

## **Urgenda: how urgently should climate change be put on the agenda of the board?**

On our first digital member forum on the 21<sup>st</sup> of April we will reflect upon the impact of the Urgenda legal case on the accountability of companies. But what/who is Urgenda? Why is a court ruling on climate change against the Dutch government significant for Belgian companies? Which lessons can a board of directors take away from this case? And what will be the impact of the current COVID-19 crisis on the climate debate?

### **Background on the Urgenda Case**

Urgenda is a Dutch foundation, striving for a more sustainable society in which a circular economy is “fuelled” by renewable energy. By connecting companies, government agencies, civil society and individual citizens through innovative solutions, Urgenda aims to speed up the transition to a sustainable society by tackling foremost what they view as “one of the biggest challenges of our time”, namely climate change. For this reason, Urgenda wrote a letter in 2012 to the Dutch Prime Minister Rutte underlining the important and urgent role of the state in transitioning to a carbon-neutral energy supply. As CO<sub>2</sub> emissions in the Netherlands were the highest in the world per capita and it did not seem likely that the initial target on reduction in greenhouse gases would be reached, Urgenda was dissatisfied with the passive attitude of the government. The initial target, as stated in the 2007 IPCC report (United Nations Intergovernmental Panel on Climate Change) and agreed upon at the United Nations Climate Change Conference of Copenhagen 2009 and Cancun 2010, required a reduction of 25-40% by 2020 for developed countries in comparison to 1990 levels to be able to keep global warming under the crucial 2-degree mark. The Dutch state had committed itself to this 25% target but had indicated at the time that even the 20% reduction, the target of the European Union, was too ambitious. Therefore, Urgenda stated in the letter: *“Current Dutch climate policy is unacceptable and exposes current and future inhabitants of the Netherlands to major physical and economic risks.”*

As the Dutch government recognised the need for climate action but did not take enough concrete measures according to the NGO to reach the envisioned targets, Urgenda sued the state in November 2013 together with 896 Dutch citizens. This climate case was unique in Europe as it was the first time citizens went to court to hold the government accountable for the possible dangerous effects of climate change. According to the plaintiffs the Dutch government had the responsibility to take action to protect its citizens from such effects. In June 2015 the court in the Hague ordered the Dutch government to reduce the country’s emission of greenhouse gases to the 25% level. This ruling was unique as it was the first time any court globally had ruled on the human rights ramifications of climate change. Its impact cannot be underestimated as in many countries NGO’s and groups of citizens followed the Urgenda example. In Belgium, for example, the association Klimaatzaak filed a similar claim on the 1<sup>st</sup> of June 2015 demanding from the Belgian governments a communal

effort to reduce the emission of greenhouse gasses with 40% in 2020 and 87,5% in 2050 (compared to 1990 levels). The judgement will take place in autumn 2020.<sup>1</sup>

For Urgenda however, the ruling was only a temporary victory as in September 2015 the government decided to appeal the judgement. As an important side note in March 2015, the European Union (and therefore also the Netherlands) had committed to a reduction of 80% by 2050, which was incorporated in the Paris Agreement in December the same year. When appealing the judgement, the Dutch government agreed on the need for action and accepted the European target of 2050 but contested the idea that it was falling short in the 2020 target of 25-40% as the target for that year was, as mentioned above, only 20% for the European Union as a whole. The Dutch government did expect to reach this European level and to fulfil the Kyoto norms. It also underlined the system of emission trading, that the Netherlands is only one small actor in a global world, and that it is not the state but its citizens and companies that generate greenhouse gases.<sup>2</sup> However on the 20th of December 2019 Urgenda won the longstanding legal “battle”. As a final order, the Supreme Council directed the State to reduce greenhouse gases by the end of 2020 by at least 25% compared to 1990 based on article 2 “Right to Life” and article 8 “Right to respect for private and family life” of the ECHR (European Convention on the Protection of Human Rights and Fundamental Freedoms). This means that the Dutch government is now “in a race against the clock” as only less than 9 months are left.

*“Each country is thus responsible for its own share. That means that a country cannot escape its own share of the responsibility to take measures by arguing that compared to the rest of the world, its own emissions are relatively limited in scope and that a reduction of its own emissions would have very little impact on a global scale. The State is therefore obliged to reduce greenhouse gas emissions from its territory in proportion to its share of the responsibility. This obligation of the State to do 'its part' is based on Articles 2 and 8 ECHR, because there is a grave risk that dangerous climate change will occur that will endanger the lives and welfare of many people in the Netherlands.”<sup>3</sup>*

## The impact of Urgenda on governance

The whole world is watching how the Urgenda story will further unfold. The case has possible not only major implications for other governments but also companies. To which degree can private companies be held accountable for climate change or other sustainability-related issues? Lawsuits against major oil and gas companies (e.g. Exxon, Mobil, BP, Shell...) on their negative climate impact are no exception anymore.

---

<sup>1</sup> KLIMAATZAAK, *Samen eisen we een ambitieus klimaatbeleid*, [https://www.klimaatzaak.eu/nl?gclid=Cj0KCQjw0pfzBRCOARIsANi0g0uDAM7DVXYk8DEvqTyoSUFbkfvvq2HGI\\_aZCFAQYOJTFj\\_sEKhAvQlaAn5FEALw\\_wcB](https://www.klimaatzaak.eu/nl?gclid=Cj0KCQjw0pfzBRCOARIsANi0g0uDAM7DVXYk8DEvqTyoSUFbkfvvq2HGI_aZCFAQYOJTFj_sEKhAvQlaAn5FEALw_wcB) (Consulted on March 2020).

<sup>2</sup> RECHTBANK DEN HAAG, *Conclusie van Antwoord*, p.44 [http://gallery.mailchimp.com/91ffff7bfd16e26db7bee63af/files/Conclusie\\_van\\_antwoord.pdf](http://gallery.mailchimp.com/91ffff7bfd16e26db7bee63af/files/Conclusie_van_antwoord.pdf) (2nd of April 2014)

<sup>3</sup> HOGE RAAD, Uitspraak cassatie, <https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf> (13th of Januari 2020)

However, thus far it has been difficult to prove a clear causal link between the activities of those companies and climate change. In comparison to states, companies are also not “bound by” international agreements as the Paris Agreement, so should they/can they be committed to lowering the level of greenhouse gases? One could argue that companies in sectors that are in general known for their high ecological footprint, such as fossil fuels, could expect such court cases and that this is not relevant for “normal” companies outside these sectors. However, the Urgenda case has opened the legal playing field and broadened the scope of accountability when it comes to climate change.

Societies evolve and what once was considered an exception can soon be considered a standard. Can companies in any sector of activities be held accountable by the public for not protecting the “right to life” or based on other articles from the ECHR? What determines this accountability, where does it start and how far does it reach? Can they only be held accountable when sustainability is included as a purpose in their articles of association? Or is a (pronounced) commitment on the topic in the year report or even a public declaration in any form (even social media) already enough? Does this, for example, imply that the Business Roundtable (an association of chief executive officers of America’s leading companies) can be brought to court when it does not live up to its stakeholder commitment “*Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses*” (from its “statement of the purpose of a corporation”, signed by 181 CEO’s)?<sup>4</sup> How easy or how difficult can the impact of (un)sustainable practices be measured and what will be the way of measurement, only quantitative parameters or also qualitative?

Will this lead to a situation in which companies are becoming more and more cautious about making commitments related to sustainability? The question remains what is/will be the role of boards of directors in the near future? To which degree can directors be held accountable or the management? What about shareholders who define the company’s purpose? Foremost, what can they do to protect their companies from such court cases, while still maintaining, communicating a clear sustainability agenda? Will organisations that have a proactive approach to sustainability today, be less likely to pronounce specific goals and actions in this domain in the near future? Will they be more cautious about setting the bar high and will they keep their goals deliberately vague and undefined?

## **The impact of COVID-19**

COVID-19 has undoubtedly a massive impact on the economy and society at large. Many companies are hit hard by the financial & human consequences of reduced activities or even closure. At this moment we are all still in the dark about the long-term consequences of this crisis and we can only guess how the future might look like. However, one thing we do know for certain: every aspect of our current economy will be held under a magnifying glass, including the climate debate. After the health crisis itself has subsided, some companies might argue that surviving is

---

<sup>4</sup>BUSINESS ROUND TABLE, *Our Commitment*,  
<https://opportunity.businessroundtable.org/ourcommitment/> (19<sup>th</sup> of August 2019)

their only objective and that they, therefore, do not have the means to invest in climate-positive actions. Others might pursue the path of green sustainability as they believe the only way of surviving this decade is by lowering their ecological footprint. How much patience will shareholders exercise when a sustainable agenda puts the short-term financial results, which are already strained due to COVID-19, under even more pressure? Regardless of the roads companies choose, there will be a society judging them. Society itself will also have gone through a drastic transformation. Will individual citizens care equally as much about climate change or will they have other priorities? Maybe they will even care more as many see this health crisis as the (partial) effect of overstressing the limits of the earth's natural resources? Even in challenging times like these, companies and especially their boards should give thought to this.

Therefore, during our digital member forum, we will reflect upon the impact of the Urgenda case and the current COVID 19 crisis on the accountability of organisations and their boards together with Prof. Luc Van Liedekerke (UA, KUL), Prof. Olivier De Schutter (UCL), Prof. Jean Viard (author of "Le sacre de la terre"), Bart De Smet (Ageas) and of course you, our members! If you have any (burning) questions on the topic or inspiring remarks, you can send them to [events@guberna.be](mailto:events@guberna.be).