



Promoting the Role of Climate Law in the Netherlands:

new perspectives on actionable interests

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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 > against administrative decisions only
- Civil law: to uphold environmental rights/stop/prevent environmental harm > claims for damages, financially or otherwise. Claims may be based on breach of constitutional/ (international) human rights
- NGOs basically operating through 'class actions': art. 3:305a Civil Code, representation of common interests acting on behalf of (unidentified) individuals/groups of persons -> from 1. January 2020 financial claims included



Case Law

- Public/NGOs seeking relief in civil courts for environmental claims:
- Civil Judge: claim admissable? - if effective remedy can be obtained through administrative procedure, no civil procedure; if sufficient interest is lacking, civil claim not admissable either.
- In civilibus: lack of administrative remedy may establish sufficient interest, if contested regulations protects interests of claimant
- Air Quality/Urgenda/Shell (and more to come?)
- **Urgenda-case**: against State NI, Civil 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 Supreme Court NI: decision confirmed, common ground-approach



Case Law

- Environmental Defence Association vs **Royal Dutch Shell**, The Hague District Court 26. May 2021 ECLI:NL:RBDH:2021:5337.
 - Civil (tort) claim, breach of duty of care based upon international law, human rights and 'soft law'.
- **Air Quality-cases**: - 2017: Civil claims not admitted, effective remedy available under administrative law > Interested parties (NGOs) may provoke administrative acts on air quality regulations, then to be submitted to administrative courts; adm. claims dismissed
- 2019: NGOs protecting Air Quality/individuals: State liable for not meeting EU-emissionlevels? Hague District Court: civil remedies can be obtained through administrative procedure; claims not-admissible. State not liable anyway: WHO-guidelines not legally binding & no liability for minimal exceedance EU-emission levels.
 - Appeal dismissed, Hague Court of Appeal 7. May 2019 ECLI:NL:GHDHA:2019:915.



Sufficient Judicial Review under Aarhus?

- General Administrative law-Act (Algemene wet bestuursrecht), i.a. art. 3:10, 6:13 & 8:1
 - Administrative claims limited to interested parties/ public concerned, although:
 - Preparatory/participation proceedings open to any party/public
- Administrative acts preceded by participation proceedings? - >
 - Claims limited to interested parties
 - participating in preparatory proces



- **'Pigs in Distress'-case**, Adm. Court 21. Dec. 2018, Preliminary Q:
 - Participation in preparatory phase prerequisite for claiming compatible with art. 6 & 9 of the Convention?
- ECJ, 14. January 2021: (i) any participant (interested/not-interested) in preparatory proceedings must also have access to enforcement in court (ii) for interested parties participation is not a prerequisite
- Council of State, Adm.Division: generous application of ECJ-ruling
 - court access for non-interested parties: no 'new' grounds
 - NB: non-interested parties still confronted with relativity (art. 8:69)
- Government: amendment of GAL-Act, for 'Aarhus(related)-cases'; *actio popularis* revisited? Relativityprinciple still in place.