - Principle of subsidiarity, prevention principle and precautionary principle
- Causality only plays a limited role
- In order to give an order it suffices that there is a real risk of danger for which measures have to be taken



Government of the Netherlands

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State to bring cassation proceedings in Urgenda case

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The State will bring cassation proceedings in response to the Court of Appeal's judgment in the Urgenda case. The government would like the Supreme Court to consider a question of principle, namely how the government's policy choices are reviewed by the courts. The cassation proceedings will not diminish the government's commitment to reducing carbon emissions by 25% by 2020. The government will continue to make every effort to achieve this goal.

To conclude

- “Human rights law and laws for environmental protection may very well shift the balance toward imposing fewer risks than governments would favour based on the desire for economic betterment.”
(D. Shelton)
- Courts can initiate change, provided that the other branches of government are willing to accept it.