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elni REVIEW

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Editorial

2020 – it was a year of transformations. At its beginning, before the Corona Pandemic hit hard in March, the editors of *elni Review* decided to further develop the journal into an electronic resource. Since then, individual articles have been shared with elni members and subscribers to the *Review* on a rolling basis. These are now compiled in the Review issue at hand.

In parallel, the online archive of elni articles released since 2005 received a comprehensive update which is expected to be completed in 2021.

Another 2020 transformation regards the 'elni FORUM' conference series which, as is considered good form by now, took place online on a whole cycle of events under the umbrella topic 'Green Deal – A way forward for EU environmental legislation?'. 2021 will see a new cycle of elni events. Details will be shared soon.

The Recent Developments section features a report of the 2020 elni event on 'Product policies for a Circular Economy'. Further details on this and the other two fora (including recordings, slides) can be found online.

The articles section of the *Review* comprises four highly topical pieces. *Ludwig Krämer* examines the legality of gene drive releases – that are an emerging issue since the discovery of the CRISPR/Cas9 method in 2012 – within the EU and describes the efforts to find some international consensus on gene drive releases.

Nicolas de Sadeleer addresses the Dutch Hoge Raad judgment of 20 December 2019 in the Urgenda case, which triggered broad international response. He finds 'An over-cautions policy for reducing GHG emissions breaches Articles 2 and 8 of the European Convention on Human Rights'.

At the interface of science and policy, *Marlene Ågerstrand* in her contribution 'Better reporting of science to improve regulatory decision-making' explains recommendations by The Society of Environmental Toxicology and Chemistry (SETAC) for reporting ecotoxicity studies to facilitate the use of these studies in research as well as regulatory assessments.

Finally, as trees and forests in Europe are entering centre stage in public opinion and the European Green Deal creates political impetus, *Marco Onida* is taking stock as regards 'Forest and forestry policy between the EU and its Member States'.

We hope you enjoy reading.

Julian Schenten / Gerhard Roller
December 2020

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The Hoge Raad judgment of 20 December 2019 in the *Urgenda* case: an overcautious policy for reducing GHG emissions breaches Articles 2 and 8 of the European Convention on Human Rights

Nicolas de Sadeleer

1 Introduction

The judgment of the Hoge Raad (hereafter HR) given on 20 December 2019 in the Urgenda case upheld the Court of Appeal judgment of 9 October 2018 ruling on a collective interest action brought by the Urgenda Foundation on behalf of 886 Dutch citizens objecting to the inadequacy of measures to reduce greenhouse gas (GHG) emissions in the Netherlands. The HR largely endorsed the particularly detailed advisory opinions delivered on 13 September 2019 by Procurator General F.F. Langemeijer and Advocate General M.H. Wissink. The HR judgment is of particular interest in view of the personal, temporal and substantive scope of Articles 2 and 8 of the European Convention on Human Rights (hereafter ECHR).

In recent years there has been an increasing debate on the link between climate change and positive obligations of a preventive nature that are incumbent upon States under human rights law. In the landmark *Urgenda* case, the HR held that, given the severity of the impact of climate change, the Dutch State is subject to a duty of care in accordance with Articles 2 (right to life) and 8 (right to privacy and family life) ECHR, which have direct effect, and is required to adopt mitigating measures.

Where the risk is 'real and immediate', which is the case for the Netherlands, the State is under a positive duty to take preventive action. The preventive nature of the positive obligations does not require any acute or immediate danger. Even though there is scientific uncertainty concerning the exact nature of the risks that any rise in sea level may have on the human population in the Netherlands over an extended period of time, the Dutch authorities are not relieved of their positive obligations to prevent such a risk from being realized. Accordingly, human rights law requires the State to mitigate (prevention) rather than to promote adaptation (harm reduction).[1]

In determining the scope of Articles 2 and 8, consideration must be given to the nature of the damage involved. With respect to untargeted risks, the concept of 'victim' and the 'demonstrable' nature of the damage or risk of damage must be interpreted more broadly than is required for industrial or technological risks. It follows that both ECHR provisions offer general protection to society against the risks associated with climate change.[2]

These measures must involve a 25% reduction of GHG emissions by the end of 2020, instead of the government's projected reduction of 20%. This target is deemed to be necessary so as to limit the concentration of GHG in the atmosphere to 450 ppm in order to prevent the dangerous climate change that would be associated with any temperature rise in excess of 2°C.

Because the 25% reduction of GHG emissions in 2020 ordered by the Dutch courts is deemed to be the minimum target in order to avoid significant damage from rising sea-levels, the Dutch State has no margin of appreciation to postpone compliance with that target. Indeed, were the reduction to be put off any longer, additional efforts would be insufficient to exclude the risk of exceeding the 2°C temperature increase threshold.[3] Moreover, the scope for discretion left to the authorities as to the nature of the measures to be taken in order to achieve a reduction target of 25% does not prevent Articles 2 and 8 from having direct effect, and does not preclude judicial review of the exercise of that margin of appreciation.[4]

As a result, where the authorities are aware of a real and imminent threat, they must be required to take preventive action in accordance with their obligations under international and EU law.[5]

2 Scope of Articles 2 and 8 ECHR

There is no mention of the Paris Agreement obligations on the ground that the Hoge Raad, as a Court of cassation, had to review the approach taken by the Court of Appeal in The Hague in its judgment of 9 October 2018, which was based on Articles 2 and 8 of the ECHR. Although this interpretation may appear bold, it is in fact in line with the case law of the European Court of Human Rights (hereafter ECtHR).

For around twenty years, environmental concerns have been progressively incorporated into the interpretation of first-generation human rights, including in particular the right to life (Article 2) and the right to respect for private and family life (Article 8) guaranteed under the

1 Case C-19/0035, Urgenda [2019] HR: 2019: 2006, para. 7.5.2; Procurator general's Opinion, para. 3.14.

2 Procurator general's Opinion, para. 3.11.

3 Procurator general's Opinion, para. 3.24.

4 Ibid, para. 2.69.

5 The Hague Court of Appeal, 9 October 2018, Netherlands v Urgenda, para. 43.

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ECHR. Thanks to a constructive and dynamic interpretation of the Convention, the ECtHR has been able, by extension, to guarantee a minimum level of environmental protection.

With respect to the substantive aspect of Article 2 of the ECHR, few judgments have ruled on the extent of this obligation.[6] That being said, the ECtHR laid down in *Öneryildiz v. Turkey* the key principles relating to the prevention of infringements of the right to life as a result of dangerous activities.[7]

89. The positive obligation to take all appropriate steps to safeguard life for the purposes of Article 2 (...) entails above all a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life (...).

90. This obligation indisputably applies in the particular context of dangerous activities, where, in addition, special emphasis must be placed on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and supervision of the activity and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by the inherent risks.

Accordingly, when the inappropriate management of a landfill causes the death of local residents, the inadequate nature of the regulatory framework is liable to result in the violation of Article 2. The positive obligation to take all necessary measures to protect life therefore means that a preventive policy must be implemented.

Four years later, in *Boudaïeva* the Court concluded that there was no justification for the Russian authorities' omissions in implementing the land-planning and emergency relief policies in a hazardous area. Moreover, it found that there was a causal link between the serious administrative flaws that impeded their implementation and the death and injuries sustained by different residents.[8]

The ECtHR case law on the scope of Article 8 regarding polluting activities is much more developed.[9] Whether the pollution is caused directly by the state or whether responsibility for it is the result of an absence of adequate regulation of private industry,[10] the protection of the right to respect for their private life and home has given rise in recent years to a particularly rich case law on environmental matters, even though this provision does not make any claim to protect the environment.[11] According to the ECtHR case law, both the private life sphere and the protection of the residence are likely to be affected by environmental impairments. The ECtHR accepts, due to the particularly broad spectrum of the ecological problems, that they are not only material or corporeal. They may also be non-material or incorporeal. Accordingly, noise pollution,[12] atmospheric emissions,[13] smells,[14] radiation[15] and concerns about the increase in allegedly harmful emissions amount to the same extent to interferences in the residence or private life of the applicants.[16] The Cordella and Others v. Italy judgment of 24 January 2019 is an extension of this case law. The Court stresses the inertia of the local authorities regarding the environmental impacts of a steel mill in the Italian city of Taranto.[17] The Court concluded that Article 8 ECHR was breached on the grounds that numerous scientific reports had established the existence of a causal link between Ilva's industrial emissions and the drastic sanitary records of people living in the "high environmental risk" municipalities.[18] In particular, this judgment confirms that the State's margin of appreciation, which is in principle wide in the field of environmental policy, will be restricted when an environmental problem with potential health impacts has been known for a long time.

However, the applicants have to overcome a number of stumbling blocks. Firstly, there must be a "direct and sufficient link" between the impugned situation and the applicant's home or private or family life. Whether it comes in the form of exposure to a polluting substance or to noise pollution, the interference must directly affect their home, or their private or family life.[19] Secondly, Article 8 applies in the event that the

6 Case Guerra v. Italy, 19 December 1998, para. 62; Case Taskin, 10 November 2004, para. 140; Case Luginbühl v. Switzerland, 17 January 2006; Case Ockan v. Turkey, 28 March 2006, para. 57; Case Tatar v. Romania, 27 January 2009, para. 72.

7 Case Oneryildiz v. Turkey, 30 November 2004, no. 48939/99, para. 90.

8 Case Boudaïeva v Russia, 20 March 2008, nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, para. 158.

9 N. de Sadeleer, 'Enforcing EUCHR Principles and Fundamental Rights in Environmental Cases', 81 (2012) Nordic Journal of International Law 39–74 ; Ibid., EU Environmental Law and the Internal Market (Oxford, Oxford University Press, 2014) 112-122.

10 Inasmuch as the environmental damage may be authorised directly by the granting of an administrative authorisation or indirectly due to the absence of adequate measure, Article 8 may also be applied to pollutions emitted by individuals or private undertakings. As a result, the violation of Article 8(1) may arise from a failure to regulate private undertakings. See notably Case Ruano Morcuende v. Spain, 6 September 2005; Case Fadeyeva v. Russia, 9 June 2005, para. 89; Case Moreno Gómez v. Spain, 16 November 2004, para. 57; Case Tatar v. Romania, 27 January 2009, para. 87; and Case Dées v. Hungary, 9 November 2010, para. 23.

11 Case Fadeyeva v. Russia, 9 June 2005, para. 68.

12 The Court and the former Commission have had to deal with a swathe of cases concerning noise nuisance. A summary of those may be found in paras. 92 and 93 of Case Mileva v. Bulgaria, 25 November 2010. See in particular Case Moreno Gómez v. Spain, 16 November 2004.

13 Case Fadeyeva v. Russia, 9 June 2005.

14 Case Lopez Ostra v. Spain, 9 December 1994, para. 58.

15 Case Ruano Morcuende v. Spain, 17 January 2006.

16 Case Guerra and others v. Italy, 19 February 1998, para. 57.

17 Case Cordella et al v. Italy, 24 January 2019, n°54414/13 and n°54264/15.

18 Ibid., paras. 164-166.

19 Case Fadeyeva v. Russia, 9 June 2005, para. 68.

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interference exceeds 'a minimum level of severity'.[20] Since it is a relative concept, the evaluation of this 'minimum level of severity' will depend on all the circumstances of the case, such as the periodicity, the intensity, the repetition, the duration, the ability of authorities to enforce environmental law, the location of the pollution and the level of existing environmental degradation.[21] Thirdly, the ECtHR requires that the applicants produce 'reasonable and convincing evidence of the likelihood that a violation affecting him personally would occur; mere suspicion or conjecture is insufficient in this regard.'[22] Applicants must overcome major hurdles in order to prove their allegations 'beyond reasonable doubt', in particular where there is no scientific assessment of the impact of the interference on their health[23] or where the assessment is biased.

Until the The Hague Court of Appeal (judgment of 9 October 2018[24]) held that Articles 2 and 8 ECHR had been violated due to an overly cautious policy to combat global warming, the application of fundamental rights to this problem was still a disputed matter. The debate is now underway as climate risks may be distinguished from industrial and technological risks both due to their temporal unpredictability as well as the collective nature of the harm they are liable to cause. Specifically, the potential victims are by definition less easy to identify than residents living in the vicinity of a classified installation. However, with only a few exceptions (*di Sarno v. Italy*), the disputes ruled on to date by the ECtHR have generally concerned risks for which the victims had been able to establish a causal link between the activity in question and the violation of their rights.

The HR recalled first of all that the State is subject to positive obligations under Articles 2 and 8 (paras. 5.2.2 and 5.2.3). The court then went on to reject the narrow interpretation of these provisions proposed by the claimant.

Ratione personae, the protection guaranteed under these two provisions is granted to the "society or population as a whole" that is threatened by an "environmental risk", and not exclusively to individual natural persons (paras. 5.3.1 and 5.6.2).

Ratione temporis, whilst the "danger" that must be averted must be "tangible and direct", its "immediacy" does not however imply that the damage suspected must arise immediately (para. 5.2.3), which would be impossible to demonstrate in relation to climate risks.

Ratione materiae, in accordance with the precautionary principle[25] which the HR inferred from Articles 2 and 8 ECHR, "preventive measures" that must be adopted in order to combat the climate emergency are required, even if there are doubts as to its specific manifestation (para. 5.3.2). According to the precautionary principle, "the existence of a tangible possibility that such a risk may manifest itself" results in a requirement to take appropriate action (para. 5.6.2). It is clear that, since the case involved an application for an order of specific performance rather than a liability action, a more flexible approach was followed as regards the causal link between the inaction on the part of the State and the violation of the rights concerned.

This reasoning seems to be in line with the ECtHR case law. Where the risk is "serious and substantial", i.e. not purely hypothetical, neither the distance in time between the suspected impacts nor the absence of absolute scientific certainty as to the occurrence of the risk can discharge States from adopting all preventive measures to ward it off.[26]

If the risk is established as being "tangible and immediate", the State is thus required to adopt preventive measures, without prejudice to its margin of appreciation (para. 5.3.2). The HR went on to add that the State "policy" must not only be "coherent" and "timely", but must also take all action required in relation to the matter according to a "due diligence" approach (para. 5.3.3). The decision as to whether these measures are "reasonable and adequate" must be subject to judicial review. It follows that the State must bear the burden of proving that it has complied with these requirements (see further *Jugheli v. Georgia*; advisory opinion of the Procurator General and the Advocate General, para. 4.181). Finally, the obligation at issue pertains to the means and not to the result (para. 5.3.4; para. 2.53 of the advisory opinion of the Procurator General and the Advocate General).

As regards the tangible nature of the risk, the HR stressed the vulnerability of certain "communities" residing in the Netherlands to sea level rises (para. 3.12). Nevertheless, the State could not require that The Hague Court of Appeal should identify with precision the communities the fundamental rights of which were liable to be violated, as this would be tantamount to requiring this court to furnish a *probatio diabolica* (para. 5.6.2). Large swathes of the population of the Netherlands may be exposed to such a risk (para. 5.6.2).

[20] Ibid., paras. 69-70; Case Giacomelli v. Italy, 2 November 2006, para. 76; Case Mileva v. Bulgaria, 25 November 2010, para. 90; Case Grimkovskaya v Ukraine, 2 July 2011, para. 58; Case Maile and Hardy, para. 187. See also Downs v. Secretary of State for Environment, Food, and Rural Affairs [2009] 3 CMLR 46.

[21] Case Fadeyeva v. Russia, 9 June 2005, para. 69.

[22] Case Asselbourg and 78 Others and Greenpeace Luxemburg v. Luxemburg, 29 June 1999, para. 1; Case Bernard and 47 others physical persons as well as Greenpeace Luxemburg v. Luxemburg, 29 June 1999, para. 1.

[23] Case Grimkovskaya v. Ukraine, 21 July 2011, para. 60.

[24] ECLI:NL:GHDHA:2018:2591.

[25] N. de Sadeleer, Environmental Principles: from Political Slogans to Legal Rules, 2nd ed. (Oxford, Oxford University Press, 2020) 135-369.

[26] O. De Schutter, 'Changements climatiques et droits humains: l'affaire Urgenda' (2020) Rev. Tr. Dr. H. 15.

The HR also stressed that the Court of Appeal had noted an "accumulation of specific risks" and not a global risk threatening the entire human race.

According to the case law of the ECtHR, and specifically the principle of effectiveness, Articles 2 and 8 ECHR cannot be interpreted in isolation. Pursuant to Article 31(3)(c) of the Vienna Convention on the Law of Treaties (the HR referred to the judgment in *Nada v. Switzerland*, para. 5.4.2), these provisions must be interpreted in the light of an understanding of the scientific facts (*"wetenschappelijke inzichten"*) and general standards (*"algemeen aanvaard standaarden"*) (para. 5.6.2). This openness of the ECHR towards science explains why the HR followed the reasoning of the District Court of The Hague (judgment of 24 June 2015) and The Hague Court of Appeal, insisting repeatedly on the "scientific consensus" regarding the severity of the phenomenon, a consensus which has progressively consolidated over the last two decades within various international circles. For instance, the IPCC AR4 report from 2007 subsequently played a decisive role in establishing the substance of the requirement of due diligence.

According to Article 13 ECHR, States are required to put in place appropriate "means" in order "to prevent effectively the most severe harm" (para. 5.4.3). Thus, effective judicial relief must be guaranteed (para. 5.5.1, para. 5.5.2 and para. 5.5.3).

The Dutch Government also objected to the reasoning of the Court of Appeal that the Netherlands should adopt more stringent measures to reduce GHG emissions because it is a global phenomenon (para. 5.6.3). The HR drew on a number of sources of international law in support of its conclusion that the global nature of the phenomenon does not preclude individual responsibility on the part of the State (para. 5.7.7). The HR thus referred to treaty law (United Nations Framework Convention on Climate Change (UNFCCC)), customary law (THE no harm principle that codifies customary international law, see *Legality of the Threat or Use of Nuclear Weapons*, ICJ Rep 2 [1996], AO) and soft-law (draft articles of the International Law Commission on state responsibility) (see paras. 5.7.2 to 5.7.7). Moreover, the possibility of judicial review is by no means called into question by the principle of the separation of powers (para. 6.3). It follows that the faint-hearted nature of the Dutch measures to combat climate change could be objected to with reference to Articles 2 and 8 ECHR on the grounds that the State "had failed to exercise due diligence by pursuing a policy that was suitable and coherent" (para. 6.5).

Since Article 53 ECHR requires a minimum level of protection, there is nothing to prevent the national courts from granting additional protection to victims (see para. 2.40 of the advisory opinion of the Procurator General and the Advocate General).

3 The objective of cutting GHG emissions from 25% to 40%

Whilst the objective of cutting GHG emissions by 80-95% by 2030 (compared to 1990 levels) did not appear controversial, the parties disagreed concerning the efforts that had to be made in order to achieve the intermediate objective for the end of 2020. Whereas the Urgenda Foundation called for a 25% reduction of global GHG emissions, the Dutch State on the other hand considered that both international and EU law allowed it to abide by its 2011 objective of a 20% cut. It will be recalled that the Court of Appeal had found against the Dutch State owing to its failure to achieve the scenario recommended by the IPCC in its 2007 report (AR4), according to which the industrialised states mentioned in Annex I to the UNFCCC are required to reduce their GHG emissions by 2020 by between 25% and 40% compared to emissions recorded in 1990. The aim of such a scenario is to avoid reaching a threshold of 450 ppm CO2, which would make it possible to limit overall global temperature increases to 2°C above pre-industrial levels. In its appeal to the HR, the Government argued that the distinction between industrialised States included in Annex I and other States had become blurred due to the very rapid industrialisation of a number of developing countries such as China (para. 7.2.5). The HR declined to follow this line of reasoning, invoking a variety of instruments (decisions, recommendations, reports, etc.) adopted both by the United Nations and by the EU. According to these texts, "an international consensus" has been established as regards "the urgent need for a GHG cut of 25-40% by 2020 in order to prevent heating in excess of 2°C" (para. 7.2.11). Moreover, the intermediate objective of -20% instead of -25% adopted by the State authorities is more in line with the Paris Agreement, which seeks to achieve a scenario under which global temperatures increase by 1.5°C rather than 2°C (para. 7.3.2).

The fact that such an obligation is incumbent upon all industrialised countries and not specifically on the Netherlands did not alter the individual responsibility of the Dutch State (para. 7.3.6). The HR also stressed the fact that the Netherlands have to date pursued a particularly lax policy compared to other industrialised countries and that CO2 emissions in this country are particularly high.

In addition, the HR pointed out that the public authorities had committed before 2011 to achieving a cut of 25% by 2020 (para. 7.4.2). Upholding the Court of Appeal judgment, the HR held that the State had not been able to demonstrate how this more relaxed approach (a 20% cut in GHG emissions instead of the 25% reduction initially recommended) was indispensable.

In one of its numerous heads of cassation, the Government had argued that the Hague Court of Appeal

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had interpreted the obligation of due diligence in the light of the 2007 AR4 report of the IPCC on the assumption that it was a binding obligation, even though the IPCC is only a consultative scientific body. This interpretation was also argued to be mistaken (advisory opinion, para. 4.97). This head of cassation was rejected by the HR on the grounds that the interpretation of the obligation of due diligence was based on both factual and legal considerations regarding the responsibility of the Dutch State (advisory opinion, para. 4.205).

The Government also took the view that the goal of a 25% cut was disproportionate, having regard to the costs associated with a more drastic reduction target. Specifically, the imposition of a 20% cut would only enable global temperature increases to be reduced by 0.000045°C by the end of the century (advisory opinion, para. 4.200). However, the HR did not find that the proportionality principle had been violated as it considered that the Dutch State is required to shoulder its international responsibility.

Finally, the discretion over whether to adopt adjustment measures rather than preventive measures did not convince the HR (para. 7.5.2).

4 Order to legislate (*"bevel to wetgeving"*) and declaratory ruling of unlawfulness

The HR recalled that the courts must not become involved in the political decision making process in terms of whether it is appropriate to enact legislation with specifically defined content when issuing an order to legislate. Whilst it is a matter "solely for the legislator concerned to decide, taking account of constitutional rules, whether legislation with a certain content must be adopted", the courts may nevertheless issue a declaratory ruling of unlawfulness (para. 8.2.4).

The HR recalled that the contested judgment of the Court of Appeal did not specify the precise content of the measures to be adopted in order to achieve the intermediate target of a 25% reduction. It is in fact for the State to decide which action must be taken and to assess whether it is essential to enact legislation in order to achieve the reduction targets (para. 8.2.7).

5 Respect for the principle of the separation of powers

The Dutch Government had alleged a violation of the principle of the separation of powers *("het stelsel van machtenscheiding"*) on the grounds that the order issued by the Court of Appeal impinged upon the exercise of legislative and executive powers. The HR held that it falls "to the courts to review whether the Government and Parliament have properly exercised their powers in accordance with the legal framework established for them" (para. 8.3.2). The HR recalled in this regard that "the protection of fundamental rights is an essential element of a democratic State governed by the rule of law" (para. 8.3.3). The HR insisted on the exceptional nature of this case as it involved a "threat of dangerous climate change and it is clear, as was held by the first instance court and the Court of Appeal, and as is recognised by the State itself, that urgent action needs to be taken" (para. 8.3.4).

It will be noted that the Court of Appeal did not order a reduction in excess of the minimum target of 25% recommended by the IPCC in 2007 in order to avoid serious climate disruption (advisory opinion, para. 4.79).

6 Conclusions

This historic judgment opens up new perspectives on the scope of Articles 2 and 8 ECHR, in particular with reference to the precautionary principle. Three conclusions may be drawn from this judgment. Firstly, the State's margin of appreciation will be all the more restricted where climate change policies that have been adopted by the State have been poorly implemented. Secondly, irrespective of the State's contribution to this global phenomenon, it is required to shoulder its responsibilities. These responsibilities are not diluted by the fact that international instruments impose obligations on a group of industrialised States, without however specifying individual contributions. Thirdly, the HR based its decision on developments taking place within other legal systems. It referred to treaty law (UNFCCC), customary law (the no harm principle) and soft-law (draft articles of the ILC on state responsibility) in order to determine the due diligence obligations placed on the Netherlands. Moreover, human rights formulated in relatively vague terms coexist alongside State commitments formulated in more precise terms, even though the respective beneficiaries are not identified.[27] This is testament of the reciprocal influences which enable individual legal systems to be decompartmentalised. This interaction between different legal systems is nothing new. In *Tatar*, the ECtHR drew on long-standing developments within international practice, basing its decision on a variety of EU texts in concluding that the PP applies in relation to the right to privacy.[28] Although Turkey has not ratified the Aarhus Convention, in the *Taşkın* case the ECtHR reinforced its case law on Article 8 of the Convention.[29] The judgment cites principle 10 of the Rio Declaration on Environment and Development, which inspired the Aarhus Convention. This hybrid approach enables the obligations resulting from the ECHR to be interpreted with reference to soft law commitments. In addition, the due diligence required under Articles 2 and 8 must be assessed not only having regard to Human Rights Convention obligations, but also in relation to the scientific consensus.

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27 O De Schutter, 'Changements climatiques et droits humains: l'affaire Urgenda' 1 (2020) RTDH.

28 HR, Urgenda, 19/00135 [2019] ECLI: NL: HR: 2019: 2006, para. 5.7.2 to 5.7.7.

29 Taşkın v Turkey, 10 November 2004, no. 46117/99, paras. 99 and 119.

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I·E·S·A·R
Institute for Environmental Studies and Applied Research
FH Bingen

The University of Applied Sciences in Bingen was founded in 1897. It is a practiceorientated academic institution and runs courses in electrical engineering, computer science for engineering, mechanical engineering, business management for engineering, process engineering, biotechnology, agriculture, international agricultural trade and in environmental engineering.

The *Institute for Environmental Studies and Applied Research* (I.E.S.A.R.) was founded in 2003 as an integrated institution of the University of Applied Sciences of Bingen. I.E.S.A.R carries out applied research projects and advisory services mainly in the areas of environmental law and economy, environmental management and international cooperation for development at the University of Applied Sciences and presents itself as an interdisciplinary institution.

The Institute fulfils its assignments particularly by:
- Undertaking projects in develop-ing countries
- Realization of seminars in the areas of environment and development
- Research for European Institutions
- Advisory service for companies and know-how-transfer

Main areas of research

- **European environmental policy**
  - Research on implementation of European law
  - Effectiveness of legal and economic instruments
  - European governance
- **Environmental advice in developing countries**
  - Advice for legislation and institution development
  - Know-how-transfer
- **Companies and environment**
  - Environmental management
  - Risk management

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sofia

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.
The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.
The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of homo oeconomicus institutionalis, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover
- Product policy/REACh
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conversation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the
- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Na-ture Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

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elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. elni encourages its members to submit articles to the elni Review in order to support and further the exchange and sharing of experiences with other members.

The first issue of the elni Review was published in 2001. It replaced the elni Newsletter, which was released in 1995 for the first time.

The elni Review is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt).

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

elni publishes a series of books entitled "Publications of the Environmental Law Network International". Each volume contains papers by various authors on a particular theme in environmental law and in some cases is based on the proceedings of the annual conference.

elni Website: elni.org

The elni website www.elni.org contains news about the network. The members have the opportunity to submit information on interesting events and recent studies on environmental law issues. An index of articles provides an overview of the elni Review publications. Past issues are downloadable online free of charge.

elni Board of Directors

- Martin Führ - Society for Institutional Analysis (sofia), Darmstadt, Germany;
- Jerzy Jendroska - Centrum Prawa Ekologicznego (CPE), Wroclaw, Poland;
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