

Alert | Environmental/Energy & Natural Resources



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The Hague District Court Dismisses Clean Air Case

On the 27th of December 2017, two Dutch NGOs and 57 individual plaintiffs lost a court case against the Dutch State in which they, in a nutshell, demanded measures to be taken to improve air quality in the Netherlands. The verdict seems to be a boost for the new Dutch government's environmental agenda and shows that such claims face scrutiny.

The demands of the plaintiffs in this case were aimed at reducing the levels of nitrogen dioxide (NO₂) and particulate matters (PM_{2.5} and PM₁₀) in the air.¹ The plaintiffs claimed that the Dutch State is required to comply with the air quality standards of the European Directive 2008/50/EC regarding air quality (the Directive) and the stricter norms of the World Health Organization (WHO) and must take measures to comply with these norms. The plaintiffs further argued that a violation of the WHO standards is contrary to articles 2 (right to life) and 8 (protection of family life) of the European Convention on Human Rights.

The Hague District Court ruled that the WHO standards are not binding and the Dutch State is not required to comply with these at the moment or in the near future. According to the court, the Dutch State is also not required to keep a safety margin pursuant to the "precautionary principle." Nevertheless, the Dutch State is obliged to meet the limit values of the Directive given that the implementation term (the term to transpose the Directive into national legislation) has passed. The Dutch State had to comply on a national level with the limit values for PM₁₀ by the 11th of June 2011 and for PM_{2.5} and NO₂ by the 1st of

¹ The Hague District Court 27 December 2017, ECLI:NL:RBDHA:2017:15380.

January 2015, but failed to meet these deadlines for PM10 and NO₂. As a result, the Dutch State has violated its obligations under the Directive. It has, however, not been established that the individual plaintiffs and the individuals whose interests are represented by the NGOs have indeed suffered any damages, according to the court.

As the Dutch State does not comply with its limit values, the Directive imposes a second obligation: to shorten the period of non-compliance as much as possible and to show that all appropriate measures have been taken. To this end, the Dutch government has implemented the *Nationaal Samenwerkingsplan Luchtkwaliteit* (the National Air Quality Cooperation Program or NSL). The plaintiffs criticized the NSL and claimed it does not meet the requirements of the Directive.

According to the court, which period may qualify as “as short as possible” and which measures are “appropriate” in the sense of the Directive depend on the circumstances of the case. The court found that the number of exceedances related to air quality has been reduced in the past years and that the remaining non-compliances are mainly caused by traffic at a limited number of urban hubs. Also, the plaintiffs’ criticism of the NSL were found to be too general to support the conclusion that the Dutch State has not fulfilled its duties. As a result, their claims were dismissed. In previous summary proceedings (*kort geding*), the preliminary relief judge had granted the claims of the plaintiffs.² The previous summary judgment, however, no longer has any binding effect after this verdict in the main proceedings. This verdict is an interim judgment, but the main the substantive issues of this matter have already been decided in this verdict and the district court has, by way of exemption, opened the possibility of appeal against this interim judgement.

Case analysis and effects

This case fits a broader development of environmental public interest litigation in the Netherlands, but also in other EU countries (for example, the UK). On the 24th of June 2015, the Hague District Court granted a claim of an NGO called Urgenda and almost 900 co-plaintiffs in which they demanded that the Dutch State must take more measures to prevent and reduce greenhouse gas emissions and that the State must ensure that emissions in the Netherlands must be reduced by 25 percent in 2020 relative to the emissions in 1990. The *Urgenda* verdict was met with considerable criticism and it cannot be ruled out that the court of appeal will find differently.

In the meantime, the new center-right Dutch government, which has been in office since October 2017, has presented its plans for meeting the obligations under the Paris Climate Agreement and improving air quality. The new Dutch government aims at an emission reduction of 55 percent by 2030 in the EU, to be achieved, amongst other steps, by closing coal-fired power plants, an increase in wind farms, and the capture and storage of CO₂. In this context, the new Dutch government aims to conclude a new national climate and energy agreement with representatives of various interest groups. The government explicitly wants to include industry in this process in order to find workable solutions.³

In addition, the goal of the new government is to have only emission-free cars by 2030. Under the government’s plans, more so-called environmental zones (*milieuzones*), which high emission vehicles are not allowed to enter, will also be introduced in cities (this is also aimed at reducing the emissions at the urban traffic hubs where limit values are exceeded).

² The Hague District Court 7 September 2017, ECLI:NL:RBDHA:2017:10171.

³ Governing agreement of 10 October 2017 by the VVD, CDA, D66 and ChristenUnie (*Vertrouwen in de toekomst*).

NGOs have, however, stated that the announced measures are not far-reaching enough and that international obligations will not be met, indicating that this is probably not the last we will see of environmental public interest litigation in the Netherlands. This verdict of the Hague District Court, however, shows that such litigation is not taken lightly. The Dutch government's apparent pro-active approach may also make it more difficult for plaintiffs to have success in court.

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