PLEADING NOTES MITIGATION PART

The Hague District Court

Plea hearing Tuesday, October 7, 2025 at 09:30 AM

Case number: C09/659832/HA ZA 24-53

On behalf of Stichting Greenpeace Nederland in the matter of

the foundation STICHTING GREENPEACE NEDERLAND, based in Amsterdam, hereinafter "Greenpeace"

lawyers: mrs. M.R.S. Bacon and E.W. Jurjens

p l a i n t i f f

against

THE STATE OF THE NETHERLANDS (Ministries of Climate and Green Growth, Infrastructure and Water Management, and Interior and Kingdom Relations), based in The Hague,

lawyers: mrs. E.H.P. Brans and K. Winterink

d e f e n d a n t

Introduction

We have just heard what impact climate change has on the inhabitants of Bonaire. Bonaire is a vulnerable part of the Netherlands, and its population is moreover less able to protect itself due to socio-economic circumstances. The consequences of climate change will therefore be most drastic on Bonaire.

This procedure is about compelling the State to take its responsibility towards its citizens on Bonaire. This means, on the one hand, that they receive comparable protection to that which has been offered to the population in European Netherlands for years. This concerns taking adaptation measures, which is the subject of tomorrow.

However, there is a limit to the effectiveness of adaptation measures. If climate change is not curbed, the consequences for Bonaire will be so severe that adaptation measures that are still possible now may lose their effectiveness. It is then like mopping up with the tap running. Adaptation and mitigation are, to that extent, communicating vessels. Adaptation measures must be aligned with the expected temperature increase, while sufficient mitigation measures can ensure that adaptation measures remain effective. And both are necessary to limit damage and risks.

It is therefore of the utmost importance that every country, including the Netherlands, takes its responsibility to keep climate change as limited as possible. That is the subject of today.

The seriousness of the climate problem informs the scope of the State's obligations

The importance of taking sufficient mitigation measures cannot be overstated. The climate problem is undoubtedly the greatest challenge of our time. The International Court of Justice ('ICJ'), the principal judicial organ of the United Nations, made no secret of this in its recent ruling on the climate obligations of states (production GP 112):

> "The questions posed by the General Assembly represent more than a legal problem: they concern an existential problem of planetary proportions that imperils all forms of life and the very health of our planet"

Greenpeace has already extensively addressed the disastrous consequences of further global warming in chapter 8 of the summons. We are confronted almost daily with scientific research that shows that these consequences are occurring earlier or more severely as the Earth continues to warm at the current pace. Unfortunately, the severity of the climate crisis is only increasing, and solutions now require the highest urgency. This is not disputed by the State, by the way. But the climate policy it pursues does not reflect this urgency. That is unacceptable. After all, the scope of climate measures that can be demanded from the State is partly determined by the seriousness of the consequences against which the claimed measures aim to protect. The ICJ rightly notes that 'the standard of due diligence for preventing significant harm to the climate system is stringent' and that 'a hightened degree of vigilance and prevention is required' (ICJ, par 138). Against this background, the State can and must do more than it currently is.

Since the ICJ ruling, there can be no misunderstanding that countries' climate policy must be aimed at limiting the global temperature increase to 1.5 degrees. The ICJ has explicitly confirmed that there is scientific consensus on this and that countries at recent climate summits have agreed that this is the new temperature goal under the Paris Agreement. It is still possible to limit the global temperature increase to 1.5 degrees, but time is almost up. The most recent update of the global carbon budget by Forster (production GP 113) shows that, as of January 1, 2025, only a budget of 130 gigatonnes of CO2 remains for this purpose.

Temperature (°C)	Estimated remaining carbon budgets from the beginning of 2025 (Gt CO2)					
Avoidance probability:	17 %	33 %	50 %	67 %	83 %	
1.5	320	200	130	80	30	
1.6	620	420	310	240	160	

1.7	910	640	490	390	290	
2.0	1790	1310	1050	870	690	

That budget will be used up in three years at the current global CO2 emissions rate. The world will then enter injury time, where every further emission reduces the chance of limiting or bringing the temperature increase back to 1.5 degrees, until this chance is completely lost. This naturally does not mean that the 'limit' of 1.5 degrees is no longer a dangerous limit. After all, this temperature limit is based not on feasibility, but on scientific findings regarding the risks of exceeding this limit. Therefore, if the global carbon budget runs out, it does not mean that countries must choose a new temperature target that *is* still feasible. It means precisely that especially the wealthy countries, like the Netherlands, must be expected even more to do everything possible to reduce emissions as quickly as possible, thereby limiting the risks of exceeding the 1.5-degree limit as much as possible.

State postpones responsibility

Politically, the problem does not lie in the consensus about the global temperature limit or the seriousness of the consequences if those goals are not met. The Netherlands recognizes those consequences and also presents itself internationally as a champion of ambitious climate policy. The problem lies in the fact that the State does not follow words with action.

It has been clear for decades that Dutch emissions must be reduced faster. But successive cabinets have closed their eyes to this and postponed the problem. This has made the problem much bigger (and more expensive) than necessary. The Schoof cabinet has also been guilty of this. The recently published Climate and Energy Outlook by the PBL (KEV '25) shows that the probability of the Netherlands achieving the legal climate target of 55 percent reduction in 2030 is less than 5 percent. The PBL also came to this conclusion in the KEV '24. The cabinet has therefore not managed to increase that probability by even one percentage point in a whole year. The Council of State considers in its critical review of the Climate and Energy Memorandum 2025 (production GP 142): *'this stagnation essentially means regression.'*

Despite all warnings from the PBL and the Council of State, among others, the State's own climate goals are becoming increasingly out of reach. The consequences of this fall to the account of future generations who did not cause this problem. This aspect of intergenerational responsibility has been emphasized in the recent rulings of the ICJ and the Inter-American Court of Human Rights ('IACHR') (production GP 111) as an important element that States must take into account when determining their climate policy to avoid liability.

What is today's focus?

Greenpeace asks your court with this procedure to assess whether the State, with its current climate policy, as laid down in the Climate Act, meets the minimum threshold of its climate obligations. Greenpeace is firmly convinced that this is not the case for various reasons. If your court shares this conviction, Greenpeace requests your court to declare this as a matter of law and further to order the State to pursue a climate policy that is at least in accordance with that minimum threshold. That minimum threshold is the minimum interpretation the Netherlands must give to its positive obligations arising for the

State from Articles 2, 8, and 14 ECHR. An obligation that can in any case be demanded of the Netherlands based on the findings of (international) case law and climate science.

The issue is therefore not, as the State repeatedly argues, a ‘reduction advocated by Greenpeace’ or a reduction that Greenpeace considers a fair share. The large number of authoritative rulings, reports, and opinions that Greenpeace has submitted shows that even if the State were to deliver the minimum threshold of its fair share, the remaining share of the global carbon budget for the Netherlands is used up, or will be very soon.

Under the current climate policy, the State allows CO2 emissions to continue until 2050. This will result in every Dutch person having emitted at least four times as much CO2 by 2050 as would be allowed if the remaining global carbon budget for 1.5 degrees were distributed equally among every world citizen. This means that people in other countries are left with less than the average, even though the Netherlands has agreed to take the lead in climate efforts, as the State calls it. This cries out for an explanation. But it is missing. The State mainly hides behind the climate policy established at the EU level. According to the State, this policy is ‘leading’. In addition, it points – again – to its relatively limited share of global emissions to escape liability. These arguments may have been rebranded, but they were largely rejected by the Supreme Court in the *Urgenda* procedure. It remains completely unclear for what substantive reasons the State now believes that the current climate policy, in light of the various principles of fairness and starting points that Dutch climate policy must take into account under international law, delivers a fair share.

It is clear from the State's defense that the population of Bonaire will not receive the protection to which they are entitled without judicial intervention. Precisely where the State falls short in its core tasks, effective review by the national court is crucial. This also follows from Article 13 ECHR. If the State can unchecked determine whether it offers its citizens adequate protection against climate change, that would lead to an unacceptable gap in the legal protection that citizens can derive from the ECHR. The various rulings of international courts have outlined the contours of fair climate policy. All these rulings show that the Netherlands' climate policy scores a solid fail. Greenpeace, the inhabitants of Bonaire - here in the courtroom and on Bonaire - and the 60,000 people who have expressed their support for this case hope that these rulings will provide support to your court to conclude today that Dutch climate policy must be tightened to comply with the standards of the ECHR.

Today, Greenpeace will address the following topics:

- Firstly, Greenpeace will make some additional remarks about the legal framework (chapter 2).
- Then, Greenpeace will explain using a number of examples why the Dutch climate policy evidently falls below the minimum threshold of its fair share obligation (chapter 3) and what that fair share obligation should minimally be (chapter 4).
- Subsequently, Greenpeace will discuss three core defenses of the State. These are, in turn:
    - the State's assertion that it is delivering its fair share by meeting the reduction obligations imposed in a European context (chapter 5);
    - the State's assertion that it is delivering its fair share with the help of Article 9 of the Paris Agreement climate finance (chapter 6); and
    - the State's assertion that it is delivering its fair share now that its climate policy falls within the bandwidth of two of the seven allocation methods from the PBL March 2024 report (chapter 7).

- After that, Greenpeace will address the feasibility of its claims (chapter 8) and conclude with a discussion of the fact that the Netherlands is currently doing too little even to meet its own climate goals (chapter 9).

Additional remarks on the legal framework.

Article 2 – 8 ECHR and national effect

The State has raised a number of formal defenses against the applicability of Articles 2 and 8 ECHR and the subsidiary assertion of Greenpeace that a violation of these articles constitutes an unlawful act. According to the State, Articles 2 and 8 ECHR are not applicable, or at least a burden of proof rests on making this plausible, which Greenpeace allegedly failed to meet. That is a far-reaching defense. It means that the State, although it does not dispute the very serious consequences of climate change for Bonaire, believes that its citizens cannot even *invoke* their right to life and/or protection of their living environment, even with due observance of everything Greenpeace has submitted, let alone whether that claim is justified. Greenpeace will go into more detail tomorrow on the defenses raised by the State in this regard. This will also delve deeper into the common ground method, on the basis of which the State's positive obligations must be further interpreted.

For now, Greenpeace makes a single remark about the State's repeated assertion that Greenpeace has not substantiated that the conduct attributed to the State constitutes an unlawful act. Greenpeace emphasizes, firstly, that it primarily bases its claims on a violation of Articles 2 and 8 ECHR, which rights have a direct effect in the national legal order and can therefore be directly invoked by Greenpeace. If the State has an obligation based on these articles, the State can be compelled to perform that obligation just as easily as any other party (Article 3:296 Dutch Civil Code). This was already confirmed by the Supreme Court in the *Urgenda* judgment. Furthermore, Greenpeace is of the opinion that a violation of these positive obligations also constitutes an unlawful act. However, this legal basis is supplementary in nature. Therefore, for the claims to be granted, it is not necessary for the alleged shortcomings of the State - in addition to a violation of the standards of Articles 2, 8, and 14 ECHR - to be deemed an unlawful act.

If the State, with its current climate policy, does not make an adequate contribution to limiting global warming, while it acknowledges that this warming will have disastrous consequences for Bonaire AND it possesses the means and possibilities to deliver a fair share, it is not clear to Greenpeace why it is not acting unlawfully. After all, that conduct is contrary to the law (Articles 2 and 8 ECHR) AND contrary to the social due care that the State must observe towards its citizens. Nor is it clear to Greenpeace why that unlawful act would not cause damage or could not be attributed to the State. If the Netherlands does not deliver a fair share, it contributes to the failure to meet the 1.5-degree goal, which, according to the IPCC, will have very serious consequences for Bonaire. That is damage. Moreover, the declarations submitted show clearly that the consequences of climate change are already felt daily. The State also does not seem to dispute this. Furthermore, the State determines its own climate policy and has done so while being very aware of the risks of climate change and the consequences if these risks were to materialize. Naturally, the State can then be reproached for pursuing a climate policy that does not meet the standards of the ECHR.

Drop in the ocean – causality

Finally, Greenpeace dwells a little more closely on the aspect of causality. The State again points out in its Statement of Defense that Dutch emissions constitute a limited part of global emissions and suggests that the causality requirement has thus not been met. The State is thereby invoking the 'drop-in-the-ocean' argument, despite its explicit denial, which the Supreme Court already rejected in Urgenda, but which was

also expressly rejected by the ECtHR and ICJ in their respective rulings afterwards. The ECtHR in *KlimaSeniorinnen* explicitly confirmed that the causal link between the State's actions and the damage caused thereby in the context of climate policy *'is necessarily more tenuous and indirect compared to that in the context of local sources of harmful pollution'* and that the State's obligations therefore cannot be established *'on the basis of a strict conditio sine qua non requirement.'* Greenpeace elaborated on this in more detail in the Statement of Reply (par 22.7 et seq.).

The State argues that for causality to be assumed, Greenpeace must demonstrate that the measures it is claiming have a real prospect of limiting the alleged damage. According to the State, granting the claims would have no influence on the well-being of the population of Bonaire. The difference between the emissions that occur based on the current climate policy and the emissions that occur under the claimed reduction obligations would be too small to have a measurable effect on climate change.

The State hereby misunderstands that an individual obligation rests on every country to make a fair contribution to combating climate change and that the State's liability must be viewed through this lens. This has been expressly confirmed by the Supreme Court, the ECtHR, and the ICJ. It was explicitly considered that countries cannot evade this obligation by pointing to their (relatively) small emissions or the fact that other countries are not meeting their obligations. That is also logical. If one person runs a red light, it obviously does not give another person a license to do so as well.

Therefore, for the State's liability, it is not necessary for Greenpeace to demonstrate that the difference between the emission reduction that occurs under the current climate policy and the reduction that would occur under the reduction claimed by Greenpeace has a noticeable effect on the population of Bonaire. What matters is that the Netherlands, like every country, has the obligation to deliver a (minimum) fair share, as only this offers a real prospect of preventing the damage resulting from dangerous climate change. This has been clear since the *Urgenda* judgment. It is therefore difficult to understand why the State persists in the 'drop-in-the-ocean' argument in the Statement of Sur-rejoinder.

The role of the judge – margin of appreciation

The State's objective in this procedure is to minimize the role of your court. For example, the State argues that the Dutch court cannot rule on its climate policy because this is a political matter AND because Dutch climate policy is subordinate to European climate policy, which the State considers 'leading'. The State seeks support for its argument in, among other things, the *KlimaSeniorinnen* ruling, from which, according to the State, it follows that its 'margin of appreciation' is broad and judicial review is therefore marginal.

The State confuses in its argumentation in various places the broad policy discretion it has in *how* it implements climate policy with the limited policy discretion it has in establishing it. It is indeed true that the State has broad policy discretion in the implementation of its policy, i.e., the choice of how to achieve its climate goals. Greenpeace does not dispute this. Greenpeace has structured its claims in such a way that this policy discretion is not limited. This broad policy discretion is not unlimited, however. The choices the State makes for the implementation of policy must, after all, be 'genuinely reasonable and suitable' to avert the danger, which must be substantiated by the State. The court may intervene when the State fails to meet this.

However, when it comes to establishing the goals of climate policy based on its positive human rights obligation, the State's policy discretion is significantly more limited. According to the ECtHR, this is justified in the context of climate change because *'the nature and gravity of the threat and the general consensus as to the stakes involved (…) call for a reduced margin of appreciation for the States'*. Contrary to the State's view, it is therefore certainly not entirely up to the State to determine which policy it

deems appropriate in this regard, but, as Greenpeace just said, the national court has an important role to play. This role, which was also emphasized by the IPCC, is considered by the ECtHR to be of particular importance in light of the *"widely acknowledged inadequacy of past State action to combat climate change globally"*. The importance of effective judicial review at the national level is confirmed by the IPCC, the Supreme Court in Urgenda, the Court of Appeal in The Hague in the Shell case, and this court in the nitrogen ruling.

Your court can therefore fully review whether the State's climate policy (evidently) falls below the minimum threshold of what can minimally be demanded of the State (claim III), what that minimum threshold minimally is (claims IV and V), which guarantees the Dutch climate policy must provide and whether the Dutch climate policy provides them (claims VI, VII), and whether the Netherlands is on track to achieve its own climate goals (claims VIII and IX).

A number of conditions that Dutch climate policy must meet

The rulings of the ECtHR, the ICJ, and the IACHR have created more clarity about the conditions that the climate policy of a wealthy country like the Netherlands must meet. These rulings support the large number of reports and previous rulings that have been drawn up and delivered concerning the mitigation obligations of states. From this whole range of sources, a number of conditions can now be established with a very high degree of consensus, which the State's climate policy must at least meet to be considered an appropriate measure within the meaning of Articles 2 and 8 ECHR. Greenpeace will compare Dutch climate policy with a non-exhaustive number of these conditions in this chapter.

These conditions can be broadly distinguished into ambition requirements – what minimum climate ambition must Dutch climate policy have – and safeguard requirements – what measures must the Netherlands take to ensure that the climate goals are actually achieved.

Greenpeace will first discuss:

- (i) its assertion that Dutch climate policy should not be based on grandfathering;
- (ii) the finding by the ICJ and IACHR that mitigation policy must take historical emissions into account; and
- (iii) the broad consensus that the minimum threshold of the Dutch fair share is determined by a so-called 'equal per capita' distribution of the global 1.5-degree carbon budget.

Subsequently, Greenpeace will address:

- (iv) the obligation to quantify the emission space by establishing a national carbon budget;
- (v) the obligation to legally lay down mitigation measures in national regulations and set intermediate targets; and
- (vi) the duty to sufficiently substantiate in what way the climate policy delivers a fair share to the 1.5-degree goal.

(Ad i) Climate policy must not be based on grandfathering

The IPCC describes grandfathering as emission rights *'allocated in proportion to current emissions'*. If the remaining global carbon budget is distributed based on countries' current emission levels, countries with relatively high emissions are favored because those countries are allowed to use a relatively large share of the global carbon budget based on that high emission level. Conversely, countries with relatively low emissions are disadvantaged.

If the Netherlands were to follow the global IPCC 1.5-degree reduction path, it would lead to a large degree of grandfathering. After all, not only does the Netherlands reduce emissions from its current emission level, which is disproportionately high compared to other countries, but it also does so with the percentage that is globally necessary on average. In the Statement of Reply, Greenpeace visualized the unfair consequences of grandfathering by comparing the Netherlands and India if both countries were to follow the global IPCC reduction path.

Greenpeace wants to emphasize that grandfathering is not only an issue when the global IPCC reduction path is followed. Grandfathering is simply an effect that occurs when countries' emission obligations with relatively high per capita emissions are calculated from that high current emission level. It therefore also occurs when countries have a somewhat greater reduction percentage than what is globally necessary according to the IPCC. Greenpeace has shown in the procedural documents that the policy laid down in the Climate Act regarding the 2030 target is about 1.5% stricter than the global IPCC reduction path, excluding aviation and maritime emissions (see paragraph 4.13 et seq. below). This means that Dutch climate policy is still largely based on grandfathering.

In the graph below, to further illustrate this, Greenpeace has compared the global per capita carbon budget as of January 1, 2025, with the cumulative CO2 emissions per Dutch person under the Climate Act.

	ton CO2
Forster et al. CO2-budget per world citizen from Jan 1, 2025	≈16
Cumulative CO2 emissions per Dutch person under the Climate Act from Jan 1, 2025	≈69

A distribution of the global carbon budget means that as of January 1, 2025, only 16 tonnes of CO2 per capita (world population) may still be emitted to stay on track for the 1.5-degree goal. The cumulative emission per Dutch person under the Climate Act amounts to 69 tonnes of CO2, which is more than four times as much.

Moreover, this calculation is based on a number of assumptions that are by no means certain to be correct. Firstly, that the Netherlands achieves the 2030 goal, for which, according to the PBL for the second year in a row, only a 5% chance remains, and secondly, that emissions decrease linearly along the targets in the Climate Act, for which there are currently no indications. That the current climate policy will lead to a cumulative emission of 69 tonnes of CO2 per Dutch person until 2050 is therefore still an optimistic estimate.

What matters now is that in the UN Climate Convention and the resulting agreements, such as the Paris Agreement, it was agreed that due to countries' disproportionate historical contribution to climate change and the differing capacity of countries to reduce their emissions, the climate effort should not be distributed equally among countries, but must be done with due observance of certain principles of fairness. These include the principle of 'common but differentiated responsibilities and respective capabilities' (CBDR-RC) and the principle of 'equity'. The application of these principles must lead to the

burdens of the climate effort resting on the shoulders of the most affluent countries with the highest historical emissions, and that poorer countries with lower historical emissions have an appropriate responsibility. This also follows from other principles to which the Netherlands has committed itself, such as the 'polluter pays' principle, which underlies European climate law, and the 'no harm' principle, a generally accepted principle of international law which holds that countries must not cause harm to each other.

The rulings of the ECtHR (*KlimaSeniorinnen*), the ICJ, and the IACHR clearly show that the application of all these principles precludes a country with high (historical) emissions like the Netherlands from using grandfathering as the basis for its climate policy. This is also the broadly supported view in climate science, reflected in authoritative reports such as the IPCC (AR5) reports and the advice from the European Climate Advisory Board. All these sources unequivocally indicate that grandfathering inherently leads to an unfair distribution of the remaining carbon budget because it rewards the polluter and places the heaviest burdens on the poorest countries. Those countries will - rightly - not accept that distribution. And so, this leads to the 1.5-degree goal not being met. This is exactly what is happening globally right now. The UNEP concludes in the most recent Global Emission Gap report that the collective NDCs, even if fully complied with, will lead to an average global temperature increase of approximately 3 degrees. Grandfathering is therefore diametrically opposed to the agreements that countries have made regarding the distribution of the climate effort. A climate policy that is too heavily based on grandfathering cannot therefore simply provide a basis for climate policy that forms a minimum interpretation of the positive obligations resting on the State under the ECHR.

Paper Robiou du Pont, Dekker, Van Vuuren, Schaeffer – production 138. The negative effect of grandfathering is one of the reasons why Detlef van Vuuren and Mark Dekker, both co-authors of the PBL March 2024 report, advocate in a recently published paper (production 138) that the starting point for determining states' emission reduction should not be the current emission level, but a (lower) emission level that is in line with principles of fairness. The researchers argue that the use of such 'discontinuous pathways' means, among other things, that the 'near-term' effects of grandfathering are removed. The researchers clearly see this as a positive consequence, because (p.2):

> 'The grandfathering allocation is criticized for its lack of ethical basis and has been shown to penalize the poorest countries as it preserves a status-quo, including current inequalities. (....) However, the IPCC has highlighted the need for a fair distribution of mitigation efforts, excluding grandfathering, in order to achieve an effective global agreement on emissions reductions. Likewise, recent reports of scientific advisory bodies have disapplied grandfathering when presenting fair-share emissions allocation. The Paris Agreement now requires NDCs of the highest possible ambition that reflect equity. A recent study described grandfathering allocations as not in line with international law.'

The researchers refer here to the need mentioned by the IPCC to distribute the climate effort fairly. According to the IPCC, *'equity […] is critical to addressing climate change'* and states' climate policy must be consistent with their fair share. This is because *'only in relation to such a 'fair share' can the adequacy of a state's contribution be assessed in the context of a global collective action problem'*. The IPCC does not consider grandfathering to be a suitable basis for the fair share of (wealthy) countries and therefore does not include grandfathering in the analysis of fair share allocation methods in AR5. The IPCC is even critical of allocation methods that grandfather historical emissions for a certain transition period to arrive at a policy that is in line with principles of fairness.

These conclusions of the IPCC, which have been endorsed by the Netherlands, may be the reason why the State actually takes no clear position on grandfathering. Greenpeace does not read in the State's procedural documents that the State explicitly disputes that its climate policy must not be based on grandfathering. The State even acknowledges in its Statement of Sur-rejoinder that grandfathering is controversial given the scientific literature, which may be called an understatement. This acknowledgment is not incomprehensible in light of the findings of - among others - the IPCC, but also given the fact that the Netherlands is trying to present itself internationally as a frontrunner in ambitious climate policy.

Thank you for your attention.

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