



Access to Justice in the Netherlands

current affairs & case law

Dr. J.G.B. Pikkemaat, Ministry of Infrastructure & Water Management, NL,

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Access to Justice: parties, interest, review

- Public law: interested parties, NGOs included, may use administrative procedure in administrative courts/appeal to Council of State
- Civil law: recourse to liability law to uphold environmental rights/stop/prevent environmental harm through claims for damages, financially or otherwise
- NGOs basically operating through 'class actions': art. 3:305a Civil Code, representation of common interests acting on behalf of (unidentified) individuals/groups of persons -> financial claims excepted
- Urgenda-case & Air Quality – cases



Case Law

- Public/NGOs seeking relief in civil courts for environmental claims:
- Civil Judge has to decide on admissibility of the claim: - if effective remedy can be obtained through administrative procedure, no civil procedure; if sufficient interest is lacking, no civil claim either
- Urgenda vs the State of Netherlands: Hague District Court 24 June 2015:
 - Claim admissible: breach of duty of care if Carbondioxide-emissions are not reduced to 25 % in 2020 compared to the 1990 emission-level
 - Court of Appeal 9. October 2018 upholds decision, on new grounds: violation of art. 2 & 8 European Convention of Human Rights
 - State appealed to the Supreme Court of the Netherlands (2019?)



Case Law

2016:

Four locally based Foundations claiming State civil liability for air pollution in their respective cities: State is not living up to its own regulations

Hague District Court, 12. October 2016:

- Claims not admitted: effective remedy under administrative law
- Interested parties (NGOs) can ask local authorities for decisions maintaining air quality regulations; decisions can be submitted to administrative courts, including any (implementation) regulations relating to the interests parties ask to protect
- Foundations followed administrative procedure: appeal to the Council of State; at the same time in civil procedure appeal the Court of Appeal; pending, by mutual agreement of the parties.



- 2017: NGOs for protecting Air Quality & individuals vs the Netherlands
 - State liable for not meeting EU-levels for emissions of Nitrogen dioxide and PM 10 or particulate matter?
 - Hague District Court ruling, 27th Dec. 2017:
 - NGOs only admissible if parties represented have sufficient interest
 - and if no effective remedy in administrative law exists
 - > any rights/remedies claimed in civil court can be obtained through administrative procedure; claims not-admissible
 - State can not be held liable anyway: WHO-guidelines not legally binding. No liability for minimally exceeding EU-emission levels; damage suffered by plaintiffs/NGOs representing them has not been established.
 - NGOs appealed; decision Court of Appeal presumably May 2019