

ENVIRONMENTAL COURT CASES ACROSS THE WORLD

Climate Change

MILIEUDEFENSIE ET AL V. ROYAL DUTCH SHELL PLC

The Hague District Court, Netherlands, Decided May 26, 2021

A COMPANY IS TAKEN TO COURT TO ENFORCE ITS COMMITMENT TO THE CLIMATE AGREEMENT

Parties

Claimants: Milieudefensie/Friends of the Earth Netherlands and other NGOs including, ActionAid NL, Both ENDS, Fossilvrij NL, Greenpeace NL, Young Friends of the Earth NL, Waddenvereniging, and 17,379 individual citizens

Defendant: Royal Dutch Shell PLC (RDS)

Key Facts

Burning fossil fuels on a massive scale has released carbon dioxide (CO₂) into the atmosphere and caused an increase in global temperature. Recently, climate science has dictated that the average temperature on earth should not increase by more than 1.5°C.

On 12 September 2019, Shell Nederland, part of the Shell group, signed the Climate Agreement encompassing a package of measures and agreement between companies, social organizations and government bodies for the joint reduction of greenhouse gas emissions in the Netherlands by 49% in 2030 relative to 1990.

The environmental group brought the case to court in 2019, alongside six other bodies and more than 17,000 Dutch citizens, calling for RDS to cut its CO₂ emissions.

The Court's Decision

RDS is obliged to reduce the CO₂ emissions of the Shell group's activities by net 45% at end 2030 relative to 2019 through the Shell group's corporate policy. This includes a "best-efforts" obligation to reduce or prevent the CO₂ emissions of business relations, including end-users. The order is provisionally enforceable, requiring RDS to work to meet its reduction obligations under the order, even as the decision is appealed by RDS.

The Court's Reasoning

Shell's reduction obligation ensues from the unwritten standard of care in Book 6 Section 162 of the Dutch Civil Code, whereby acting in conflict with what is generally accepted according to unwritten law is unlawful. The unwritten standard of care draws from the **Kelderluik criteria** (a judgement of the Supreme Court of the Netherlands establishing factors to consider in situations of negligence, similar to the "Learned Hand" formula applied in Anglo-American legal systems).

The standard also draws on human rights, specifically the right to life, and respect for private and family life. In addition, soft law endorsed by RDS such as the UN Guiding Principles on Business and Human Rights, the UN Global Compact and the OECD Guidelines for Multinational Enterprises all contributed to the interpretation of the unwritten standard of care.



What now?

RDS has publicly stated its intention to appeal the decision, but as the judgement is provisionally enforceable, they are still obliged to comply until a final and conclusive decision has been made.

International Impact

This case follows the landmark ruling in [Urgenda](#), and has likely put other companies with significant contributions to CO2 emissions on guard. The ruling leaves open the possibility that a company whose CO2 emissions affect the legal rights of present and future Dutch citizens may be liable to reduce their emissions (irrespective of where the company or source of emissions is actually located).

The pending appeal and enforceability remain an issue as end-user emissions make up a significant amount of Shell's CO2 emissions overall. The judgment requires Shell work to reduce or prevent these end-user emissions on a "best-efforts" basis.

Key Issues

Climate change, CO2 emissions, corporate liability, corporate negligence, standard of care

International Agreements Cited

European Convention on Human Rights
The UN Climate Convention
The Paris Agreement

References & Further Reading

Judgments

For the decision in Dutch: PDF download [here](#)
For the decision in English: PDF download [here](#)

Further Reading

Arthur Peterson, The Conversation, ["Shell ordered to cut its emissions - why this ruling could affect almost any major company in the world"](#)
Jillian Ambrose, The Guardian, ["Oil giant Shell set to appeal against ruling on carbon emissions."](#)



Photo by: Ruetir

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