

SUPREME COURT OF THE NETHERLANDS

CIVIL ROOM

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JUDGMENT

In the case of

THE STATE OF THE NETHERLANDS (MINISTRY OF ECONOMIC AFFAIRS AND CLIMATE), based in The Hague, EISER to cassation, hereinafter: the State,

lawyers: K. Teuben, M.W. Scheltema and J.W.H. from neighbourhood,

against

URGENDA FOUNDATION

Based in Amsterdam, DEFENDANT in cassation,
hereinafter: Urgenda,

lawyer: F.E. Vermeulen.

Summary of the ruling

This case concerns the question whether the Dutch State is obliged to reduce the emission of greenhouse gases from Dutch soil by at least 25% by the end of 2020 compared to 1990, and whether the court can order the State to do so.

Urgenda claim and court and tribunal judgments

Urgenda has asked the court to order the State to limit the emission of greenhouse gases in such a way that by the end of 2020 it will be reduced by 40% compared to 1990, and in any case by at least 25%.

The court granted Urgenda's claim in 2015 in the sense that an order was issued to the State to reduce emissions by at least 25% by the end of 2020 compared to 1990.

On appeal, the court of justice ratified the court's judgment in 2018.

Cassation appeal

The State appealed in cassation to the Hoge Raad against the decision of the court of appeal. The State has raised a large number of objections to the court's decision.

The deputy Attorney General and the Attorney General have advised the Supreme Court to dismiss the appeal of the State and thus to uphold the ruling of the court.

Judgment of the Supreme Court

The Supreme Court comes to the conclusion that the cassation appeal by the State must be rejected. This means that the order issued by the court and ratified by the court to the State to reduce greenhouse gas emissions by at least 25% by the end of 2020 compared to 1990 will be permanently upheld.

The Supreme Court's judgment is based on facts and principles that the court of appeal has established and that have not been challenged by the State and Urgenda in cassation. In cassation, the Supreme Court judges whether the court has correctly applied the law and whether the judgment of the court, based on the data it could take into account, is understandable and sufficiently substantiated.

The reasons for the Supreme Court's judgment are set out below in Chapters 4-8 of the judgment. This statement of reasons is summarized below. This summary does not replace the statement of reasons for this judgment and does not fully reflect the Supreme Court's judgment.

Dangerous climate change

(see below in 4.1-4.8)

Urgenda and the State both endorse the climate scientific understanding that there is a real threat of dangerous climate change in the coming decades. There is a great deal of agreement on this threat in climate science and the international community. In short, this involves the following.

The emission of greenhouse gases, including CO₂, leads to an increasing concentration of those gases in the atmosphere. These greenhouse gases retain the heat emitted by the earth. Because the last century and a half (since the beginning of the industrial revolution) more and more greenhouse gases are being emitted, the earth is heating up further and further. The warming up in that period is approximately 1.1 °C, the majority of which (0.7°C) has occurred in the last forty years. In climate science and within the international community there is a high degree of agreement on the principle that global warming must be limited to a maximum of 2°C and, according to the latest insights, to a maximum of 1.5°C. Greater global warming can have very damaging consequences, such as extreme heat, extreme drought, extreme precipitation, disruption of ecosystems that, among other things, endanger food supply, and rise in sea levels as ice from glaciers and polar ice caps melt. This warming can also lead to climate change, whereby the climate on Earth or areas on Earth changes abruptly and radically (so-called "tipping points").

All this threatens the lives, well-being and living environment of many, worldwide and also in the Netherlands. Some of these consequences are already happening.

Global problem and national responsibility

(see below in 5.6.1-5.8)

The risk of dangerous climate change has a global character: greenhouse gas emissions do not only occur from Dutch territory, but worldwide. The consequences of this are also being experienced worldwide.

The Netherlands is a party to the United Nations Climate Convention (UN Climate Convention). The aim of that treaty is to keep the concentration of greenhouse gases in the atmosphere at a level at which a disturbance of the climate system caused by human action is prevented. The treaty is based on the principle that all member countries must take measures to prevent climate change, in accordance with everyone's specific responsibilities and possibilities.

Every country is therefore responsible for its share. Therefore, the argument that own emissions on a global scale are relatively small and that a reduction of their own emissions on a global scale has only a minor effect cannot relieve a country of its partial responsibility to take measures. The State is therefore obliged, in accordance with its share, to reduce greenhouse gas emissions from its territory. This obligation for the State to do "its own" is based on art. 2 and 8, because there is a serious risk that a dangerous climate change will occur that threatens the lives and well-being of many in the Netherlands.

What does the obligation for the State to do "its [own]" mean?

(see below in 6.1-7.3.6)

When fulfilling the positive obligations that the State requires on the basis of art. 2 and 8, there is a need for broadly based insights into science and internationally accepted standards. Among other things, the reports of the IPCC are important in this context. The IPCC is a scientific and intergovernmental organization established in the context of the United Nations in the field of climate science and climate development. In its 2007 report, the IPCC has included a scenario in which global warming is expected to be limited to a maximum of 2°C. To achieve this objective, the so-called Annex I countries (ie the developed countries, including the Netherlands) must have reduced their emissions by 25-40% in 2020 compared to 1990, and in 2050 by 80-95%.

At the annual climate conferences held under the UN Climate Convention, almost all countries have been regularly informed since 2007 of the need to follow the IPCC scenario and to achieve a 20% reduction in greenhouse gas emissions by 2020, -40%. It has been stated several times by and in the EU that on scientific grounds a reduction of emissions by 30% compared to 1990 is necessary in 2020.

Moreover, in the years after 2007 there has also been a widespread understanding that safe global warming should not be limited to a maximum of 2°C, but to a maximum of 1.5°C. The 2015 Paris Agreement therefore explicitly states that the states aim to limit global warming to 1.5°C. This therefore necessitates an even greater reduction in emissions than previously assumed.

All in all, there is therefore a great deal of consensus about the urgent need for a reduction of at least 25-40% of greenhouse gas emissions in 2020 by the Annex I countries. With the consensus on this objective, the interpretation and application of art. 2 and 8 of the ECHR. The urgent need for a 25-40% reduction in 2020 also applies to the Netherlands individually.

The policy of the State

(see below in 7.4.1-7.5.3)

Both the State and Urgenda are of the opinion that it is necessary to limit the concentration of greenhouse gases in the atmosphere in order to achieve the 2°C objective or the 1.5°C objective. But they disagree about the pace at which greenhouse gas emissions must be reduced.

The State's policy until 2011 was aimed at achieving a 30% reduction in emissions in 2020 compared to 1990. According to the State, this was necessary to remain on a credible path to keep the 2°C objective within reach. to hold.

After 2011, however, the State lowered its 2020 reduction target from a 30% reduction by the Netherlands to a 20% reduction in the EU context. The State intends to accelerate the reduction after 2020 at an accelerated rate to 49% in 2030 and 95% in 2050. Those targets for 2030 and 2050 have since been laid down in the Climate Act. However, the State has not explained that and why a reduction of only 20% in 2020 can be considered justified within the EU context, contrary to the internationally accepted and necessary reduction in 2020 of 25-40%.

There is a broad consensus in climate science and within the international community that as reduction measures are taken later, they must become more radical and costly to achieve the intended end goal. There is also a greater risk of abrupt climate change because a tipping point is reached. In the light of that generally endorsed insight, it was up to the State to explain that the intended acceleration of the reduction after 2020 will be practically feasible and sufficiently effective to achieve the targets for 2030 and 2050, and thus the 2°C- and keeping the 1.5°C goal within reach. However, the State did not do that.

The Court of Appeal has therefore been able to judge that the State must in any case adhere to the internationally deemed objective of a minimum 25% reduction by 2020.

Judicial and political domain

(see below in 8.1-8.3.5)

The State has argued that it is not the task of the judge to make political assessments that are necessary for the decision-making on greenhouse gas reduction.

In the Dutch state system, decision-making on the reduction of greenhouse gas emissions belongs to the government and parliament. They have a great deal of freedom to make the necessary political decisions. It is up to the judge to judge whether the government and parliament have kept their decisions within the limits of the law to which they are bound. These limits stem from the ECHR, among other things. The Constitution requires the Dutch court to apply the provisions of this treaty. The court must do this in accordance with the interpretation thereof by the ECtHR. This task for the judge to offer legal protection, also against the government, is an essential part of the democratic constitutional state.

The judgment of the court is in accordance with the above. After all, the Court of Appeal has ruled that the policy of the State with regard to the reduction of greenhouse gas emissions clearly lags behind the requirements of art. 2 and 8 of the ECHR, to take appropriate measures to protect the residents of the Netherlands against dangerous climate change. Furthermore, the Court of Appeal limited the order given to the State to the lower limit (25%) of the internationally endorsed, minimum necessary reduction target for 2020 of 25-40%.

The order given leaves it up to the State to determine with which concrete measures it will comply with that order. If legislative measures are required for this, it is up to the State to assess which specific legislation is desirable and necessary.

Conclusion

In summary, the Supreme Court's judgment boils down to the fact that the order issued by the court and the court of appeal to the Dutch State to reduce greenhouse gas emissions by at least 25% by the end of 2020 compared to 1990 will be maintained. On the basis of art. 2 and 8 ECHR can and may judge that the State is obliged to achieve that reduction, because of the risk of a dangerous climate change that can also seriously affect the residents of the Netherlands in their right to life and well-being.