

# Climate litigation - the Urgenda cases in The Netherlands

Stibbe



mr. dr. V.M.Y. van 't Lam

# Introduction

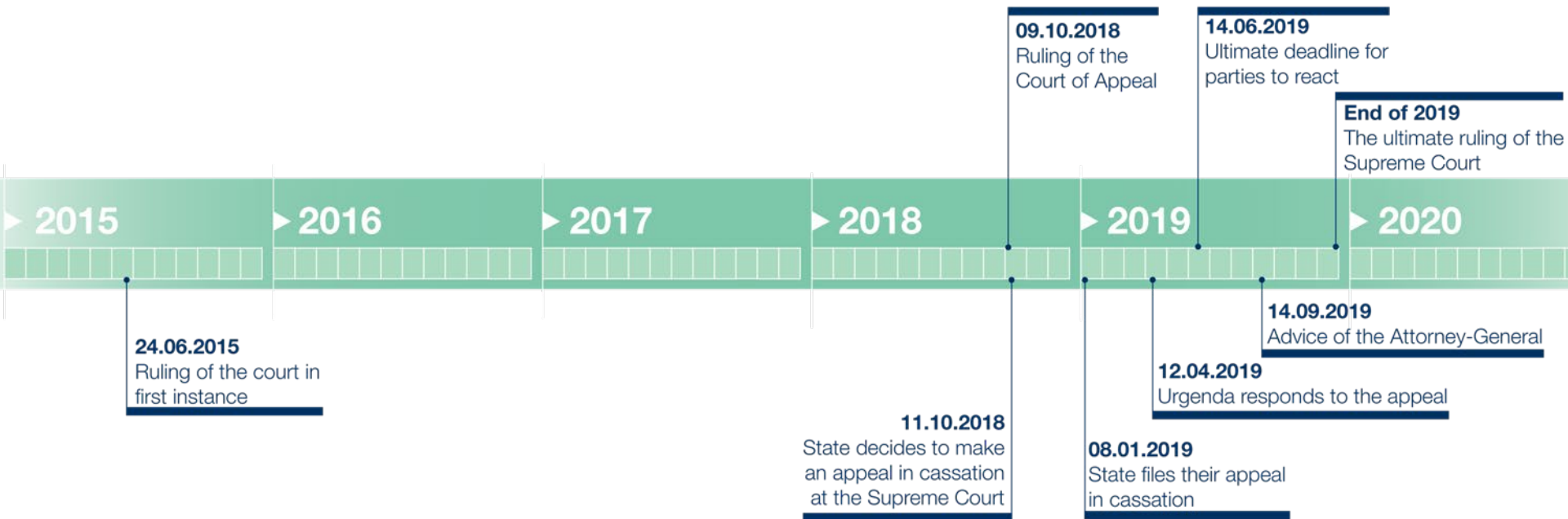
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1. The *Urgenda* cases: a timeline
2. Case and ruling in first instance (2015)
3. Case and ruling at Court of Appeal (2018)
4. Points of discussion due to *Urgenda* ruling
5. Appeal in cassation at the Supreme Court
6. The advice of the Attorney-General
7. Discussion

## The *Urgenda* cases: a timeline

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1. **24 June 2015:** Ruling of the court in first instance
2. **9 October 2018:** Ruling of the Court of Appeal
3. **11 October 2018:** State decides to make an appeal in cassation at the Supreme Court
4. **8 January 2019:** State files their appeal in cassation
5. **12 April 2019:** Urgenda responds to the appeal
6. **14 June 2019:** Ultimate deadline for parties to react
7. **14 September 2019:** Advice of the Attorney-General
8. **End of 2019:** The ultimate ruling of the Supreme Court



# Case and ruling in first instance (2015)

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## Ruling in first instance by the trial Court

- Duty of care according to general and civil law
- Consequential effect of the ruling (*reflexwerking*)
- Ruling in short: *the court orders the State to reduce the Dutch emissions of greenhouse gasses by the end of 2020 to such an extent that this volume will be reduced by at least 25% compared to the level in 1990. (r.o. 5.1)*

# Case and ruling at Court of Appeal (2018)

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## Ruling by Court of Appeal

- Duty of care and consequential effect make way for...
  - The protection of the rights as meant in:
    - Article 2 (right to life) ECHR and
    - Article 8 (personal life) ECHR
- Ruling: *Same ruling as in first instance but based on different grounds (r.o. 76)*

# Points of discussion due to Urgenda ruling

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The debate in essence: three main legal questions

- *Which legal norm binds the State concerning the reduction of emissions of greenhouse gases?*
- *Are the measures that the State would have to take in order to comply with the 25% norm proportional and fairly balanced between the interests of preventing the ("real and imminent") danger of climate change and other interests?*
- *Are the Courts authorized to order the State to comply with the 25% norm, in the light of the doctrine of the separation of powers?*

# Appeal in cassation at the Supreme Court

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## Status quo

- Arguments of the State vs arguments of Urgenda
- Advice of the Attorney-Generals scheduled for September 2019
  - Received on 14 september 2019
- Ultimate advice of the Supreme Court to be expected around the end of 2019...
- Progress is being made by the Dutch State, pending the Supreme Court ruling



# The advice of the Attorney-Generals

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On Friday 14 September 2019 the Attorney-Generals (A-G's) Langemeijer and Wissink published their advice to the Supreme Court.

## *Conclusion of the advice*

The A-G's conclude to confirm the decision made by the Court of Appeal. This means that the Supreme Court is advised to leave the reduction order intact.

# The advice of the Attorney-Generals

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## Summary

- The Court of Appeal could base the (breach of) the duty of care on articles 2 and 8 ECHR;
- The States argument concerning the lack of impact of the Dutch reduction does not suffice;
- The 25% reduction is an absolute minimum that the State must comply with, regardless of the '*margin of appreciation*'; and,
- The A-G's consider that the reduction order issued does not constitute an inadmissible legislative order.

# The advice of the Attorney-Generals

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## Alternatives

*If the Supreme Court were to reach a different conclusion than the A-Gs, the latter would wish to point out a number of matters to take into account.*

1. Referral to a different Court of Appeal
2. 'Advisory opinion' at the ECtHR
  - Practical arguments plead against this option
3. Civil tort instead of articles 2 and 8 ECHR
4. Settle the case with less far-reaching claims

# Other current developments in the Netherlands regarding Climate

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- Environmental law ('Omgevingswet'): regulates the environment. Contains rules for governments, companies and individual persons.
- Climate Act: currently only symbolic. No binding goals
- Climate Agreement: difficult to reach agreement. Do they end up in legislation or in agreements?
- Government: sometimes requesting too much?

# Discussion

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1. Incorporation of the Urgenda ruling in (goals and objectives) of the new Climate Law – Climate Act?
2. Bright future for Climate Law cases in civil court? (potential precedent opportunities?)
3. Urgenda also a precedent for future rulings? Not necessarily...

# Discussion

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Links to English translations:

1. Ruling by Court of Appeal (9 October 2018): [ECLI:NL:GHDHA:2018:2610](#)

2. Press release on the Urgenda Advice by the Attorney-Generals of the Dutch judiciary: [Link](#)

3. Advisory opinion (13 September 2019) [ECLI:NL:PHR:2019:1026](#)



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