

Today the Netherlands' supreme court sided with an environmental organization and ruled that the Dutch government has an obligation to reduce greenhouse gas emissions more aggressively. This is being widely praised by environmentalists and others concerned about climate change. However, this historic ruling will likely have little impact on actual emissions, at least directly. At the same time, its legal logic might have long term consequences across Europe.



Urgenda logo

As background, the activist group [Urgenda](#) filed the suit, claiming that the Dutch government is failing to meet its duties both under its constitution and under international law. It won [at the district level in 2015](#), [on appeal in 2018](#), and [now at the highest court](#).

Today's court decision rests on a three bases. First, the Netherlands is a party to the United Nations Convention on Climate Change (UNFCCC), under which countries agree to stabilize atmospheric gas concentrations. In this, the Netherlands is among the so-called "Annex I countries," which have greater — albeit still modest — obligations to act toward reducing emissions. Second, back in 2007 the Intergovernmental Panel on Climate Change (IPCC) concluded, in an obscure box in its Fourth Assessment Report ([WG3, Chapter 13 \[PDF\]](#)) that stabilizing atmospheric greenhouse gases concentrations at 450 ppm CO<sub>2</sub>eq could require Annex I countries to reduce their emissions by 25 to 40% by 2020 (all values here are relative to 1990 levels). This range was repeated in the [preamble to a 2011 decision by the Parties to the UNFCCC's Kyoto Protocol \[PDF\]](#) and in [an 2013 decision regarding what parties may do \[PDF\]](#). Third, the Netherlands is a party to the [European Convention on Human Rights](#), whose articles 2 (the right to life) and 8 (the right to respect for private and family life) implicitly — according to the court — establish a positive duty for

the state to take proactive steps to protect its residents from threats to life and home. Human rights treaties have direct legal effect in the Netherlands, and climate change poses such a threat. Together, these bases led the court to conclude that the Dutch state is obligated to reduce its emissions in 2020 by at least 25%. It dismissed a variety of counterarguments, such as the fact that the Netherlands' emissions constitute such a small portion of the world's total that reductions to them would have an insignificant impact on the extent to which climate change might pose threats to human rights.

Unfortunately, this ruling will have little direct effect on actual greenhouse gas emissions, even in the Netherlands. One reason for this is that public policy can do little to change emissions in the short term. (Public policy *can* change them in long term.) Instead, short-term emissions are largely dictated by economic activity and population changes. Although the Netherlands' emissions have been falling in recent years, whether they will satisfy the *Urgenda* ruling next year is now beyond the government's control, outside of unacceptably draconian measures. (Answer: they will not, as [2019 emissions are perhaps 23% lower](#).) The other reason is that the Netherlands is so deeply intertwined in the European Union that any short-term aggressive emissions reductions there would "leak" into other member states. In fact, about half of the EU's emissions fall within the [Emission Trading Scheme](#), a cap-and-trade market. The total volume of ETS allowances — that is, permitted EU wide emissions — does not change without European-wide decisions, regardless of what the Netherlands does. Cuts to greenhouse gas emissions outside of the ETS would also be absorbed by other EU countries, albeit only partially and with some temporal lag.

What's notable from a legal perspective is how the court found — or developed — an obligation. Under the UNFCCC, countries agreed to no individual emissions cuts, only a soft "aim" to bring them back to 1990 levels. As noted, whether climate change will threaten human rights is largely independent of the Netherlands' emissions. The IPCC is a scientific assessment body that aims to be "[policy-relevant and yet policy-neutral, never policy-prescriptive](#)." Finally, the decisions of the Kyoto Protocol parties are, like all other such decisions, nonbinding ones, and the relevant passages were merely in the preamble and optional. Yet putting these together, the court found an obligation.

Nevertheless, the ruling may have longer-term, indirect impacts on emissions. For one thing, similar lawsuits in other European countries — [such as Belgium](#) — might now have greater chances of success. Indeed, such a case could come before the European Court of Justice, which enforces the European Convention on Human Rights. Furthermore, the Dutch ruling could catalyze greater ambition at the EU level, as the Commission works to revise its 2030 target ([now at a 40% reduction](#), with [55% under consideration](#)) and its 2050 one ([now at 80 to 95%](#), with "[climate neutrality](#)" under consideration) as well as its contribution to

the Paris Agreement, to be updated next year.

Of course, targets are merely that: targets. Actual emissions cuts are an entirely different matter. Politicians have incentives to set ambitious long-term targets but not to take the sometimes painful short-term steps to achieve them. [As Oliver Geden says](#) (borrowing from [Nils Brunsson](#)), disconnect among talk, decisions, and actions is to be expected. For example, although [the EU will likely miss its existing 2030 target](#), such a forecast is unlikely to stop political leaders for calling for even more ambition. Talk is indeed cheap.

At its heart, the *Urgenda* case is a predictable consequence of this inconsistency. As we approach the dates of long-term targets, such tensions will become increasingly common, evident, and unsustainable.