

KEY INTERNATIONAL TAKEAWAYS FROM SHELL DUTCH COURT OF APPEAL DECISION MILIEUDEFENSIE V SHELL

In 2021, the Hague District Court ruled that, by 2030, Shell had to reduce its emissions by 45% relative to 2019 levels. The decision attracted significant commentary in both the legal and mainstream international media. Last month, Shell won its appeal and its reduction obligation was set aside. But how relevant is the case beyond Dutch borders, particularly now that the appeal has been upheld? In this update, we consider a number of key takeaways for international organisations in industries associated with high carbon emissions.

The 2021 decision

The original ruling for Shell to reduce its emissions was based on an "unwritten" standard of care under the Dutch Civil Code. In finding that Shell had a duty of care to cut its emissions, the court also had regard to human rights law as well as 'soft law' instruments including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines on Responsible Business Conduct.

Despite stemming from a Dutch law duty, the court's ruling would have affected Shell globally. The reduction obligation applied to the group's entire energy portfolio, including 'scope 3' emissions (being the indirect emissions occurring within Shell's value chain, which comprise approximately 95% of its net carbon emissions).

The ruling attracted global interest. It was considered likely to have broad implications for organisations in the energy industry or other industries with high carbon emissions, particularly where such companies had entities in the Netherlands contributing to shaping corporate strategy and policy. When Shell announced that it would challenge the court's decision, the outcome of the appeal was awaited with acute international anticipation.

Appeal verdict

On 12 November 2024, the Hague Court of Appeal quashed Shell's reduction obligation and ordered the claimants (a collection of climate activists including Milieudefensie (the Dutch branch of Friends of the Earth), other NGOs and private individuals) to pay Shell's legal costs. Fundamentally, the court said that there was insufficient scientific consensus on how global emission reduction goals should be translated to set targets for individual corporate actors. The ruling was widely reported as a setback for climate litigation against high carbon emitting corporate actors. However, the court made a number of findings that are significant for companies associated with climate change and may be indicative for future global litigation:

- The court upheld that Shell and other corporate actors have a duty of care under Dutch law (including as a matter of human rights law) to counter "dangerous" climate change by reducing their carbon emissions, although it could not impose a specific percentage reduction obligation of 45% (or any other percentage) on Shell. Furthermore, it concluded that major fossil fuel producers like Shell have a "*special responsibility*" and "*major obligations*" to limit CO₂ emissions, even if these obligations are not explicitly laid down in (public law) regulations of the countries in which they operate.

- The court also addressed Shell's planned investments in new oil and gas fields. It stated that the emissions reductions required to keep the climate goals of the Paris Agreement within reach will require not only taking measures to reduce demand for fossil fuels, but also limiting the supply of fossil fuels. The court concluded that oil and gas companies are expected to take into account the negative consequences of a further expansion of the supply of fossil fuels for the energy transition when investing in the production of fossil fuels, and that: "*Shell's planned investments in new oil and gas fields may be at odds with this.*" This may leave the door open to future litigation on the issue of whether new fossil fuel investments are consistent with companies' duties to help mitigate climate change.
- Despite its victory, the court rejected many of Shell's key arguments and gave important guidance on the accountability of multinational organisations for their climate change contributions, such that the scope for future litigation remains broad.

Key takeaways for international organisations associated with climate change

The litigation risks for international companies which are associated with climate change and have a nexus to the Netherlands remain particularly substantial, but there is significant and general global momentum behind climate litigation and all relevant organisations should be aware of risk and learnings. The importance of carefully reviewing business strategy and internal policies through the climate lens to ensure compliance with corporate duties and navigate risk is greater than ever.

- *CO2 reduction obligations are confirmed...* organisations like Shell have a duty of care under Dutch law (also taking into account human rights law) to reduce carbon emissions, and so should ensure that appropriate emission reduction plans be put in place.
- *... but by how much?* The court's inability to apply a figure to the reduction obligation will create uncertainty for companies trying to implement carbon reduction plans. For now, companies are free to choose their own approach to reducing their

emissions, provided that they align with the climate targets of the Paris Agreement.

- *Other mandatory regulations still apply:* the decisions of the Dutch courts do not impact the obligations of organisations under incoming EU regulation (including the Corporate Sustainability Reporting Directive and Corporate Sustainability Due Diligence Directive). These are also not exhaustive. The Court of Appeal concluded that obligations under existing legislation: "*do not preclude a duty of care based on the social standard of care on the part of individual companies to reduce their CO2 emissions.*"
- *Review of potential new investments in oil and gas:* a new red line may emerge around new oil and gas investments if a court eventually rules that they are incompatible with achieving climate goals. In the interim, the Court of Appeal has made clear that "*oil and gas companies are expected to take into account the negative consequences for the energy transition when investing in new oil and gas fields.*" Organisations like Shell should review prospective new investments in fossil fuel-related assets to consider their potential negative effects and document their consideration carefully. This issue may become particularly pertinent in light of the new Milieudefensie claim against ING Bank in the Netherlands filed in February 2024, in which it is demanding that ING lower its carbon footprint resulting from "*financing policies and services*", including its investments in oil and gas. Furthermore, challenges from activist groups and other third parties to investments in and the expansion of fossil-fuel related infrastructure is a litigation trend beyond the Netherlands (see, for example, the recent *Finch* case in England¹).
- *Consider appointing a specialist officer or team, internally and externally:* with legislative developments, a proliferation in litigation and evolving customer expectations to keep track of, it is vital that organisations equip themselves with the right people and advisers to stay abreast of developments and deal pro-actively with relevant responsibilities. Organisations need to understand the legal and litigation landscape across the jurisdictions in which they operate and invest to best inform their business strategy and help mitigate climate-related litigation risk.

1 *R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2024] UKSC 20.*

- *Remember, this may not yet be over:* Milieudefensie may seek to appeal the judgment to the Dutch Supreme Court (the court that decided the landmark *Urgenda*² case), and so this may not be the conclusion of the case. Milieudefensie has until 12 February 2025 to file an appeal.
- *And whatever the final outcome, the pace of climate litigation seems unlikely to abate:* even if it ends with this appeal decision, the *Milieudefensie v Shell* case is unlikely to stop future climate litigation. It is one, albeit significant, case among many. As we have discussed in previous updates (see our European Disputes Blog article on '[New movements in climate change litigation](#)'), the number and significance of claims relating to climate change is on the rise around the world and this trend shows no signs of slowing.

An English translation of the Court of Appeal decision can be found [here](#).

For More Information

For more information on the topics in this briefing and / or to be notified of future Weil ESG publications, please contact any of the authors below.



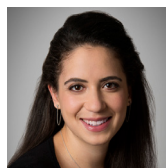
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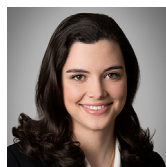
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² *Urgenda Foundation v. the Netherlands*, Judgment of 20 December 2019, No. 19/00135, ECLI:NL:HR:2019:2006.

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