

# The Climate Show – Episode 38

## Transcript

00:00:04 Linnéa Nordlander

Hi, and welcome to the Climate Show, a podcast that explores the law and politics of climate change. This podcast is brought to you by the University of Copenhagen.

00:00:16 Beatriz Martinez Romera

Hi, we are Beatriz Martinez,

00:00:18 Linnéa Nordlander

And Linnéa Nordlander.

00:00:19 Beatriz Martinez Romera

And we are your host at the Climate Show.

00:00:29 Beatriz Martinez Romera

In today's episode, we are exploring the ruling that the District Court of The Hague delivered on the 28th of January 2026, in the case of Greenpeace Netherlands against the Netherlands, the so-called Bonaire case. We will discuss the case and what it means for the future of climate change litigation beyond the Netherlands.

00:00:47 Linnéa Nordlander

This case concerns the island of Bonaire, which is in the Caribbean part of the Kingdom of the Netherlands. And the claim was brought on behalf of Bonaire's residents, who are already experiencing the effect of sea level rise, rising temperatures, coastal erosion, and pressure on ecosystems.

00:01:03 Linnéa Nordlander

At its core, the case asks what adaptation and mitigation obligations states owe to those facing the impacts of climate change.

00:01:11 Beatriz Martinez Romera

To guide us, we are joined by Edward Brans, Professor of Sustainability and Environmental Liability at Utrecht University. He is also practicing attorney who acted as counsel for the Netherlands in the case. Stay with us and we will unpack why Bonaire ruling matters. Enjoy the show.

00:01:34 Beatriz Martinez Romera

Welcome to the Climate Show. Today we are diving into climate litigation, not just as a legal trend, but as a tool shaping what governments and companies must do in the face of climate impacts. Our focus today is Greenpeace versus the Netherlands, a case brought on behalf of the residents of Bonaire, a Caribbean island, of the Netherlands. And it's a judgment that was delivered recently on the 20th of January 2026.

00:01:57 Beatriz Martinez Romera

And we have here Professor Edward Brands, who is going to help us to unpack what is at stake here and what happened in the case. Thank you very much for being here today with us at the Climate Show and also for the seminar that you delivered this morning on this very same topic. Welcome.

00:02:13 Edward Brans

Yeah, thank you very much. Thank you for having me.

00:02:16 Beatriz Martinez Romera

For the listeners who haven't followed the case closely. What were the plaintiffs asking the court to do in simple terms?

00:02:26 Edward Brans

Now, what is interesting is the case concerns 2 aspects. One is on adaptation, and the other one is on mitigation. Now, with regard to mitigation, we have already a lot of cases worldwide with regard to adaptation. That's not that many.

00:02:40 Edward Brans

And only from that aspect, this case is relevant and of interest. Which concerns adaptation, there was asked for adaptation measures and an adaptation plan, making sure that the island is protected to the negative effects of climate change. Which concerns mitigation, there was asked for specific mitigation targets for 2030, for 2040 etc.

00:03:04 Beatriz Martinez Romera

And why Bonaire? What makes the legal framing distinctive compared to mainland Netherlands for this climate change case?

00:03:12 Edward Brans

Bonaire is a small island and it's vulnerable to sea level rise, for instance, but also other negative effects of climate change. I think one of the reasons the case was started is also that which concerns the Netherlands, it's quite easy for an NGO to start a case. And because the state is started in the Netherlands, it also takes into account, or it also concerns an island such as Bonaire.

00:03:40 Edward Brans

So, from that perspective, so from 2 angles, Bonaire is vulnerable to climate change. And because of the fact that you can easily start a case in the Netherlands, I think that's one of the reasons that Bonaire was taken as a starting point in this particular case.

00:03:56 Beatriz Martinez Romera

And what type of impacts are we talking about when we talk about climate impacts in Bonaire?

00:04:01 Edward Brans

There are various impacts. One of the aspects of the case is that it was, there were scenario studies undertaken in order to figure out what the negative effects of climate change are for Bonaire and that concerns, depending on the scenarios chosen, that is sea level rise, rise in temperature, the likelihood that there is now and then a lot of rain that falls, that sort of affects.

00:04:33 Beatriz Martinez Romera

And you mentioned two relevant outcomes of the case. There's also another outcome that we're not going to delve much about, which are issues of discrimination that were raised as well. On mitigation, there's been a lot of talk on this issue of the fair share of countries in terms of reduction targets and limitation targets for greenhouse gas emissions. What is that the case is showing in this connection in terms of the fair share of the Netherlands?

00:05:03 Edward Brans

Now, what I find interesting is that if you look at the legal documents of both Greenpeace and the state of the Netherlands, fair share was a part of the debate. How do you determine fair share? And in that respect, it was referred to Uganda, for instance. And in Uganda, it is decided by the Supreme Court that the Netherlands should do its part, should do a minimum fair share.

00:05:22 Edward Brans

However, it's not determined how you figure out what that fair share is. And what is interesting is if you look at the legal documents of both parties, there is referred to legal scientific literature on a fair share. However, if you look at the court case itself, the outcome of the case, it uses some terms that are relevant to figuring out what fair share is. For instance, the term grandfathering is used. However, determining what the fair share of the Netherlands is, that's not a part of the final outcome of the case.

00:05:59 Beatriz Martinez Romera

And one striking aspect is how the ruling treats adaptation, not just as a type of nice-to-have policy, but as a duty with concrete deliverables. What is your opinion on this and what is the case saying?

00:06:13 Edward Brans

Now, what is of interest here, I think, is that it is referred to the European Convention on Human Rights, specifically Article 8. And based on that, the court asked itself the question, is the state of the Netherlands acting in line with its positive obligations? And then it looked at the various measures that have been taken and that are going to be taken, and it concluded that where it concerns the adaptation measures that are necessary to protect the island, that more needs to be done. And what the court orders is that the states should develop an adaptation plan, implement such a plan, and all has to be done before 2030 or the end of 2030. I can't remember exactly. So that's the outcome of the case. The basic argument is the Netherlands should act in line with its positive obligations under Article 8 of the European Convention of Human Rights.

00:07:13 Beatriz Martinez Romera

And is there any concrete outcome of this type as well with regards to mitigation? You mentioned before a target that they give in to the state, right?

00:07:22 Edward Brans

Yeah, that's an interesting and also relevant question. If you look at the claims of Greenpeace, you find these in the judgment itself, the exact claims of Greenpeace, and you compare to what is awarded at a court order, then you do not find a specific target in the language of that court order.

00:07:43 Edward Brans

However, there is referred to UN standards and in that respect to the Glasgow Climate Pact and also other COP decisions. And if you look at the decision, it's very likely that the courts of the opinion that the Netherlands should do its emissions, should reduce its emissions by 43% in 2000 compared to 2019. If you look at the current Dutch law, that takes as a starting point 55% in 2040 compared to 1990. So that's something different.

00:08:19 Beatriz Martinez Romera

And of course, this opens one of the debates that usually occur after these cases. When we run into the argument of whether judges should intervene on the political

decisions, the so-called political question argument, what role did this play in the case and what do you think the aftermath of this is going to be?

00:08:41 Edward Brans

I think it's a highly relevant question. It was also a part of the debate in Uganda and many other cases worldwide, I know. Also here, there was a debate on whether or not a court has the ability to order a state to take emission reduction measures. What is also interesting in that respect, that a part of the decision is on this particular debate. So, what I find of interest is that the court really addresses this issue. The final outcome is that if you look at the language of the court order, it says that you have to introduce absolute emission targets into national legislation.

00:09:23 Edward Brans

Now, the decision is only a month old and people are thinking about what the meaning or what this decision brings. But most probably there are people who are going to argue that this is not in line with the Trias Politica. And yeah, obviously there are others who think that it is. So that's probably going to be one of the arguments, one of the debates.

00:09:49 Beatriz Martinez Romera

You mentioned earlier the European Court of Human Rights and in particular the human rights arguments and the case *Klimaseniorinnen* from 2024. I would like to ask you if you can elaborate a bit more on to what extent the reasoning of *Klimaseniorinnen* has influenced Bonaire.

00:10:11 Edward Brans

I think the case is highly relevant. If you look at the court decision, the court is referring to the *Klimaseniorinnen* in the case in many, many instances. Many paragraphs have referred to the *Klimaseniorinnen*.

00:10:23 Edward Brans

And that's done from various perspectives. If you look at paragraph 550 of the *Klimaseniorinnen* case, includes a couple of criteria to determine whether or not a state is acting in line with what can you expect where it concerns, taking mitigation measures and setting up a target, etc. Now, the court is referring to this particular paragraph of

the decision. So that's one thing. It asks itself the question, if you look at this, is these criteria developed in the case, is the state of the Netherlands acting in line with these criteria?

00:10:57 Edward Brans

The other thing is that, for instance, concerning access to justice for NGOs and whether or not an NGO can claim under Article 8 of the European Convention of Human Rights, there's also referred to the criteria that have been introduced by the European courts in the Klimaseniorinnen case. So, in my perspective, the Klimaseniorinnen case plays an eminent role in this Bonaire case.

00:11:29 Beatriz Martinez Romera

And there is also an interesting question about signs and courts here. So, in other cases worldwide, but also in the Netherlands, cases that you mentioned earlier, the IPCC, the Intergovernmental Panel of Climate Change, reports and science is used as a standard. But it's also other local studies and other literature, other science that has been incorporated, at least as evidence on this case. Could you elaborate a bit more on how the court has taken these science?

00:12:02 Edward Brans

What I found very interesting, you're absolutely correct. If you look at cases such as in the beginning, in the first instance, the court of first instance in the Uganda case. Very often they're referred to IPCC reports and basically that's about it.

00:12:18 Edward Brans

And here it's different. For instance, where it concerns the adaptation question, they're referred to many other studies than the IPCC reports. Of course, they're referred to IPCC reports and they make clear that small islands are vulnerable for sea level rise, for instance. But then there is referred to studies that specifically concern Bonaire and other Caribbean islands. And also that's taking into account IPCC scenarios to determine what the extent of the negative effects might be for Bonaire. So, in that respect, I think this is a very interesting decision.

00:12:58 Edward Brans

It's obvious that not only the IPCC reports play a role in cases such as this, but also other scientific reports. And of course, I think that the court took into account that if you look at the people who wrote this, or at the people who wrote this, they fulfill, they do act in line with the scientific criteria that you can expect.

00:13:25 Beatriz Martinez Romera

Thank you so much. Before we wrap up, is there anything else you would like to raise that maybe we are missing and is relevant on this case on Bonaire? And maybe why is this case, how do you see the impact of this case in further litigation?

00:13:38 Edward Brans

Now, I think that this case is going to be relevant for various reasons. First of all, you have the Klimaseniorinnen case, and since then there only have been a few cases that refer to Klimaseniorinnen case. So, this is one decision whereby the Klimaseniorinnen case is taken as a starting point to further determine what kind of measures you can expect from a state. And I think from that perspective, that is, that makes this case relevant. It's also very likely that other courts will refer to the Bonaire case and also the line of reasoning that has been taken.

00:14:16 Edward Brans

But it might also be that this case is going to be relevant for cases against companies, for instance. The case, it determines what you can expect from the Dutch states, but there are elements in it. You can also argue if the state of the Netherlands is required to take certain actions, why not companies? So, I can imagine that also from that perspective, this case will play a role in future.

00:14:49 Edward Brans

What is also relevant, I think that in the beginning we talked about the number of cases on mitigation adaptation. Now where it concerns adaptation, there is only a limited amount of cases in the world. Now this is a new one and it might play a role in other cases because the court is quite clear on what you can expect from countries or at least what criteria the court uses to determine what it should be. So, I think very likely the reasoning of the court will play a role in other cases. That's what I expect.

00:15:22 Beatriz Martinez Romera

Edward, thank you very much for being with us today, for coming all the way to Copenhagen to deliver the seminar for our colleagues and our students. I hope you come here again soon. And to our listeners, I hope you enjoyed this episode. See you very soon.

00:15:41 Edward Brans

Okay, thanks.

00:15:45 Linnéa Nordlander

Thank you for listening to this episode. If you would like to read more about Professor Edward Brans work and about the Bonaire climate case, check out the links in the show notes. Stay tuned for our next episode.