

Jul 20, 2015

Citizens Win Legal Challenge Against Dutch Government Over Climate Change

On June 24, 2015, the Hague District Court ruled that the Dutch government must take more action to reduce greenhouse gas emissions in the Netherlands (*Urgenda Foundation v The State of the Netherlands*). Specifically, the court ruled that the Dutch government must take measures to ensure Dutch emissions in the year 2020 will be at least 25% of 1990 emission levels. In this landmark case, Urgenda, a non-profit environmental organization, represented 900 citizens in a civil suit against the Dutch government. Urgenda argued the Dutch government was acting in a hazardingly negligent manner towards society by failing to mitigate a dangerous and imminent 2°C change in atmospheric temperature.

From the outset Urgenda faced two legal challenges. The first was establishing that the Dutch government owed a duty of care. The second was determining the standard against which to assess that duty. In reviewing both domestic and international law, including **Article 21 of the Dutch Constitution**, the **UN Climate Change Convention**, the international "no-harm" principle^[1], the **EU Emissions Trading System directive** and Articles 2 and 8 of the **European Convention on Human Rights (ECHR)**, the court held that the Dutch government has a positive duty to safeguard the lives within its jurisdiction against the consequences of climate change. The court explained that, "even though no explicit right to a clean and quiet environment is included in the [UN Climate Change] Convention or its protocols, the case-law of the [Dutch] court has shown a growing awareness of a link between the protection of the rights and freedoms of individuals and the environment." This duty extends to government control over private sector bodies.

The court found that the duty was breached when the Dutch government failed to mitigate harm arising from climate change. The court ruled on a balance it is least costly to take measures preemptively: to prevent rather than cure. "It compels all countries, including the Netherlands, to implement the reduction measures to the fullest extent as possible."

The court dismissed fears over loss of enterprise and an equalization effect which may see neighbouring countries output more carbon emissions as a result of reductions by the Netherlands. They cited other countries, including the United Kingdom, that made this change with no adverse effects.

The government had argued that the judiciary was overstepping its jurisdiction in mandating a reduction and risked entering into the domain of politics. The court rejected this argument, stating: "the claim essentially concerns legal protection and therefore requires a 'judicial review.'"

Currently, the decision is being reviewed for an appeal. In the meantime, the organization is providing its **legal documents** to other jurisdictions wishing to pursue the same tort. To date, non-profits in **Belgium** and Norway have taken up the mantle. In the **Guardian**, the president of a Belgian environmental organization stated: "This gives us a lot of hope as it sets an incredible precedent. The government in Belgium will take a lot of notice of what's happening here today. This could be the first stone that sets an avalanche in motion."

The impact of the *Urgenda Foundation* case in Canada will be revealed over time. While not binding on Canadian courts, the decision may act as a roadmap for future legal challenges. A significant issue for any Canadian case, however, will be overcoming the doctrine of legislative or policy decision immunity. In *R. v. Imperial Tobacco Canada Ltd.*, the Supreme Court of Canada described this doctrine as shielding the government from liability for decisions as to a course of action based on public policy considerations, such as economic, social and political factors. Any challenge brought in Canadian courts will have to be carefully crafted to overcome this doctrine.

Looking ahead, questions arise as to what effect, if any, *Urgenda Foundation* may have on the upcoming **Paris 2015 UN Climate Change Conference** this October. The aim of the Paris 2015 conference is to reach a legally-binding agreement to combat climate change, including reducing greenhouse gas

emissions to limit global warming to below 2°C. It will be interesting to see whether world leaders are more careful with their commitments after seeing the legal ramifications in Denmark.

[1] The "no harm" principle is an idea that no country should do anything that will adversely affect, to a large degree, another nation.

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