

PLEA NOTES ADAPTATION SECTION

District Court of The Hague

Plea hearing Wednesday, October 8, 2025, at 09:30 AM

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

On behalf of Stichting Greenpeace Nederland concerning

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

attorneys: Mr. M.R.S. Bacon and Mr. E.W. Jurjens

P L A I N T I F F

against

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

attorneys: Mr. E.H.P. Brans and Mr. K. Winterink

D E F E N D A N T

Introduction

For years, the inhabitants of Bonaire have been experiencing the increasing impact of climate change on their lives, well-being, and living environment in various ways. Their experience is broadly confirmed by scientific research on small islands like Bonaire. Bonaire is a small island in the Caribbean and is, partly for that reason, particularly vulnerable to the consequences of climate change. The inhabitants of Bonaire therefore had and have—just like all Dutch people—the right to protection from the State against the consequences of climate change (adaptation measures). They are hit hard by climate change, and the need is thus great.

This affects everyone on Bonaire. Even children and young people growing up on Bonaire today. Recently, UNICEF conducted a study interviewing children and young people on Bonaire about the effects of climate change on their lives. They express their concerns about this, saying, for example:

- "In fifty years, almost the entire island will be underwater. We won't be able to live here anymore. That is our future, and we are worried about it." (Bonaire youth)
- "What used to be a luxury is now a necessity. You can't sleep without air conditioning." (Bonaire youth)

- "Akeesha (16) from Bonaire says it has almost become normal there to get skin problems from the heat: 'As soon as I travel to a cooler country, my skin gets better almost immediately. No rash, no bumps, no irritation: nothing at all.'"

The same picture emerges from the testimonies submitted in this case, what we heard yesterday, and all available research. Protection against the consequences of climate change in the form of timely, adequate, and structural adaptation policy is absolutely necessary in Bonaire. However, it has become clear in this case that the State offers its inhabitants in Bonaire, who are particularly vulnerable to the consequences of climate change, less protection against the consequences of climate change than its inhabitants in the European Netherlands.

This procedure concerns the question of whether the State is taking sufficient adaptation measures to protect its citizens on Bonaire against the immediate consequences of climate change. Greenpeace believes that the State is failing in this. This is contrary to the positive obligations that the State has under Articles 2 and 8 ECHR and also constitutes an unlawful act.

Where the State, during the mitigation part yesterday, tried to nuance the claims as a 'reduction advocated by Greenpeace,' the necessity of taking adaptation measures is a factual necessity that cannot be ignored. The consequences of climate change are already happening now, and the State has a duty to respond adequately to them.

The State does not deny that Bonaire is vulnerable but claims that it *is* taking adequate measures. That is incorrect. The measures the State is taking are characterized by delay and the shifting of responsibility to the local government. That is inappropriate. After all, the State has a duty to provide an adequate level of protection. It cannot hide behind the local government.

Greenpeace's claims are essentially aimed at compelling the State to develop a clear adaptation strategy for the population of Bonaire, which is implemented with the urgency required by the seriousness of the situation. It is important that the State legally anchors the adaptation measures, makes financial resources available, and ensures transparent and timely implementation with concrete milestones and monitoring.

Today we will discuss the following topics:

- The vulnerability of Bonaire (Chapter 2);
- The legal framework, which explains the State's positive obligations under Articles 2 and 8 ECHR (Chapter 3);
- The shortcomings in the State's adaptation policy, where Greenpeace's claims are discussed (Chapter 4);
- The provisional enforceability (Chapter 5) and the conclusion (Chapter 6).

The Vulnerability of Bonaire

Bonaire is a small island in the Caribbean that forms a Special Municipality of the Netherlands. The island is exceptionally vulnerable to the consequences of climate change due to various reasons, such as its location, geography, and the low socio-economic circumstances of its inhabitants. The vulnerability of Bonaire is increasingly confirmed by authoritative reports such as the Netherlands Environmental Assessment Agency (PBL) and the Climate Vulnerability Analysis (CVA), which were conducted at the State's own request. The State itself also recognizes that Bonaire is vulnerable.

The main consequences of climate change for Bonaire are the increase in sea-level rise, erosion, coral loss, salinization of drinking water, more extreme storms, and heat stress. The most vulnerable groups are the low-income local population, the elderly, and people with chronic health problems.

The consequences are already occurring now. The population is confronted daily with problems such as:

- Loss of land and homes due to sea-level rise and coastal erosion (production GP 108, 109).
- Damage to coral due to bleaching and increasing seawater temperature (production GP 114).
- Water shortages due to drought, affecting agriculture.
- Damage to infrastructure due to more extreme rainfall and storms.

The consequences also affect the culture and identity of the inhabitants of Bonaire. The Bonairean identity is strongly connected to nature and the sea. The loss of coral reefs, beaches, and historic salt pans deeply affects the population. As can be read in the summons, the inhabitants of Bonaire feel insufficiently heard and protected by the State.

The State recognizes Bonaire's vulnerability but tries to nuance the severity. That is incorrect. The population of Bonaire is disproportionately affected by the consequences of climate change. This is further exacerbated because the socio-economic situation of Bonaire's inhabitants is already poor, and they lack sufficient financial resources to take protective measures themselves. The State argues that it is uncertain which adaptation measures are needed. That is a fallacy. It is clear that Bonaire is already being affected and that the need to act is high. The State cannot wait until there is complete certainty about the impact. A positive obligation rests on the State to take proactive measures and not hide behind uncertainty.

The Legal Framework

The State has a positive obligation under Articles 2 (right to life) and 8 (right to private and family life) of the European Convention on Human Rights (ECHR) to protect its citizens against serious risks that threaten their lives and well-being. In the case of Bonaire, this means an obligation to take adequate adaptation measures.

The Court has already ruled in the *Urgenda* case that this positive obligation plays a role in climate policy. Recent rulings, such as those of the European Court of Human Rights (ECtHR) in the *KlimaSeniorinnen* case (production GP 110) and the Advisory Opinion of the Inter-American Court of Human Rights (IACtHR) (production GP 111), have confirmed and sharpened this starting point. The positive obligation is therefore crystal clear.

It follows from this jurisprudence that the State must take into account a number of fundamental principles when determining its adaptation policy:

1. **Serious and Real Risk:** The positive obligation is activated when there is a real and immediate risk to the life and health of citizens. This risk is clearly present in Bonaire, as evidenced by the CVA and the experiences of the inhabitants.
2. **Appropriate Measures:** The State must take appropriate measures to eliminate this risk. This requires the policy to be 'genuinely reasonable and suitable'. The judge has the task of assessing this.
3. **Proactive and Preventive:** The State must act proactively to prevent or limit the threat. Waiting until the damage has occurred is not permitted.
4. **Vulnerable Groups:** The State must pay special attention to the most vulnerable groups in society. The local population of Bonaire is one of these groups due to the low socio-economic circumstances.
5. **Intergenerational Aspect:** The adaptation policy must also take into account future generations.

The State has repeatedly tried to limit the application of these articles in this procedure, but this has been superseded by recent jurisprudence. The State cannot escape its duty to effectively protect its citizens.

The Shortcomings in the State's Adaptation Policy

Greenpeace argues that the State is failing in its positive obligation because the adaptation policy for Bonaire is ineffective, too slow, insufficiently concrete, and insufficiently funded.

4.1 Insufficient Urgency

The State acknowledges Bonaire's vulnerability, but the policy does not reflect that urgency. The adaptation policy is fragmented across different ministries and lacks a clear, overarching strategy.

The most important document, the Climate Vulnerability Analysis (CVA), dates back to 2019 (production GP 117). It contains only general recommendations. Despite the urgency, the State has taken six years to develop an 'implementation strategy' for these recommendations. This is unacceptably slow. The consequences of climate change will not wait.

4.2 Shifting Responsibility

The State attempts to shift responsibility for the implementation of the adaptation policy to the local government of Bonaire. This is contrary to the principle that the State is ultimately responsible for the level of protection of its citizens.

The State claims that the local government can finance the necessary adaptation measures itself. That is a myth. Bonaire's financial position is very weak, and the local government lacks the resources and expertise to independently bear the extensive measures required—for example, for coastal defence. The State cannot give Bonaire the status of Special Municipality with one hand and then place the responsibility for life-saving protection measures with the local government with the other.

4.3 Lack of Legal Anchoring and Concrete Objectives

The adaptation policy is not legally anchored, which is a fundamental shortcoming in light of ECtHR jurisprudence. The State's duty of protection requires that measures can be enforced and are not dependent on political whims. The State must clearly establish the adaptation measures and their financing in a law or binding regulation.

Furthermore, concrete, measurable objectives and milestones for the implementation of the adaptation measures are missing. The State goes no further than mentioning general plans or intentions without the necessary 'hard' guarantees. This lack of concrete objectives makes it impossible to assess the effectiveness of the policy and renders the policy ineffective.

4.4 Greenpeace's Claims

Greenpeace's claims are aimed at rectifying these shortcomings. We ask your Court to order the State to:

1. Establish an overarching adaptation strategy that meets the requirements of the ECHR;
2. Legally anchor the necessary adaptation measures and provide them with concrete, measurable, and time-bound milestones;
3. Provide sufficient and sustainable financial resources for the implementation of these measures.

These claims leave the State sufficient policy freedom to choose the *manner* in which it implements the measures. However, the State is held to the minimum standard of protection due to the inhabitants of Bonaire based on their fundamental rights.

Provisional Enforceability

The State has argued that, should the claims be granted, an order for provisional enforceability should be denied. This is incorrect.

The interests that Greenpeace defends—the right to life and the protection of the private life of the inhabitants of Bonaire—are of the highest order. It concerns preventing irreparable damage to the living environment, health, and culture of a vulnerable population group.

This urgent interest must prevail over the interests argued by the State. Moreover, this Court has already ruled in a comparable case that Greenpeace's urgent environmental interest should prevail over the interests argued by the State (reference to earlier ruling). In Greenpeace's opinion, the interests in this procedure are of a comparable scope and urgency, so there is no reason in this case either to deviate from the principle that claims are declared provisionally enforceable upon granting.

Conclusion

Greenpeace concludes that all its claims are ready to be granted. It is clear that extra efforts from the State are required to effectively protect the inhabitants of Bonaire against the serious consequences of climate change on Bonaire. Further adaptation measures (and mitigation measures) are crucial for this.

The inhabitants of Bonaire are entitled to be able to continue living safely and healthily in their familiar place and to maintain their valuable culture—just like any Dutch person. As they themselves said:

Nos no ta pidi karidat. Nos ta eksigí hustisia (*We are not asking for charity. We are demanding justice*).

This procedure is being handled on behalf of Greenpeace by Mr. M.R.S. Bacon, Kennedy Van der Laan, Molenwerf 16, 1014 BG Amsterdam (Postbus 58188, 1040 HD Amsterdam), tel. 020-5506 881, email: michael.bacon@kvdl.com