

Climate Change Litigation and Private International Law: Review of the Hague District Court's Judgment against Royal Dutch Shell (summary)

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On May 26, 2021, The Hague District Court ordered Royal Dutch Shell to reduce Shell Group's greenhouse gas (GHG) emissions by 45% compared to 2019 by 2030. It is the first judicial decision to recognize a climate change "mitigation" obligation for corporations under tort law.

This paper analyzes its significance in details of the decision's content. The characteristics of the decision can be summarized in four points:

First, the Court noted that damages by the climate change are characterized by the fact that the damage occurred by numerous contributions made by multiple conducts occurred in multiple places and each conduct can be attributed individual responsibility for its contribution.

Second, the Court identified the parent company of a carbon major as the policy-making entity of the corporate group, and found that a decision of the corporate policy made by the parent company was an independent cause for the damage caused by global warming. Thus, the Court held that the "event giving rise to the damage" in Article 7 Rome II Regulation was defined as a corporate policy decision by parent company.

Third, in interpreting the "unwritten standard of care" under Dutch tort law as applicable law to this case, the Court took into account the human rights and their values set forth in the UN Covenant on Human Rights and the European Convention on Human Rights, as well as the responsibility to respect human rights as stated in the UN Guiding Principles on Business and Human Rights (UNGPs).

As a result, the parent company of the Shell Group was considered to have a legal obligation to reduce all emissions from Scope 1 to 3 of the group's GHG emissions from having a detrimental effect on human rights of the residents of areas affected by climate change, such as the Netherlands and the Wadden district.

Fourth, the Court also held that the emission permits (allowances) allocated under the EU ETS, had the effect of indemnifying against civil-related obligation, pursuant to Article 17 of the Rome II Regulation. Thus, the Shell Group's Scope 1 emissions in the EU

are exempt from additional reduction obligation ordered by the Court. However, the extent of the indemnification is limited to such emissions and thus can be said to be negligible.

This paper presents an overview of the Hague District Court decision and further discusses the content of the decision from the perspective of private international law, including what may reflect the results of the climate attribution science.