

Last month, [an appeals court in the the Netherlands upheld a lower court's ruling](#) that the Dutch government is legally obligated to reduce greenhouse gas emissions more aggressively. This drew much international attention, as well as praise from environmental advocacy organizations. As expected, [the government has announced that it will appeal this decision in the *Urgenda* case to the Supreme Court.](#)



Supreme Court building of the Netherlands, by [Flickr user roel1943](#).

Some background can help explain why the case is peculiar. From a climate change perspective, it is the first one in which courts agree that the state bears obligations to lower greenhouse gas emissions. To some degree, this is a product of the [Dutch Constitutional provision](#) that “It shall be the concern of the authorities to keep the country habitable and to protect and improve the environment” (Article 21).

From the Dutch legal perspective, it indicates a notably assertive judiciary. The Netherlands is a civil law country, in which courts interpret and apply the law but cannot not create it through landmark rulings. Furthermore, the Supreme Court — or more accurately, the High Council (*Hoge Raad*) — may neither consider a law’s constitutionality nor reexamine a case’s facts. Instead, as a *court of cassation*, it can only reaffirm or reject lower courts’ decisions based upon whether they interpreted and applied the law appropriately and provided sufficient motivation. Thus, the judicial branch as a whole and the Supreme Court in particular have substantially less power compared to their American counterparts.

It is for this reason that the original *Urgenda* ruling was surprising. In it, a district court ordered the government to dramatically reduce the country’s greenhouse gas emissions in a

short period of time. Such a policy decision would normally be the domain of the more political Parliament and cabinet. [Many observers argue](#) that the *Urgenda* decisions were contrary to the Dutch balance of powers.

Now, the government says that it intends to abide by the rulings' substance that it must reduce emission by at least 25% (relative to 1990) by 2020. The government claims that it is bringing the case to the Supreme Court only to learn [whether "the judge is going to sit in the political chair."](#)

Regardless, it is doubtful whether these rulings, including the Supreme Court's possible affirmation of the lower court decisions, will have any significant impact on greenhouse gas emissions. Climate policy can be thought of as navigating a large ocean ship that is regularly hit by strong currents. Steering with policy can change the course in the long term, but doing so in the short term is challenging. Moreover, the rate of economic growth — the strong currents — has a much greater short term effect on emissions than climate policy. And political leaders and the voters who choose them overwhelmingly support greater economic growth, which — all else being equal — increases emissions.

Let's look at the numbers. [As of 2017](#), the Netherlands' emissions were down by only 13% relative to 1990. The Netherlands' agreement with the European Union is to reduce them by about 18%. [The governing agreement to form the current unstable four-party coalition](#) addresses only 2030 emissions targets, not those of 2020. Although government forecasts that *intended* policies will reduce emissions by 23% by 2020 [[PDF, p. 15](#)], it seems unlikely that reductions in three years will be almost double those of the previous twenty-seven. Furthermore the largest opportunity in such a short time would be the closure of one or two coal-powered electricity plants. Yet in this case, the Netherlands would need to import more electricity from its neighbors, leading to a mere shifting — not reduction — of greenhouse gas emissions within the European Union.