

Although I am in the midst of a series of blog posts ([1](#), [2](#), [3](#)) regarding novel technologies in the recent special report of the Intergovernmental Panel on Climate Change (IPCC), I take a brief detour to report on a court ruling in the Netherlands regarding climate change. Although I am skeptical of its impact in the case at hand, the ruling might have significant long term and indirect influence, in the Netherlands and elsewhere.

The environmental advocacy organization [Urgenda](#) (urgent + agenda) chose the Netherlands in which to file a lawsuit for two key legal reasons. First, an advocacy or other nongovernmental organization may file a public interest suit there that is related to its mission. Second, [the Dutch constitution](#) provides that “It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment” (Article 21).

Specifically, Urgenda pointed to the Netherlands’ commitments in international agreements. The country had endorsed a target of limiting global warming to two degrees Celsius in the nonbinding [Cancún Agreements](#). (The Paris Agreement would later codify this in a legally binding form.) According to the Fourth Assessment Report of the IPCC — an international organization in which the Netherlands participates — this would require that industrialized countries reduce their greenhouse gas emissions in 2020 by 25 to 40% (all values here are relative to 1990). By failing to be on track to meet even the lower end of this range, Urgenda accuses the Dutch government of acting tortuously. In this, Article 21, the Cancún Agreements, and the IPCC report together establish the duty of care. The environmental organization also pointed to Article 2 (the right to life) and Article 8 (the right to privacy) of the European Convention on Human Rights ([PDF](#)).

The Netherlands’ government responded that it is fulfilling its international legal obligations, including those under the UN Framework Convention on Climate Change and its Kyoto Protocol. The European Union had collectively committed under the Protocol to an 8% emissions reduction by 2012, and on its own initiative to a 20% one by 2020. The Netherlands’ role within the EU to meet these targets was emissions reductions of 6% and 17% respectively. It met its 2012 target, and was still dedicated to its 2020 one.

Urgenda had make several challenging arguments. The first is that the Netherlands’ contribution to global greenhouse gas emissions is so small as to be almost insignificant globally. For example, if it permanently ended all emissions today, then dangerous climate change — and its impacts on Article 21’s obligation “to keep the country habitable and to protect and improve the environment” — would be delayed by perhaps two or three months. Second, torts usually require a harm to actually occur, not a mere risk of one. Climate change’s negative impacts will mostly manifest in the future and outside the Netherlands. In

response, Urgenda claimed that its mission is necessarily transboundary and inter-generational. Third, the case requires that a nonstate legal invoke international agreements in a domestic case. This is especially challenging in the Netherlands, whose constitution largely rules this out unless the agreement explicitly applies to individuals (Articles 93 and 94). This is why Urgenda's case relied on the European Convention on Human Rights.

In 2015, [the district court ruled in Urgenda's favor](#) and that the Dutch government must ensure that it reduce emissions in 2020 by at least 25% in order to avoid being negligent in its duties under Article 21. It agreed with the plaintiff on most of its points, although it rejected the applicability of the European Convention on Human Rights. The court stated that any emissions reductions, independent of the country's relative contribution, would help reduce climate change, and it concluded that these reductions' costs would be acceptable. The government appealed but said that it would in the meantime take efforts to comply with the ruling.

Last week, [the appeals court upheld](#) the lower court's ruling. One notable way in which it diverged from the previous decision is its acceptance of Urgenda's invocation of the European Convention on Human Rights. The Dutch government will presumably dispute this ruling in the Supreme Court.

Although I was wrongly skeptical that the appeals court would side with Urgenda, I remain doubtful that the Supreme Court will do so. My strongest reason is that, under the Netherlands' balance of powers doctrine, courts must restrain themselves when ruling on matters of executive branch policy. The Urgenda decisions seem to surpass this standard. However, this reason for skepticism is made less relevant by the appeals court's acceptance of arguments based on the European Convention on Human Rights. This is because one way in which Dutch courts may rule on executive branch's actions is respect to policy's compatibility with international treaties that establish fundamental rights.

Regardless, the rulings will likely have little impact on actual Dutch emissions. The Netherlands has reduced its emissions by 13% to date and is on track to add a couple more points to this value. Reaching 25% reductions in two years is impossible short of unacceptably draconian actions. If the government takes the case to the Supreme Court, it can claim that it is in the meantime undertaking reasonable measures to reduce emissions.

Ultimately, the case may have greater impacts in legal reasoning, including beyond the Netherlands. Courts have been reluctant to acknowledge the significance of a given jurisdiction's small contribution to global emissions, particularly in the face of likely "leakage" of emissions to other jurisdictions in response to more aggressive policies.

Plaintiffs have also been generally unable to establish standing for future expected harms. The rulings will likely offer inspiration and — more importantly — legal arguments for other plaintiffs and sympathetic judges. Indeed, citizens and advocacy organizations [in several countries have filed similar suits](#) that accuse the state of insufficiently protecting its residents.

As a final aside, the appeals court ruling considers whether negative emissions technologies could allow temporary “overshoot” of emissions targets and subsequent drawdown, the topic of [my first blog post](#). The court rejected these technologies’ relevance to emissions targets because

“The option to remove CO<sub>2</sub> from the atmosphere with certain technologies in the future is highly uncertain and... the climate scenarios based on such technologies are not very realistic considering the current state of affairs. AR5 [the IPCC’s Fifth Assessment Report] might thus have painted too rosy a picture, and it cannot be assumed outright that the ‘multiple mitigation pathways’ [that rely on negative emissions technologies at large scales] listed by the IPCC in AR5 (p. 20) can lead to the 2° C target.”

For more, see [my former colleague, Jonathan Verschuuren of Tilburg University](#) in the Netherlands.