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Wai 3325, #A75(b)

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND

(Application no. 53600/20)

JUDGMENT

Art 34 • Victim • *Locus standi* • Separate key criteria set out for establishing victim status of individual applicants and *locus standi* (representation) of associations in climate-change context • Need for effective protection of Convention rights taking into account special features of this phenomenon without undermining the exclusion of *actio popularis* from the Convention system • In case-circumstances victim-status criteria not fulfilled by individual applicants • Especially high threshold for fulfilling criteria not met (incompatible *ratione personae*) • Applicant association fulfilled relevant criteria (*locus standi*) and thus had standing to act on behalf of its members • Importance of collective action and intergenerational burden-sharing in climate-change context
Art 8 • Positive obligations • Private and family life • Respondent State's failure to comply with positive obligation to implement sufficient measures to combat climate change • Art 8 applicable • Art 8 encompassing a right for individuals to effective protection by the State authorities from the serious adverse effects of climate change on their lives, health, well-being and quality of life • Need to develop a more appropriate and tailored approach as regards the various Convention issues arising in the climate-change context not addressed by Court's existing environmental case-law • Importance of intergenerational burden-sharing • Reduced margin of appreciation as regards State's commitment combating climate change, its adverse effects and the setting of aims and objectives in this respect • Wide margin of appreciation as to the choice of means designed to achieve those objectives • Contracting State's primary duty to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change • Enumeration of requirements to which competent authorities need to have due regard • Need for domestic procedural safeguards • Mitigation measures to be supplemented by adaptation measures aimed at alleviating the most serious or imminent consequences of climate-change • Existence of critical lacunae in Swiss authorities' process of putting in place the relevant domestic regulatory framework • Failure to quantify, through a carbon budget or otherwise, national GHG emission limitations • Failure to act in good time

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and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework • Wide margin of appreciation exceeded
Art 6 § 1 (civil) • Access to court • Applicability of civil limb concerning the effective implementation of mitigation measures under domestic law • Domestic courts' failure to engage seriously or at all with applicant association's action • Lack of convincing reasons for non-examination of merits of complaints • Failure to consider compelling scientific evidence concerning climate change and to examine applicant association's legal standing • Lack of further legal avenues or safeguards • Very essence of right of access to court impaired • Emphasis on domestic courts' key role in climate -change litigation and of access to justice in this field
Art 46 • Execution of judgment • General measures • Respondent State to assess specific measures to be taken with the assistance of the Committee of Ministers

Prepared by the Registry. Does not bind the Court.

STRASBOURG

9 April 2024

This judgment is final but it may be subject to editorial revision.

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In the case of Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Síofra O'Leary,
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Darian Pavli,
Raffaele Sabato,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Peeter Roosma,
Ana Maria Guerra Martins,
Mattias Guyomar,
Andreas Zünd*, judges*,

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 30 March 2023, 6 and 7 December 2023 and 14 February 2024,

Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

1. The case originated in an application (no. 53600/20) against the Swiss Confederation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by an association registered under Swiss law, Verein KlimaSeniorinnen Schweiz, and by four Swiss nationals, Ms Ruth Schaub, Ms Marie-Eve Volkoff Peschon, Ms Bruna Giovanna Olimpia Molinari and Ms Marie Gabrielle Thérèse Budry ("the applicants"), all members of that association, on 26 November 2020.

2. The applicants were represented by Ms C.C. Bähr and Mr M. Looser, lawyers practising in Zürich, Ms J. Simor KC and Mr M. Willers KC, lawyers practising in London, and Mr R. Mahaim, a lawyer practising in Lausanne. The Swiss Government ("the Government") were represented by their Agent, Mr A. Chablais, of the Federal Office of Justice.

3. The applicants alleged, in particular, various omissions of the Swiss authorities in the area of climate-change mitigation. They relied on Articles 2, 6, 8 and 13 of the Convention.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 26 April 2022 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. The President of the Court decided that in the interests of the proper administration of justice the case should be assigned to the same composition of the Grand Chamber as the cases of *Carême v. France* (application no. 7189/21) and *Duarte Agostinho and Others v. Portugal and 32 Others* (application no. 39371/20) (Rule 24, Rule 42 § 2 and Rule 71), which were also relinquished by Chambers of the Fifth and Fourth Sections respectively.

6. The applicants and the Government each filed memorials on the admissibility and merits of the case. In addition, having been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3), third-party comments were received from the Governments of Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania and Slovakia.

7. Upon the leave granted by the President, third-party comments were also received from the following entities: the United Nations High Commissioner for Human Rights; the United Nations Special Rapporteurs on toxics and human rights, and on human rights and the environment, and the Independent Expert on the enjoyment of all human rights by older persons; the International Commission of Jurists (ICJ) and the ICJ Swiss Section (ICJ-CH); the European Network of National Human Rights Institutions (ENNHRI); the coordinated submission of the International Network for Economic, Social and Cultural Rights (ESCR-Net); the Human Rights Centre of Ghent University; Professors Evelyne Schmid and Véronique Boillet (University of Lausanne); Professors Sonia I. Seneviratne and Andreas Fischlin (Swiss Federal Institute of Technology Zurich); Global Justice Clinic, Climate Litigation Accelerator and Professor C. Voigt (University of Oslo); ClientEarth; Our Children's Trust, Oxfam France and Oxfam International and its affiliates (Oxfam); a group of academics from the University of Bern (Professors Claus Beisbart, Thomas Frölicher, Martin Grosjean, Karin Ingold, Fortunat Joos, Jörg Künzli, C. Christoph Raible, Thomas Stocker, Ralph Winkler and Judith Wyttenbach, and Doctors Ana M. Vicedo-Cabrera and Charlotte Blattner); the Center for International Environmental Law and Dr Margaretha Wewerinke-Singh; the Sabin Center for Climate Change Law at Columbia Law School; and Germanwatch, Greenpeace Germany and Scientists for Future.

8. On 11 January 2023 the Grand Chamber decided that in the interest of the proper administration of justice, after the completion of the written stage of the proceedings in the above-mentioned cases, the oral stage would be

staggered so that a hearing in the present case and in the Carême v. France case would be held on 29 March 2023, and a hearing in the Duarte Agostinho and Others v. Portugal and 32 Others case would be held before the same composition of the Grand Chamber at a later stage (the hearing was held on 27 September 2023). At a later stage, Armen Harutyunyan, who was prevented from sitting in the present case, was replaced by Jovan Ilievski, substitute judge (Rule 24 § 3).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 March 2023 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
MR A. CHABLAIS, *Agent*,
MR F. PERREZ,
MS M. BEELER-SIGRON,
MS L.L. PAROZ,
MS R. BURKARD,
MS S. NGUYEN-BLOCH,
MS I. RYSE *Advisers*;

(b) *for the applicants*
MS J. SIMOR KC,
MR M. WILLERS KC,
MS C.C. BÄHR,
MR M. LOOSER,
MR R. MAHAIM, *Counsel*,
MR R. HARVEY,
MS L. FOURNIER, *Advisers*,
MS B. MOLINARI,
MS M. BUDRY, *Applicants*,
MS A. MAHRER,
MS R. WYDLER-WÄLTI, *Co-Presidents of the applicant association*;

(c) *for the Government of Ireland*
MR B. LYSAGHT, *Agent*,
MS C. DONNELLY SC,
MR D. FENNELLY, *Counsel*,
MR M. CORRY,
MS E. GRIFFIN, *Advisers*;

(d) *for ENNHRI*
MS J. SANDVIG,
MS K. SULYOK,
MS H.C. BRAENDEN,

MR P.W. DAWSON, *Advisers*.

The Court heard addresses by Mr Chablais, Mr Perrez, Ms Simor KC, Mr Willers KC, Ms Donnelly SC and Ms Sandvig, and the answers by Mr Chablais, Mr Perrez and Ms Simor KC to questions put by the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The applicants' particular situation

1. The first applicant

10. The first applicant – Verein KlimaSeniorinnen Schweiz – is a non-profit association established under Swiss law ("the applicant association"). According to its Statute, the applicant association was established to promote and implement effective climate protection on behalf of its members. The members of the association are women living in Switzerland, the majority of whom are over the age of 70. The applicant association is committed to reducing greenhouse gas ("GHG") emissions in Switzerland and their effects on global warming. The activity of the applicant association is stated to be in the interests of not only its members, but also of the general public and future generations, through effective climate protection. The applicant association pursues its purpose in particular through the provision of information, including educational activities, and by taking legal action in the interests of its members with regard to the effects of climate change. The applicant association has more than 2,000 members whose average age is 73. Close to 650 members are 75 or older.

11. For the purposes of the proceedings before the Grand Chamber, the applicant association solicited submissions by its members about the effects of climate change on them. The members described how their health and daily routines were affected by heatwaves.

2. The second to fifth applicants

12. The second to fifth applicants ("applicants nos. 2-5") are women who are members of the applicant association. The second applicant, Ms Schaub, was born in 1931. She died in the course of the proceedings before the Court (see paragraph 273 below). The third applicant, Ms Volkoff Peschon, was born in 1937 and lives in Geneva. The fourth applicant, Ms Molinari, was born in 1941 and lives in Vico Morcote. The fifth applicant, Ms Budry, was born in 1942 and lives in Geneva.

(a) The second applicant

13. In a written declaration, the second applicant submitted that she had experienced difficulties enduring the heatwaves and had more than once collapsed while exposed to the sun on a balcony in her flat. She had had to adapt her lifestyle to the heatwaves, for instance when going to the shops, and had to stay indoors almost the entire day. She had also received assistance from a nurse, who had given her special clothing to keep cool. She had needed to get medical attention and had suffered extremely painful episodes of gout, which intensified during hot days. She had even been hospitalised once after she had collapsed during a heatwave, but then she had adapted her habits to the heat by going to the shops earlier and getting fresh air at night. All these limitations had led to problems in her social environment.

14. The second applicant also provided a medical certificate of 15 November 2016 describing how in August 2015, during a warm summer's day, she had collapsed in the doctor's waiting room owing to the high temperature. The medical certificate also indicated that the applicant wore a pacemaker.

(b) The third applicant

15. In a written declaration, the third applicant submitted that she had difficulties enduring the heatwaves, such that she needed to organise her life according to the weather forecast. When it was very hot, she had to stay at home the entire day, with the blinds down and the air conditioning turned on. She was also required to refrain from recreational activities and was obliged to regularly measure her blood pressure and then take her medication accordingly. She had also had to see a cardiologist. She would like to move and live somewhere at altitude, but her cardiovascular problems limited her in that respect. She had never been hospitalised, but on several occasions she had felt severely unwell. In addition, owing to the pollution, she had experienced breathing difficulties and extreme sweating. In conclusion, the third applicant stressed that between May and September, the thermometer determined the way she led her life, including her relations with family and friends.

16. The third applicant provided a medical certificate of 19 October 2016 indicating that for the previous two summers she had suffered significantly as a result of the heatwaves. They affected her physical capacities as she had cardiovascular health issues. Another medical certificate of 11 February 2019 indicated that the applicant's health condition and the medication she took were not compatible with heatwaves. During heatwaves she had to stay at home and take the appropriate medication (which needed to be adjusted).

17. A medical certificate of 23 September 2021 confirmed that the applicant suffered from cardiovascular health issues. During heatwaves she generally felt weak and had been unable to continue with her usual therapy.

Moreover, she was required to adjust her daily routines. Another medical certificate of 26 November 2022, which was based on a telephone interview with the applicant and the inspection of her medical file, confirmed that the applicant suffered physically and psychologically during the heatwaves.

(c) The fourth applicant

18. According to a written declaration of the fourth applicant, her mobility was restricted during heatwaves as excessive heat exacerbated her asthma and chronic obstructive pulmonary disease.

19. She provided medical certificates of 7 October 2016 and 15 July 2020 attesting to her medical condition and to the adverse effects of periods of hot weather on it. This was confirmed in a medical certificate of 26 November 2022 according to which it was highly probable that the aggravation of the applicant's health condition was in correlation with the occurrence of climate change-induced heatwaves. Moreover, during heatwaves, the applicant suffered because she had to reduce her activities and she felt isolated.

(d) The fifth applicant

20. In a written declaration, the fifth applicant complained that the heatwaves had the effect of taking away all her energy. During summer she could not face leaving her home and going for a swim. At the same time, she could not afford to take longer holidays in a hotel with a swimming pool. She had never been hospitalised and had not seen a doctor in relation to the heatwaves. Previously she had also worried about her 90-year-old mother, until the latter had moved away to a place with a better climate.

21. The fifth applicant provided a medical certificate of 4 October 2016 attesting that she suffered from asthma.

B. Proceedings instituted by the applicants

1. The applicants' requests to the authorities

22. On 25 November 2016, relying on section 25a of the Federal Administrative Procedure Act of 20 December 1968 ("the APA"), and Articles 6 and 13 of the Convention, the applicants requested the Federal Council, the Federal Department of the Environment, Transport, Energy and Communications ("the DETEC"), the Federal Office for the Environment ("the FOEN") and the Federal Office for Energy ("the SFOE") to take a formal decision on "real acts" (acts based on federal public law that affect rights and obligations, but do not arise from formal rulings) with a view to addressing alleged omissions in climate protection. Their requests for a legal remedy read as follows:

"1. By 2020, the Respondents [the above-noted authorities] shall take all necessary actions within their competence to reduce [GHG] emissions to such an extent that Switzerland's contribution aligns with the target of holding the increase in global average temperature to well below 2°C above pre-industrial levels, or at the very least, does not exceed the 2°C target, thereby putting an end to the unlawful omissions undermining these targets.

Specifically:

a. Respondent 1 shall examine the duties of the Confederation under Article 74 § 1 of the Federal Constitution and their implementation in the climate sector [under] the current climate goal and regarding compliance with:

– Article 74 § 2 and Article 73 of the Constitution and the constitutional duty of the government to protect the individual in accordance with Article 10 § 1 of the Constitution; and

– Articles 2 and 8 of the European Convention on Human Rights (ECHR);

and shall develop, without delay, a new plan to be implemented immediately and through 2020 that will permit Switzerland to achieve the 'well below 2°C' target or, at the very least, not [to] exceed the 2°C target, which requires a reduction of domestic [GHG] emissions by at least 25% below 1990 levels by 2020;

b. Respondent 1 shall communicate to the Federal Assembly (Parliament) and the general public that – in order to comply with Switzerland's obligation to protect and [with] the principles of precaution and sustainability – a reduction of [GHG] emissions is necessary by 2020 in order to meet the 'well below 2°C' target or, at the very least, not exceed [the] 2°C target, which requires a domestic [GHG] reduction of at least 25% below 1990 levels by 2020;

c. Through a decision at the level of the Federal Council, department or federal office, Respondents 1, 2, or 3 shall initiate, without delay, a preliminary legislative procedure for an emission reduction target as laid out in the request [at] 1 (a); and

d. Respondent 1 shall inform Parliament as stated in the request [at] 1 (c) [whether] the proposed emissions reduction target is in compliance with the Constitution and the ECHR.

2. The respondents shall take all necessary mitigation measures within their competence to meet the [GHG] reduction target defined in the request [at] 1, namely reducing [GHG] emissions by at least 25% below 1990 levels by 2020, thereby putting an end to their unlawful omissions. In particular:

a. Respondent 1 shall consider measures to achieve the target as defined in the request [at] 1 (a);

b. Respondent 1 shall communicate the appropriate measures to reach the target as stated in the request [at] 1 (b);

c. Respondents 1, 2, or 3 shall, with regard to the request [at] 1 (c) above, include measures to achieve the target in the preliminary legislative procedure.

3. Respondents shall carry out all acts, within their competence, required to lower emissions by 2030 to such an extent that Switzerland's contribution aligns with the 'well below 2°C' target or, at the very least, does not exceed [the] 2°C target, thus ending the unlawful omissions inconsistent with these targets. In particular:

a. Respondents 1, 2, or 3 shall, in the course of the preliminary legislative procedure, carry out all actions that allow Switzerland to do its share to meet the 'well below 2°C'

target or, at the very least, to not exceed [the] 2°C target, which means a domestic reduction of [GHG] emissions of at least 50% below 1990 levels by 2030;

b. Respondents 1, 2, or 3 shall include in the preliminary legislative procedure all necessary mitigation measures required to meet the [GHG] reduction target as defined in the request [at] 3 (a).

4. The respondents shall implement all mitigation measures, within their competence, required to achieve the current [GHG] reduction target of 20%, thus ending the unlawful omissions. In particular:

a. Respondent 3 shall obtain without delay the reports of cantons detailing the technical measures adopted to reduce the CO_2 emissions from buildings;

b. Respondent 3 shall verify that the cantonal reports include data about CO_2 reduction measures that have already been taken or are planned and their effectiveness; demonstrate the progress made to reduce CO_2 emissions from buildings in their territory; and require improvements if necessary;

c. Respondent 3 shall verify that cantons are issuing state of the art building standards for new and existing buildings;

d. Respondents 1, 2 and 3 shall take the necessary actions if cantons fail to comply with the verification requirement as stated in the request at 4 (c); if necessary they shall become active in [the] preparation of new state of the art federal building standards for new and existing buildings;

e. Respondent 2, having determined that the interim building sector target for 2015 was not achieved, shall examine the need for improvements by cantons and propose additional effective mitigation measures to Respondent 1;

f. Respondents 1, 2, and 3 shall take steps aimed at rapidly increasing the CO_2 tax on thermal fuels;

g. Respondent 4 shall require the importers of passenger cars to submit data showing actual CO_2 emissions of passenger cars;

h. Respondent 2, given that the interim transport sector target 2015 will likely not be achieved, shall immediately draft additional and effective mitigation measures and propose them to Respondent 1; in particular, Respondent 1 shall take actions to promote electromobility or otherwise demonstrate that the sector interim target in section 3(2) of the CO_2 Ordinance can be achieved without such promotion; and Respondents l, 2, and 3 shall take steps to raise the compensation rate for the CO_2 emissions from motor fuels;

i. Respondent 1 shall make a comprehensive assessment of the effectiveness of measures enacted under the CO_2 Act and consider whether additional measures are necessary, report the findings of the assessment to Parliament, and immediately initiate steps to implement the necessary measures for the period ending in 2020.

5. Alternatively, with regard to the requests 1, 2, 3 and 4, a declaratory ruling shall be issued finding the respective omissions unlawful.

as well as the following procedural motion:

The requests for legal remedies 1-5 shall be enacted in a timely manner."

23. In their memorial submitted to the DETEC, the applicants pointed out, in particular, that the aim of their request was to compel the authorities, in the interest of safeguarding their lives and health, to take all necessary measures

required by the Constitution and the Convention to prevent the increase of the global temperature.

24. As regards their individual circumstances, the applicants pointed to the nature and mission of the applicant association and, as regards the rest of them, contended that they were members of a most vulnerable group affected by climate change. Evidence showed that the life and health of older women were more severely impacted by periods of heatwaves than the rest of the population. They submitted that this could be seen in their cases as they all had various health impairments affected by heatwaves, and such adverse effects would exacerbate with time owing to the predicted rise in the frequency and duration of heatwaves.

25. The applicants further explained that they considered the current domestic emissions reduction targets insufficient, unconstitutional and incompatible with the Convention and international law. They also considered the mitigation measures taken by the authorities to be insufficient. In their view, the authorities had no justification for their inaction in the field of climate change.

26. The applicants contended that the above-noted omissions violated the sustainability principle (Article 73 of the Constitution), the precautionary principle (Article 74 § 2 of the Constitution) and the right to life (Article 10 of the Constitution), and also their rights under the Convention, in particular "the right to life, to health, and to physical integrity protected in Article 2 and Article 8 [of the Convention]" in relation to the positive duty to protect. Specifically, they argued that the State had a duty to put in place the necessary regulatory framework and administration, taking into account the particular situation in question and the level of risk.

27. Furthermore, the applicants relied on Articles 6 and 13 of the Convention. They argued, in particular, that their request concerned a serious and genuine dispute over their civil rights and obligations within the meaning of Article 6 § 1 of the Convention, since the omissions at issue posed a serious risk to their lives, health and physical integrity. They were therefore entitled to have their request assessed by the authorities and ultimately a court. This was, in their view, the intention and purpose of the remedy under section 25a of the APA, which, by the nature of things, was being used in the present case to contest omissions and claim protection under the Convention. However, and independently of section 25a of the APA, the applicants considered that their request should be examined, having regard to the requirements of Articles 6 and 13 of the Convention.

28. On 25 April 2017 the DETEC rejected the applicants' request for lack of standing. The DETEC explained that an action under section 25a of the APA was subject to the following conditions: (a) there had to be a "real act"; (b) the request had to concern federal public law; (c) the authority concerned had to be a federal administrative authority; (d) the real act had to affect rights

or obligations; (e) there had to be an "interest worthy of protection"; and (f) the principle of subsidiarity had to be observed.

29. While, in principle, the DETEC accepted that the conditions under (a) to (c) had been fulfilled, it considered that the condition under (d) – namely, that the real act had to affect rights or obligations – had not been met, which made it irrelevant to discuss the conditions under (e) to (f).

30. The DETEC held that the main aim of the applicants' request to the federal administrative authorities had been to initiate the enactment of legislative provisions to reduce CO_2 emissions. That action was not comparable with an order (individual-specific order) or at least with a general order (general-specific order), as required by section 25a of the APA. In the DETEC's view, the general purpose of the applicants' request was to achieve a reduction in CO_2 emissions worldwide and not only in their immediate surroundings. The DETEC considered that no individual legal positions were affected in the case in issue as the applicants' request did not serve to specifically realise such individual positions, but rather aimed to have general, abstract regulations and measures put in place. The DETEC therefore considered that section 25a of the APA did not apply, as legislative procedures were not regulated by that Act and the applicants had other means at their disposal to engage in the exercise of their political rights.

31. For similar reasons, the DETEC rejected the applicants' Convention arguments. Focusing on Article 13 of the Convention, the DETEC found that the applicants were pursuing general-public interests, which could not provide the basis for them having victim status under the Convention. The DETEC also held that Article 13 of the Convention allowed only the review of a concrete State act in relation to an individual person, which was not the situation in the case at hand.

2. Proceedings in the Federal Administrative Court

(a) The applicants' appeal

32. On 26 May 2017 the applicants lodged an appeal with the Federal Administrative Court ("the FAC") against the DETEC's decision. They requested that the impugned decision be quashed and remitted to the DETEC for re-examination.

33. In their appeal the applicants reiterated their arguments regarding the effects of climate change made before the DETEC (see paragraphs 22-27 above) and argued that their request was not aimed at obtaining the adoption of general, abstract regulations, but rather specific actions in the context of preliminary legislative proceedings as well as the correct implementation of the existing law. Such a request, in the applicants' view, fell within the scope of section 25a of the APA. The applicants also argued that the DETEC had violated their right to be heard by not entering into the details of their request and particularly their arguments based on the Convention.

(b) The FAC's decision

34. On 27 November 2018 the FAC dismissed the applicants' appeal.

35. With regard, first, to the applicants' standing to lodge the appeal, the FAC held that applicants nos. 2-5 had an "interest worthy of protection" in the revocation or amendment of the impugned DETEC decision, which made the appeal admissible from that perspective. The FAC therefore considered that it was unnecessary to determine whether the applicant association had such an interest as well.

36. The FAC then examined the applicants' complaint as regards the breach of their right to be heard. It found that, while the DETEC decision lacked reasoning, in the circumstances of the case at hand it was clear that the applicants' request had been rejected because the DETEC considered it to be of an *actio popularis* nature.

37. As regards the remainder of the applicants' arguments, the FAC explained that section 25a of the APA reflected the guarantee of access to a court provided in Article 29a of the Constitution and Article 6 of the Convention, in so far as "real acts" were concerned. It also pointed out that neither the law nor the case-law defined the concept of "real acts". However, the FAC considered that, as regards the substantive area of application of section 25a of the APA, the decisive factor was the question whether a need for individual legal protection existed. Moreover, in order to restrict the area of application as was necessary to exclude *actio popularis* claims, the other criteria mentioned in section 25a(l) of the APA – namely, an "interest worthy of protection", and rights and obligations being affected – were to be applied. The concept of an "interest worthy of protection", which derived primarily from fundamental rights, required that there should be an existing interest and a practical benefit in pursuing it. Moreover, the appellant had to be affected in a way that differed from the general population, which was a criterion intended to exclude *actio popularis* proceedings. As regards potential infringements of fundamental rights, it was necessary to examine the material scope of the right in question in order to determine whether the right was affected or not. This assessment was to be carried out in the circumstances of a particular case.

38. Examining the applicants' case from the perspective of these considerations, and relying on the Federal Supreme Court's case-law on *actio popularis* complaints, the FAC held that the applicants' claim relating to the consequences of climate change, and demanding the issuance of a material ruling under section 25a of the APA, required the existence of a close proximity between the applicants and the matter in dispute, which – as opposed to *actio popularis* claims – went beyond the existence of a possible proximity which the general public might claim. In this connection, while accepting that over the course of the twenty-first century climate change would affect Switzerland in all its regions and seasons, the FAC considered that the impacts of climate change on people, animals and plants would be of

a general nature, even if not all would be impacted equally. The FAC reasoned, in particular, as follows:

> "The adverse effects vary among different population groups in terms of economic and health impacts. For the population in cities and agglomerations, for example, heatwaves are a health burden because of the formation of heat islands. Heatwaves in the summer can put infants and small children at risk as well because of their susceptibility to dehydration, and high ozone levels owing to the heat can bring about respiratory disorders and impairment of pulmonary function. In addition, the changed geographic areas of carriers of disease such as ticks and mosquitoes will newly affect parts of the population which had previously not been exposed to such risks. Climate change, and in particular the associated change of average temperature and average amounts of precipitation also impact forestry, agriculture, winter tourism and water management, for example. In addition, because of the thawing permafrost, the danger of rockslides is increasing, and, particularly in the winter, also the risk of flooding, debris flows and landslides."

39. However, the FAC considered that the group of women older than 75 would not be particularly affected by the impacts of climate change such as to allow them to lodge an action under section 25a APA. It noted the following:

> "Although different groups are affected in different ways, ranging from economic interests to adverse health effects affecting the general public, it cannot be said from the perspective of the administration of justice, having regard to the case-law as described above, that the proximity of the appellants to the matter in dispute – climate protection on the part of the Confederation – was close, compared with the general public ... Thus, the appellants have no sufficient interest worthy of protection, for which reason the authority of first instance rightly refused to issue a material ruling in terms of section 25a APA."

40. As regards the applicants' reliance on Article 6 § 1, and subsidiarily on Article 13, of the Convention, concerning the protection of their rights under Articles 2 and 8 of the Convention, the FAC held that the applicability of Article 6 § 1 of the Convention required, *inter alia*, the existence of a genuine dispute of a serious nature, the outcome of which was directly decisive for the civil claim in question. According to the FAC, this meant that a claim should be asserted in formal terms in a reasonable way and that Article 6 § 1 should be interpreted in conjunction with Article 34 of the Convention, which regulated the conditions for lodging individual applications before the Court and excluded the possibility of *actio popularis* complaints.

41. In this respect, as regards the applicants' specific complaints, the FAC reasoned as follows:

> "Neither preliminary legislative proceedings nor the requested provision of information to the public [as requested by the appellants] can make a direct contribution toward reducing [GHG] emissions in Switzerland in line with the case-law summarised above. Rather, this depends on the decisions of the legislature and regulators as well as of each individual concerned. The requested actions are therefore not appropriate for reducing the risk of heatwaves during the summer. The same applies inasmuch as the

appellants demand the introduction of emission reduction measures not currently provided for by law ...

In this factual situation, it cannot be said that a genuine dispute of a serious nature was brought before the first-instance authority the outcome of which would have proven to be directly decisive for any possible civil claims by the appellants; a reduction of the general risk of danger cannot be achieved directly through the requested actions. The first-instance authority was therefore not obliged on the basis of Article 6 § 1 [of the Convention] to enter into the matter of the appellants and to issue a material ruling which would open up the path to appeal and thus provide for protection through the courts. With this outcome, it is not necessary to examine Article 13 [of the Convention], either ... the guarantee in terms of Article 13 [of the Convention] is absorbed in full by Article 6 [of the Convention] in civil disputes."

42. Finally, the FAC summarised its findings in the following manner:

"In summary, the appellants are not affected by the Confederation's climate protection measures in a way that goes beyond that of the general public. Their legal requests, inasmuch as they are based on section 25a of the APA and demand (further) actions to reduce [GHG] emissions, are therefore to be qualified as inadmissible *actio popularis*; the first-instance authority rightly did not enter into the matter. Further claims to the issuance of a material ruling do not result from the [Convention] either. Therefore, the appeal is to be dismissed."

3. Proceedings in the Federal Supreme Court

(a) The applicants' appeal

43. On 21 January 2019 the applicants lodged an appeal in the Federal Supreme Court ("the FSC") against the FAC's judgment. They requested that it be quashed, and the case remitted to the DETEC for examination on the merits or, alternatively, to the FAC for its reassessment. In their appeal, the applicants relied on Articles 9, 10, 29 and 29a of the Constitution and Articles 2, 6, 8, 13 and 34 of the Convention.

44. The applicants argued that they had an "interest worthy of protection", which was current and practical, since, in the absence of a remedial action, Switzerland continued to emit excessive GHG emissions which increasingly impacted their lives and health. As regards the applicant association, they stressed that it was appealing on its own behalf but also in the interests of its members, which represented a vulnerable group whose health, and potentially lives, were particularly impacted by the consequences of global warming.

45. The applicants further contended that the FSC needed to make the necessary determination of the facts of the case since the FAC had failed to do that or had done it only in a rudimentary way, particularly in relation to the possible impacts of climate change. In their view, the FAC had failed to consider the issues relating to more frequent deaths and the adverse health impacts in the population group of women aged 75 to 84 linked to climate change. They referred to the various health ailments suffered by applicants nos. 2-5, which made them even more vulnerable to climate change.

46. Moreover, as regards the object of the appeal before the FSC, the applicants explained that they were challenging, in particular, the lower bodies' determination of the procedural prerequisites for examination of the substance of their case in terms of section 25a of the APA and Articles 6 § 1 and 13 of the Convention, in conjunction with Articles 10 and 29 § 2 of the Constitution and Articles 2 and 8 of the Convention. They complained of a breach of their right to be heard, namely the right to have a proper examination of their case by the DETEC and the FAC. The applicants also referred to Article 9 § 3 of the Aarhus Convention[1] (see paragraph 141 below) as regards their standing to bring the present proceedings before the courts.

47. The applicants further argued that the FAC had incorrectly considered that their complaint was of an *actio popularis* nature. In their view, as a group which was particularly vulnerable to climate change, they had a right to seek protection under Article 10 of the Constitution and under Article 2 of the Convention. Moreover, pointing to the risks to their health, physical integrity and well-being as a result of global warming, the applicants argued that excessive GHG emissions were similar to harmful air pollution and were to be considered as dangerous activities within the meaning of Article 8 of the Convention. On the basis of these considerations, the applicants also considered that they had victim status under Article 34 of the Convention.

48. As regards, in particular, their reliance on Article 6 of the Convention, the applicants argued that the FAC had examined the wrong question by reviewing the connection between their legal requests and GHG emissions (which it had, moreover, assessed incorrectly), whereas it had been supposed to examine the connection between GHG emissions and the State's obligation to protect their right to life under Article 10 of the Constitution.

49. In this connection, the applicants alleged that they had not had effective legal protection as required by the Convention. In their view, the FAC had misconstrued the concept of a dispute of a genuine and serious nature relevant for the applicability of Article 6. The applicants argued that their request had been aimed at addressing the omissions in climate protection on the part of the State, thereby leading to a reduction in excessive GHG emissions and the heatwaves linked to them. In other words, the outcome of the proceedings they sought to achieve was the reduction of GHG emissions and heatwaves. However, the FAC had incorrectly considered that there needed to be a direct connection between their requests and the reduction of GHG emissions. In any event, in the applicants' view, the FAC had not properly examined the existence of a link between some of the demands they had made (such as the institution of preliminary legislative proceedings or the

[1] Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, United Nations, Treaty Series, vol. 2161, p. 447. This Convention was adopted on 25 June 1998 in Aarhus, Denmark and entered into force on 30 October 2001.

provision of information to the public and Parliament) and the reduction of GHG emissions and heatwaves, and, by extension, the protection of their right to life guaranteed under the relevant domestic law, namely Article 10 of the Constitution.

50. According to the applicants, there was a sufficient connection between this protected civil right under domestic law and the outcome of the proceedings which they sought to achieve. Moreover, citing the Court's case-law in *Bursa Barosu Başkanlığı and Others v. Turkey* (no. 25680/05, § 128, 19 June 2018), the applicants argued that Article 6 was applicable even if their claim did not benefit only them exclusively, but also benefited the general public. The applicants also considered that the FAC's interpretation of Article 6 in conjunction with Article 34 of the Convention had had no legal basis and been arbitrary. In summary, the applicants noted as follows:

> "The appellants' dispute is genuine and serious because the outcome of the proceedings – the reduction of [GHG] – is directly decisive for their right to protection of their lives as well as for the implementation of CO_2 legislation. The appellants thus have the right to access to a court in terms of Article 6 [of the Convention]."

51. As regards Article 13 of the Convention, the applicants argued that even if the FAC had considered Article 6 to be inapplicable, it had been required to examine the complaint under Article 13 in conjunction with the existence of adverse effects of climate change on their right to life under Article 2, and their right to respect for private and family life under Article 8 of the Convention.

(b) The FSC's decision

52. On 5 May 2020 the FSC dismissed the applicants' appeal.

53. The FSC considered that applicants nos. 2-5 had standing to lodge an appeal against the FAC's judgment. The FSC, however, left it open whether the applicant association also had standing to lodge the appeal and considered it more appropriate to limit its considerations to applicants nos. 2-5.

54. As regards the merits of the applicants' appeal, the FSC first found that the decisions of the DETEC and the FAC had been duly reasoned, as required by Article 29 § 2 of the Constitution and Article 6 § 1 of the Convention (assuming that it applied).

55. With respect to the applicants' reliance on section 25a of the APA, the FSC stressed that this provision was intended to provide legal protection against "real acts" and not for an *actio popularis* avenue. This necessitated a careful examination in the particular circumstances of each case of whether the person was affected in a different way from the general public. In other words, it was essential that an applicant's own rights were affected. Moreover, the FSC explained that the term "real acts" under section 25a of the APA referred to a broad concept of State acts (or failures to act). However, the legal protection guaranteed under that provision was restricted by the application of other admissibility criteria, notably the requirement that the

"real act" affect rights or obligations and that the person have an "interest worthy of protection". The requirement of being affected presupposed an interference (actual or potential) of a certain gravity with the rights of an individual. Linked to that, the "interest worthy of protection" was primarily concerned with fundamental rights, although other legal titles might also be taken into account.

56. Applying these considerations to the case in issue, the FSC first noted that the applicants had requested a large number of measures of different nature and scope which essentially amounted to a request to institute preparatory work for the enactment of laws and secondary legislation. However, finding that in the light of other considerations it was not necessary to engage further with this issue, the FSC stressed that, according to Swiss constitutional law, proposals for shaping current policy areas should in principle be pursued by way of democratic participation.

57. The FSC further considered that the fact that the DETEC and the other authorities had not taken the actions requested by the applicants did not in itself mean that the rights invoked by the applicants would be violated. Moreover, it did not follow from that alleged omission alone that the applicants' fundamental rights would be affected with the necessary intensity, as required under section 25a of the APA.

58. In this connection, the FSC held that the limit of "well below 2°C" in terms of the Paris Agreement[2] was not expected to be exceeded in the near future. Relying on the 2018 Special report "1.5°C global warming" of the Intergovernmental Panel on Climate Change (IPCC), the FSC concluded that global warming would reach 1.5°C around the year 2040 (likely range 2030 to 2052), provided that it continued at the current rate (0.2°C per decade, likely range 0.1 to 0.3°C per decade). The limit of "well below 2°C" would accordingly be reached at a later time. The FSC considered that the Paris Agreement and the international climate protection regime based on it, including the relevant Swiss law, were based on the assumption that the limit of "well below 2°C" would not be exceeded in the near future and that there was still some time to prevent global warming from exceeding this limit.

59. On the basis of the above considerations, the FSC found as follows:

> "In the circumstances mentioned above, the appellants' right to life under Article 10 § 1 of the Constitution and Article 2 [of the Convention] does not appear to be threatened by the alleged omissions to such an extent at the present time that one could speak of their own rights being affected in terms of section 25a of the APA with sufficient intensity ... The same applies to their private and family life and their home in terms of Article 8 [of the Convention] and Article 13 § 1 of the Constitution. The alleged domestic omissions do not achieve the fundamental rights relevance required under section 25a to guarantee the protection of individual rights. Therefore, section 25a of the APA, which ensures the protection of individual rights, does not apply ... Nor do the appellants appear to be victims of a violation of the above-mentioned Convention rights in terms of Article 34 [of the Convention] ... Their

[2] Paris Agreement, 12 December 2015, United Nations, Treaty Series, vol. 3156.

above-mentioned rights are not affected and they are not victims within the meaning of Article 34 [of the Convention] because their rights are not affected with sufficient intensity. This is not altered by the fact that – as they argue – in certain cases potential victims can be victims in terms of Article 34 [of the Convention]. This also requires being affected with a certain intensity ..., which requirement is not met here.

In view of what has been said above, it follows that the rights of the appellants – like the rest of the population – are not affected by the alleged omissions with sufficient intensity in terms of section 25a of the APA. Accordingly, their request to the above-mentioned authorities for issuance of a ruling on real acts does not have the aim of ensuring their individual legal protection. Rather, it aims to have the climate protection measures at the federal level existing today and planned up to the year 2030 examined in the abstract for their compatibility with State obligations to protect. Indirectly – through the requested action of State authorities – it aims to initiate the tightening of these measures. Such a procedure or *actio popularis* is inadmissible in terms of section 25a of the APA, which guarantees the protection of individual rights only. Article 9 § 3 of the Aarhus Convention ... to which the appellants referred, cannot alter this finding ..."

60. Moreover, the FSC considered that, in terms of section 25a of the APA, the applicants' legal action was of an *actio popularis* nature and aimed at achieving something which should more appropriately be achieved not by legal action but by political means. The DETEC had therefore not acted in breach of section 25a of the APA when rejecting the applicants' requests.

61. As regards the applicants' reliance on Article 6 § 1 of the Convention, the FSC reasoned as follows:

"[The] condition [that the disputed claim existing in domestic law must at least be "arguable"] is not met in the present case. In terms of domestic law, the appellants base their alleged subjective right to have the impugned omissions ceased and to have the requested actions performed, on the right to life under Article 10 § 1 of the Constitution. However, as noted above, the alleged omissions do not affect this fundamental right in a legally relevant way. Therefore, they cannot derive the requests mentioned from this right. Accordingly, they have no subjective right to the declaratory ruling requested in the alternative, namely that the alleged omissions breach (fundamental) rights. The [FAC] therefore rightly confirmed the DETEC's decision not to examine the case in this respect. It is therefore not necessary to address the further requirements of Article 6 § 1 [of the Convention] ..."

62. Lastly, as regards the applicants' complaint under Article 13 of the Convention, the FSC found that, in the light of the findings above, the applicants did not have an arguable claim under another provision of the Convention triggering the application of Article 13.

63. In conclusion, the FSC stressed as follows:

"It is clear from the considerations above that the appellants cannot use the means of individual legal protection invoked to protect themselves against the alleged omissions of the abovementioned authorities in the field of climate protection. Therefore, even though their concern is readily comprehensible given the possible consequences of insufficient implementation of the Paris Climate Agreement for older women which they highlighted, their appeal must be dismissed."

II. FACTS CONCERNING CLIMATE CHANGE

A. Submissions by the applicants

1. General observations on climate change

64. The work of the IPCC demonstrated that increases in GHG concentrations since around 1750 had unequivocally been caused by human activities and that the human-caused global surface temperature increase from the period 1850-1900 to the period 2010-19 was 1.07°C. The IPCC had also found with high confidence that there was a near-linear relationship between cumulative anthropogenic GHG emissions and global warming: human-induced global warming resulted in more frequent and more intense heatwaves[3]. The IPCC had emphasised that reductions this decade largely determined whether warming could be limited to 1.5°C or 2°C[4].

65. Increasing temperatures and heatwaves increased mortality which could be attributed to human-induced climate change[5]. Indeed, climate change and related extreme events would significantly increase ill health and premature deaths in the near to long term[6]. Globally, heat-related mortality in people over 65 had increased by approximately 68% between 2000-04 and 2017-21[7]. Of all the climate hazards, heat was by far the most significant cause of death in Europe[8].

66. Increasing temperatures and heatwaves not only entailed increased mortality but also posed a serious health risk. Heatwaves placed strain on the human body and caused dehydration and the impairment of heart and lung function, leading to an increase in emergency hospital admissions: older people and infants were particularly at risk. They also contributed to dehydration, hyperthermia, fatigue, loss of consciousness, heat cramps and heat strokes, including the aggravation of existing medical conditions such as

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[3] Citing IPCC, "Climate Change 2021: The Physical Science Basis", Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("AR6 WGI").

[4] Citing AR6 Synthesis Report: Climate Change 2023 ("AR6SR").

[5] Citing, *inter alia*, IPCC, "Climate Change 2022: Impacts, Adaptation and Vulnerability", Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("AR6 WGII"); and study Vicedo-Cabrera/Scovronick/Sera et al., "The burden of heat-related mortality attributable to recent human-induced climate change", *Nature Climate Change* 11, 492-500 (2021).

[6] Citing, *inter alia*, AR6 WGII (cited above); study Evan De Schrijver/Sidharth Sivaraj/Christoph Raible et al., "Nationwide Projections of Heat and Cold-Related Mortality under Different Climate Change and Population Development Scenarios in Switzerland" (2003).

[7] Citing "The 2022 report of the Lancet Countdown on health and climate change: health at the mercy of fossil fuels".

[8] Citing AR6 WGII (cited above).

cardiovascular, respiratory and kidney conditions or mental illnesses and stress[9].

67. Older adults, women and persons with chronic diseases were at the highest risk of temperature-related morbidity and mortality[10]. Overall, women aged above 75 (such as applicants nos. 2-5) were at greater risk of premature loss of life, severe impairment of life and of family and private life, owing to climate change-induced excessive heat than the general population[11].

68. While any increase in global warming was projected to affect heat-related morbidity and mortality, the global scientific consensus was that many premature deaths and health impairments could be prevented by adhering to the 1.5°C limit[12].

2. The situation in Switzerland

69. Per capita GHG emissions in Switzerland in 2020 had been 5.04 tonnes of CO_2eq. Total domestic GHG emissions in Switzerland in 2020 had amounted to 43.40 Mt CO_2e[13]. In the same year, Switzerland's share of global cumulative CO_2 emissions had been 0.18%[14].

70. These figures, however, excluded emissions attributable to Switzerland but occurring outside of its territory ("external emissions") such as GHG emissions from international aviation and shipping fuels tanked in Switzerland (these emissions had nearly doubled since 2004 and in 2019 had been equivalent to about 13.2% of total domestic GHG emissions in Switzerland[15]) and consumption-based GHG emissions, created by the import of goods (Switzerland being the world's largest importer of such emissions relative to its domestic emissions[16]). The per capita footprint in that respect

[9] Citing, *inter alia*, FOEN "Climate Change in Switzerland" (2020); FOEN report "La canicule et la sécheresse de l'été 2018" (2019); Report of Ragettli and Röösli, the Swiss Tropical and Public Health Institute (2020); AR6 WGII (cited above).

[10] Citing, *inter alia*, the IPCC 2018 Special report (cited above); AR6 WGII (cited above); study Ana M. Vicedo-Cabrera/Evan De Schrijver/Dominik Schumacher et al., "The Footprint of Anthropogenic Climate Change on Heat-Related Deaths in Summer 2022 in Switzerland" (2003).

[11] Citing, *inter alia*, Swiss Tropical and Public Health Institute (TPH) report "Hitze und Gesundheit" (2022); study Saucy et al., "The role of extreme temperature in cause-specific acute cardiovascular mortality in Switzerland: A case-crossover study", *Science of The Total Environment*, vol. 790, 10 October 2021; report of Ragettli and Röösli, the Swiss Tropical and Public Health Institute (2021).

[12] Citing, *inter alia*, IPCC 2018 Special report (cited above).

[13] Citing FOEN "Kenngrössen zur Entwicklung der Treibhausgasemissionen in der Schweiz 1990-2020".

[14] Citing Our World in Data portal (1 October 2019); available at www.ourworldindata.org (last accessed 14.02.2024).

[15] Citing FOEN report "Greenhouse gas emissions from aviation" (2022).

[16] Citing Our World in Data chart.

had been 13 tonnes of CO_2eq[17]. Such a GHG footprint had been found to be excessively high by the FOEN[18].

71. Moreover, to this had to be added the emissions caused by finance flows (such as investing, underwriting, lending, insurance). A 2015 study commissioned by the FOEN had shown that the investments made by the largest equity funds authorised in Switzerland tended to a contribution to global warming of 4-6°C[19]. The FOEN had therefore considered that more could be done at this level[20].

72. In Switzerland, the annual temperature had increased around 2.1°C since the measurements had begun in 1864[21]. The summers of 2003, 2015, 2018, 2019 and 2022 had been the five warmest summers on record in Switzerland, with those of 2003 and 2022 being the first and second hottest since records had begun[22].

73. In Switzerland more deaths than average occurred during hot summers[23]. Almost 1,000 additional heat-related deaths had occurred in June and August 2003, approximately 800 in June, July and August 2015, 185 in August 2018 and 521 in June, July and August 2019. Between June and August 2022, 1,700 more people over 65 had died than statistically expected (the reasons having still not been completely analysed)[24].

74. During the 2003 heatwave, 80% of the additional deaths had occurred in persons over 75. The most significant rise in mortality risk during the hot summer of 2015 had been for 75 to 84-year-olds. In August 2018, nearly 90% of heat-related deaths had occurred in older women, almost all of whom were older than 75. During the 2019 heatwave, older persons had been at the highest risk of mortality, and people aged 85 and over had been most affected (448 of 521). Similarly, the 2022 heatwaves appeared predominantly to have affected people over 65[25].

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[17] Citing FOEN report 1990-2020 (cited above).

[18] Citing FOEN report "Indicator Economy and Consumption, GHG footprint" (2021).

[19] Citing report "Kohlenstoffrisiken für den Finanzplatz Schweiz" (2015).

[20] Citing FOEN communication "Le test climatique 2022 révèle le potentiel du marché financier" (2022).

[21] Citing Federal Office of Meteorology and Climatology MeteoSwiss portal on Climate Change (last modified 14 January 2022).

[22] Citing FOEN report "La canicule et la sécheresse de l'été 2018" (2019); MeteoSwiss Climate Report 2019 (2020); Michel, *Die Republik*, "Ein tödlicher Sommer" assessment (2022).

[23] Citing FOEN "La canicule et la sécheresse" (cited above).

[24] Citing FOEN "Climate Change in Switzerland" (2020); Ragettli and Röösli 2020 (cited above); Michel (cited above).

[25] Citing IPCC, "Climate Change 2014: Impacts, Adaptation, and Vulnerability", Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change ("AR5 WGII"); FOEN report "Hitze und Trockenheit im Sommer 2015" (2016); FOEN "La canicule et la sécheresse" (cited above); Ragettli and Röösli 2020 (cited above); Michel (cited above).

3. Measures taken by the Swiss authorities

75. Switzerland had not transposed its Nationally Determined Contributions (NDC) under international law into domestic law:

– The current CO_2 Act 2011 merely contained a binding emissions reduction target for 2020 and 2024;

– A new CO_2 Act 2020[26], containing a binding target for 2030, had been rejected in a referendum on 13 June 2021;

– On 16 September 2022 the government had submitted to Parliament a draft amendment of the CO_2 Act 2011[27] which was intended to apply for the period from 2025 to 2030[28]. Parliament had, however, agreed on another proposed amendment[29] to the Act;

– Moreover, Switzerland had never carried out an analysis of its carbon budget.

76. According to the applicants, Switzerland's climate reduction targets and actions could be summarised as follows:

– 2007-13: in accordance with the CO_2 Act 2011 (in force since 2013), domestic GHG needed to be reduced by 20% below 1990 levels by 2020. However, in 2007, the IPCC had stated that developed countries like Switzerland had to reduce their domestic emissions by 25%-40% below 1990 levels by 2020 to meet the (now outdated) 2°C limit with a 66% probability[30]. The inadequacy of the solution had been recognised by the government[31].

– 2014-17: in 2017 the government had presented a new CO_2 Act (which had later become the rejected 2020 CO_2 Act) proposing an overall reduction of 50% and a domestic emissions reduction of 30% below 1990 levels by 2030[32]. However, in 2014, the IPCC had found that countries such as Switzerland had to achieve domestic reductions of at least 40% and possibly as much as 100% by 2030 for there to be a 66% probability of remaining

[26] FF 2020 7607 – Loi fédérale sur la réduction des émissions de gaz à effet de serre (Loi sur le CO_2).
[27] FF 2022 2652 – Loi fédérale sur la réduction des émissions de CO_2 (Loi sur le CO_2) (Projet).
[28] Citing "Politique climatique : le Conseil fédéral adopte le message relatif à la révision de la loi sur le CO_2".
[29] Put forward by the Glacier initiative.
[30] Citing IPCC, "Climate Change 2007: Mitigation of Climate Change", Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Mitigation of Climate Change.
[31] Citing FF 2009 6723 "Message relatif à la politique climatique suisse après 2012 (Révision de la loi sur le CO2 et initiative populaire fédérale « pour un climat sain »)"; FF 2012 1857 "Message concernant l'évolution future de la politique agricole dans les années 2014-2017 (Politique agricole 2014–2017)".
[32] Citing FF 2018 229 "Message relatif à la révision totale de la loi sur le CO2 pour la période postérieure à 2020"; FF 2018 373 Loi fédérale sur la réduction des émissions de gaz à effet de serre (Loi sur le CO_2).

within the (now outdated) 2°C limit. This implied the need for an on average domestic reduction of 50% by 2030[33].

– In 2020 Switzerland had submitted an updated NDC, stating that it was committed to following scientific recommendations in order to limit warming to 1.5°C and that in view of its climate neutrality target by 2050, Switzerland's NDC was to reduce its GHG emissions by at least 50% by 2030 compared with 1990 levels[34].

– 2018-2030: There had been no real progression in the formally updated NDC by Switzerland[35] and the text of the current and planned national climate legislation did not reflect a commitment to the 1.5°C limit. Moreover, the emission reduction pathways were not in line with the 1.5°C limit: in comparison to the period up to 2020 (which the applicants considered as entailing an annual decrease of 2%), in 2021 they had even decreased (see paragraph 123 below; section 3(1^{bis}) and (1^{ter}) of the CO_2 Act 2011). The Swiss authorities had accepted that the reduction pathway would not be sufficient to achieve Switzerland's NDC and that compensating for the delay in emissions reduction would be a major challenge and the share of measures taken abroad would have to be significantly higher than planned[36]. For the period from 2025 to 2030, it was planned that it would be within the competence of the government to determine the spread of domestic measures within the reduction target of at least 50% by 2030. The intention was a domestic reduction of around 34% by 2030 compared to 1990 (1.52% per year). At the same time, the State had not explained how the delay could be compensated for with this domestic reduction pathway[37].

– 2031-50: for the period from 2031 onwards, the Swiss authorities' goal was to reduce GHG emissions by 75% below 1990 levels by 2040 and to net zero by 2050. However, the applicants pointed out that according to that legislation these targets were to be achieved only "as far as possible" through domestic measures[38]. They also considered that these targets were not in line with the 1.5°C objective.

77. In this connection, taken globally, the IPCC had considered that immediate action to limit the warming to 1.5°C required a reduction in net global GHG emissions from 2019 levels of 43% by 2030 and by 84%

[33] Citing AR5 WGII (cited above).
[34] Citing Switzerland's submissions within the framework of international climate negotiations (UNFCCC): 2020.
[35] Citing Emissions Gap Report 2022 (available at www.unep.org; last accessed 14.02.2024), figure 3.1; and Climate Analytics, "A 1.5°C compatible Switzerland" (2021).
[36] Citing FF 2021 2252 – Initiative parlementaire. Prolongation de l'objectif de réduction de la loi sur le CO_2. Projet et rapport explicatif de la Commission de l'environnement, de l'aménagement du territoire et de l'énergie du Conseil national.
[37] Citing "Message relatif à la révision de la loi sur le CO_2 pour la période postérieure à 2024".
[38] Citing FF 2022 1537 Loi fédérale relative aux objectifs en matière de protection du climat (LCl) (Projet), sections 3(3) and (4).

by 2050[39]. To limit the global temperature increase required limiting the overall cumulative CO_2 emissions within a carbon budget. To have a 67% chance of meeting the 1.5°C limit, the remaining global carbon budget was 400 $GtCO_2$ and to have an 83% chance, 300 $GtCO_2$[40]. Thus, according to the applicants' calculation, even applying the method of same "per capita burden-sharing" for emissions from 2020 onwards (the applicants challenged the validity of the method of "equal per capita emissions" as compared to "highest possible ambition"), Switzerland would have a remaining carbon budget of 0.44 $GtCO_2$ for a 67% chance of meeting the 1.5°C limit, or 0.33 $GtCO_2$ for an 83% chance. In a scenario with a 34% reduction in CO_2 emissions by 2030 and 75% by 2040, Switzerland would have used the remaining budget around 2034 (or 2030 for an 83% chance).

78. The Climate Action Tracker ("the CAT")[41] had found that if all States followed Switzerland's approach, warming would reach up to 3°C. In addition, the CAT had rated Switzerland's fair share target as "insufficient" and its climate finance as "insufficient", indicating that "substantial improvements" were needed to be consistent with limiting warming to 1.5°C[42]. The CAT had concluded that to do its fair share to limit global warming to 1.5°C, Switzerland had to reduce its GHG emissions to significantly below zero by 2030 (a reduction of between 160% and more than 200% below 1990 emissions)[43]. Similar findings had been reached in other studies[44].

79. However, Switzerland was pursuing a strategy of purchasing emission reductions abroad and taking them into account in the national emission reduction target for 2030, which had the effect of postponing the reduction efforts Switzerland itself had to undertake to be net zero in 2050. Such a strategy would require Switzerland, after 2030, to reduce domestic emissions to zero within a very short period of time with high annual emission reduction rates that would become increasingly difficult to achieve[45].

80. Furthermore, most of the GHG emissions attributable to Switzerland occurred abroad. The Swiss authorities had at first recognised that they should be taken into account when setting climate targets[46]. However, this did not

[39] Citing IPCC, "Climate Change 2022: Mitigation of Climate Change", Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("AR6 WGIII").
[40] Citing AR6 WGI (cited above).
[41] Available at www.climateactiontracker.org (last accessed 14.02.2024).
[42] Ibid.
[43] Ibid; citing also Rajamani et al., "National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law", *Climate Policy* 21:8, pp. 983-1004, 2021.
[44] Citing Climate Analytics "A 1.5°C compatible Switzerland".
[45] Citing Emissions Gap Report (cited above); IPCC 2018 Special report (cited above).
[46] Citing FF 2018 229 (cited above).

form part of their current legislative proposals or of the updated 2021 NDC[47]. In this context, the financial sector had a considerable influence on GHG emissions[48]. However, according to the amended CO_2 Act 2011, the finance sector would be included in national climate law only in 2025 and with a limited effect, since it would merely be obliged to review the financial risks of climate change and not to make financial flows compatible with a climate-compatible emissions pathway.

81. The Swiss authorities also recognised that they had missed their own 2020 climate target. Even after the COVID-19 restrictions, GHG emissions were rising again significantly[49]. Some sectors (and most notably the building and transport sectors in the cantons) were not properly supervised and some sectors (such as the agricultural and financial sectors) were not regulated.

82. The (planned) emission reduction measures for 2030 were similar to those in the CO_2 Act 2011 and these measures would not be able to achieve a domestic reduction of around 34% by 2030[50]. At the same time, a 1.5°C compatible domestic pathway was technically and economically feasible[51]. However, Switzerland would need to achieve full decarbonisation in line with the 1.5°C limit and should step up the taking of the measures abroad in order to meet its "fair share" target.

B. Submissions by the Government

83. The Government considered that the situation concerning climate change in Switzerland, and the measures taken in that respect, should be viewed in two separate phases: the first concerned the measures taken before the adoption of the FSC's judgment of 5 May 2020 in the applicants' case (see paragraphs 52-63 above); and the second related to the measures taken after the adoption of that judgment.

1. The first phase

84. The CO_2 Act 2011, applying the Kyoto Protocol[52], envisaged that GHG emissions in Switzerland should be reduced by 20% compared to 1990 levels by 2020. This corresponded to an average reduction of 15.8% in the period between 2013 and 2020, which was the international objective fixed

[47] Citing "Switzerland's information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 of its updated and enhanced nationally determined contribution (NDC) under the Paris Agreement (2021-2030)".
[48] Citing FOEN "Climate and financial markets" (2020); FOEN "Testing for climate goal alignment" (2022).
[49] Citing FOEN "Inventaire des gaz à effet de serre 2020 : la Suisse manque de peu son objectif climatique".
[50] Citing Climate Analytics (cited above); CAT (cited above).
[51] Citing CAT Targets (cited above).
[52] Kyoto Protocol to the United Nations Framework Convention on Climate Change, 11 December 1997, United Nations, Treaty Series, vol. 2303, p. 162.

by Switzerland under the Kyoto Protocol. The Federal Council had relied on the available scientific data when fixing the objective for the period up until 2020.

85. The fourth IPCC report of 2007[53] had noted that the concentration of GHG in the atmosphere should be stabilised at a level of 445 to 490 ppm of the equivalent CO_2 in order to avoid dangerous climate change. In this way, it would have been possible to limit the rise in temperature to 2 or even 2.4°C compared to the pre-industrial period. To achieve this objective, it was necessary to reduce GHG emissions at the global level from 5.8 t to 1 to 1.5 t of CO_2 equivalent per inhabitant at most. Such an objective would have required a reduction in GHG emissions of at least 50 to 85% globally and an 80 to 95% reduction at the national level of industrialised countries until 2050 compared to 1990. Industrialised countries therefore had to reduce their emissions by 25 to 40% until 2020 compared to 1990. In this connection, the objective fixed by Switzerland (20% compared to 1990 levels) corresponded to the objective set by its principal commercial partners, notably the European Union. Moreover, although the Federal Council had envisaged the possibility of increasing the relevant level of reduction of GHG emissions to 30%, it had not ultimately pursued this possibility.

86. By the end of 2020, the relevant legislation on climate had envisaged the following measures: (a) imposing a CO_2 tax on fossil fuels and creating benefits for the construction sector, technology, households and enterprises; (b) requiring all installations emitting significant levels of GHG emissions to participate in the EU Emissions Trading System[54]; (c) ensuring the undertaking of emissions reduction by small and mid-size installations emitting GHG emissions; (d) aligning domestic legislation with EU requirements relating to the GHG emissions emanating from passenger cars; (e) obliging the importers of fossil fuels to compensate for a certain proportion of CO_2 emissions; (f) taking measures in the field of waste management in order to reduce GHG emissions; (g) coordination of the relevant adaptation measures; and (h) provision of information and education on climate change.

87. These measures, as well as measures taken in other areas, in particular agriculture and energy, should have enabled Switzerland to reduce its emissions by 20% to 2020 compared to 1990. According to the relevant assessment[55], Switzerland had just barely missed this target: in 2020 GHG emissions had been some 19% below 1990 levels. Owing to the mild winter, in 2020 emissions had been particularly low in buildings and the measures to contain the coronavirus pandemic had further contributed to a reduction of transport-related emissions. However, only the industrial sector had achieved

[53] Citing IPCC, Fourth Assessment Report, AR4 Climate Change 2007, ("AR4").
[54] See EU Emissions Trading System (EU ETS) (available at www.europa.eu; last accessed 14.02.2024).
[55] Citing FOEN report "Examen de l'objectif 2020 (pour la période de 2013 à 2020)".

the fixed objective. Emissions from the building and transport sectors and other emissions had been above the target level. On average over the period from 2013 to 2020, Switzerland had reduced its GHG emissions by around 11% compared to 1990 levels.

88. Since 2012 the Federal Council had put in place the national strategy of climate change adaptation measures which identified the measures that needed to be taken in different sectors to address the issues of climate change.[56] While this strategy was at the federal level, at the local and cantonal levels many measures could be taken by the relevant authorities under the CO_2 Act.

89. The Federal Council had envisaged sixty-three adaptation measures for the period between 2014 and 2019, which included, among others, measures of protection against heatwaves. Some further scientific reports on the matter had also been published[57], including a FOEN report which had found that the increase in heat stress and the damage to human health it caused were among the main risks of climate change in Switzerland[58]. Other adaptation measures had also been adopted[59].

90. In 2015 Switzerland had also established a National Centre for Climate Services which was in charge of coordinating various climate services at the federal level. Moreover, and in reaction to the heatwaves in the summer of 2003, since 2005 the Federal Office of Meteorology and Climatology (MeteoSwiss) had been publishing heatwaves alerts, and the Federal Office for Public Health had been publishing recommendations on how to deal with the effects of heatwaves[60]. Various adaptation measures had accordingly been taken at the cantonal level to protect the population during heatwaves.

91. Furthermore, as regards the planning for the period between 2030 and 2050, on 27 February 2015 Switzerland had been the first country to provide its NDC[61]. It was committed to reducing its GHG emissions by 50% by 2030 compared to 1990, which represented an average reduction of 35% over the period from 2021 to 2030. It had also set an indicative reduction target of 70 to 85% by 2050. When setting these targets, Switzerland had relied on the available scientific evidence contained notably in the fifth IPCC report (2014)[62]. Switzerland considered that its commitment to reduce emissions by

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[56] Citing FOEN "Federal Council strategy for adaptation to climate change in Switzerland".
[57] Citing the report "Boite outils contre chaleur" (2021) prepared by the Swiss Tropical and Public Health Institute under the authority of the Federal Office for Public Health, and the FOEN report "Quand la ville surchauffe" (2018).
[58] Citing FOEN study "Climate-related risks and opportunities" (2018).
[59] Citing FOEN Pilot programme "Adaptation to climate change".
[60] Citing FOEN publication "Chaleur", available at www.bag.admin.ch (last accessed 14.02.2024)
[61] Citing Federal Council's communication "Switzerland targets 50% reduction in greenhouse gas emissions by 2030".
[62] IPCC, Fifth Assessment Report, AR5 Climate Change 2014 ("AR5").

50% by 2030 compared to 1990 would correspond to the recommendations in the IPCC report, namely of reducing global emissions by 40 to 70% by 2050 compared to 2010. Switzerland also noted that its responsibility for GHG emissions had been limited since it only produced around 0.1% of global emissions and its per capita emissions had been within the international average. Moreover, it was taking measures to reduce GHG emissions.

92. By ratifying the Paris Agreement, Switzerland had made a definite commitment to halve its GHG emissions by 2030 and reduce them by on average 35% per year over the period from 2021 to 2030 compared to 1990. In 2017 the Federal Council had proposed legislation to implement this commitment but, despite its acceptance by Parliament, it had been rejected in a referendum on 13 June 2021.

93. The parliamentary deliberations on the complete revision of the CO_2 Act had been delayed. In 2019 Parliament had therefore decided to proceed with a partial revision of the CO_2 Act in force at the time by extending the time-limit for the measures provided for and setting a reduction target for 2021, according to which GHG emissions were to be limited by 1.5% compared to 1990. The 2021 objective represented, in particular, a legal basis for determining the applicable compensation rate for importers of fossil fuels and the level of the CO_2 tax increase. In August 2019 the Federal Council had decided that as of 2050, Switzerland should no longer emit more GHG than could be absorbed by natural sinks and stored by technical installations (net zero emissions target)[63]. This corresponded to the scientific evidence established in the IPCC 2018 Special report "1.5°C global warming" (cited above). The same scientific basis underpinned the objectives set out in the 2021 strategy adopted by Switzerland (see paragraph 100 below).

2. The second phase

94. On 25 September 2020 Parliament had enacted a new CO_2 Act which had been intended to implement Swiss commitments under the Paris Agreement and fix the objectives for the period until 2030 (reduce emissions by 50% by 2030 and by 35% for the period from 2021 to 2030, each time relative to 1990). The new CO_2 Act, envisaging a comprehensive set of measures to achieve those objectives, had been supposed to come into force on 1 January 2022. However, on 13 June 2021 it had been rejected in a referendum.

95. In order to avoid a legislative lacuna, on 17 December 2021 Parliament had decided to enact a partial revision of the existing CO_2 Act 2011[64]. In accordance with this solution, the reduction target for the years

[63] Citing Federal Council's communication "Federal Council aims for a climate-neutral Switzerland by 2050".

[64] Citing communication "Prolongation de l'objectif de réduction de la loi sur le CO_2" (2021).

2021 to 2024 was 1.5% per year compared to 1990, on the understanding that from 2022, a maximum of 25% of this reduction could be achieved by measures implemented abroad. These objectives were independent of the reduction objective of 20% set for the period until 2020, and they were susceptible to further amendments.

96. In the meantime, on 17 September 2021 the Federal Council had defined the next steps of Swiss climate policy[65]. It had sought to address, in particular, the concerns expressed in the popular vote relating to fears of an increase in the cost of living and in particular a possible rise in the price of petrol, which had led to the rejection of the new CO_2 Act. The Federal Council had therefore established the following guiding principles for the new legislation: (a) keeping the instruments of the existing CO_2 Act; (b) no new taxes; (c) additional financial aid to the sectors and population affected; and (d) the development of sustainable aviation fuel.

97. Furthermore, on 17 December 2021 the Federal Council had started the consultation process on the revision of the CO_2 Act for the period after 2024[66]. The consultation process had ended in April 2022 and in September of that year the Federal Council had issued a communication regarding a revision of the CO_2 Act for the period after 2024[67]. The following measures had been envisaged: (a) reintroduction of the CO_2 tax and, for a determined period, an increase in climate-protection benefits; (b) financial support for biogas installations and the encouragement of energetic planning in the municipalities; (c) lowering of the CO_2 emission target values applicable to new vehicles in cooperation with the European Union; (d) introduction of the relevant climate-protection measures in the transport sector; (e) the development of sustainable aviation fuel in coordination with the European Union; (f) an increase in the maximum share of emissions that had to be offset by petrol importers to 90% (compensation measures in Switzerland and abroad); (g) introduction of a possible CO_2 tax exemption for companies which were willing to put in place the relevant offsetting measures; and (h) introduction of an obligation for the financial sector supervision authorities to review the risks linked to climate change. All these measures, combined with the use of new developing technologies, should allow Switzerland to maintain its reduction target of 50% by 2030. The Federal Council had considered that the measures implemented in Switzerland should lead to a reduction of emissions by some 34%. The legislative process with a view to enacting this legislation was currently ongoing.

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[65] Citing Federal Council's communication "Politique climatique : le Conseil fédéral pose les jalons pour un nouveau projet de loi".

[66] Citing Federal Council's communication "Politique climatique : le Conseil fédéral met la loi révisée sur le CO2 en consultation".

[67] Citing Federal Council's communication FF 2022 2651 "Message relatif à la révision de la loi sur le CO2 pour la période postérieure à 2024".

98. There had also been developments in the domestic legislation in relation to popular initiatives to combat climate change, in particular the "Initiative pour les glaciers" that sought to establish in the Constitution a prohibition of GHG emission by 2050. The Federal Council had opposed certain aspects of this initiative, considering that it had gone too far. On 11 August 2021 the Federal Council had made a counter legislative proposal considering that it would be more appropriate to introduce an obligation to reduce consumption of fossil fuels, save in some exceptional circumstances (such as when needed for the military, police or other security services).

99. Parliament had finally, on 30 September 2022, passed the Law on climate protection, innovation and strengthening energy security ("the Climate Act")[68], which had put in place the principle of a net zero emissions target by 2050. This Act – approved by a popular vote on 18 June 2023 – provided for an intermediate target for 2040 (75% reduction compared to 1990) and for the years 2031 to 2040 (average reduction of 64%) and 2041 to 2050 (average reduction of 89%). It had also set indicative values for the reduction of emissions in the building, transport and industry sectors for the years 2040 and 2050. A significant budget had already been put in place in order to meet the objectives of this Act.

100. The Climate Act corresponded to the climate strategy for 2050 drafted by the Federal Council in January 2021[69], several months before the publication of the sixth IPCC report[70]. In adopting this strategy, Switzerland had, albeit with a month's delay, complied with its commitments under the Paris Agreement by showing that it could reduce its GHG emissions to close to 90% by 2050. The building and transport sectors would be able to cut their emissions by 2050 and emissions from energy consumption in the industry sector could also be eliminated by 2050. A reduction in emissions of at least 40% compared to 1990 was also possible in the agricultural sector.

101. As regards the adaptation measures, on the basis of preliminary assessments of the situation, in August 2020 the Federal Council had adopted the second climate-change adaptation plan.[71] The major novelty of this plan was the putting in place of the "prevention of heat stress" measure, which aimed to protect the population from the heat, specifically the workforce. Moreover, various other measures had been put in place to address the adverse effects of heatwaves. Switzerland was currently in the process of drafting its next climate-change adaptation plan for the period after 2025.

102. At the international level, on 9 December 2020 Switzerland had submitted its new NDC, setting out the target of reducing GHG emissions by at least 50% by 2030 compared to 1990. Compared to the objective

[68] Citing FF 2022 2403 Loi fédérale sur les objectifs en matière de protection du climat, sur l'innovation et sur le renforcement de la sécurité énergétique.
[69] Citing "Long-term climate strategy to 2050".
[70] Citing Sixth Assessment Report – IPCC.
[71] Citing "Adaptation aux changements climatiques en Suisse: Plan d'action 2020-2025".

announced in 2015, that of 2020 had been characterised by the following elements: the reduction target had gone from 50% to at least 50%, and the indicative reduction target from below 70% to below 85% until 2050, complemented by the target of GHG neutrality by 2050.[72] Switzerland had also kept the parties to the Paris Agreement duly informed of developments at the domestic level.

C. Facts in relation to climate change emerging from the material available to the Court

103. With a view to its examination of the present case, and having regard to the two other cases being examined by the Grand Chamber (see paragraph 5 above), in which rulings are being delivered on the same day, as well as other pending cases stayed at the Chamber level, the Court deems it necessary to highlight the following factual elements which emerge from the material available to it.

104. As early as 1992, when there was less scientific evidence and knowledge than there is at present, the United Nations Framework Convention on Climate Change (UNFCCC)[73] noted in its Preamble that "human activities have been substantially increasing the atmospheric concentrations of GHG, that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind". This was further developed in the operationalisation of the commitments under the UNFCCC by the adoption of the Kyoto Protocol 1997 (including its Doha Amendment) and of the Paris Agreement 2015, as a legally binding international treaty on climate change. The Preamble to the latter instrument acknowledged, in particular, that "climate change is a common concern of humankind, [and that] Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity".

105. More recently, in 2021, the acknowledgment expressed in the Paris Agreement was reiterated in the Glasgow Climate Pact[74], which also expressed "alarm and utmost concern" as regards human activity-induced global warming, and the Paris Agreement was also endorsed in the 2022

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[72] Citing "Protection du climat : cinq ans après l'Accord de Paris".

[73] United Nations Framework Convention on Climate Change, 9 May 1992, United Nations, Treaty Series, vol. 1771, p. 107. All Council of Europe member States are members of the UNFCCC system.

[74] Available at unfccc.int/process-and-meetings/the-paris-agreement/the-glasgow-climate-pact-key-outcomes-from-cop26; last accessed 14.02.2024.

COP 27 Sharm el-Sheikh Implementation Plan and similar findings have been reached in the 2023 COP28 decision (see paragraph 140 below). For its part the EU recognised in the European Climate Law "[t]he existential threat posed by climate change" which required "enhanced ambition and increased climate action by the Union and the Member States". A similar position has been adopted in the recent developments on climate change in the various initiatives and instruments adopted at the UN level, notably as regards the recognition of a human right to a clean, healthy and sustainable environment (UN General Assembly Resolution 76/300[75]).

106. The Court further notes that by defining the Paris Agreement targets the States formulated, and agreed to, the overarching goal of limiting warming to "well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels", recognising that this would significantly reduce the risks and impacts of climate change (Article 2 § 1 (a)). Since then, scientific knowledge has developed further and States have recognised that "the impacts of climate change will be much lower at the temperature increase of 1.5°C compared with 2°C" and thus resolved "to pursue further efforts to limit the temperature increase to 1.5°C" (see Glasgow Climate Pact, paragraph 21, and Sharm el-Sheikh Implementation Plan, paragraph 4).

107. Indeed, in this connection, the Conference of Parties to the UNFCCC, in its decision adopting the Paris Agreement, invited the IPCC to provide a special report on the impacts of global warming of 1.5°C above pre-industrial levels and related global GHG emission pathways (1/CP.21, paragraph 21). The IPCC report in question – IPCC 2018 Special report "1.5°C global warming" (cited above) – found that human-induced warming had reached approximately 1°C above pre-industrial (the period 1850-1900) levels in 2017, increasing at 0.2°C per decade (*high confidence*). Ambitious mitigation actions were therefore considered indispensable to limit warming to 1.5°C[76]. The report further found that any increase in global temperature (such as +0.5°C) was projected to affect human health, with primarily negative consequences (*high confidence*). Lower risks were projected at 1.5°C than at 2°C for heat-related morbidity and mortality (*very high confidence*), and for ozone-related mortality if emissions needed for ozone formation remained high (*high confidence*)[77].

108. The report also noted with alarm that in line with the then existing emission commitments under the Paris Agreement (NDCs), global warming was expected to surpass 1.5°C above pre-industrial levels, even if those pledges were supplemented with very challenging increases in the scale and ambition of mitigation, after 2030 (*high confidence*). Thus, net zero CO_2

[75] UN General Assembly Resolution The human right to a clean, healthy and sustainable environment, A/RES/76/300, 28 July 2022.
[76] Chapter 1, Executive summary, pp. 51-52.
[77] Chapter 3, Executive summary, p. 177.

emissions would be required in less than fifteen years, and lower GHG emissions in 2030 would lead to a higher chance of keeping peak warming to 1.5°C (*high confidence*). In particular, limiting warming to 1.5°C implied reaching net zero CO_2 emissions globally around 2050 and concurrent deep reductions in emissions of non-CO_2 forcers (*high confidence*)[78].

109. The IPCC report sought to quantify mitigation requirements in terms of 1.5°C pathways that refer to "carbon budgets". The report explained that cumulative CO_2 emissions would be kept within a budget by reducing global annual CO_2 emissions to net zero. This assessment suggested a remaining budget of about 420 $GtCO_2$ for a two-thirds chance of limiting warming to 1.5°C, and of about 580 $GtCO_2$ for an even chance (*medium confidence*). At the same time, staying within a remaining carbon budget of 580 $GtCO_2$ implied that CO_2 emissions would have to reach carbon neutrality in about thirty years, reduced to twenty years for a 420 $GtCO_2$ remaining carbon budget (*high confidence*). Moreover, non-CO_2 emissions contributed to peak warming and affected the remaining carbon budget[79].

110. In its subsequent Assessment Reports ("AR"), the IPCC came to similar conclusions confirming and updating its findings in the 2018 Special Report. Thus, in AR6 "Climate Change 2021: The Physical Science Basis" (cited above), the IPCC unequivocally confirmed that anthropogenic climate change has produced various adverse effects for humans and nature and created risks for further such effects in the future, in particular in relation to global warming. According to the report, global surface temperature would continue to increase until at least the middle of the century under all emissions scenarios considered, and global warming of 1.5°C and 2°C would be exceeded during the twenty-first century unless deep reductions in CO_2 and other GHG emissions occurred in the coming decades. On the other hand, with further global warming, changes in several climatic impact-drivers would be more widespread at 2°C compared to 1.5°C global warming and even more widespread and/or pronounced for higher warming levels[80]. The report also confirmed the IPCC's earlier findings (*high confidence*) that there was a near-linear relationship between cumulative anthropogenic CO_2 emissions and the global warming they caused. Thus, limiting human-induced global warming to a specific level required limiting cumulative CO_2 emissions, reaching at least net zero CO_2 emissions, together with strong reductions in other GHG emissions. Furthermore, the report nuanced the relevant estimated remaining carbon budgets from the beginning of 2020. It explained that to have a 67% chance of meeting the 1.5°C limit, the remaining global carbon budget was 400 $GtCO_2$ and to have an 83% chance, 300 $GtCO_2$.[81]

[78] Chapter 2, Executive summary, p. 95.
[79] Ibid., p. 96.
[80] Summary for Policymakers, pp. 14 and 24.
[81] Ibid., pp. 27-29.

111. In AR6 "Climate Change 2022: Mitigation of Climate Change" (cited above), the IPCC found that total net anthropogenic GHG emissions had continued to rise during the period 2010-2019. During that period, average annual GHG emissions had been higher than in any previous decade (*high confidence*). Net anthropogenic GHG emissions had increased across all major sectors globally[82]. The report further pointed out that a consistent expansion of policies and laws addressing mitigation had led to the avoidance of emissions that would otherwise have occurred. However, global GHG emissions in 2030 associated with the implementation of NDCs announced prior to the Glasgow Climate Conference (COP26) would make it likely that warming would exceed 1.5°C during the twenty-first century. It was likely that limiting warming to below 2°C would then rely on a rapid acceleration of mitigation efforts after 2030. Policies implemented by the end of 2020 were projected to result in higher global GHG emissions than those implied by NDCs (*high confidence*). In other words, according to the findings of the IPCC, the world was currently on a trajectory that would lead to very significant adverse impacts for human lives and well-being.

112. According to the above-mentioned IPCC report, global GHG emissions would be projected to peak between 2020 and at the latest before 2025 in global modelled pathways that limited warming to 1.5°C with no or limited overshoot and in those that limited warming to 2°C and assumed immediate action (in both types of modelled pathways, rapid and deep GHG emissions reductions follow throughout 2030, 2040 and 2050). However, without a strengthening of policies beyond those already implemented by the end of 2020, the report predicted GHG emissions to rise beyond 2025, leading to a median global warming of 3.2°C (2.2 to 3.5°C) by 2100 (*medium confidence*)[83].

113. Furthermore, the report stressed that global net zero CO_2 emissions would be reached in the early 2050s in modelled pathways that limited warming to 1.5°C with no or limited overshoot, and around the early 2070s in modelled pathways that limited warming to 2°C. These pathways also included deep reductions in other GHG emissions. Reaching and sustaining global net zero GHG emissions would result in a gradual decline in warming (*high confidence*).[84]

114. In the latest AR6 "Synthesis Report: Climate Change 2023", the IPCC noted that human activities, principally through GHG emissions (increasing with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals), had unequivocally caused global warming, with global surface temperature reaching 1.1°C above 1850-1900

[82] Summary for Policymakers, pp. 6, 8 and 14.
[83] Ibid., p. 17.
[84] Ibid., p. 23.

levels between 2011 and 2020. According to the report, human-caused climate change was already affecting many weather and climate extremes in every region across the globe, which had led to widespread adverse impacts and related losses and damages to nature and people (*high confidence*)[85].

115. The IPCC further stressed that policies and laws addressing mitigation had consistently expanded and had already been deployed successfully in some countries, leading to avoided and in some cases reduced or removed emissions (*high confidence*). Global GHG emissions in 2030 implied by NDCs announced by October 2021 made it likely that warming would exceed 1.5°C during the twenty-first century and made it harder to limit warming below 2°C. There were gaps between projected emissions from implemented policies and those from NDCs. Moreover, finance flows fell short of the levels needed to meet climate goals across all sectors and regions (*high confidence*). The IPCC warned that continued GHG emissions would lead to increasing global warming, with the best estimate of reaching 1.5°C in the near term (2021-2040). At the same time, every increment of global warming would intensify multiple and concurrent hazards. However, deep, rapid and sustained reductions in GHG emissions would lead to a discernible slowdown in global warming within around two decades, and also to discernible changes in atmospheric composition within a few years (*high confidence*). While some future changes were unavoidable and/or irreversible, they could be limited by deep, rapid and sustained global GHG emissions reductions. The likelihood of abrupt and/or irreversible changes increased with higher global warming levels. Similarly, the probability of low-likelihood outcomes associated with potentially very large adverse impacts increased with higher global warming levels (*high confidence*). Adaptation options that were feasible and effective today would become constrained and less effective with increasing global warming; losses and damages would also increase and additional human and natural systems would reach adaptation limits (*high confidence*).[86]

116. In the same report, the IPCC stressed the importance of carbon budgets and policies for net zero emissions. It noted that limiting human-caused global warming required net zero CO_2 emissions. Cumulative carbon emissions until the time of reaching net-zero CO_2 emissions and the level of GHG emission reductions this decade would largely determine whether warming could be limited to 1.5°C or 2°C. Projected CO_2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C (50%) (*high confidence*). As regards mitigation pathways, the IPCC noted that all global modelled pathways that limited warming to 1.5°C (>50%) with no or limited overshoot, and those that limited warming to 2°C (>67%), involved rapid and deep and,

[85] Summary for Policymakers, pp. 4-5.
[86] Ibid., pp. 10-19.

in most cases, immediate GHG emissions reductions in all sectors this decade. Global net zero CO_2 emissions would be reached for these pathway categories in the early 2050s and around the early 2070s, respectively (*high confidence*).[87]

117. However, the IPCC stressed that if warming exceeded a specified level such as 1.5°C, it could gradually be reduced again by achieving and sustaining net negative global CO_2 emissions, which would require additional deployment of carbon dioxide removal, compared to pathways without overshoot. This would, however, lead to greater feasibility and sustainability concerns as overshoot entailed adverse impacts, some irreversible, and additional risks for human and natural systems, all growing with the magnitude and duration of overshoot (*high confidence*)[88].

118. The IPCC stressed the urgency of near-term integrated climate action. It noted that climate change was a threat to human well-being and planetary health. There was a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*). Climate-resilient development integrated adaptation and mitigation to advance sustainable development for all, and was enabled by increased international cooperation, including improved access to adequate financial resources and inclusive governance and coordinated policies (*high confidence*). The choices and actions implemented in this decade would have impacts now and for thousands of years (*high confidence*).[89]

119. According to the IPCC, deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (finding with *very high confidence*). On the other hand, delayed mitigation and adaptation action would lock in high-emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (*high confidence*)[90].

120. The IPCC noted that effective climate action was enabled by political commitment, well-aligned multilevel governance, institutional frameworks, laws, policies and strategies and enhanced access to finance and technology. Clear goals, coordination across multiple policy domains and inclusive governance processes facilitated effective climate action. Regulatory and economic instruments could support deep emissions reductions and climate resilience if scaled up and applied widely (*high confidence*).[91]

[87] Ibid., pp. 20-23.
[88] Ibid., p. 24.
[89] Ibid., p. 25.
[90] Ibid., pp. 27-29.
[91] Ibid., p. 34.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

A. Constitution

121. The relevant provisions of the Federal Constitution of the Swiss Confederation, adopted on 18 April 1999 (Cst., RS 101), read as follows:

Article 10 Right to life and to personal freedom

"1. Every person has the right to life. The death penalty is prohibited.

2. Every person has the right to personal liberty and in particular to physical and mental integrity and to freedom of movement.

..."

Article 13 Right to privacy

"1. Every person has the right to respect for their private and family life and their home, and the relations established via mail and telecommunications.

..."

Article 29 General procedural guarantees

"1. Every person has the right to equal and fair treatment in judicial and administrative proceedings and to have their case decided within a reasonable time.

2. Each party to a case has the right to be heard.

..."

Article 29a Guarantee of access to the courts

"In a legal dispute, every person has the right to have their case determined by a judicial authority. The Confederation and the cantons may by law preclude the determination by the courts of certain exceptional categories of case."

Article 73 Sustainable development

"The Confederation and the cantons shall endeavour to achieve a balanced and sustainable relationship between nature and its capacity to renew itself and the demands placed on it by the population."

Article 74 Protection of the environment

"1. The Confederation shall legislate on the protection of the population and its natural environment against damage or nuisance.

2. It shall ensure that such damage or nuisance is avoided. The costs of avoiding or eliminating such damage or nuisance are borne by those responsible for causing it.

3. The cantons are responsible for the implementation of the relevant federal regulations, except where the law reserves this duty for the Confederation."

Article 189 Jurisdiction of the Federal Supreme Court

"...

4. Acts of the Federal Assembly or the Federal Council may not be challenged in the Federal Supreme Court. Exceptions may be provided for by law."

B. Federal Act on the Protection of the Environment

122. The relevant provisions of the Federal Act on the Protection of the Environment of 7 October 1983 (EPA, RS 814.01) read as follows:

Section 1 Aim

"(1) [The Environmental Protection] Act is intended to protect people, animals and plants, their biological communities and habitats against harmful effects or nuisances and to preserve the natural foundations of life in the long term, in particular biological diversity and the fertility of the soil.

(2) Early preventive measures must be taken in order to limit effects which could become harmful or a nuisance."

Section 3 Reservation of other legislation

"(1) Stricter regulations in other federal legislation are reserved.

..."

Section 4 Implementing provisions based on other federal legislation

"(1) Regulations on the environmental effects of air pollution, noise, vibrations and radiation that are based on other federal legislation must comply with the principles of limitation of emissions (Art. 11), ambient limit values (Art. 13-15), alarm values (Art. 19) and planning values (Art. 23-25).

..."

Section 11 Principles

"(1) Air pollution, noise, vibrations and radiation are limited by measures taken at their source (limitation of emissions).

(2) Irrespective of the existing environmental pollution, as a precautionary measure emissions are limited as much as technology and operating conditions allow, provided that this is economically acceptable.

(3) Emissions are limited more strictly if the effects are found or expected to be harmful or a nuisance, taking account of the existing level of environmental pollution."

Section 12 Limitation of emissions

"(1) Emissions are limited by issuing:

(a) maximum emission values;

(b) regulations on construction and equipment;

(c) traffic or operating regulations;

(d) regulations on the heat insulation of buildings;

(e) regulations on thermal and motor fuels.

(2) Limits are prescribed by ordinance or, in cases where an ordinance makes no such provision, by rulings based directly on this Act."

Section 13 Ambient limit values

"(1) The Federal Council stipulates by ordinance the ambient limit values for assessing harmful effects or nuisances.

(2) In doing so, it also takes account of the effects of pollution levels on particularly sensitive groups such as children, the sick, the elderly and pregnant women."

Section 14 Ambient limit values for air pollution

"The ambient limit values for air pollution must be set so that, in the light of current scientific knowledge and experience, ambient air pollution below these levels:

(a) does not endanger people, animals or plants, their biological communities and habitats;

(b) does not seriously affect the well-being of the population;

(c) does not damage buildings;

(d) does not harm soil fertility, vegetation or waters."

C. CO_2 Act

123. The relevant provision of the Federal Act on the Reduction of CO2 Emissions of 23 December 2011 (CO2 Act, RS 641.71), read as follows:

Section 1 Aim

"(1) This Act is intended to reduce [GHG] emissions and in particular CO_2 emissions that are attributable to the use of fossil fuels (thermal and motor fuels) as energy sources with the aim of contributing to limiting the global rise in temperature to less than 2 degrees Celsius.

..."

Section 3 Reduction target

"(1) Domestic [GHG] emissions must be reduced overall by 20 per cent as compared with 1990 levels, by 2020. The Federal Council may set sector-specific interim targets.

(1^{bis}) [GHG] emissions must be reduced by a further 1.5 per cent annually by 2024 compared with 1990 levels. The Federal Council may specify sectoral interim targets.

(1^{ter}) At least 75 per cent of the reduction in [GHG] emissions in accordance with paragraph 1^{bis} must be achieved through domestic measures.

(3) The total volume of [GHG] emissions is calculated on the basis of the [GHG] emitted in Switzerland. Emissions from the use of aviation fuel on international flights are not taken into account.

...

(4) The Federal Council may set reduction targets for individual economic sectors by agreement with the parties concerned.

(5) It shall at the due time submit proposals to the Federal Assembly on the reduction targets for the period after 2020. It shall consult the parties concerned beforehand."

124. The Federal Council set interim targets for various sectors (section 3(1) of the Ordinance on the Reduction of CO_2 Emissions [CO_2 Ordinance, SR 641.711] in conjunction with section 3(1)(2) of the CO_2 Act). If a sectoral interim target is not achieved, the DETEC, after hearing the cantons and the parties concerned, applies to the Federal Council for further measures (section 3(2) of the CO_2 Ordinance) or – for the fuels sector – the CO_2 tax is automatically increased (section 94(1) of the CO_2 Ordinance in conjunction with section 29 of the CO_2 Act). The CO_2 Act provides for various measures to achieve the reduction target. These are, first of all, technical measures for the reduction of CO_2 emissions in the building sector (enactment of building standards for new and old buildings by the cantons, combined with a reporting obligation for the attention of the FOEN – section 9 of the CO_2 Act in conjunction with section 16 of the CO_2 Ordinance) and in the transport sector (overall target values for the CO_2 emissions of all new passenger cars placed on the market in Switzerland and, since 1 January 2018, also for vans and light articulated vehicles placed on the market for the first time, combined with individual targets and penalty payments – sections 10 et seq. of the CO_2 Act).

125. In the transport sector, part of the CO_2 emissions resulting from the use of motor fuels as an energy source must be compensated, for example, through emissions-reduction projects. The Federal Council determines the compensation rate according to, among other things, the achievement of the reduction target pursuant to section 3 of the CO_2 Act (section 26(1) and (2) of the CO_2 Act in conjunction with section 89(1) of the CO_2 Ordinance).

126. The Federal government levies the above-mentioned CO_2 tax on the production, extraction and import of fuels (section 29 of the CO_2 Act). The enforcement of the CO_2 Act and the issuance of implementing regulations is the responsibility of the Federal Council (section 39(1) of the CO_2 Act). It then periodically reviews the effectiveness of the legal measures and the need for further measures (section 40(1) of the CO_2 Act). The implementation of the CO_2 Ordinance is generally the responsibility of the Federal Office for the Environment (section 130(1) of the CO_2 Ordinance).

D. Climate Act

127. The relevant provisions of the Federal Act on climate protection, innovation and strengthening energy security of 30 September 2022 (the Climate Act, FF 2022 2403), read as follows:

Section 1 Aim

"The purpose of the present Act is to set the following objectives, in accordance with the Agreement of 12 December 2015 on climate change:

(a) reduction of [GHG] emissions and use of negative-emissions technologies;

(b) adaptation to and protection from the effects of climate change;

(c) directing of financial flows so as to render them compatible with climate-resilient low-emission development."

Section 3 Targets for emissions reduction and negative-emissions technologies

"(1) The Confederation shall ensure a reduction to net zero by 2050 of human-induced [GHG] emitted in Switzerland (net-zero objective) through the following measures:

(a) reducing [GHG] emissions as far as possible, and

(b) offsetting the impact of residual [GHG] emissions through the use of negative-emissions technologies in Switzerland and abroad.

(2) After 2050, the quantity of CO_2 removed and stored using negative-emissions technologies must be greater than the residual [GHG] emissions.

(3) The Confederation shall ensure a reduction in [GHG] emissions compared with 1990 levels. The intermediate reduction targets shall be the following:

(a) between 2031 and 2040: at least 64% on average;

(b) by 2040: at least 75%;

(c) between 2041 and 2050: at least 89% on average.

(4) The reduction targets must be technically feasible and economically sustainable. As far as possible, they should be achieved through emissions reductions in Switzerland.

(5) Within the scope of their powers, the Confederation and the cantons shall ensure that, by 2050 at the latest, carbon sinks are available in Switzerland and abroad in sufficient quantity to achieve the net-zero objective. The Federal Council may set indicative values for the use of negative-emissions technologies.

(6) Emissions from international air and sea transport refuelling in Switzerland shall be taken into account for the achievement of the targets referred to in subsections 1 and 2."

Section 4 – Indicative values for different sectors

"(1) The reduction targets referred to in section 3, subsections 1 and 3, are to be achieved by reducing [GHG] emissions in Switzerland compared with 1990 levels by at least the following amounts:

(a) in the construction sector:

1. by 2040: 82%,

2. by 2050: 100%;

(b) in the transport sector:

1. by 2040: 57%,

2. by 2050: 100%;

(c) in the industrial sector:

1. by 2040: 50%,

2. by 2050: 90%.

(2) After consultation with the relevant actors the Federal Council may, in accordance with subsection 1, set indicative values for other sectors and for [GHG] and emissions from fossil-based energy sources. It shall take into account the latest scientific knowledge, the availability of new technologies, and developments within the European Union."

Section 11 – Achievement of the objectives

"(1) After hearing the views of the relevant actors and taking into account the most recent scientific knowledge, the Federal Council shall submit to the Federal Assembly, in good time, proposals for the realisation of the objectives set in the present Act:

(a) for the period from 2025 to 2030;

(b) for the period from 2031 to 2040;

(c) for the period from 2041 to 2050.

(2) The proposals referred to in subsection 1 are to be implemented primarily in the CO_2 Act of 23 December 2011.

(3) The proposals of the Federal Council shall aim to strengthen the economy and ensure social acceptance.

(4) Within the scope of their powers, the Confederation and the cantons shall undertake efforts, in Switzerland and internationally, to limit the risks and effects of climate change, in accordance with the objectives of the present Act."

E. The Federal Administrative Procedure Act

128. The relevant provision of the Federal Administrative Procedure Act of 20 December 1968 (APA, RS 172.021), determining standing for a ruling on real acts, namely acts based on federal public law that affect rights and obligations, but do not arise from formal rulings, provides as follows:

Section 25a Ruling on real acts

"(1) Any person who has an interest that is worthy of protection may request from the authority that is responsible for acts that are based on federal public law and which affect rights or obligations that it:

(a) refrains from, discontinues or revokes unlawful acts;

(b) rectifies the consequences of unlawful acts;

(c) confirms the illegality of such acts.

(2) The authority shall decide by way of a ruling."

129. For further relevant provisions of the Act, see *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 28, ECHR 2000-IV.

F. Relevant domestic case-law

130. According to the Federal Supreme Court's case-law, Article 73 of the Constitution does not provide for individual claims (ATF [judgments of the Federal Supreme Court] 132 II 305, at 4.3). Conversely, it is not a mere declaration or interpretation aid, "but a binding instruction for action addressed to the competent authorities" (FOJ, VPB 65.2, A.III). The Constitution therefore recognises the pursuit of sustainability as a (never completed) permanent task. The addressees are the Confederation and the cantons, each within the scope of their competence. The political authorities (legislature, parliaments and governments) are to be addressed first and foremost, and only subsidiarily – within the scope of their competence – also the authorities applying the law.

131. Similarly to Article 73, Article 74 of the Constitution is also not a justiciable norm. It simply provides a guideline for legislation. The addressee is primarily the legislature. The authorities applying the law must, however, take into account the requirements of Article 74 § 2 of the Constitution within the framework and limits of constitutional interpretation (see ATF 132 II 305, at 4.3, concerning the concept of precaution). The "precautionary principle" as a constitutional guideline is intended to prevent a lack of scientific certainty from becoming a pretext for government inaction (ATF 132 II 305, at 4.3). Paragraph 2 leaves the (federal) legislature a certain scope for assessment and design of the necessary legislative measures to be taken. In line with Article 74 § 2 of the Constitution, Article 1 § 2 of the Environmental Protection Act interprets this constitutional mandate to mean that impacts that could become harmful or a nuisance are to be "limited at an early stage".

132. Furthermore, Article 189 § 4 of the Constitution excludes the abstract review of norms by way of appeal. It does not, however, prejudice action against an ordinance by way of concrete legal action. The preliminary review of an ordinance in the particular circumstances of a case in which it has been applied is not excluded (concrete norm control; see ATF 141 V 473, at 8.3, and ATF 141 II 169, at 3.4) and neither is the preliminary review of another Federal Council or parliamentary act (see ATF 139 II 499, at 4.1). Article 189 § 4 of the Constitution can also not allow the constitutional guarantee of legal recourse under Article 29a of the Constitution to be circumvented. The content of the latter must be taken into account in the interpretation and implementation of Article 189 of the Constitution, as must the requirements of international law arising from Article 6 § 1 or Article 13 of the Convention (see message of the Federal Council accompanying the Constitution, p. 531).

II. RELEVANT INTERNATIONAL MATERIALS

A. United Nations

1. The system of the United Nations Framework Convention on Climate Change

(a) United Nations Framework Convention on Climate Change

133. The relevant parts of the UNFCCC provide as follows:

"Acknowledging that change in the Earth's climate and its adverse effects are a common concern of humankind,

Concerned that human activities have been substantially increasing the atmospheric concentrations of [GHG], that these increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind,

Noting that the largest share of historical and current global emissions of [GHG] has originated in developed countries, that per capita emissions in developing countries are still relatively low and that the share of global emissions originating in developing countries will grow to meet their social and development needs,

...

Noting that there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof,

Acknowledging that the global nature of climate change calls for the widest possible cooperation by all countries and their participation in an effective and appropriate international response, in accordance with their common but differentiated responsibilities and respective capabilities and their social and economic conditions,

...

Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction,

...

Recognizing that States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries,

...

Recognizing that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas,

Recognizing that various actions to address climate change can be justified economically in their own right and can also help in solving other environmental problems,

Recognizing also the need for developed countries to take immediate action in a flexible manner on the basis of clear priorities, as a first step towards comprehensive response strategies at the global, national and, where agreed, regional levels that take into account all [GHG], with due consideration of their relative contributions to the enhancement of the greenhouse effect,

...

Affirming that responses to climate change should be coordinated with social and economic development in an integrated manner with a view to avoiding adverse impacts on the latter, taking into full account the legitimate priority needs of developing countries for the achievement of sustained economic growth and the eradication of poverty,

...

Determined to protect the climate system for present and future generations ...”

Article 1
Definitions

“For the purposes of this Convention:

1. ’Adverse effects of climate change’ means changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.

2. ’Climate change’ means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.

...

4. ’Emissions’ means the release of [GHG] and/or their precursors into the atmosphere over a specified area and period of time.

5. ’[GHG]’ means those gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation.

...

9. ’Source’ means any process or activity which releases a [GHG], an aerosol or a precursor of a [GHG] into the atmosphere.”

Article 2
Objective

“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of [GHG] concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow

ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner."

Article 3
Principles

"In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.

2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.

3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost ...

4. The Parties have a right to, and should, promote sustainable development ...

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties ..."

Article 4
Commitments

"1. All Parties, taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances, shall:

(a) Develop, periodically update, publish and make available to the Conference of the Parties ... national inventories of anthropogenic emissions ...

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all [GHG] not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;

(c) Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices ...

(d) Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs ...

(e) Cooperate in preparing for adaptation to the impacts of climate change ...

(f) Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;

(g) Promote and cooperate in scientific, technological, technical, socio-economic and other research ...

2. The developed country Parties ... commit themselves specifically as provided for in the following:

(a) Each of these Parties shall adopt national policies and take corresponding measures on the mitigation of climate change, by limiting its anthropogenic emissions of [GHG] and protecting and enhancing its [GHG] sinks and reservoirs. These policies and measures will demonstrate that developed countries are taking the lead in modifying longer-term trends in anthropogenic emissions consistent with the objective of the Convention, recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other [GHG] not controlled by the Montreal Protocol would contribute to such modification, and taking into account the differences in these Parties' starting points and approaches, economic structures and resource bases, the need to maintain strong and sustainable economic growth, available technologies and other individual circumstances, as well as the need for equitable and appropriate contributions by each of these Parties to the global effort regarding that objective. These Parties may implement such policies and measures jointly with other Parties and may assist other Parties in contributing to the achievement of the objective of the Convention and, in particular, that of this subparagraph;

(b) In order to promote progress to this end, each of these Parties shall communicate ... detailed information on its policies and measures referred to in subparagraph (a) above, ... with the aim of returning individually or jointly to their 1990 levels these anthropogenic emissions of carbon dioxide and other [GHG] not controlled by the Montreal Protocol ..."

(b) The Kyoto Protocol

134. The UNFCCC was first operationalised through the Kyoto Protocol (1997). This Protocol committed industrialised countries and economies in transition to limit and reduce GHG emissions in accordance with agreed individual targets and the principle of "common but differentiated responsibility and respective capabilities". The relevant part of the Kyoto Protocol provides as follows:

Article 3 § 1

"The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the [GHG] listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

135. Annex B of the Kyoto Protocol set quantified emission limitation or reduction commitment (percentage of base year or period) for Switzerland at 92%.

(c) The Paris Agreement

136. The Paris Agreement – adopted at the UN Climate Change Conference (COP21) in Paris on 12 December 2015 – is an international treaty setting out the overarching goal of GHG emissions reduction. The relevant parts of it provide as follows:

> "In pursuit of the objective of the Convention, and being guided by its principles, including the principle of equity and common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,
>
> Recognizing the need for an effective and progressive response to the urgent threat of climate change on the basis of the best available scientific knowledge,
>
> ...
>
> Recognizing that Parties may be affected not only by climate change, but also by the impacts of the measures taken in response to it,
>
> ...
>
> Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,
>
> ..."

Article 2

> "1. This Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:
>
> (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;
>
> (b) Increasing the ability to adapt to the adverse impacts of climate change and foster climate resilience and low [GHG] emissions development, in a manner that does not threaten food production; and
>
> (c) Making finance flows consistent with a pathway towards low [GHG] emissions and climate-resilient development.
>
> 2. This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances."

Article 3

"As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts ..."

Article 4

"1. In order to achieve the long-term temperature goal set out in Article 2, Parties aim to reach global peaking of [GHG] emissions as soon as possible, recognizing that peaking will take longer for developing country Parties, and to undertake rapid reductions thereafter in accordance with best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of [GHG] in the second half of this century, on the basis of equity, and in the context of sustainable development and efforts to eradicate poverty.

2. Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions."

(d) COP26 and COP27

137. At the UNFCCC Conference of the Parties (COP26) in Glasgow, which took place between 31 October and 13 November 2021, the Glasgow Climate Pact was adopted, which provides, *inter alia*, as follows:

"The Conference of the Parties

...

Also acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

...

I. Science and urgency

1. Recognizes the importance of the best available science for effective climate action and policymaking;

...

3. Expresses alarm and utmost concern that human activities have caused around 1.1 ºC of warming to date, that impacts are already being felt in every region and that carbon budgets consistent with achieving the Paris Agreement temperature goal are now small and being rapidly depleted;

4. Recalls Article 2, paragraph 2, of the Paris Agreement, which provides that the Paris Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances;

5. Stresses the urgency of enhancing ambition and action in relation to mitigation, adaptation and finance in this critical decade to address the gaps in the implementation of the goals of the Paris Agreement;

...

IV. Mitigation

20. Reaffirms the Paris Agreement temperature goal of holding the increase in the global average temperature to well below 2 ºC above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 ºC above pre-industrial levels;

21. Recognizes that the impacts of climate change will be much lower at the temperature increase of 1.5 ºC compared with 2 ºC and resolves to pursue efforts to limit the temperature increase to 1.5 ºC;

22. Recognizes that limiting global warming to 1.5 ºC requires rapid, deep and sustained reductions in global [GHG] emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century as well as deep reductions in other [GHG];

23. Also recognizes that this requires accelerated action in this critical decade, on the basis of the best available scientific knowledge and equity, reflecting common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;

...

26. Emphasizes the urgent need for Parties to increase their efforts to collectively reduce emissions through accelerated action and implementation of domestic mitigation measures in accordance with Article 4, paragraph 2, of the Paris Agreement;

..."

138. The UNFCCC Conference of the Parties (COP27) took place in Sharm el-Sheikh from 6 to 20 November 2022. The relevant parts of the adopted Sharm el-Sheikh Implementation Plan provide as follows:

"The Conference of the Parties

...

Acknowledging that climate change is a common concern of humankind, and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

...

57. Encourages Parties to increase the full, meaningful and equal participation of women in climate action and to ensure gender-responsive implementation and means of implementation, including by fully implementing the Lima work programme on gender and its gender action plan, to raise climate ambition and achieve climate goals;

...

59. Recognizes the role of children and youth as agents of change in addressing and responding to climate change and encourages Parties to include children and youth in their processes for designing and implementing climate policy and action, and, as appropriate, to consider including young representatives and negotiators into their

national delegations, recognizing the importance of intergenerational equity and maintaining the stability of the climate system for future generations;"

(e) COP28

139. In preparation for the UNFCCC Conference of the Parties (COP28) in Dubai, held between 30 November and 12 December 2023, the synthesis report on the technical dialogue of the first global stocktake under the Paris Agreement[92], made the following key findings:

"Key finding 1: since its adoption, the Paris Agreement has driven near-universal climate action by setting goals and sending signals to the world regarding the urgency of responding to the climate crisis. While action is proceeding, much more is needed now on all fronts.

Key finding 2: to strengthen the global response to the threat of climate change in the context of sustainable development and efforts to eradicate poverty, governments need to support systems transformations that mainstream climate resilience and low GHG emissions development. Credible, accountable and transparent actions by non-Party stakeholders are needed to strengthen efforts for systems transformations.

Key finding 3: systems transformations open up many opportunities, but rapid change can be disruptive. A focus on inclusion and equity can increase ambition in climate action and support.

Key finding 4: global emissions are not in line with modelled global mitigation pathways consistent with the temperature goal of the Paris Agreement, and there is a rapidly narrowing window to raise ambition and implement existing commitments in order to limit warming to 1.5 ºC above pre-industrial levels.

Key finding 5: much more ambition in action and support is needed in implementing domestic mitigation measures and setting more ambitious targets in NDCs to realize existing and emerging opportunities across contexts, in order to reduce global GHG emissions by 43 per cent by 2030 and further by 60 per cent by 2035 compared with 2019 levels and reach net zero CO2 emissions by 2050 globally.

Key finding 6: achieving net zero CO2 and GHG emissions requires systems transformations across all sectors and contexts, including scaling up renewable energy while phasing out all unabated fossil fuels, ending deforestation, reducing non-CO2 emissions and implementing both supply- and demand-side measures.

Key finding 7: just transitions can support more robust and equitable mitigation outcomes, with tailored approaches addressing different contexts.

Key finding 8: economic diversification is a key strategy to address the impacts of response measures, with various options that can be applied in different contexts.

Key finding 9: as climate change threatens all countries, communities and people around the world, increased adaptation action as well as enhanced efforts to avert, minimize and address loss and damage are urgently needed to reduce and respond to increasing impacts, particularly for those who are least prepared for change and least able to recover from disasters.

[92] FCCC/SB/2023/9, 8 September 2023.

Key finding 10: collectively, there is increasing ambition in plans and commitments for adaptation action and support, but most observed adaptation efforts are fragmented, incremental, sector-specific and unequally distributed across regions.

Key finding 11: when adaptation is informed and driven by local contexts, populations and priorities, both the adequacy and the effectiveness of adaptation action and support are enhanced, and this can also promote transformational adaptation.

Key finding 12: averting, minimizing and addressing loss and damage requires urgent action across climate and development policies to manage risks comprehensively and provide support to impacted communities.

Key finding 13: support for adaptation and funding arrangements for averting, minimizing and addressing loss and damage need to be rapidly scaled up from expanded and innovative sources, and financial flows need to be made consistent with climate-resilient development to meet urgent and increasing needs.

Key finding 14: scaled-up mobilization of support for climate action in developing countries entails strategically deploying international public finance, which remains a prime enabler for action, and continuing to enhance effectiveness, including access, ownership and impacts.

Key finding 15: making financial flows – international and domestic, public and private – consistent with a pathway towards low GHG emissions and climate-resilient development entails creating opportunities to unlock trillions of dollars and shift investments to climate action across scales.

Key finding 16: existing cleaner technologies need to be rapidly deployed, together with accelerated innovation, development and transfer of new technologies, to support the needs of developing countries.

Key finding 17: capacity-building is foundational to achieving broad-ranging and sustained climate action and requires effective country-led and needs-based cooperation to ensure capacities are enhanced and retained over time at all levels."

140. The relevant parts of the COP28 First Global Stocktake[93] provide as follows:

The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement,

Recalling Article 2, paragraph 1, of the Paris Agreement, which provides that the Agreement, in enhancing the implementation of the Convention, including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty,

Also recalling Article 2, paragraph 2, of the Paris Agreement, which provides that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances,

...

Acknowledging that climate change is a common concern of humankind and that Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to a clean, healthy and sustainable environment, the right to health, the rights of Indigenous Peoples, local

[93] FCCC/PA/CMA/2023/L.17, 13 December 2023.

communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity,

...

I. Context and cross-cutting considerations

1. Welcomes that the Paris Agreement has driven near-universal climate action by setting goals and sending signals to the world regarding the urgency of responding to the climate crisis;

2. Underlines that, despite overall progress on mitigation, adaptation and means of implementation and support, Parties are not yet collectively on track towards achieving the purpose of the Paris Agreement and its long-term goals;

3. Reaffirms the Paris Agreement temperature goal of holding the increase in the global average temperature to well below 2 ºC above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 ºC above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change;

4. Underscores that the impacts of climate change will be much lower at the temperature increase of 1.5 ºC compared with 2 ºC and resolves to pursue efforts to limit the temperature increase to 1.5 ºC;

5. Expresses serious concern that 2023 is set to be the warmest year on record and that impacts from climate change are rapidly accelerating, and emphasizes the need for urgent action and support to keep the 1.5 ºC goal within reach and to address the climate crisis in this critical decade;

6. Commits to accelerate action in this critical decade on the basis of the best available science, reflecting equity and the principle of common but differentiated responsibilities and respective capabilities in the light of different national circumstances and in the context of sustainable development and efforts to eradicate poverty;

7. Underscores Article 2, paragraph 2, of the Paris Agreement, which stipulates that the Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances;

...

15. Notes with alarm and serious concern the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change:

(a) That human activities, principally through emissions of [GHG], have unequivocally caused global warming of about 1.1 ºC;

(b) That human-caused climate change impacts are already being felt in every region across the globe, with those who have contributed the least to climate change being most vulnerable to the impacts, and, together with losses and damages, will increase with every increment of warming;

(c) That most observed adaptation responses are fragmented, incremental, sector-specific and unequally distributed across regions, and that, despite the progress made, significant adaptation gaps still exist across sectors and regions and will continue to grow under current levels of implementation;

16. Notes the following findings of the Sixth Assessment Report of the Intergovernmental Panel on Climate Change:

(a) That mitigation efforts embedded within the wider development context can increase the pace, depth and breadth of emissions reductions, as well as that policies that shift development pathways towards sustainability can broaden the portfolio of available mitigation responses and enable the pursuit of synergies with development objectives;

(b) That both adaptation and mitigation financing would need to increase manyfold, and that there is sufficient global capital to close the global investment gap but there are barriers to redirecting capital to climate action, and that Governments through public funding and clear signals to investors are key in reducing these barriers and investors, central banks and financial regulators can also play their part;

(c) That feasible, effective and low-cost mitigation options are already available in all sectors to keep 1.5 ºC within reach in this critical decade with the necessary cooperation on technologies and support;

17. Notes with concern the pre-2020 gaps in both mitigation ambition and implementation by developed country Parties and that the Intergovernmental Panel on Climate Change had earlier indicated that developed countries must reduce emissions by 25–40 per cent below 1990 levels by 2020, which was not achieved;

II. Collective progress towards achieving the purpose and long-term goals of the Paris Agreement ...

A. Mitigation

...

25. Expresses concern that the carbon budget consistent with achieving the Paris Agreement temperature goal is now small and being rapidly depleted and acknowledges that historical cumulative net carbon dioxide emissions already account for about four fifths of the total carbon budget for a 50 per cent probability of limiting global warming to 1.5 ºC;

...

28. Further recognizes the need for deep, rapid and sustained reductions in [GHG] emissions in line with 1.5 ºC pathways and calls on Parties to contribute to the following global efforts, in a nationally determined manner, taking into account the Paris Agreement and their different national circumstances, pathways and approaches:

...

(d) Transitioning away from fossil fuels in energy systems, in a just, orderly and equitable manner, accelerating action in this critical decade, so as to achieve net zero by 2050 in keeping with the science;

..."

2. The Aarhus Convention

141. The relevant parts of the 1998 Aarhus Convention read as follows:

"The Parties to this Convention,

...

Recognizing that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself,

Recognizing also that every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations,

...

Have agreed as follows:"

Article 2
Definitions

"4. 'The public' means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;

5. 'The public concerned' means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest."

Article 9
Access to justice

"2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment."

142. The relevant parts of the Aarhus Convention Implementation Guide[94] provide as follows (footnotes omitted):

[94] United Nations Economic Commission for Europe, *The Aarhus Convention: An Implementation Guide*, Second Edition, 2014.

"While narrower than the 'public,' the 'public concerned' is nevertheless still very broad. With respect to the criterion of 'being affected', this is very much related to the nature of the activity in question. Some of the activities subject to article 6 of the Convention may potentially affect a large number of people. For example, in the case of pipelines, the public concerned is usually in practice counted in the thousands, while in the case of nuclear power stations the competent authorities may consider the public concerned to count as many as several hundred thousand people across several countries.

With respect to the criterion of 'having an interest', the definition appears to go well beyond the kind of language that is usually found in legal tests of 'sufficient interest' (see next paragraph). In particular it should be read to include not only members of the public whose legal interests or rights guaranteed under law might be impaired by the proposed activity. Potentially affected interests may also include social rights such as the right to be free from injury or the right to a healthy environment. It also applies, however, to a category of the public that has an unspecified interest in the decision-making procedure.

It is significant that article 2, paragraph 5, does not require that a person must show a legal interest to be a member of the public concerned. Thus, the term may encompass both 'legal interest' and 'factual interest' as defined under continental legal systems, such as those of Austria, Germany and Poland. Under national law, persons with a mere factual interest do not normally enjoy the full panoply of rights in proceedings accorded to those with a legal interest. In contrast, the Convention accords the same status (at least in relation to article 6) regardless of whether the interest is a legal or factual one.

Article 2, paragraph 5, explicitly includes within the category of the interested public NGOs whose statutory goals include promoting environmental protection, so long as they meet 'any requirements under national law'. Whether or not an NGO promotes environmental protection can be ascertained in a variety of ways, such as through its charter, by-laws or activities. 'Environmental protection' can include any purpose consistent with the implied definition of environment found in article 2, paragraph 3. The requirement for 'promoting environmental protection' would thus be satisfied in the case of NGOs focusing on any aspect of the implied definition of environment in article 2, paragraph 3. For example, if an NGO works to promote the interests of those with health concerns due to water-borne diseases, this NGO would be considered to fulfil the definition of article 2, paragraph 5.

The reference to 'meeting any requirements under national law' should not be read as leaving absolute discretion to Parties in defining these requirements. Their discretion should be seen in the context of the important role the Convention assigns to NGOs with respect to its implementation and the clear requirement of article 3, paragraph 4, to provide 'appropriate recognition' for NGOs. In its findings on communication ACCC/C/2004/05 (Turkmenistan), the Compliance Committee found that 'Non-governmental organizations, by bringing together expertise and resources, generally have greater ability to effectively exercise their rights under the Convention than individual members of the public'.

Parties may set requirements for NGOs under national law, but in the light of the integral role that NGOs play in the implementation of the Convention, Parties should ensure that these requirements are not overly burdensome or politically motivated, and that each Party's legal framework encourages the formation of NGOs and their constructive participation in public affairs. Moreover, any requirements should be consistent with the Convention's principles, such as non-discrimination and the

avoidance of technical and financial barriers. Within these limits, Parties may impose requirements based on objective criteria that are not unnecessarily exclusionary.

For example, a possible requirement for environmental NGOs to have been active in that country for a certain number of years might not be consistent with the Aarhus Convention, because it may violate the non-discrimination clause of article 3, paragraph 9. Furthermore, the requirement 'to have been active' in itself might be overly exclusive in countries that have permitted the formation of NGOs for only a relatively short period of time, and where they are therefore relatively undeveloped.

There are also sometimes requirements for NGOs to have a certain number of active members. This was one of the issues considered by the ECJ in Case C-263/08 (Sweden), discussed in the box above. Such a membership requirement would also be considered overly strict under the Convention, if the threshold is set at such a high level that only a handful of NGOs can meet it in a given country. In 2009, Slovenia amended its Environmental Protection Act to remove the requirement that NGOs promoting environmental protection undergo a financial audit of operations in order to qualify as the 'public concerned' under article 2, paragraph 5.

If an NGO meets the requirements set out in article 2, paragraph 5, it is deemed to be a member of the 'public concerned' under article 6 and article 9, paragraph 2. But for NGOs that do not meet such requirements ab initio, and for individuals, the Convention is not entirely clear whether the mere participation in a public participation procedure under article 6, paragraph 7, would qualify a person as a member of the 'public concerned'. Because article 9, paragraph 2, is the mechanism for enforcing rights under article 6, however, it is arguable that any person who participates as a member of the public in a hearing or other public participation procedure under article 6, paragraph 7, should have an opportunity to make use of the access to justice provisions in article 9, paragraph 2. In this case, he or she would fall under the definition of 'public concerned'.

...

Nothing in the Convention prevents the Parties from granting standing to any person without distinction. However, the Convention requires – as a minimum – that members of the 'public concerned' either having a sufficient interest or maintaining impairment of a right have standing to review the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 ...

With respect to NGOs, the Convention states clearly that NGOs meeting the requirements of article 2 paragraph 5, are deemed to have a 'sufficient interest' or a right capable of being impaired...

Proper implementation of, and compliance with, the Convention requires that the objective of wide access to justice is upheld when determining the scope of persons – both natural and legal with standing. Several Parties to the Convention apply some kind of test to establish standing, often in terms of a direct, sufficient, personal or legal interest, or of a legally protected individual right. While some such criteria, for instance limiting standing only to members of the public with private property rights, would not be in line with the Convention, the permissibility of other criteria will depend on how they are construed by the reviewing body in practice. In other words, even criteria such as having a sufficient interest or a right that can be impaired may be incompatible with the Convention if understood too narrowly in the case law of the reviewing bodies.

As illustrated by the Compliance Committee's findings on communication ACCC/C/2005/11 (Belgium), meeting the Convention's objective of giving the public concerned wide access to justice may require a significant shift of thinking in countries where NGOs have previously lacked standing in cases because they were held not to

have a sufficient interest, or an impaired right. In ACCC/C/2005/11, the Belgian judiciary had applied the general criteria for standing under Belgian law to NGOs, meaning that NGO applicants had to show a direct, personal and legitimate interest as well as a 'required quality'. The Compliance Committee concluded that even though the wording of the relevant Belgian laws did not as such imply a lack of compliance, the jurisprudence of the Belgian courts, as developed before the entry into force of the Convention for Belgium, implied a too restrictive access to justice to environmental organizations, and thus did not meet the requirements of the Convention. ...

An example of national criteria for standing that would clearly not be in compliance with the Convention was the former Swedish criteria for NGOs. According to former Swedish law, to be able to appeal environmental permits, environmental associations were required to be active in Sweden for more than three years and to have at least 2,000 members. This was found by the CJEU to be in violation of the EU legislation intended to implement the Aarhus Convention ..."

143. The relevant part of the 2015 Maastricht Recommendations[95] on the implementation of the Aarhus Convention provides as follows:

"c. 'The public concerned' includes, inter alia, non-governmental organizations (NGOs) promoting environmental protection and meeting any requirements under national law. To ensure the framework for public participation is as transparent, clear and consistent as possible, the following may be clearly specified through national law:

i. What constitutes 'having an interest in' environmental decision-making;

ii. The requirements, if any, which NGOs promoting environmental protection must meet in order to be deemed to have an interest. What constitutes a sufficient interest should be determined in accordance with the objective of giving the public concerned wide access to justice."

3. The United Nations General Assembly

(a) Resolution on the human right to a clean, healthy and sustainable environment

144. Upon the invitation of the Human Rights Council formulated in its Resolution 48/13 of 8 October 2021, the General Assembly of the United Nations adopted its Resolution 76/300 on the human right to a clean, healthy and sustainable environment on 28 July 2022.

145. It was adopted with 161 votes in favour (of the 169 member States present), 8 abstentions[96] and no votes against[97]. 45 of the 46 member States of the Council of Europe voted in favour.[98]

146. In the Preamble to the Resolution, the General Assembly noted the following:

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[95] United Nations Economic Commission for Europe, *Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters*, 2015.

[96] China, Russian Federation, Belarus, Cambodia, Iran, Syria, Kyrgyzstan and Ethiopia.

[97] Official Records: A/76/PV.97.

[98] Türkiye does not appear in the Official records as a voting country.

"[A] vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies."

147. Its four operative paragraphs provide as follows:

"1. *Recognizes* the right to a clean, healthy and sustainable environment as a human right;

2. *Notes* that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;

3. *Affirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;

4. *Calls upon* States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all."

(b) Other General Assembly material

148. Nearly every year since its first Resolution on the subject, namely Resolution no. 43/53 on the protection of global climate for present and future generations of mankind adopted on 6 December 1988, the issue of global climate protection for future generations has been put on the agenda of the General Assembly, resulting in the adoption of numerous resolutions[99].

149. In its Resolution 69/220 adopted on 19 December 2014, the General Assembly made explicit reference to the necessity to protect the climate system for the benefit of present and future generations of humankind, referring to the UNFCCC.

150. In the Preamble to its Resolution 72/219 adopted on 20 December 2017, the General Assembly made a statement which it has retained ever since in the Preamble of each of the resolutions adopted on this subject[100]:

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[99] Resolutions nos. 43/53, 6 December 1988; 44/207, 22 December 1989; 45/212, 21 December 1990 ; 46/169, 19 December 1991; 47/195, 22 December 1992; 48/189, "United Nations Framework Convention on Climate Change", 21 December 1993; 49/120, 19 December 1994; 50/115, 20 December 1995; 51/184, 16 December 1996; 52/199, 18 December 1997; 54/222, 22 December 1999; Decision no. 55/443, 20 December 2000; Resolutions nos. 56/199, 21 December 2001; 57/257, 20 December 2002; 58/243, 23 December 2003; 59/234, 22 December 2004; 60/197, 22 December 2005; 61/201, 20 December 2006; 62/86, 10 December 2007; 63/32, 26 November 2008; 64/73, 7 December 2009; 65/159, 20 December 2010; 66/200, 22 December 2011; 67/210, 21 December 2012; 68/212, 20 December 2013; 69/220; 70/205, 22 December 2015; 71/228, 21 December 2016; 72/219, 20 December 2017; 73/232, 20 December 2018; 74/219, 19 December 2019; 75/217, 21 December 2020; 76/205, 17 December 2021.

[100] Including in its last Resolution under this item, namely Resolution 76/205 on the protection of global climate for present and future generations of mankind, 17 December 2021.

> "Recognizing that, in undertaking its work, the United Nations should promote the protection of the global climate for the well-being of present and future generations of humankind ..."

4. The Secretary-General of the United Nations

151. In 2009, the Secretary-General of the United Nations noted that:

> "The United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water and to housing (see A/HRC/10/61)".[101]

152. In May 2022, pursuant to the request of the Human Rights Council[102], the Secretary-General issued a report on "The impacts of climate change on the human rights of people in vulnerable situations"[103], in which he presented the legal and policy framework applying to persons in vulnerable situations in the context of climate change (footnotes omitted):

> "The nine core international human rights instruments set forth binding legal obligations on the States that are party to them, including some that are relevant to climate change. In the context of climate change, fulfilling these obligations may require States to, among other things, take action to protect people against climate change-related harms that impact on the enjoyment of human rights and to implement inclusive climate policies. Climate action should empower people in vulnerable situations, ensuring their full and effective participation as rights holders."

153. In the report, the Secretary-General made a series of recommendations to States and other stakeholders to address the impacts of climate change on the human rights of people in vulnerable situations (paragraphs 48-58).

5. The Human Rights Council

(a) Resolutions

154. In 2018, in its Resolution 37/8, the Human Rights Council acknowledged that "more than 100 States [had] recognized some form of a right to a healthy environment in, inter alia, international agreements, their constitutions, legislations or policies".[104]

155. In Resolution 46/7 on human rights and the environment[105] the Human Rights Council noted as follows:

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[101] "Climate change and its possible security implications", Report of the Secretary-General to the General Assembly A/64/350, distr. 11 September 2009.
[102] Human Rights Council, Resolution 47/24, adopted on 14 July 2021.
[103] "The impacts of climate change on the human rights of people in vulnerable situations", Report of the Secretary General, A/HRC/50/57, distr. 6 May 2022.
[104] Human Rights Council Resolution 37/8, adopted on 22 March 2018, A/HRC/RES/37/8, last preambular paragraph.
[105] Human Rights Council Resolution 46/7, Human rights and the environment, 20 March 2021, A/HRC/RES/46/7.

"Recalling also the Paris Agreement, adopted on 12 December 2015 by the parties to the United Nations Framework Convention on Climate Change, in which they acknowledged in the preamble that they should, when taking action to address climate change, respect, promote and consider their respective obligations with regard to human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, the empowerment of women and intergenerational equity,

...

Taking note of the outcomes of the twenty-fifth session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, and encouraging States to consider, among other aspects, respect for and the promotion of human rights at the twenty-sixth session, to be held in Glasgow, United Kingdom of Great Britain and Northern Ireland, from 1 to 12 November 2021,

..."

156. In Resolution 48/13 of 8 October 2021, the Human Rights Council formally recognised the right to a clean, healthy and sustainable environment as a human right and invited the General Assembly to consider the matter (see the General Assembly Resolution 76/300, cited above). The relevant parts of the Resolution read as follows:

"Recalling also States' obligations and commitments under multilateral environmental instruments and agreements, including on climate change, and the outcome of the United Nations Conference on Sustainable Development, held in Rio de Janeiro, Brazil, in June 2012, and its outcome document entitled "The future we want", which reaffirmed the principles of the Rio Declaration on Environment and Development,

Recalling further all its resolutions on human rights and the environment, the most recent of which are resolutions 45/17 of 6 October 2020, 45/30 of 7 October 2020 and 46/7 of 23 March 2021, and relevant resolutions of the General Assembly,

Recognizing that sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations,

Reaffirming the importance of international cooperation, on the basis of mutual respect, in full compliance with the principles and purposes of the Charter, with full respect for the sovereignty of States while taking into account national priorities,

Recognizing that, conversely, the impact of climate change, the unsustainable management and use of natural resources, the pollution of air, land and water, the unsound management of chemicals and waste, the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment, and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights,

...

1. Recognizes the right to a clean, healthy and sustainable environment as a human right that is important for the enjoyment of human rights;

2. Notes that the right to a clean, healthy and sustainable environment is related to other rights and existing international law;

3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law;"

157. The Human Rights Council also adopted Resolution 50/9 on human rights and climate change of 7 July 2022, in which it focused more closely on the implications of climate change for the full enjoyment of the right to food, but also called upon all States to adopt

"a comprehensive, integrated, gender-responsive, age-inclusive and disability-inclusive approach to climate change adaptation and mitigation policies, consistent with the United Nations Framework Convention on Climate Change and the objective and principles thereof".

158. On 6 October 2022 the Human Rights Council adopted Resolution 51/4 on the human rights of older persons, in which it recognised the essential contribution that older persons made to the functioning of societies and to the achievement of the 2030 Agenda for Sustainable Development (see also Resolution 44/7 of 16 July 2020).

(b) Special procedures

(i) Special Rapporteur on the promotion and protection of human rights in the context of climate change

159. The mandate of the Special rapporteur on the promotion and protection of human rights in the context of climate change was established in October 2021 by the Human Rights Council.

160. In the thematic report of July 2022 to the United Nations General Assembly – entitled "Promotion and protection of human rights in the context of climate change mitigation, loss and damage and participation" (A/77/226) – the Special rapporteur provided a series of recommendations:

"Recommendations with respect to bridging the mitigation gap

89. The Special Rapporteur maintains that all of the recommendations made by the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment in his report to the General Assembly in 2019 with respect to mitigation action are still relevant and should be considered as recommended in the present report. In addition, the below recommendations should be considered.

90. With respect to mitigation, the Special Rapporteur on the promotion and protection of human rights in the context of climate change recommends that the General Assembly:

...

(d) Establish an international human rights tribunal to hold accountable Governments, business and financial institutions for their ongoing investments in fossil fuels and carbon intensive industries and the related human rights effects that such investments invoke;

...

97. The Special Rapporteur also recommends that the General Assembly encourage all Member States to include youth representatives in national parliaments to highlight climate change concerns.

98. The Special Rapporteur further recommends that the General Assembly encourage all States to give standing to children and young people, including indigenous children and young people international, national and subnational court systems."

(ii) Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

161. In 2018 the then Special Rapporteur issued a report which summarised the main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment under the title of "Framework principles on human rights and the environment"[106].

162. The subsequent Rapporteur issued two thematic reports in 2019 (one to the Human Rights Council, the other to the General Assembly).

163. In his 2019 report to the Human Rights Council of 8 January 2019 (A/HRC/40/55), the Special Rapporteur focused on the right to breathe clean air as one of the human rights to a safe, clean, healthy and sustainable environment. He detailed the scope and content of human rights obligations relating to clean air in the following terms:

"IV. Human rights obligations relating to clean air

57. As the previous mandate holder made clear, States have obligations to protect the enjoyment of human rights from environmental harm (A/HRC/25/53). The foreseeable adverse effects of poor air quality on the enjoyment of human rights give rise to extensive duties of States to take immediate actions to protect against those effects. In a joint statement issued in 2017, a group of United Nations experts said 'a threat like this can no longer be ignored. States have a duty to prevent and control exposure to toxic air pollution and to protect against its adverse effects on human rights.'[107]

58. The framework principles on human rights and the environment clarify the three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations. Therefore, the framework principles can be operationalized in the context of air pollution in order to respect, protect and fulfil human rights.

59. The procedural obligations of States in relation to the right to breathe clean air include duties related to promoting education and public awareness; providing access

[106] The Framework principles on human rights and the environment are annexed to the Special Rapporteur's Report, A/HRC/37/59, distr. 24 January 2018.

[107] "Toxic air pollution: UN rights experts urge tighter rules to combat 'invisible threat'", press release, 24 February 2017.

to information; ensuring freedom of expression, association and assembly; facilitating public participation in the assessment of proposed projects, policies and environmental decisions; and ensuring affordable, timely access to remedies.

60. With respect to substantive obligations, States must not violate the right to breathe clean air through their own actions; must protect the right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil the right. States also must avoid discrimination and retrogressive measures.

61. There are seven key steps that States must take in fulfilling the right to breathe clean air: monitor air quality and impacts on human health; assess sources of air pollution; make information publicly available, including public health advisories; establish air quality legislation, regulations, standards and policies; develop air quality action plans at the local, national and, if necessary, regional levels; implement an air quality action plan and enforce the standards; and evaluate progress and, if necessary, strengthen the plan to ensure that the standards are met.

62. At each of these stages, States must ensure that the public is fully informed and has an opportunity to participate in decision-making processes. Extra effort should always be made to reach out to women, children and others in vulnerable situations whose voices are too often not heard in environmental policy processes. States must pay special attention to environmental defenders working to protect the right to clean

164. In the 2019 report to the General Assembly (A/74/161), the Special Rapporteur built on the above-mentioned 2018 framework principles on human rights and the environment (see paragraph 161 above) and detailed the content of State obligations (footnotes omitted):

"63. The framework principles on human rights and the environment clarify three categories of State obligations: procedural, substantive, and special obligations towards those in vulnerable situations. The framework principles can be operationalized in the context of climate change in order to respect, protect and fulfil human rights.

64. Pursuant to international human rights law, States have procedural obligations to:

(a) Provide the public with accessible, affordable and understandable information regarding the causes and consequences of the global climate crisis, including incorporating climate change into the educational curriculum at all levels;

(b) Ensure an inclusive, equitable and gender-based approach to public participation in all climate-related actions, with a particular emphasis on empowering the most affected populations, namely women, children, young people, indigenous peoples and local communities, persons living in poverty, persons with disabilities, older persons, migrants, displaced people, and other potentially at-risk communities;

(c) Enable affordable and timely access to justice and effective remedies for all, to hold States and businesses accountable for fulfilling their climate change obligations;

(d) Assess the potential climate change and human rights impacts of all plans, policies and proposals, including both upstream and downstream effects (i.e. both production- and consumption-related emissions);

(e) Integrate gender equality into all climate actions, enabling women to play leadership roles;

(f) Respect the rights of indigenous peoples in all climate actions, particularly their right to free, prior and informed consent;

(g) Provide strong protection for environmental and human rights defenders working on all climate-related issues, from land use to fossil fuels. States must vigilantly protect defenders from harassment, intimidation and violence.

65. With respect to substantive obligations, States must not violate the right to a safe climate through their own actions; must protect that right from being violated by third parties, especially businesses; and must establish, implement and enforce laws, policies and programmes to fulfil that right. States also must avoid discrimination and retrogressive measures. These principles govern all climate actions, including obligations related to mitigation, adaptation, finance, and loss and damage.

66. Human rights obligations are reinforced by international environmental law, as States are obliged to ensure that polluting activities within their jurisdiction or control do not cause serious harm to the environment or peoples of other States or to areas beyond the limits of national jurisdiction. Given the foreseeability of increasing climate impacts, this well-established 'no harm' rule of customary international law is being violated as a result of [GHG] emissions, which, regardless of where they are emitted, are contributing, cumulatively, to adverse effects in other States, including small island developing States. The Urgenda case in the Netherlands is an important precedent, as the Court relied on international human rights law to hold the Government of the Netherlands accountable for fulfilling commitments the Government itself says are necessary to prevent dangerous climate change.

...

68. States have an obligation to cooperate to achieve a low-carbon, climate resilient and sustainable future, which means sharing information; the transfer of zero-carbon, low-carbon and high-efficiency technologies from wealthy to less wealthy States; building capacity; increasing spending on research and development related to the clean energy transition; honouring international commitments; and ensuring fair, legal and durable solutions for migrants and displaced persons. Wealthy States must contribute their fair share towards the costs of mitigation and adaptation in low-income countries, in accordance with the principle of common but differentiated responsibilities. Climate finance to low-income countries should be composed of grants, not loans. It violates basic principles of justice to force poor countries to pay for the costs of responding to climate change when wealthy countries caused the problem.

69. Climate actions, including under new mechanisms being negotiated pursuant to article 6 of the Paris Agreement, must be designed and implemented to avoid threatening or violating human rights. In the past, policies supporting biofuel production contributed to spikes in food prices, riots, and a major increase in the total number of people suffering from hunger. Forest preservation policies raise similar concerns about the impact on rights, as such policies may limit access to lands used for hunting, fishing, gathering, cultivation and other important cultural activities. Integrating actions to achieve climate targets and the Sustainable Development Goals, in cooperation with affected communities, will ensure that these types of adverse outcomes are avoided.

70. In 2018, the Committee on Economic, Social and Cultural Rights warned States that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of their obligation to respect, protect and fulfil all human rights for all. States must, therefore, dedicate the maximum available financial and material resources to shift to renewable energy, clean transport and agroecological farming; halt and reverse deforestation and soil deterioration; and increase adaptive capacity, especially in vulnerable and marginalized communities ...

74. A failure to fulfil international climate change commitments is a prima facie violation of the State's obligations to protect the human rights of its citizens. ...

75. A dramatic change of direction is needed. To comply with their human rights obligations, developed States and other large emitters must reduce their emissions at a rate consistent with their international commitments. To meet the Paris target of limiting warming to 1.5ºC, States must submit ambitious nationally determined contributions by 2020 that will put the world on track to reducing [GHG] emissions by at least 45 per cent by 2030 (as calculated by the Intergovernmental Panel on Climate Change). All States should prepare rights-based deep decarbonization plans intended to achieve net zero carbon emissions by 2050, in accordance with article 4, paragraph 19, of the Paris Agreement. Four main categories of actions must be taken: addressing society's addiction to fossil fuels; accelerating other mitigation actions; protecting vulnerable people from climate impacts; and providing unprecedented levels of financial support to least developed countries and small island developing States."

165. In the 2020 Report to the Human Rights Council, entitled "Right to a healthy environment: good practices" (A/HRC/43/53), the Special Rapporteur summarised good practices in implementing the human right to a safe, clean, healthy and sustainable environment, drawn from more than 175 States. He argued that the legal recognition of this right could itself be considered a good practice. The relevant parts of the report read as follows:

"III. Good practices in the implementation of the right to a safe, clean, healthy and sustainable environment

A. Legal recognition

9. In the present report, the Special Rapporteur focuses on the implementation of the right to a safe, clean, healthy and sustainable environment. The legal recognition of this right can itself be considered a good practice, whether by means of constitutional protection, inclusion in environmental legislation or through ratification of a regional treaty that includes the right.

10. In cooperation with the Vance Center for International Justice, the Special Rapporteur prepared an updated list of States that legally recognize the right to a safe, clean, healthy and sustainable environment (see annex II). There are 110 States where this right enjoys constitutional protection. Constitutional protection for human rights is essential, because the constitution represents the highest and strongest law in a domestic legal system. Furthermore, the constitution plays an important cultural role, reflecting a society's values and aspirations.

11. The right to a healthy environment is explicitly included in regional treaties ratified by 126 States. This includes 52 States that are parties to the African Charter on Human and Peoples' Rights, 45 States that are parties to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 16 States that are parties to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and 16 States that are parties to the Arab Charter on Human Rights. As at 1 December 2019, five States had ratified the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement); this recent treaty requires, however, 11 ratifications to enter into force. Ten States adopted the non-binding Declaration on Human Rights of the Association of South-East Asian Nations.

> 12. It is also important that legislation be enacted and implemented to respect, protect and fulfil the right to a safe, clean, healthy and sustainable environment. There are 101 States where this right has been incorporated into national legislation. Especially good practices can be seen in Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal and South Africa, where the right to a healthy environment serves as a unifying principle that permeates legislation, regulations and policies.
>
> 13. In total, more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment. The Special Rapporteur has collected the texts of the constitutional and legislative provisions that recognize this right."

166. The Special Rapporteur also issued thematic reports on "Human rights and the global water crisis: water pollution, water scarcity and water-related disasters" (A/HRC/46/28, 2021); Healthy and sustainable food: reducing the environmental impacts of food systems on human rights (A/76/179, 2021); and "The right to a clean, healthy and sustainable environment: non-toxic environment" (A/HRC/49/53, 2022).

167. In the recent thematic report – entitled "The human right to a clean, healthy and sustainable environment: a catalyst for accelerated action to achieve the Sustainable Development Goals" (A/77/284, 2022) – the Special Rapporteur wanted to "challeng[e] the conventional wisdom that the Sustainable Development Goals are mere aspirations, by highlighting the extensive human rights obligations that underlie the Goals". The relevant recommendations in this respect include the following:

> "(a) Incorporate the right to a clean, healthy and sustainable environment at all levels (global, regional and national), including in a legally binding global instrument, the Universal Declaration of Human Rights, post-2020 global biodiversity framework, the European Convention on Human Rights and national constitutions, legislation and policies;
>
> (b) Acknowledge that the Goals are built on a robust foundation of human rights law, establishing legally binding obligations;"

(iii) Independent expert on human rights and international solidarity

168. In a 2020 Report submitted to the Human Rights Council – entitled "International solidarity and climate change" (A/HRC/44/44) – the Independent expert on human rights and international solidarity made a series of recommendations for human rights based reform, in relation to threats posed by climate change, in particular:

> "(a) All States, corporations and international organizations should take all necessary separate and joint steps towards achieving net-zero emissions by 2050, consistent with their highest possible ambitions to reduce emissions and the common objective of keeping the global temperature rise below 1.5°C under the Paris Agreement;
>
> (b) To that end, States, corporations and financial institutions, particularly the highest emitting States, in historical and contemporary terms, should consider ceasing to pursue the exploration of and new investments in fossil fuels as a matter of human rights-based

international solidarity, since the shared carbon budget will be exceeded if already existing and proposed fossil fuel developments proceed;

(c) States, corporations and financial institutions should cooperate to ensure that any transformation of the fossil fuel economy (which is imperative) does not perpetuate asymmetries between richer and poorer States and peoples. As countries phase down or even phase out their fossil fuel operations, wealthier countries should provide poorer countries that are less adaptable to the transition with support based on the right to development of the poorer States, and the social and economic rights of their people that are tied to energy systems;

...

(g) States should cooperate through the international climate regime and international human rights community, including through ILO, to guarantee access to justice in the context of climate change with respect to the following:

(i) Rectifying loss and damage associated with the inequalities perpetuated by climate change, including by giving this agenda the same priority as mitigation and adaptation and providing meaningful financial support to affected countries and peoples;

(ii) Safeguarding the enjoyment of international human rights among indigenous peoples and local communities affected by climate change-related projects, including protecting environmental defenders from criminalization;

(iii) Formulating and implementing concrete plans from the global to the local levels for a just transition towards sustainable economies that ensures the right to decent work for all;

(iv) Cooperating to realize international human rights obligations as they apply to marginalized groups uniquely affected by climate change, including indigenous peoples, the elderly, children, persons with disabilities, persons living in poverty and women."

(iv) Independent Expert on the enjoyment of all human rights by older persons

169. The 2019 Report (A/HRC/42/43) of the Independent Expert noted the following negative impacts of climate change on older people:

"101. The Independent Expert reiterates her view that the lack of a comprehensive and integrated international legal instrument to promote and protect the rights and dignity of older persons has significant practical implications, including for older persons in emergency situations. She stresses in particular that current instruments do not make the issues of ageing specific or sufficiently visible, and therefore preclude older persons from the full enjoyment of their human rights, particularly in emergency situations."

170. In the 2021 Report entitled "Human rights of older women: the intersection between ageing and gender" (A/76/157), the Independent Expert added that "in emergencies brought on by climate change impacts, older women might be viewed as a burden and therefore be vulnerable to abuse and neglect ... The specific risks and impacts for older women are, however, generally invisible."

6. The Human Rights Committee

171. The International Covenant on Civil and Political Rights ("ICCPR")[108] does not contain any provisions explicitly aimed at environmental protection. Nevertheless, the Human Rights Committee ("the HRC") derives specific obligations related to environmental protection from the right to life (Article 6) and the right to private and family life (Article 17).

172. In its General Comment No. 36 on the right to life, adopted in 2019[109], the HRC reiterated the link between environmental protection and the duty to protect life (a connection already made by the HRC in a communication from 2001):

> "26. The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity. These general conditions may include ... degradation of the environment ..."

173. Referring to international instruments, such as the Paris Agreement, the HRC further detailed the connection between States' obligations regarding the right to life and environmental preservation (footnotes omitted):

> "62. Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The obligations of States parties under international environmental law should thus inform the content of article 6 of the Covenant, and the obligation of States parties to respect and ensure the right to life should also inform their relevant obligations under international environmental law. Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors. States parties should therefore ensure sustainable use of natural resources, develop and implement substantive environmental standards, conduct environmental impact assessments and consult with relevant States about activities likely to have a significant impact on the environment, provide notification to other States concerned about natural disasters and emergencies and cooperate with them, provide appropriate access to information on environmental hazards and pay due regard to the precautionary approach."

174. In the case of *Portillo Cáceres v. Paraguay*[110] the HRC held as follows:

> "6.3 The Committee takes note of the State party's argument that the communication is inadmissible ratione materiae because environmental rights are not provided for in the Covenant. The Committee also notes, however, that the authors have stated that they are not claiming a violation of the right to a healthy environment but rather violations of their right to life, physical integrity, privacy, family life and an effective remedy and

[108] International Covenant on Civil and Political Rights, New York, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 and vol. 1057, p. 407.

[109] HRC, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, 3 September 2019.

[110] *Portillo Cáceres v. Paraguay*, Communication No. 2751/2016, CCPR/C/126/D/2751/2016, 20 September 2019.

that they are doing so on the grounds that the State party has not honoured its positive obligation to protect those rights, which, in the case at hand, would entail enforcing environmental standards. The Committee considers, therefore, that article 3 of the Optional Protocol does not constitute an obstacle to a finding of admissibility in respect of the present communication.

...

7.4 The Committee also takes note of developments in other international tribunals that have recognized the existence of an undeniable link between the protection of the environment and the realization of human rights and that have established that environmental degradation can adversely affect the effective enjoyment of the right to life. Thus, severe environmental degradation has given rise to findings of a violation of the right to life.

7.5 In the present case, the Committee is of the view that heavily spraying the area in question with toxic agrochemicals – an action which has been amply documented – poses a reasonably foreseeable threat to the authors' lives given that such large-scale fumigation has contaminated the rivers in which the authors fish, the well water they drink and the fruit trees, crops and farm animals that are their source of food. (...) Consequently, in view of the acute poisoning suffered by the authors, as acknowledged in the amparo decision of 2011 (paras. 2.20 and 2.21), and of the death of Mr. Portillo Cáceres, which has never been explained by the State party, the Committee concludes that the information before it discloses a violation of article 6 of the Covenant in the cases of Mr. Portillo Cáceres and the authors of the present communication.

...

7.8 ... When pollution has direct repercussions on the right to one's private and family life and home, and the adverse consequences of that pollution are serious because of its intensity or duration and the physical or mental harm that it does, then the degradation of the environment may adversely affect the well-being of individuals and constitute violations of private and family life and the home. Consequently, in the light of the information that it has before it, the Committee concludes that the events at issue in the present case disclose a violation of article 17 of the Covenant."

175. In *Teitiota v. New Zealand*[111] the HRC noted as follows:

"9.4 The Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures. The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3). The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. Furthermore, the Committee recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.

[111] *Teitiota v. New Zealand*, Communication No. 2728/2016, CCPR/C/127/D/2728/2016, 23 September 2019.

9.5 Moreover, the Committee observes that both it and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life.

...

9.7 [In relation to the author's claims regarding the risk of violence during land-disputes] the Committee considers that a general situation of violence is only of sufficient intensity to create a real risk of irreparable harm under articles 6 or 7 of the Covenant in the most extreme cases, where there is a real risk of harm simply by virtue of an individual being exposed to such violence on return, or where the individual in question is in a particularly vulnerable situation. ... [T]he author has not demonstrated clear arbitrariness or error in the domestic authorities' assessment as to whether he faced a real, personal and reasonably foreseeable risk of a threat to his right to life as a result of violent acts resulting from overcrowding or private land disputes in Kiribati.

9.8 ... While recognizing the hardship that may be caused by water rationing, the Committee notes that the author has not provided sufficient information indicating that the supply of fresh water is inaccessible, insufficient or unsafe so as to produce a reasonably foreseeable threat of a health risk that would impair his right to enjoy a life with dignity or cause his unnatural or premature death.

9.9 ... The Committee recognizes that in certain places, the lack of alternatives to subsistence livelihoods may place individuals at a heightened risk of vulnerability to the adverse effects of climate change. ... The information made available to the Committee does not indicate that when the author's removal occurred, there was a real and reasonably foreseeable risk that he would be exposed to a situation of indigence, deprivation of food and extreme precarity that could threaten his right to life, including his right to a life with dignity. ...

9.11 ... The Committee is of the view that without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States. Furthermore, given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized.

9.12 In the present case, the Committee accepts the author's claim that sea level rise is likely to render Kiribati uninhabitable. However, it notes that the time frame of 10 to 15 years, as suggested by the author, could allow for intervening acts by Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population. The Committee notes that the State party's authorities thoroughly examined that issue and found that Kiribati was taking adaptive measures to reduce existing vulnerabilities and build resilience to climate change-related harms. Based on the information made available to it, the Committee is not in a position to conclude that the domestic authorities' assessment that the measures taken by Kiribati would suffice to protect the author's right to life under article 6 of the Covenant was clearly arbitrary or erroneous in that regard, or amounted to a denial of justice."

176. In its views adopted on 21 July 2022 in Communication No. 3624/2019 (*Daniel Billy et al. v. Australia*; "Torres Strait Islanders case"), although not finding a violation of Article 6 in that particular case, the

HRC considered that adverse climate-change impacts could qualify as a reasonably foreseeable threat to life:

> "Article 6
>
> 8.3 The Committee notes the authors' claim that the events in this case constitute a violation by act and omission of their right to a life with dignity under article 6 of the [International Covenant on Civil and Political Rights], owing to the State party's failure to perform its duty to provide adaptation and mitigation measures to address climate change impacts that adversely affect their lives, including their way of life. With respect to the State party's position that article 6 (1) of the Covenant does not obligate it to prevent foreseeable loss of life from climate change, the Committee recalls that the right to life cannot be properly understood if it is interpreted in a restrictive manner, and that the protection of that right requires States parties to adopt positive measures to protect the right to life.[112] The Committee also recalls its general comment No. 36 (2018) on the right to life, in which it established that the right to life also includes the right of individuals to enjoy a life with dignity and to be free from acts or omissions that would cause their unnatural or premature death (para. 3).[113] The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life.[114] States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity.
>
> 8.4 The Committee takes note of the State party's position that the extension of article 6 (1) of the Covenant to a right to life with dignity through general comment No. 36 is unsupported by the rules of treaty interpretation, with reference to article 31 of the 1969 Vienna Convention on the Law of Treaties. However, the Committee is of the view that the language at issue is compatible with the latter provision, which requires that a treaty be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. In this regard, the Committee notes that under article 31 of the Convention, the context for interpretation of a treaty includes in the first place the text of the treaty, including its preamble and annexes. The preamble of the Covenant initially recognizes that the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, and further recognizes that those rights derive from the inherent dignity of the human person. While the State party notes that socioeconomic entitlements are protected under a separate Covenant, the Committee observes that the preamble of the present Covenant recognizes that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy their civil and political rights, as well as their economic, social and cultural rights.

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[112] For example, *Teitiota v. New Zealand* (CCPR/C/127/D/2728/2016), paragraph 9.4, and *Toussaint v. Canada*, paragraph 11.3.
[113] See also *Portillo Cáceres et al. v. Paraguay* (CCPR/C/126/D/2751/2016), paragraph 7.3.
[114] *Toussaint v. Canada* (CCPR/C/123/D/2348/2014), paragraph 11.3, and *Portillo Cáceres et al. v. Paraguay*, paragraph 7.5.

> 8.5 The Committee observes that both it and regional human rights tribunals have established that environmental degradation can compromise effective enjoyment of the right to life, and that severe environmental degradation can adversely affect an individual's well-being and lead to a violation of the right to life."

7. Committee on the Elimination of Discrimination against Women

177. The Convention on the Elimination of All Forms of Discrimination against Women does not make explicit reference to environmental rights. However, in its General Recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change, issued in 2018[115], the Committee identified general (§§ 25-38) as well as specific (§§ 39-54) principles of that Convention applicable to disaster risk reduction and climate change.

8. Committee on the Rights of the Child

178. The Committee on the Rights of the Child ("the CRC") dealt with the issue of the effects of climate change on children in General comment No. 26 on children's rights and the environment, with a special focus on climate change.[116]

179. In *Sacchi and Others v. Argentina* (CRC/C/88/D/104/2019, 22 September 2021), the CRC dealt[117] with a complaint lodged by sixteen children of various nationalities against Argentina (the same complaint was also lodged against Brazil, France, Germany and Türkiye). The authors claimed to be victims of climate change, and that the respondent States were responsible for (a) failing to prevent foreseeable human rights violations caused by climate change by reducing their emissions at the "highest possible ambition", and (b) delaying the steep cuts in carbon emissions needed to protect the lives and welfare of children at home and abroad. While the Committee established jurisdiction of the respondent States, it declared the case inadmissible for non-exhaustion of domestic remedies. For further details, see *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], no. 39371/20, §§ 58-60, 9 April 2024.

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[115] CEDAW, General recommendation No. 37 on gender-related dimensions of disaster risk reduction in a changing climate, CEDAW/C/GC/37, distr. 13 March 2018.

[116] General comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, RC/C/GC/26, 23 August 2023.

[117] Under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, A/RES/66/138, 19 December 2011.

9. Committee on Economic, Social and Cultural Rights

180. In its Statement on climate change and the Covenant of 8 October 2018[118], the Committee on Economic, Social and Cultural Rights noted as follows:

> "3. The Committee welcomes the pledges already made. Quite apart from such voluntary commitments made under the climate change regime however, all States have human rights obligations, that should guide them in the design and implementation of measures to address climate change.
>
> ...
>
> 5. Under the International Covenant on Economic, Social and Cultural Rights, States parties are required to respect, protect and fulfil all human rights for all. They owe such duties not only to their own populations, but also to populations outside their territories, consistent with articles 55 and 56 of the United Nations Charter. In doing so they should, consistent with the Covenant, act on the basis of the best scientific evidence available.
>
> 6. This Committee has already noted that a failure to prevent foreseeable human rights harm caused by climate change, or a failure to mobilize the maximum available resources in an effort to do so, could constitute a breach of this obligation.
>
> The nationally determined contributions (NDCs) that have been announced until now are insufficient to meet what scientists tell us is required to avoid the most severe impacts of climate change. In order to act consistently with their human rights obligations, the NDCs should be revised to better reflect the 'highest possible ambition' referred to in the Paris Agreement (article 4.3). The future implementation guidelines of the Agreement should require from States that they take into account their human rights duties in the design of the NDCs. This implies acting in accordance with the principles of gender sensitivity, participation, transparency and accountability; and building on local and traditional knowledge.
>
> Moreover, States parties should adopt measures to adapt to the negative consequences of climate change, and integrate such measures within existing social, environmental and budgetary policies at domestic level. Finally, as part of their duties of international assistance and cooperation for the realization of human rights, high-income States should also support adaptation efforts, particularly in developing countries, by facilitating transfers of green technologies, and by contributing to the Green Climate Fund. This would be consistent with the requirement under the Covenant that States ensure 'the right of everyone to enjoy the benefits of scientific progress', and with the Covenant's acknowledgement of 'the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific ... field'.
>
> ...
>
> 8. ... Human rights mechanisms have an essential role to play in protecting human rights by ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures that could mitigate climate change. Such measures include accelerating the shift to renewable sources of energy such as wind or solar; slowing down deforestation

[118] OHCHR, Climate change and the International Covenant on Economic, Social and Cultural Rights, Statement of the Committee on Economic, Social and Cultural Rights of 8 October 2018.

and moving to agroecological farming allowing soils to function as carbon sinks; improving the insulation of buildings; and investing in public transport. A fundamental shift in the global energy order is urgently required from hydrocarbon to renewable energy sources, in order to avoid dangerous anthropogenic interference with the climate system and the significant human rights violations that such interference would cause.

9. Complying with human rights in the context of climate change is a duty of both State and non-State actors. This requires respecting human rights, by refraining from the adoption of measures that could worsen climate change; protecting human rights, by effectively regulating private actors to ensure that their actions do not worsen climate change; and fulfilling human rights, by the adoption of policies that can channel modes of production and consumption towards a more environmentally sustainable pathway.
...

The role of the Committee on Economic, Social and Cultural Rights

10. In its future work, the Committee shall continue to keep under review the impacts of climate change on economic, social and cultural rights, and provide States guidance as to how they can discharge their duties under the International Covenant on Economic, Social and Cultural Rights in the mitigation of climate change and adaptation to its unavoidable effects."

181. In the relevant parts of General Comment No. 25 (2020) on science and economic, social and cultural rights[119], the Committee on Economic, Social and Cultural Rights held as follows:

"B. Participation and the precautionary principle

56. Participation also includes the right to information and participation in controlling the risks involved in particular scientific processes and its applications. In this context, the precautionary principle plays an important role. This principle demands that, in the absence of full scientific certainty, when an action or policy may lead to unacceptable harm to the public or the environment, actions will be taken to avoid or diminish that harm. Unacceptable harm includes harm to humans or to the environment that is: (a) threatening to human life or health; (b) serious and effectively irreversible; (c) inequitable to present or future generations; or (d) imposed without adequate consideration of the human rights of those affected. Technological and human rights impact assessments are tools that help to identify potential risks early in the process and the use of scientific applications.

...

International cooperation

...

81. Fourth, international cooperation is essential because the most acute risks to the world related to science and technology, such as climate change, the rapid loss of biodiversity, the development of dangerous technologies, such as autonomous weapons based on artificial intelligence, or the threat of weapons of mass destruction, especially nuclear weapons, are transnational and cannot be adequately addressed without robust international cooperation. States should promote multilateral agreements to prevent these risks from materializing or to mitigate their effects."

[119] Committee on Economic, Social and Cultural Rights, General Comment No. 25 (2020) on science and economic, social and cultural rights, E/C.12/GC/25, 30 April 2020.

182. The relevant parts of General Comment No. 14 on the right to health (2000)[120] read as follows (footnotes omitted):

> "11. The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health -related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.
>
> ...
>
> 15. 'The improvement of all aspects of environmental and industrial hygiene' (art. 12.2 (b)) comprises, inter alia, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. ...
>
> 36. The obligation to fulfil requires States parties, inter alia, to give sufficient recognition to the right to health in the national political and legal systems, preferably by way of legislative implementation ... States are also required to adopt measures against environmental and occupational health hazards and against any other threat as demonstrated by epidemiological data. For this purpose they should formulate and implement national policies aimed at reducing and eliminating pollution of air, water and soil, including pollution by heavy metals such as lead from gasoline. ..."

183. The relevant parts of General Comment No. 26 (2022) on land and economic, social and cultural rights[121] read as follows:

> "Climate change
>
> 56. The impact of climate change on access to land, affecting user rights, is severe in many countries. In coastal zones, sea level rise has an impact on housing, agriculture and access to fisheries. Climate change also contributes to land degradation and desertification. Rising temperatures, changing patterns of precipitation and the increasing frequency of extreme weather events such as droughts and floods are increasingly affecting access to land. States shall cooperate at the international level and comply with their duty to mitigate emissions and their respective commitments made in the context of the implementation of the Paris Agreement. States have these duties also under human rights law, as the Committee has highlighted previously. Moreover, States shall avoid adopting policies to mitigate climate change, such as carbon sequestration through massive reforestation or protection of existing forests, that lead to different forms of land grabbing, especially when they affect the land and territories of populations in vulnerable situations, such as peasants or Indigenous Peoples. Mitigation policies should lead to absolute emissions reductions through the phasing out of fossil fuel production and use.

[120] Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000) on the right to the highest attainable standard of health, E/C.12/2000/4, 11 August 2000.
[121] Committee on Economic, Social and Cultural Rights, General Comment No. 26 (2022) on land and economic, social and cultural rights, E/C.12/GC/26, 24 January 2023.

57. States have an obligation to design climate change adaptation policies at the national level that take into consideration all forms of land use change induced by climate change, to register all affected persons and to use the maximum available resources to address the impact of climate change, particularly on disadvantaged groups.

58. Climate change affects all countries, including those that may have contributed to it the least. Thus, those countries that have historically contributed most to climate change and those that are currently the main contributors to it shall assist the countries that are most affected by climate change but are least able to cope with its impact, including by supporting and financing land-related adaptation measures. Cooperation mechanisms for climate change mitigation and adaptation measures shall provide and implement a robust set of environmental and social safeguards to ensure that no project negatively affects human rights and the environment and to guarantee access to information and meaningful consultation with those affected by such projects. They shall also respect the free, prior and informed consent of Indigenous Peoples."

10. Office of the High Commissioner for Human Rights

184. Since presenting a general report on the relationship between climate change and human rights to the Human Rights Council in 2009, the Office of the High Commissioner for Human Rights has submitted several reports to the Human Rights Council focused on the effects of climate change on the enjoyment of human rights of several categories of persons, including on persons with disabilities[122], women[123], migrants and displaced persons[124], children[125] and on persons suffering from mental health issues[126].

185. In its Analytical study on the promotion and protection of the rights of older persons in the context of climate change (A/HRC/47/46) published in 2021, the Office of the High Commissioner for Human Rights addressed multiple and intersecting forms of discrimination in relation to climate change, the relevant parts of which read as follows (footnotes omitted):

"34. Both ageing and climate change have differential effects when it comes to gender. Because women tend to live longer, there are more older women than older men, and women in heterosexual partnerships tend to outlive their partners, so more older women live alone. Physiological and physical differences, social norms and roles,

[122]Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change, A/HRC/44/30, distr. 2 April 2020.
[123] Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women, A/HRC/41/26, distr. 1 May 2019.
[124] Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps, A/HRC/38/21, distr. 23 April 2018.
[125] Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child, A/HRC/35/13, distr. 4 May 2017.
[126] Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health, A/HRC/32/23, distr. 6 May 2016.

and gender discrimination and inequities in access to resources and power all play a role in making older women face particular risk of vulnerability to climate impacts.

35. Older women experience higher rates of poverty than older men and face other economic hardships that are aggravated by climate change. They also face disproportionate health risks, including a greater likelihood of experiencing chronic diseases and air pollution harms, and have higher rates of mortality and other health complications from extreme heat events than any other demographic group. Conversely, during typhoons, older men have been found to be more at risk of death.

36. Gendered social roles and expectations have complex effects on climate risks for older people. In some societies, older men are more socially isolated and thus have more difficulty in accessing assistance to cope with the negative effects of climate change. However, in situations of emergency or strained family resources brought on by climate impacts, older women are sometimes more likely to be viewed as a burden and to suffer abuse or neglect. In some countries, older women are blamed for extreme weather through accusations of witchcraft or sorcery, and face violence or exclusion as a result. Transformation of traditional livelihoods and of cultural and social practices also has varying effects on men and women because of their different social roles. Social norms around gender orientation and sexual identity may also compound the negative human rights effects of climate change for lesbian, gay, bisexual, transgender and intersex older persons."

11. Other developments

186. In 2019 the UN Treaty Bodies (Committee on the Elimination of Discrimination against Women; Committee on Economic, Social and Cultural Rights; Committee on the Protection of the Rights of All Migrant Workers and Members of their Families; Committee on the Rights of the Child; and Committee on the Rights of Persons with Disabilities) issued a Joint Statement on human rights and climate change[127], the relevant parts of which provide as follows (footnotes omitted):

"3. [The report released in 2018 by the Intergovernmental Panel on Climate Change on global warming of 1.5°C above pre-industrial levels] confirms that climate change poses significant risks to the enjoyment of the human rights protected by the International Convention on the Elimination of all Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Rights of the Child, and the International Convention on the Rights of Persons with Disabilities. The adverse impacts identified in the report threaten, among others, the right to life, the right to adequate food, the right to adequate housing, to health and to water, and cultural rights. These negative impacts are also illustrated in the damage suffered by the ecosystems which in turn affect the enjoyment of human rights. The risk of harm is particularly high for those segments of the population already marginalized or in vulnerable situations or that, owing to discrimination and pre-existing inequalities, have limited access to decision-making or resources, such as women, children, persons with disabilities, indigenous peoples and persons living in rural areas. Children are at a

[127] OHCHR Joint Statement on human rights and climate change, HRI/2019/1, 16 September 2019.

particularly heightened risk of harm to their health, owing to the immaturity of their body systems.

...

States' Human Rights Obligations

10. Under the Convention on the Elimination of All Forms of Discrimination Against Women, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention on the Rights of the Child, and the International Convention on the Rights of Persons with Disabilities, States parties have obligations, including extraterritorial obligations, to respect, protect and fulfil all human rights of all peoples. Failure to take measures to prevent foreseeable harm to human rights caused by climate change, or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations.

11. In order for States to comply with their human rights obligations, and to realize the objectives of the Paris Agreement, they must adopt and implement policies aimed at reducing emissions. These policies must reflect the highest possible ambition, foster climate resilience and ensure that public and private investments are consistent with a pathway towards low carbon emissions and climate resilient development.

12. In their efforts to reduce emissions, States parties should contribute effectively to phasing out fossils fuels, promoting renewable energy and addressing emissions from the land sector, including by combating deforestation. Additionally, States must regulate private actors, including by holding them accountable for harm they generate both domestically and extraterritorially. States should also discontinue financial incentives or investments in activities and infrastructure which are not consistent with low [GHG] emissions pathways, whether undertaken by public or private actors as a mitigation measure to prevent further damage and risk.

13. When reducing emissions and adapting to climate impacts, States must seek to address all forms of discrimination and inequality, including advancing substantive gender equality, protecting the rights of indigenous peoples and of persons with disabilities, and taking into consideration the best interests of the child.

...

Role of the Committees

18. In their future work, the Committees shall continue to keep under review the impacts of climate change and climate-induced disasters on the rights holders protected under their respective treaties. They will also continue to provide States parties with guidance on how they can meet their obligations under these instruments in relation to mitigation and adaptation to climate change."

187. On 12 December 2022 the International Tribunal for the Law of the Sea received a request from the Commission of Small Island States on Climate Change and International Law to deliver an advisory opinion on the scope and content of the "specific obligations of States Parties to the United Nations Convention on the Law of the Sea ('UNCLOS') including under Part XII thereof".[128] The questions put in the request were the following:

[128] The detailed questions and the obligations at stake can be found in the press release ITLOS/Press 327, 12 December 2022.

"What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea ('UNCLOS'), including under Part XII:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic [GHG] emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?"

188. On 29 March 2023, under Article 96 of the Charter of the United Nations, the UN General Assembly adopted a Resolution[129] requesting the International Court of Justice to provide an advisory opinion on States' obligations in respect of climate change. The questions put to that court were the following:

"Having particular regard to the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Paris Agreement, the United Nations Convention on the Law of the Sea, the duty of due diligence, the rights recognized in the Universal Declaration of Human Rights, the principle of prevention of significant harm to the environment and the duty to protect and preserve the marine environment,

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of [GHG] for States and for present and future generations;

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?"

B. Council of Europe

1. Parliamentary Assembly of the Council of Europe

189. In a Recommendation adopted on 29 September 2021, entitled "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe"[130], the Parliamentary Assembly of the Council of Europe (PACE) recommended that the Committee of Ministers draw up an additional protocol to the European Convention on Human Rights and an additional protocol to the European Social Charter on the right to a safe, clean,

[129] Resolution A/RES/77/276, 29 March 2023.
[130] PACE, Recommendation 2211 (2021), adopted on 29 September 2021.

healthy and sustainable environment, based on the terminology used by the United Nations.

190. More generally, in a Resolution similarly entitled, PACE recommended that the member States build and consolidate a legal framework – domestically and at European level – to anchor the right to a safe, clean, healthy and sustainable environment, based on the United Nations guidance on this matter.[131] The relevant part of the Resolution reads as follows:

> "3. The Parliamentary Assembly notes that already in 1972, the Stockholm Declaration of the United Nations Conference on the Human Environment explicitly linked environmental protection and first generation human rights, indirectly referring to the right to a healthy environment. Since then, about half the countries of the world have recognised the right to a healthy environment in their constitutions, including 32 Council of Europe member States. The right to a healthy environment is also recognised through a series of regional agreements and arrangements worldwide – with the exception of the European region.
>
> 4. The Assembly believes that the European vision of contemporary human rights protection could nevertheless become a benchmark for ecological human rights in the 21st century, if action is taken now. So far this vision has been limited to civil and political rights enshrined in the European Convention on Human Rights and its Protocols (ETS No. 5, hereafter 'the Convention') and socio-economic rights recognised in the European Social Charter (ETS Nos. 35 and 163, hereafter 'the Charter').
>
> 5. The Assembly notes that the Convention does not make any specific reference to the protection of the environment, and the European Court of Human Rights (hereafter the 'Court') can thus not deal effectively enough with this new generation human right. The Assembly's call for action, in particular in Recommendation 1885 (2009) 'Drafting an additional protocol to the European Convention on Human Rights concerning the right to a healthy environment', was unfortunately not followed by the Committee of Ministers.
>
> 6. The Court's case law provides for indirect protection of a right to the environment by sanctioning only environmental violations that simultaneously result in an infringement of other human rights already recognised in the Convention. The Court thus favours an anthropocentric and utilitarian approach to the environment which prevents natural elements from being afforded any protection per se. The Assembly encourages the Council of Europe to recognise, in time, the intrinsic value of Nature and ecosystems in the light of the interrelationship between human societies and Nature.
>
> 7. The Assembly is convinced that the Council of Europe as the European continent's leading human rights and rule of law organisation should stay proactive in the evolution of human rights and adapt its legal framework accordingly. A legally binding and enforceable instrument, such as an additional protocol to the Convention, would finally give the Court a non-disputable base for rulings concerning human rights violations arising from environment-related adverse impacts on human health, dignity and life.
>
> 8. The Assembly considers that an explicit recognition of a right to a healthy and viable environment would be an incentive for stronger domestic environmental laws and a more protection-focused approach by the Court. It would make it easier for

[131] Resolution 2396 (2021), adopted on 29 September 2021.

victims to lodge applications for remedies and would also act as a preventive mechanism to supplement the currently rather reactive case law of the Court.

9. Recognising an autonomous right to a healthy environment would have the benefit of allowing a violation to be found irrespective of whether another right had been breached and would therefore raise the profile of this right. In this context, the Assembly notes that the United Nations (UN), in its studies and resolutions on human rights and the environment, mainly refers to the human rights obligations linked to the enjoyment of 'a safe, clean, healthy and sustainable environment'. The Council of Europe should be encouraged to use this terminology for its own legal instruments – though it may want to go even further and guarantee the right to a 'decent' or 'ecologically viable' environment."

191. In Recommendation 2211 (2021)[132], PACE recommended that the Committee of Ministers draw up an additional protocol to the European Convention on Human Rights on the right to a safe, clean, healthy and sustainable environment. The relevant part of the Recommendation reads as follows:

"1. The Parliamentary Assembly refers to its Resolution 2396 (2021) 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe' and reiterates the need for the Council of Europe to modernise its standard setting activity so as to embrace the new generation of human rights. The Assembly is highly concerned by the speed and extent of environmental degradation, loss of biodiversity, and the climate crisis that directly impact on human health, dignity and life. It considers that it is high time for the Council of Europe to show ambition and strategic vision for the future by facing up to this major transformative challenge for human rights and securing their enhanced protection in the era of systemic environmental threats to the present and future generations.

2. The Assembly notes that harmful environmental impacts are increasingly affecting the enjoyment of first and second generation human rights by individuals and society at large, hurting the shared values that the Council of Europe is called upon to defend. Those impacts are being recognised through environmental litigation at national level across Europe and beyond; they constitute a compelling case for consolidating and updating the Council of Europe legal arsenal, and linking up national action with commitments under the relevant international treaties, such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

3. To this end, the Assembly recommends that the Committee of Ministers:

3.1 draw up an additional protocol to the European Convention on Human Rights (ETS No. 5, hereafter 'the Convention') on the right to a safe, clean, healthy and sustainable environment, based on the terminology used by the United Nations and drawing on the text reproduced below, which is an integral part of this recommendation. The inclusion of this right in the Convention would establish the clear responsibility of member States to maintain a good state of the environment that is compatible with life in dignity and good health and the full enjoyment of other fundamental rights; this would also support a much more effective protection of a safe, clean, healthy and sustainable environment at national level, including for generations to come;

3.2 draw up an additional protocol to the European Social Charter (ETS Nos. 35 and 163, hereafter 'the Charter') on the right to a safe, clean, healthy and sustainable

[132] Recommendation 2211 (2021), adopted on 29 September 2021.

environment; the inclusion of this right in the ESC would make it possible to recognise the interrelationship between protection of social rights and environmental protection; it would also enable non-governmental organisations to lodge collective complaints on environmental issues;

3.3 launch the preparation of a feasibility study for a '5P' convention on environmental threats and technological hazards threatening human health, dignity and life; the drawing-up of such a convention would afford an opportunity to incorporate therein the principles of prevention, precaution and non-regression, which are necessary if humanity's right to a healthy environment is to be properly protected; the convention could also include a supranational monitoring mechanism modelled on independent expert committees such as the Group of Experts on Action against Trafficking in Human Beings (GRETA) and The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO);

3.4 revise Recommendation CM/Rec(2016)3 on human rights and business with a view to strengthening corporate environmental responsibility for the adequate protection of the human right to a safe, clean, healthy and sustainable environment."

192. PACE also adopted a Recommendation[133] and a Resolution[134] entitled "The climate crisis and the rule of law". In the latter, it referred to the Court's case-law in relation to environmental damage. In particular, it urged the member States to do the following:

"5.1 promote the rule of law and employ a transparent, accountable and democratic legislative process for implementing the aim of 'net zero emissions', based on clear and credible plans to meet commitments to keep the global temperature increase in line with the preferred objective of the Paris Agreement, amounting to an increase in average temperatures of 1.5°C;"

2. Committee of Ministers

193. The Committee of Ministers issued replies to the above-mentioned recommendations of the Parliamentary Assembly. In a reply issued on 4 October 2022, it addressed the recommendation to adopt a new protocol to the European Convention on Human Rights, indicating that it had instructed the Steering Committee for Human Rights (CDDH) to undertake other possible work, including the preparation of a study on the need for and feasibility of a further instrument or instruments on human rights and the environment[135].

194. The Committee of Ministers adopted its Recommendation CM/Rec(2022)20 to member States on human rights and the protection of the environment on 27 September 2022. In the Preamble, the Committee of Ministers noted:

[133] Recommendation 2214 (2021), adopted on 29 September 2021.
[134] Resolution 2399 (2021), adopted on 29 September 2021.
[135] Committee of Ministers, Reply to Recommendation 2211(2021), Doc. 15623, adopted at the 1444th meeting of the Ministers' Deputies (27 September 2022), 4 October 2022, paragraphs 3-4.

"the increased recognition of some form of the right to a clean, healthy and sustainable environment in, *inter alia*, international instruments, including regional human rights instruments, and national constitutions, legislation and policies;"

195. The Committee of Ministers then recommended that the member States undertake the following:

"1. reflect on the nature, content and implications of the right to a clean, healthy and sustainable environment and, on that basis, actively consider recognising at the national level this right as a human right that is important for the enjoyment of human rights and is related to other rights and existing international law;

2. review their national legislation and practice in order to ensure that they are consistent with the recommendations, principles and guidance set out in the appendix to this recommendation;

..."

196. The appendix to this Recommendation, containing six paragraphs, reads as follows:

"1. In the implementation of this recommendation, member States should ensure the respect of general principles of international environmental law, such as the no harm principle, the principle of prevention, the principle of precaution and the polluter pays principle, and take into account the need for intergenerational equity.

2. Member States should ensure, without discrimination, the effective enjoyment of the rights and freedoms set forth in the Convention for the Protection of Human Rights and Fundamental Freedoms and, when applicable, the European Social Charter and the European Social Charter (revised), including in relation to the environment.

3. Member States should take adequate measures to protect the rights of those who are most vulnerable to, or at particular risk from, environmental harm, taking into account their needs, risks and capacities.

4. Member States should ensure access without discrimination, *inter alia*, to information and justice in environmental matters, participation in environmental decision making and environmental education. Member States should ensure that human rights are taken into account at all stages of the environmental decision-making process.

5. Taking into consideration their vital role in the protection of the environment, member States should consult and co-operate in the implementation of this recommendation with sub-national entities, civil society, national human rights institutions, regional institutions for the protection and promotion of human rights, environmental human rights defenders, economic stakeholders, indigenous peoples and local communities, cities and regions.

6. Member States should encourage or, where appropriate, require business enterprises to act in compliance with their human rights responsibilities related to the environment, including by applying a smart mix of measures– national and international, mandatory and voluntary."

197. In the Explanatory memorandum to the Recommendation[136] the CDDH stated that the Recommendation in question did not have any effect

[136] CM(2022)141-add3final, 27 September 2022.

on the legal nature of the instruments on which it was based, or on the extent of States' existing legal obligations; nor did it seek to establish new standards or obligations.

3. Council of Europe Commissioner for Human Rights

198. In the human rights comment "Living in a clean environment: a neglected human rights concern for all of us"[137], the Commissioner stressed as follows:

> "The Council of Europe bodies overseeing the implementation of the European Convention of Human Rights and the European Social Charter have produced an extensive body of case law that delineates states parties' obligations in the field of the environment. Despite the absence in the Convention of a specific reference to the environment, the European Court of Human Rights has clearly established that various types of environmental degradation can result in violations of substantive human rights, such as the right to life, to private and family life, the prohibition of inhuman and degrading treatment, and the peaceful enjoyment of the home. Moreover, the European Committee of Social Rights has interpreted the right to health included in the Charter to encompass the right to a healthy environment.
>
> ...
>
> States must adopt – and adhere to – ambitious, holistic policies and measures to preserve the environment and biodiversity, combat air, water and soil pollution, mitigate climate change and ensure proper waste disposal. In doing so, they should pay extra attention to protect the rights of those most vulnerable, including children, the poor and marginalised communities who tend to be disproportionally affected by environmental degradation. Rather than a piecemeal approach that merely reacts to individual complaints, what is needed is a preventive approach at national and local level grounded in the human rights standards of the Council of Europe. This also means ensuring that environmental policies are accompanied by measures to protect the rights of those they may impact, including the right to work and to an adequate standard of living of those working in mining or heavy industries, for example. It is extremely important for states to educate people from an early age of the need to preserve the environment and teach them how to do so. Further, states must ensure people's rights to information, participation and redress, and demonstrate their commitment to doing so by ratifying the Aarhus convention."

4. Other materials

199. In 2020 the European Commission for Democracy through Law ("the Venice Commission") addressed the question of judicial control in the field of environmental protection:

> "114. The Venice Commission is aware of the problems of judicial control in the area of protection of the environment. Critics or sceptics will claim that this area is not suitable for judicial control, as it will take the courts into sophisticated discussions on natural sciences. They might also claim that as the environmental protection is an area for discretion and political compromises, in case a parliament or government made a

[137] Commissioner for Human Rights Human rights comment "Living in a clean environment: a neglected human rights concern for all of us", 4 June 2019.

political compromise on the protection of the environment, the judicial branch should not intervene. However, an important argument to counter such a conclusion is that the protection of the environment is not like the traditional human rights conflict, where the minority needs protection against the majority. In the area of protection of the environment, there is a totally new dimension: the protection of the rights of future generations. As the future generations do not take part in present day democracy and do not vote in present day elections, the judicial branch appears to be best placed to protect the future generations against the decisions of present-day politicians."[138]

200. In Appendix V of the Reykjavík Declaration[139] the following was declared:

"We, the Heads of State and Government, underline the urgency of taking co-ordinated action to protect the environment by countering the triple planetary crisis of pollution, climate change and loss of biodiversity. We affirm that human rights and the environment are intertwined and that a clean, healthy and sustainable environment is integral to the full enjoyment of human rights by present and future generations.

...

We note that the right to a healthy environment is enshrined in various ways in several constitutions of the Council of Europe member States and the increased recognition of the right to a clean, healthy and sustainable environment in, inter alia, international instruments, regional human rights instruments, national constitutions, legislation and policies.

We recall the extensive case law and practice on environment and human rights developed by the European Court of Human Rights and the European Committee of Social Rights. We appreciate the ongoing work of the Committee of Ministers, the Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe, the Commissioner for Human Rights, the youth sector and other parts of the Council of Europe to strengthen the protection of human rights linked to the protection of the environment.

Together we commit to:

i. strengthening our work at the Council of Europe on the human rights aspects of the environment based on the political recognition of the right to a clean, healthy and sustainable environment as a human right, in line with United Nations General Assembly Resolution 76/300 'The human right to a clean, healthy and sustainable environment', and by pursuing the implementation of Committee of Ministers Recommendation CM/Rec(2022)20 on human rights and the protection of the environment; ...

v. initiating the 'Reykjavík process' of strengthening the work of the Council of Europe in this field, with the aim of making the environment a visible priority for the Organisation. The process will focus and streamline the Organisation's activities, with a view to promoting co-operation among member States. We will identify the challenges raised by the triple planetary crisis of pollution, climate change and loss of

[138] European Commission for Democracy through Law, Opinion No. 997/2020, 9 October 2020, CDL-AD(2020)020-e. The opinion was issued on four draft constitutional bills on the protection of the environment, on natural resources, on referendums and on the President of Iceland, the government, the functions of the executive and other institutional matters.

[139] Declaration of the Fourth Summit of Heads of State and Government of the Council of Europe (Reykjavík, Iceland, 16-17 May 2023).

biodiversity for human rights and contribute to the development of common responses thereto, while facilitating the participation of youth in these discussions. We will do this by enhancing and co-ordinating the existing Council of Europe activities related to the environment and we encourage the establishment of a new intergovernmental committee on environment and human rights ('Reykjavík Committee')."

C. European Union

1. Primary legislation

201. The relevant part of the Treaty on European Union (OJ 2012/C 326, pp. 13-390) provides as follows:

Article 3 § 3

"The Union ... shall work for the sustainable development of Europe ... aiming at ... a high level of protection and improvement of the quality of the environment ..."

202. The relevant parts of the Treaty on the Functioning of the European Union (OJ 2012/C 326, pp. 47-390) provide as follows:

Article 11

"Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development."

Article 191

"1. Union policy on the environment shall contribute to pursuit of the following objectives:

– preserving, protecting and improving the quality of the environment,

– protecting human health,

– prudent and rational utilisation of natural resources,

– promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

– available scientific and technical data,

– environmental conditions in the various regions of the Union,

– the potential benefits and costs of action or lack of action,

– the economic and social development of the Union as a whole and the balanced development of its regions.

..."

Article 263

The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects *vis-à-vis* third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

...

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

..."

203. Article 37 of the Charter of Fundamental Rights of the European Union (OJ 2012/C 326, pp. 391-407) provides as follows:

Article 37
Environmental protection

"A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development."

2. Legislative acts

(a) Concerning GHG emissions

204. By Decision No. 94/69/EC of the Council of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (OJ 2009/L 140, pp. 136-48), the Council approved the UNFCCC on behalf of the European Community (now the European Union).

205. Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their GHG emissions to meet the Community's GHG emission reduction commitments up to 2020 (OJ 2009/L 140, pp. 136-48) provides that each Member State is to limit its GHG emission according to a percentage set for that Member State (Article 3). Detailed percentages by Member States can be found in Annex II.

206. Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009/L 140, pp. 16-62), establishes a common framework for the promotion of energy from renewable sources (Article 1) and sets mandatory national overall targets for the use of energy from renewable sources (Article 3 and Annex 1).

207. Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ 2012/L 315, pp. 1-56) establishes a common framework of measures for the promotion of energy efficiency within the Union in order to ensure the achievement of the Union's 2020 20% headline target on energy efficiency (Article 1).

208. Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual GHG emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018/L 156, pp. 26-42) defines obligations on Member States with respect to their minimum contributions for the period from 2021 to 2030 to fulfilling the Union's target of reducing its GHG emissions by 30% below 2005 levels in 2030 in specific sectors. It provides that each Member State will, by 2030, limit its GHG emissions at least by the percentage set for that Member State in relation to its GHG emissions in 2005 (Article 4 § 1; Annex 1).

209. By Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action ("the Governance Regulation", OJ 2018/L 328, pp. 1-77), the European Union established a governance mechanism, based on long-term strategies, to implement strategies and measures designed to meet the objectives and targets of the Energy Union and the long-term Union GHG emissions commitments consistent with the Paris Agreement (Article 1).

210. Through the adoption on 6 April 2022 of Decision (EU) 2022/591 on a General Union Environment Action Programme to 2030 (OJ 2022/L 114, pp. 22-36), the European Parliament and the Council set out a general action programme in the field of the environment for the period up to 31 December 2030 (the "8th Environment Action programme" or "8th EAP").

211. Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law") (OJ 2021/L 243, pp. 1-17), established a framework for the irreversible and gradual reduction of anthropogenic GHG

emissions by sources and enhancement of removals by sinks regulated in Union law. It sets out a binding objective of climate neutrality in the Union by 2050 in pursuit of the long-term temperature goal set out in point (a) of Article 2 § 1 of the Paris Agreement, as well as a binding Union target of a net domestic reduction in GHG emissions for 2030. The Regulation also requires that the projected indicative Union GHG budget be established and based on the best available science.

(b) Concerning access to information, public participation and access to justice in environmental matters

212. Through Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006/L 264, pp. 13-19), the then European Community guaranteed the right of public access to environmental information received or produced by Community institutions and bodies (Article 1).

213. This Regulation was recently amended, following the 2017 findings and recommendations of the Aarhus Convention Compliance Committee with regard to a communication brought by an NGO concerning compliance of the European union with the Aarhus Convention (in particular with its Article 3 § 1 and Article 9 §§ 2, 3, 4 and 5).[140]

214. Consequently, Regulation (EU) 2021/1767 of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies broadened the scope of the type of acts that can be subject to internal review and the range of persons entitled to request an internal review. The relevant provisions of the consolidated Regulation (EC) No 1367/2006 read as follows:

Article 2
Definitions

"...

(g) 'administrative act' means any non-legislative act adopted by a Union institution or body, which has legal and external effects and contains provisions that may contravene environmental law within the meaning of point (f) of Article 2(1);

[140] Findings and recommendations of the Compliance Committee with regard to communication ACCC/C/2008/32 (part II) concerning compliance by the European Union, adopted by the Compliance Committee on 17 March 2017, ECE/MP.PP/C.1/2017/7.

(h) 'administrative omission' means any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law within the meaning of point (f) of Article 2(1)."

Article 10
Request for internal review of administrative acts

"1. Any non-governmental organisation or other members of the public that meet the criteria set out in Article 11 shall be entitled to make a request for internal review to the Union institution or body that adopted the administrative act or, in the case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law within the meaning of point (f) of Article 2(1).

..."

Article 11
Criteria for entitlement at Union level

"1. A non-governmental organisation shall be entitled to make a request for internal review in accordance with Article 10, provided that:

(a) it is an independent non-profit-making legal person in accordance with a Member State's national law or practice;

(b) it has the primary stated objective of promoting environmental protection in the context of environmental law;

(c) it has existed for more than two years and is actively pursuing the objective referred to under (b);

(d) the subject matter in respect of which the request for internal review is made is covered by its objective and activities.

1a. A request for internal review may also be made by other members of the public, subject to the following conditions:

(a) they shall demonstrate impairment of their rights caused by the alleged contravention of Union environmental law and that they are directly affected by such impairment in comparison with the public at large; or

(b) they shall demonstrate a sufficient public interest and that the request is supported by at least 4 000 members of the public residing or established in at least five Member States, with at least 250 members of the public coming from each of those Member States.

In the cases referred to in the first subparagraph, the members of the public shall be represented by a non-governmental organisation which meets the criteria set out in paragraph 1 or by a lawyer authorised to practise before a court of a Member State. That non-governmental organisation or lawyer shall cooperate with the Union institution or body concerned in order to establish that the quantitative conditions in point (b) of the first subparagraph are met, where applicable, and shall provide further evidence thereof upon request."

3. Case-law of the Court of Justice and the General Court of the European Union

215. In 1991 the European Commission adopted a decision granting Spain financial assistance from the European Regional Development Fund for the construction of two power stations in the Canary Islands. In 1993 Greenpeace brought an action before the Court of First Instance ("the CFI", now the General Court) seeking annulment of the Commission's decision to disburse these funds to Spain, and of another decision which the Commission had allegedly subsequently taken to reimburse further expenses incurred in the construction of the power stations. In 1995 the CFI dismissed the annulment action of the applicant association for lack of standing. On appeal, the applicant association argued, on the one hand, that by applying case-law on standing developed by the Court of Justice of the European Union (CJEU) in relation to economic issues, the CFI had failed to take account of the nature and specific character of the environmental interests underpinning their action and, on the other, that "the approach adopted by the [CFI] [had created] a legal vacuum in ensuring compliance with Community environmental legislation, since in this area the interests [were], by their very nature, common and shared, and the rights relating to those interests [were] liable to be held by a potentially large number of individuals so that there could never be a closed class of applicants satisfying the criteria adopted by the [CFI]" (judgment of the CJEU of 2 April 1998 in *Stichting Greenpeace Council (Greenpeace International) and Others v. Commission*, C-321/95 P, EU:C:1998:153, paragraphs 17-18). In reply, the CJEU held as follows (ibid., paragraphs 27-30 and 33):

> "The interpretation of the fourth paragraph of Article 173 of the Treaty [now Article 263 TFEU] that the [CFI] applied in concluding that the appellants did not have locus standi is consonant with the settled case-law of the Court of Justice.
>
> As far as natural persons are concerned, it follows from the case-law ... that where, as in the present case, the specific situation of the applicant was not taken into consideration in the adoption of the act, which concerns him in a general and abstract fashion and, in fact, like any other person in the same situation, the applicant is not individually concerned by the act.
>
> The same applies to associations which claim to have locus standi on the basis of the fact that the persons whom they represent are individually concerned by the contested decision. For the reasons given in the preceding paragraph, that is not the case.
>
> In appraising the appellants' arguments purporting to demonstrate that the case-law of the Court of Justice, as applied by the [CFI], takes no account of the nature and specific characteristics of the environmental interests underpinning their action, it should be emphasised that it is the decision to build the two power stations in question which is liable to affect the environmental rights arising under Directive 85/337 that the appellants seek to invoke.
>
> ... in the circumstances of the present case those rights are fully protected by the national courts which may, if need be, refer a question to this Court for a preliminary ruling under Article 177 of the Treaty [now Article 267 TFEU]."

216. This line of reasoning, on the strict requirements for natural and legal persons to have standing to institute annulment actions, was confirmed by the CJEU in its judgment of 25 July 2002 in *Unión de Pequeños Agricultores v. Council of the European Union*, C-50/00 P, EU:C:2002:462, paragraphs 40-41:

> "By Article 173 and Article 184 [now Article 263 and Article 277 TFEU], on the one hand, and by Article 177 [now Article 267 TFEU], on the other, the Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community Courts (see, to that effect, *Les Verts v. Parliament*, paragraph 23). Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty [now Article 263 TFEU], directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 184 of the Treaty [now Article 277 TFEU] or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid (see Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 20), to make a reference to the Court of Justice for a preliminary ruling on validity.
>
> Thus, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection."

217. In 2021 two annulment actions concerning climate change were rejected by the CJEU. In one case the applicants sought the annulment of the legislative package relating to GHG emissions (*Armando Carvalho and Others*[141]), while in the other the applicants sought the annulment of part of Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources (*Peter Sabo and Others*[142]). The CJEU, referring to its well-established case-law in relation to Article 263 § 4 of the Treaty on the Functioning of the European Union (TFEU) (OJ 2016/C 202/01, p. 47) on the standing of natural and legal persons to bring actions for annulment, confirmed that the latter had to be able to demonstrate that they were individually concerned by the impugned acts – a condition not fulfilled by the applicants in either of those cases.

218. The relevant parts of the judgment of the CJEU in *Armando Carvalho and Others*, which was decided by a Chamber of three judges, read as follows:

> "40 The General Court held, in essence ... that the fact that the effects of climate change may be different for one person than they are for another and that they depend on the personal circumstances specific to each person does not mean that the acts at issue distinguish each of the appellants individually. In other words, the fact that the appellants, owing to the alleged circumstances, are affected differently by climate

[141] *Armando Carvalho and Others v. European Parliament and Council of the European Union*, C-565/19 P, EU:C:2021:252.
[142] *Peter Sabo and Others v. European Parliament and Council of the European Union*, C-297/20 P, EU:C:2021:24.

change is not in itself sufficient to establish the standing of those appellants to bring an action for annulment of a measure of general application such as the acts at issue.

41 Accordingly, the General Court held, in paragraph 50 of the order under appeal, that the appellants' interpretation of the circumstances alleged by them as establishing that they were individually concerned would render the requirements of the fourth paragraph of Article 263 TFEU meaningless and would create locus standi for all without the criterion of individual concern referred to in the judgment in *Plaumann* being fulfilled.

42 Consequently, the appellants cannot claim that the General Court did not take into account, in the order under appeal, the characteristics specific to them in order to determine whether they were individually concerned.

43 Moreover, the appellants' argument that the General Court made no reference, in the order under appeal, to the evidence showing that the appellants were affected in different ways by climate change is, in the light of the foregoing, ineffective.

...

46 According to settled case-law, which has not been altered by the Treaty of Lisbon, natural or legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 71 and 72 and the case-law cited).

47 In that regard, as is noted by the Parliament, the appellants' reasoning, in addition to its generic wording, leads to the conclusion that there is locus standi for any applicant, since a fundamental right is always likely to be concerned in one way or another by measures of general application such as those contested in the present case.

48 As was recalled by the General Court in paragraph 48 of the order under appeal, the claim that the acts at issue infringe fundamental rights is not sufficient in itself to establish that the action brought by an individual is admissible, without running the risk of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless (see, to that effect, orders of 10 May 2001, *FNAB and Others v Council*, C-345/00 P, EU:C:2001:270, paragraph 40, and of 14 January 2021, *Sabo and Others v Parliament and Council*, C-297/20 P, not published, EU:C:2021:24, paragraph 29 and the case-law cited).

49 Since, as is apparent from paragraph 46 of the order under appeal, the appellants merely invoked, before the General Court, an infringement of their fundamental rights, inferring individual concern from that infringement, on the ground that the effects of climate change and, accordingly, the infringement of fundamental rights are unique to and different for each individual, it cannot be held that the acts at issue affect the appellants by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguish them individually just as in the case of the person addressed.

50 Therefore, the General Court was fully entitled to hold, in paragraph 49 of the order under appeal, that the appellants had not established that the contested provisions of the acts at issue distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee."

219. Referring to the fact that, under EU law, actions for annulment by associations had been held to be admissible where, *inter alia*, the association represented the interests of its members, who would themselves be entitled to bring proceedings, the CJEU held as follows (ibid.):

> "89 Indeed, in so far as the appellants, as natural persons, were considered not to be individually concerned for the purposes of the fourth paragraph of Article 263 TFEU, the same consideration applies to the members of that association. Those members cannot therefore claim that they possess attributes which distinguish them individually from the other potential addressees of the acts at issue.
>
> 90 Concerning the first condition, it should be borne in mind that associations have a right to bring proceedings against an act of the Union where the provisions of EU law specifically recognise those associations as having procedural rights (see, to that effect, judgment of 4 October 1983, *Fediol v Commission*, 191/82, EU:C:1983:259, paragraph 28). However, the association Sáminuorra has not claimed that such provisions exist in its favour.
>
> 91 As regards the argument that the General Court should have recognised the existence of another situation in which associations would be entitled to bring proceedings, namely 'the action of a collective defending a collective good', that argument was not put forward at first instance and must therefore, pursuant to Article 170(1) of the Rules of Procedure of the Court of Justice, be rejected as inadmissible in the context of the present appeal.
>
> 92 To allow the appellants to raise for the first time before the Court of Justice arguments which they have not raised before the General Court would be to authorise them to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to review of the findings of law on the pleas argued before the lower court (see, to that effect, judgment of 17 June 2010, *Lafarge v Commission*, C-413/08 P, EU:C:2010:346, paragraph 52)."

220. In the case of *Peter Sabo and Others*, the CJEU also held as follows:

> "29 ... [T]he claim that an act infringes fundamental rights is not sufficient in itself for it to be established that the action brought by an individual is admissible, without running the risk of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless. Indeed, it is apparent from the settled case-law of the Court that the extent of the alleged adverse impact on the observance of the appellants' fundamental rights cannot give rise to non-application of the rules for admissibility expressly laid down by the fourth paragraph of Article 263 TFEU ..."

221. The CJEU also has extensive case-law on the Aarhus Convention, which the EU ratified in 2005, following which various pieces of EU legislation were enacted, including the 2006 Aarhus Regulation (Regulation 1367/2006). More recently, in the context of a request for a preliminary ruling under Article 267 TFEU, the scope and content of obligations under Article 9 § 3 of the Aarhus Convention (access to justice) were examined in relation to EU rules regarding emissions from motor

vehicles in the judgment of 8 November 2022 of the CJEU (Grand Chamber) in *Deutsche Umwelthilfe eV v. Bundesrepublik Deutschland*.[143]

222. The relevant parts of the reasoning provide as follows:

> "1. Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a situation where an environmental association, authorised to bring legal proceedings in accordance with national law, is unable to challenge before a national court an administrative decision granting or amending EC type-approval which may be contrary to Article 5(2) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.
>
> ...
>
> 65. Secondly, where a Member State lays down rules of procedural law applicable to the matters referred to in Article 9(3) of the Aarhus Convention concerning the exercise of the rights that an environmental organisation derives from Article 5(2) of Regulation No 715/2007, in order for decisions of the competent national authorities to be reviewed in the light of their obligations under that article, the Member State is implementing EU law for the purposes of Article 51(1) of the Charter and must, therefore, ensure compliance, inter alia, with the right to an effective remedy, enshrined in Article 47 thereof (see, to that effect, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraphs 44 and 87 and the case-law cited).
>
> 66. Consequently, while it is true that Article 9(3) of the Aarhus Convention does not have direct effect in EU law and cannot, therefore, be relied on, as such, in a dispute falling within the scope of EU law, in order to disapply a provision of national law which is contrary to it, the fact remains that, first, the primacy of international agreements concluded by the European Union requires that national law be interpreted, to the fullest extent possible, in accordance with the requirements of those agreements and, secondly, that Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law (judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 45).
>
> 67. However, the right to bring proceedings provided for in Article 9(3) of the Aarhus Convention, which is intended to ensure effective environmental protection (judgment of 8 March 2011, *Lesoochranárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 46), would be deprived of all useful effect, and even of its very substance, if it had to be conceded that, by imposing criteria laid down by national law, certain categories of 'members of the public' – a fortiori 'the public concerned', such as environmental associations that satisfy the requirements laid down in Article 2(5) of the Aarhus Convention – were to be denied of any right to bring proceedings against acts and omissions by private persons and public authorities which contravene certain categories of provisions of national law relating to the environment (see, to that effect,

[143] C-873/19, EU:C:2022:857.

judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 46).

68. Imposing those criteria must not deprive environmental associations in particular of the possibility of verifying that the rules of EU environmental law are being complied with, given also that such rules are usually in the public interest, rather than simply in the interests of certain individuals, and that the objective of those associations is to defend the public interest (judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 47 and the case-law cited)."

D. Material from other regional human rights mechanisms

1. Inter-American system

(a) Relevant instruments

223. The American Convention on Human Rights[144] does not contain any specific provision relating to the protection of a human right to a healthy environment. However, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights[145] provides as follows:

Article 11
Right to a Healthy Environment

"1. Everyone shall have the right to live in a healthy environment and to have access to basic public services.

2. The States Parties shall promote the protection, preservation, and improvement of the environment."

224. The Inter-American Convention on Protecting the Human Rights of Older Persons[146] provides the following:

Article 25
Right to a healthy environment

"Older persons have the right to live in a healthy environment with access to basic public services. To that end, States Parties shall adopt appropriate measures to safeguard and promote the exercise of this right, *inter alia*:

a. To foster the development of older persons to their full potential in harmony with nature;

[144] American Convention on Human Rights, adopted on 22 November 1969 and entered into force 18 July 1978, OAS Treaty Series No. 36.
[145] Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", adopted on 17 November 1988 and entered into force on 16 November 1999, OAS Treaty Series No. 69.
[146] Inter-American Convention on Protecting the Human Rights of Older Persons, adopted in Washington on 15 June 2015 and entered into force on 11 January 2017.

b. To ensure access for older persons, on an equal basis with others, to basic public drinking water and sanitation services, among others."

(b) The Inter-American Court of Human Rights

225. On 15 November 2017 the Inter-American Court of Human Rights delivered an Advisory Opinion entitled "The Environment and Human Rights"[147] in which it derived the right to a healthy environment from Article 26 of the American Convention (Economic, social, and cultural rights). The relevant concluding part of the Advisory Opinion reads as follows:

"Conclusion ...

242. Based on the above, in response to the second and third questions of the requesting State, it is the Court's opinion that, in order to respect and to ensure the rights to life and to personal integrity:

a. States have the obligation to prevent significant environmental damage within or outside their territory, in accordance with paragraphs 127 to 174 of this Opinion.

b. To comply with the obligation of prevention, States must regulate, supervise and monitor the activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, even when it has happened despite the State's preventive actions, in accordance with paragraph 141 to 174 of this Opinion.

c. States must act in keeping with the precautionary principle in order to protect the rights to life and to personal integrity in the case of potential serious or irreversible damage to the environment, even in the absence of scientific certainty, in accordance with paragraph 180 of this Opinion.

d. States have the obligation to cooperate, in good faith, to protect against environmental damage, in accordance with paragraphs 181 to 210 of this Opinion.

e. To comply with the obligation of cooperation, States must notify other potentially affected States when they become aware that an activity planned under their jurisdiction could result in a risk of significant transboundary harm and also in cases of environmental emergencies, and consult and negotiate in good faith with States potentially affected by significant transboundary harm, in accordance with paragraphs 187 to 210 of this Opinion.

f. States have the obligation to ensure the right of access to information, established in Article 13 of the American Convention, concerning potential environmental impacts, in accordance with paragraphs 213 to 225 of this Opinion;

g. States have the obligation to ensure the right to public participation of the persons subject to their jurisdiction established in Article 23(1)(a) of the American Convention,

[147] Inter-American Court of Human Rights, *State Obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity: Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2*, Advisory Opinion OC-23/17 on the environment and human rights, 15 November 2017.

in policies and decision-making that could affect the environment, in accordance with paragraphs 226 to 232 of this Opinion, and

h. States have the obligation to ensure access to justice in relation to the State obligations with regard to protection of the environment set out in this Opinion, in accordance with paragraphs 233 to 240 of this Opinion.

243. The obligations described above have been developed in relation to the general obligations to respect and to ensure the rights to life and to personal integrity, because these were the rights that the State referred to in its request (supra paras. 37, 38, 46 and 69). However, this does not mean that the said obligations do not exist with regard to the other rights mentioned in this Opinion as being particularly vulnerable in the case of environmental degradation (supra paras. 56 to 69)."

226. In the 2020 case of the *Indigenous communities of the Lhaka Honhat Association (Our Land) v. Argentina*[148], the Inter-American Court of Human Rights held Argentina responsible for violating indigenous communities' human rights through its failure to recognise and protect their lands. In that case, the Court examined the rights to a healthy environment, adequate food, water, and cultural identity autonomously.

227. In January 2023 a new request[149] for an Advisory Opinion was submitted to the Inter-American Court of Human Rights by Colombia and Chile asking it to clarify the scope of State obligations, in their individual and collective dimension, in order to respond to the climate emergency within the framework of international human rights law, paying special attention to the differentiated impacts of this emergency on individuals from diverse regions and population groups, as well as on nature and on human survival on the planet.

(c) The Inter-American Commission on Human Rights

228. In March 2022, the Inter-American Commission on Human Rights and the Office of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights[150] published a resolution recognising that climate change was a human rights emergency.

2. African system

229. The relevant part of the African Charter on Human and Peoples' Rights[151] reads as follows:

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[148] *Case of the indigenous communities of the Lhaka Honhat Association (Our Land) v. Argentina*, 6 February 2020.

[149] Request for an advisory opinion on the climate emergency and human rights submitted to the Inter-American Court of Human Rights by the Republic of Colombia and the Republic of Chile, 9 January 2023.

[150] Resolution No. 3/21 Climate Emergency: Scope of Inter-American human rights obligations.

[151] African Charter on Human and Peoples' Rights, adopted in Nairobi on 1 June 1981 and entered into force on 21 October 1981.

Article 24

"All people shall have the right to a general satisfactory environment favourable to their development."

230. On 14 May 2019, the African Commission on Human and Peoples' Rights adopted a Resolution on the human rights impacts of extreme weather in Eastern and Southern Africa due to climate change[152] in which it addressed the implications of climate change on human rights.

231. In the case of *Social and Economic Action Rights Centre v. Nigeria*[153], the African Commission held as follows (footnotes omitted):

"50. The Complainants allege that the Nigerian government violated the right to health and the right to clean environment as recognized under Articles 16 and 24 of the African Charter ...

51. These rights recognise the importance of a clean and safe environment that is closely linked to economic and social rights in so far as the environment affects the quality of life and safety of the individual. As has been rightly observed by Alexander Kiss, 'an environment degraded by pollution and defaced by the destruction of all beauty and variety is as contrary to satisfactory living conditions and the development as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health.'

52. The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Nigeria is a party, requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene. The right to enjoy the best attainable state of physical and mental health enunciated in Article 16(1) of the African Charter and the right to a general satisfactory environment favourable to development (Article 16(3)) already noted obligate governments to desist from directly threatening the health and environment of their citizens. The State is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the State for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.

53. Government compliance with the spirit of Articles 16 and 24 of the African Charter must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development, undertaking appropriate monitoring and providing information to those communities exposed to hazardous materials and activities and providing meaningful opportunities for

[152] ACHPR/Res. 417 (LXIV) 2019, adopted at its 64th Ordinary Session, held in Sharm el-Sheikh, Arab Republic of Egypt, from 24 April to 14 May 2019.

[153] African Commission on Human and People's Rights, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria*, Communication No. 155/96, 27 May 2002.

individuals to be heard and to participate in the development decisions affecting their communities.

...

68. The uniqueness of the African situation and the special qualities of the African Charter on Human and Peoples' Rights imposes upon the African Commission an important task. International law and human rights must be responsive to African circumstances. Clearly, collective rights, environmental rights, and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective. As indicated in the preceding paragraphs, however, the Nigerian Government did not live up to the minimum expectations of the African Charter."

III. COMPARATIVE LAW

A. Relevant comparative materials concerning the Aarhus Convention

232. Of the forty-six Council of Europe member States only five have not ratified the Aarhus Convention.[154] In a great majority of the thirty-eight member States surveyed by the Court[155], environmental non-governmental associations are allowed to bring cases in the interests of the protection of the environment and/or in the interests of private individuals who may be affected by specific environmental hazards or industrial projects (in at least thirty-four States).

233. However, the non-governmental association in question has to fulfil certain criteria. In almost all the member States surveyed, the corporate goals of the association have to be linked to the interests it seeks to protect. In eleven member States such associations have to have existed, or to have been actively involved in the protection of the environment, for some time before bringing a case, and in eight member States the association bringing a case has to operate in a particular geographical zone. Some member States provide for additional criteria for recognising the standing of associations, but these are less common: the size of the association; prior participation in the decision-making process; internal organisation; prohibition for the association or its leadership to participate in for-profit activities; and a general requirement of the lawfulness of the activities of the association. Moreover, in some systems the question of the standing of the association may depend on the question of the standing of natural persons who may be directly affected by the environmental hazards. The standing of the association may

[154] Andorra, Lichtenstein, Monaco, San Marino, and Türkiye.

[155] Armenia, Austria, Belgium, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Republic of Moldova, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, the Slovak Republic, Slovenia, Spain, Türkiye, Ukraine, and the United Kingdom.

be established directly by the court or, in six member States, through a mechanism of preliminary accreditation by an administrative authority.

234. As to climate-change cases, in most member States, it appears that while a theoretical possibility of an environmental association bringing a climate-change case may exist, or cannot be ruled out, there is no conclusive case-law on the matter, or no case-law at all. In seven member States such claims by an environmental association would probably not be acceptable in the national legal order, while in five others a possibility for an environmental association to bring legal cases concerning climate change, under certain conditions (linked to the actionability of the claim), has been examined by domestic courts (Belgium, France, Germany, Ireland and the Netherlands).

B. Overview of domestic case-law concerning climate change

235. The following overview of domestic case-law provides extracts from some cases on climate change brought before national courts in Council of Europe member States.

1. France

(a) The *Grande-Synthe* case

236. The detailed circumstances of the *Grande-Synthe* case of the *Conseil d'État* are set out in the case of *Carême v. France* (dec.) [GC], no. 7189/21, 9 April 2024. In that case, upon an action brought by Mr Carême acting on his own behalf and in his capacity as mayor of Grande-Synthe, and in the name and on behalf of the latter municipality, the *Conseil d'État* declared admissible the action brought by the municipality and inadmissible the action brought by Mr Carême. The *Conseil d'État* found that the measures taken by the authorities to tackle climate change had not been sufficient and ordered the authorities to take additional measures by 31 March 2022 to meet the GHG emissions reduction targets set out in the domestic legislation and Annex I of Regulation (EU) 2018/842.

(b) Applications for judicial review seeking to secure compliance with the limit values for concentrations of particulate matter and nitrogen dioxide

237. By a decision of 12 July 2017, the *Conseil d'État*, on an application for judicial review, set aside the tacit refusals of the President of the Republic, the Prime Minister and the Ministers responsible for the environment and health and ordered the Prime Minister and the Minister responsible for the environment to take all appropriate measures before 31 March 2018 and to draw up plans in accordance with Article 23 of Directive 2008/50/EC of 21 May 2008 in order to reduce the concentrations of particulate matter and nitrogen dioxide throughout the national territory (*Conseil d'État* (plenary), 10 July 2020, *Association Les Amis de la Terre France et autres*, no. 428409).

238. Referring in particular to the limit values for concentrations of particulate matter and nitrogen dioxide laid down by the Directive of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe[156] and to the fact that, in certain areas of French territory, those values had been exceeded each year between 2012 and 2014, the *Conseil d'État* found that the regulatory authority had failed to fulfil its obligations by omitting to draw up air-quality plans for the areas concerned in accordance with the provisions of the Directive and those transposing the Directive into domestic law.

239. The *Conseil d'État* stated in that judgment that the setting-aside of the decisions tacitly refusing to take action necessarily entailed taking all the measures necessary to ensure that the appropriate air-quality plans were drawn up and implemented.

(c) Full administrative-law actions seeking to secure compliance with GHG emissions reduction targets

240. In another more recent case, known as the "Case of the century", which concerned GHG emissions reduction targets, the Paris Administrative Court, drawing on the *Grande-Synthe* case, acknowledged, this time in the context of a full administrative-law action and in a judgment of 3 February 2021, that environmental associations were "justified in arguing that, to the extent [that the State] had made commitments which it had not complied with in the context of the first carbon budget, [it should] be regarded as liable for part of the ecological damage within the meaning ... of Article 1246 of the Civil Code". That Article, as amended by Law no. 2016-1087 of 8 August 2016 on the recovery of biodiversity, nature and landscapes, provides that "[a]ny person who causes ecological damage has the duty to afford redress" (Paris Administrative Court, 3 February 2021, *Oxfam France et autres*, no. 1904967).

241. As regards the commitments of the French State and the general obligation to combat climate change, the Paris Administrative Court found support in the same texts referred to in the *Grande-Synthe* case, namely: France's commitments under the UNFCCC, the Paris Agreement, Decision No 406/2009/EC of 23 April 2009 on the effort of Member States to reduce their GHG emissions, and Regulation (EU) 2018/842 of 30 May 2018 on binding annual GHG emission reductions; and Article L. 100-4 of the Energy Code and Article L. 222-1 B of the Environment Code. The Administrative Court also referred to Article 3 of the Environment Charter, which recalls the existence of the preventive principle already enshrined in law, and provides that "[e]veryone shall, in accordance with the conditions laid down by law, avoid causing any damage to the

[156] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ 2008/L 152, pp. 1-44.

environment or, failing that, limit its consequences". The Administrative Court inferred that it was clear from all the above provisions that the French State "[had] recognised the urgency of combating current climate change and acknowledged its capacity to take effective action in relation to that phenomenon in order to limit the causes and mitigate the adverse consequences" and "[had] chosen ... to exercise its regulatory powers, in particular by pursuing a public policy of reducing GHG emissions from French territory, through which it [had] undertaken to achieve, within specific and successive deadlines, a certain number of targets in this sphere ...".

242. As to the implementation of those State commitments in the light of the GHG emissions reduction targets, the Administrative Court concluded that "the State [had to] be regarded as having failed to adhere to the first carbon budget and [as not having] ... carried out the actions which it itself [had] recognised as apt to reduce GHG emissions". In reaching that conclusion the Administrative Court found support, *inter alia*, in the same reports of the High Council on Climate cited by the *Conseil d'État* in its decision in the *Grande-Synthe* case.

243. Observing that "the State [could not] be held liable for the alleged ecological damage ... except in so far as the failure to adhere to the first carbon budget [had] contributed to the increase in GHG emissions", the Administrative Court, in an interlocutory judgment, ordered further investigations. It found that, as the evidence stood, it could not determine the specific measures to be ordered to enable the State to achieve the targets that France had set itself in terms of reducing GHG emissions.

244. Following that investigative measure, in a subsequent judgment of 14 October 2021, the Administrative Court ordered the Prime Minister and the competent ministers to take, by 31 December 2022, all appropriate measures to remedy the environmental damage and prevent aggravation of the damage, in an amount equal to the uncompensated share of GHG emissions under the first carbon budget, namely 15 Mt CO_2e, and subject to an adjustment in line with the CITEPA's (Interprofessional Technical Centre for Studies on Air Pollution – *Centre interprofessionnel technique d'études de la pollution atmosphérique*) estimated data as at 31 January 2022. In the Administrative Court's view, those concrete measures were apt to afford redress for the alleged damage (Paris Administrative Court, 14 October 2021, *Oxfam France et autres*, no. 1904967). The court did not impose a coercive fine at that stage.

245. In his opinion on the second decision of the *Conseil d'État* of 1 July 2021 in the *Grande-Synthe* case, the public rapporteur set out the following considerations regarding the specific nature of the climate cases examined in France compared with other European States:

> "The case before you belongs ... [to the category of actions directed against the States' climate policy], applications for judicial review, within which climate-related cases again take various forms. One of the main distinctions between these cases is the rule

relied upon in seeking the setting-aside of the decision. The application may be based on an alleged breach of human rights, as recognised in particular by the Supreme Court of the Netherlands in the *Urgenda* case, or on specific GHG emission standards that are binding on States or governments. These standards may be derived from international law, where it can be relied upon before the national courts, from constitutional law, as in the case before the [German Constitutional Court] ..., or from legislation, as in the present case and in the *Friends of the Irish Environment* case.

The last aspect to be addressed in order to determine the case before you is undoubtedly the most delicate: all these cases seek to criticise shortcomings in climate policy."

246. In an address to the Court of Cassation on 21 May 2021 entitled "*L'environnement: les citoyens, le droit, les juges*"[157] ("The environment: citizens, the law and judges"), the Vice-President of the *Conseil d'État*, Bruno Lasserre, made the following remarks on the first decisions given by the administrative courts (the decision of the *Conseil d'État* of 19 November 2020 in the *Grande-Synthe* case, the decision of the *Conseil d'État*, sitting in plenary, of 10 July 2020 in the case of *Association Les Amis de la Terre France*, and the ruling of the Paris Administrative Court of 3 February 2021 in the "Case of the century"):

"... [one of the innovations of this line of case-law] concerns the legal scope conferred, first, on the Paris Agreement, which the *Conseil d'État*, followed by the Paris Administrative Court, recognised for the first time as having interpretative force; and, secondly, on the [GHG] emissions reduction targets laid down in EU law and national law, since the Administrative Court took a decisive step in finding that those targets are not merely aspirational, but binding. Thus, the *Conseil d'État* has opened a new avenue in relation to climate cases, which the [national] courts had hitherto viewed mainly through the lens of fundamental rights, at least in their most emblematic decisions. These include, for example, the *Urgenda* decisions, based on Articles 2 and 8 of the European Convention on Human Rights, and the recent decision of the Karlsruhe Constitutional Court based on a provision of the Basic Law protecting 'the natural foundations of life'. However, the approach of the courts varies significantly depending on whether they are verifying the State's compliance with specific and detailed undertakings or examining whether its actions are compatible with such general principles as the right to life or the right to respect for private life. Two standards which therefore influence the method and, more fundamentally, the stance adopted by the courts. ...

Finally, the *Conseil d'État* has adapted to current efforts to tackle climate change by inaugurating a new type of review, which could be termed a 'pathway review'. The time-limits laid down in law for achievement of the targets may be distant – 2030, 2040, and even 2050 – but for the courts to wait ten, twenty or thirty years to verify whether they have been achieved would mean denying the urgency of taking action now and depriving their review of all meaningful effect from the outset, given the very high inertia of the climate system. A pathway review is thus akin to monitoring compliance in advance. This means that the court must be satisfied, at the point at which it takes its decision, not that the targets have been achieved, but that they may be achieved, that

[157] Available at www.conseil-etat.fr; last accessed 14.02.2024.

they are in the process of being achieved, that they form part of a credible and verifiable pathway."

(d) Examples of orders and coercive fines imposed in climate cases

247. In the case of *Association Les Amis de la Terre France et autres*, on an application for judicial review, the *Conseil d'État*, having ordered the Prime Minister and the Minister responsible for the environment to take all necessary measures by 31 March 2018, gave a decision on 10 July 2020 in which it ordered the State to pay a coercive fine unless it could demonstrate, within six months of service of the decision, that it had implemented the decision of 12 July 2017 in each of the areas concerned. The *Conseil d'État* fixed the amount of the fine at EUR 10 million for each six-month period until the date of enforcement (*Conseil d'État*, 10 July 2020, *Association Les Amis de la Terre France et autres*, no. 428409).

248. The *Conseil d'État* subsequently assessed the interim amount of the fine.

249. By a decision of 4 August 2021, it ordered the State to pay the sum of EUR 10 million in respect of the six-month period from 11 January to 11 July 2021.

250. In his opinion on this case, the public rapporteur made the following remarks concerning the issue of the proper recipient of the sums payable by the State by way of fines in climate cases:

> "4. ... This is where the innovative reasoning of your plenary judgment comes in, since the applicable provision is the second sub-paragraph of Article L. 911-8, according to which the portion not paid to the applicant is allocated to the State budget: 'However, since the purpose of the coercive fine is to compel a public-law entity ... to perform the obligations imposed on it by a court decision, those provisions are not applicable where the coercive fine in question is payable by the State. In such cases, where it appears necessary for effective enforcement of the judicial decision, the court may, even of its own motion, and having obtained the observations of the parties and of the legal entity or entities concerned on this point, decide to allocate that portion to a public-law entity which has sufficient autonomy *vis-à-vis* the State and whose activities relate to the subject matter of the dispute, or to a private-law, non-profit entity which, in accordance with its articles of association, carries out actions in the general interest that are likewise connected to that subject matter.' That is the wording of your plenary judgment.
>
> 4.1 In order to determine which persons other than the State may receive the proceeds of all or part of the coercive fine, ... it is important to bear in mind the purpose of coercive fines, which is to compel the State to enforce a judicial decision as is incumbent upon it in accordance with the rule of law."

251. In line with that opinion, the *Conseil d'État* therefore ordered that the sum of EUR 10 million be paid out as follows: EUR 8,800,000 mainly to four public institutions active in the environmental field, namely the Environment and Energy Management Agency (ADEME), the Centre for Studies and Expertise on Risk, Environment, Mobility and Planning (CEREMA), the National Health, Food, Environment and Work Safety

Agency (ANSES) and the National Institute for the Industrial Environment and Risk (INERIS), with the remainder to be paid to the air-quality monitoring associations in the most affected regions.

252. In a decision of 17 October 2022, the *Conseil d'État* again assessed the interim amount of the coercive fine, for the two six-month periods from 12 July 2021 to 12 July 2022, and ordered the State to pay the sum of EUR 20 million, of which EUR 16,950,000 was to be paid out mainly to the same public institutions. In a further decision of 24 November 2023, the *Conseil d'État* found that the decision of 12 July 2017 had been partially executed and ordered the State to pay the sum of EUR 10 million to the above-mentioned public institutions and associations, as well as to the association *Les Amis de la Terre France*.

253. Lastly, that case also resulted in a judgment of the CJEU finding an infringement in view of France's failure to comply with the limit values for concentrations of nitrogen dioxide and particulate matter laid down in Directive 2008/50/EC (judgment of 24 October 2019 in *Commission v. France*, C-636/18, EU:C:2019:900, paragraphs 44-45).

2. Germany

254. In the case of *Neubauer and Others v. Federal Republic of Germany*[158], the German Federal Constitutional Court ("the GFCC") examined four constitutional complaints directed against certain provisions of the Federal Climate Change Act of 12 December 2019 (*Bundes-Klimaschutzgesetz*) and against the State's failure to take further measures to reduce GHG emissions.

255. The applicants grounded their claims on the right to life and integrity (Article 2 § 2, first sentence, of the Basic Law), the right to property and the right of inheritance (Article 14 § 1 of the Basic Law), as well as on a fundamental right to a future consistent with human dignity and a fundamental right to an ecological minimum standard of living, which they derived from Article 2 § 1 in conjunction with Article 20a and from Article 2 § 1 in conjunction with Article 1 § 1, first sentence, of the Basic Law.

256. The GFCC held that the provisions of the Federal Climate Change Act were incompatible with fundamental rights in so far as they lacked sufficient specifications for further emission reductions from 2031 onwards. In all other respects, the constitutional complaints were rejected. The GFCC held that it could not be ascertained that the legislature, in introducing these provisions, had violated its constitutional duty to protect the complainants from the risks of climate change or failed to satisfy the obligation arising from Article 20a of the Basic Law to take climate action. However, the challenged provisions did violate the freedoms of the complainants, some of whom were

[158] Order of the First Senate of 24 March 2021, 1 BvR 2656/18 DE:BVerfG:2021:rs20210324.1bvr265618.

still very young, because the provisions irreversibly shifted major emission reduction burdens into periods after 2030. The fact that GHG emissions had to be reduced followed from the Basic Law, among other things the constitutional climate goal arising from its Article 20a. These future obligations to reduce emissions had an impact on practically every type of freedom because virtually all aspects of human life still involved the emission of GHG and were thus potentially threatened by drastic restrictions after 2030. Therefore, the legislature should have taken precautionary steps to mitigate these major burdens in order to safeguard the freedoms guaranteed by fundamental rights.

257. The official Headnotes of the Order summarised the findings as follows:

> "1. The protection of life and physical integrity under Art. 2(2) first sentence of the Basic Law encompasses protection against impairments of constitutionally guaranteed interests caused by environmental pollution, regardless of who or what circumstances are the cause. The state's duty of protection arising from Art. 2(2) first sentence of the Basic Law also encompasses the duty to protect life and health against the risks posed by climate change. It can furthermore give rise to an objective duty to protect future generations.
>
> 2. Art. 20a of the Basic Law obliges the state to take climate action. This includes the aim of achieving climate neutrality.
>
> a. Art. 20a of the Basic Law does not take absolute precedence over other interests. In cases of conflict, it must be balanced against other constitutional interests and principles. Within the balancing process, the obligation to take climate action is accorded increasing weight as climate change intensifies.
>
> b. If there is scientific uncertainty regarding causal relationships of environmental relevance, a special duty of care imposed upon the legislator by Art. 20a of the Basic Law – also for the benefit of future generations – entails an obligation to take account of sufficiently reliable indications pointing to the possibility of serious or irreversible impairments.
>
> c. As an obligation to take climate action, Art. 20a of the Basic Law has an international dimension. The fact that no state can resolve the problems of climate change on its own due to the global nature of the climate and global warming does not invalidate the national obligation to take climate action. Under this obligation, the state is compelled to engage in internationally oriented activities to tackle climate change at the global level and is required to promote climate action within the international framework. The state cannot evade its responsibility by pointing to [GHG] emissions in other states.
>
> d. In exercising its mandate and prerogative to specify the law, the legislator has formulated the climate goal of Art. 20a of the Basic Law in a constitutionally permissible manner, currently setting out that the increase in the global average temperature should be limited to well below 2°C and preferably to 1.5°C above pre-industrial levels.
>
> e. Art. 20a of the Basic Law is a justiciable legal provision designed to commit the political process to a favouring of ecological interests, partly with a view to future generations.

3. Compatibility with Art. 20a of the Basic Law is required in order to justify under constitutional law any state interference with fundamental rights.

4. Under certain conditions, the Basic Law imposes an obligation to safeguard fundamental freedom over time and to spread the opportunities associated with freedom proportionately across generations. In their subjective dimension, fundamental rights – as intertemporal guarantees of freedom – afford protection against the [GHG] reduction burdens imposed by Art. 20a of the Basic Law being unilaterally offloaded onto the future. Furthermore, in its objective dimension, the protection mandate laid down in Art. 20a of the Basic Law encompasses the necessity to treat the natural foundations of life with such care and to leave them in such condition that future generations who wish to carry on preserving these foundations are not forced to engage in radical abstinence.

Respecting future freedom also requires initiating the transition to climate neutrality in good time. In practical terms, this means that transparent specifications for the further course of [GHG] reduction must be formulated at an early stage, providing orientation for the required development and implementation processes and conveying a sufficient degree of developmental urgency and planning certainty.

5. The legislator itself must set out the necessary provisions specifying the overall emission amounts that are allowed for certain periods. As regards the method by which the legal framework for the allowed emission amounts is adopted, the legislative process cannot be replaced by a reduced form of parliamentary involvement in which the Bundestag merely approves the Federal Government's ordinances. This is because it is precisely the special public function of the legislative process that makes the adoption of parliamentary legislation necessary here. It is true that having parliamentary legislation in areas of law that are constantly subject to new developments and knowledge can in some cases be detrimental to the protection of fundamental rights. This notion draws on the concept of dynamic fundamental rights protection (foundationally, see BVerfGE 49, 89 <137>). However, this concept cannot be used here as an objection against the requirement for parliamentary legislation. The challenge is not to protect fundamental rights by ensuring that the legal framework keeps pace with new developments and knowledge. The challenge is to create a framework that makes further developments aimed at protecting fundamental rights possible in the first place."

3. Ireland

258. In the case of *Friends of the Irish Environment CLG v. the Government of Ireland, Ireland and the Attorney General*[159], the Supreme Court of Ireland was asked to examine the adequacy of domestic measures taken in relation to climate change in the light of statutory provisions enacted in 2015, as well as rights-based arguments under the Constitution and the Convention in relation to the right to life and the right to bodily integrity.

259. The relevant concluding part of the judgment, delivered by the then Chief Justice, reads as follows:

"9.1 In this judgment I first consider the argument put forward by FIE to the effect that the Plan does not comply with its legislative remit under the 2015 Act and is, therefore, ultra vires. It is noted that there was no question raised at the hearing as to

[159] Supreme Court of Ireland, *Friends of the Irish Environment CLG v. The Government of Ireland, Ireland and the Attorney General*, Appeal No: 205/19, 31 July 2020.

the standing of FIE to make arguments along those lines. For the reasons set out in this judgment I conclude that, contrary to the submissions made on behalf of the Government, FIE should be entitled to pursue the wider range of argument on this issue addressed in their written submissions. I also conclude that the issues are justiciable and do not amount to an impermissible impingement by the courts into areas of policy. What might once have been policy has become law by virtue of the enactment of the 2015 Act.

9.2 I also conclude that the 2015 Act, and in particular s.4, requires a sufficient level of specificity in the measures identified in a compliant plan that are required to meet the National Transitional Objective by 2050 so that a reasonable and interested person could make a judgement both as to whether the plan in question is realistic and as to whether they agree with the policy options for achieving the NTO which such a plan specifies. The 2015 Act as a whole involves both public participation in the process leading to the adoption of a plan but also transparency as to the formal government policy, adopted in accordance with a statutory regime, for achieving what is now the statutory policy of meeting the NTO by 2050. A compliant plan is not a five-year plan but rather a plan covering the full period remaining to 2050. While the detail of what is intended to happen in later years may understandably be less complete, a compliant plan must be sufficiently specific as to policy over the whole period to 2050.

9.3 For the reasons also set out in this judgment, I have concluded that the Plan falls well short of the level of specificity required to provide that transparency and to comply with the provisions of the 2015 Act. On that basis, I propose that the Plan be quashed.

9.4 I have also considered in this judgment whether it is appropriate to go on to deal with any of the further issues raised, given that I propose that the Plan be quashed and that it follows that an identical plan cannot be made in the future. However, as the issues of standing debated in this appeal could well arise in any future challenge to a new plan, I do address those questions. For the reasons set out in this judgment I conclude that FIE, as a corporate entity which does not enjoy in itself the right to life or the right to bodily integrity, does not have standing to maintain the rights based arguments sought to be put forward whether under the Constitution or under the ECHR. I also conclude that it has not been shown that it is necessary to allow FIE to have standing under the exception to the general rule, which arises in circumstances where refusing standing would make the enforcement of important rights either impossible or excessively difficult.

9.5 On that basis I did not consider it appropriate to address the rights-based arguments put forward, but do offer views on the question of whether there is an unenumerated or, as I would prefer to put it, derived right under the Constitution to a healthy environment. While not ruling out the possibility that constitutional rights and obligations may well be engaged in the environmental field in an appropriate case, I express the view that the asserted right to a healthy environment is either superfluous (if it does not extend beyond the right to life and the right to bodily integrity) or is excessively vague and ill-defined (if it does go beyond those rights). As thus formulated, I express the view that such a right cannot be derived from the Constitution. I would reserve the position of whether, and if in what form, constitutional rights and state obligations may be relevant in environmental litigation to a case in which those issues would prove crucial."

4. The Netherlands

260. In *State of the Netherlands v. Stichting Urgenda* (20 December 2019, NL:HR:2019:2007), the Supreme Court of the Netherlands upheld the lower

courts' order directing the State to reduce GHG by the end of 2020 by at least 25% compared to 1990.

261. The official summary of the judgment reads as follows:

"The issue in this case is whether the Dutch State is obliged to reduce, by the end of 2020, the emission of [GHG] originating from Dutch soil by at least 25% compared to 1990, and whether the courts can order the State to do so.

Urgenda's claim and the opinions of the District Court and the Court of Appeal

Urgenda sought a court order directing the State to reduce the emission of [GHG] so that, by the end of 2020, those emissions will have been reduced by 40%, or in any case at by at least 25%, compared to 1990.

In 2015, the District Court allowed Urgenda's claim, in the sense that the State was ordered to reduce emissions by the end of 2020 by at least 25% compared to 1990.

In 2018, the Court of Appeal confirmed the District Court's judgment.

Appeal in cassation

The State instituted an appeal in cassation in respect of the Court of Appeal's decision, asserting a large number of objections to that decision.

The deputy Procurator General and the Advocate General advised the Supreme Court to reject the State's appeal and thus to allow the Court of Appeal's decision to stand.

Opinion of the Supreme Court

The Supreme Court concludes that the State's appeal in cassation must be rejected. That means that the order which the District Court issued to the State and which was confirmed by the Court of Appeal, directing the State to reduce [GHG] by the end of 2020 by at least 25% compared to 1990, will stand as a final order.

The Supreme Court's opinion rests on the facts and assumptions which were established by the Court of Appeal and which were not disputed by the State or Urgenda in cassation. In cassation, the Supreme Court determines whether the Court of Appeal properly applied the law and whether, based on the facts that may be taken into consideration, the Court of Appeal's opinion is comprehensible and adequately substantiated. The grounds for the Supreme Court's judgment are laid down below in sections 4-8 of the judgment. These grounds will be summarised below. This summary does not supersede the grounds for this judgment and does not fully reflect the Supreme Court's opinion.

Dangerous climate change (see paras. 4.1-4.8, below)

Urgenda and the State both endorse the view of climate science that a genuine threat exists that the climate will undergo a dangerous change in the coming decades. There is a great deal of agreement on the presence of that threat in climate science and the international community. In that respect and briefly put, this comes down to the following.

The emission of [GHG], including CO_2, is leading to a higher concentration of those gases in the atmosphere. These [GHG] retain the heat radiated by the Earth. Because over the last century and a half since the start of the industrial revolution, an ever-increasing volume of [GHG] is being emitted, the Earth is becoming warmer and warmer. In that period, the Earth has warmed by approximately 1.1°C, the largest part of which (0.7°C) has occurred in the last forty years. Climate science and the international community largely agree on the premise that the warming of the Earth

must be limited to no more than 2°C, and according to more recent insights to no more than 1.5°C. The warming of the Earth beyond that temperature limit may have extremely dire consequences, such as extreme heat, extreme drought, extreme precipitation, a disruption of ecosystems that could jeopardise the food supply, among other things, and a rise in the sea level resulting from the melting of glaciers and the polar ice caps. That warming may also result in tipping points, as a result of which the climate on Earth or in particular regions of the Earth changes abruptly and comprehensively. All of this will jeopardise the lives, welfare and living environment of many people all over the world, including in the Netherlands. Some of these consequences are already happening right now.

Protection of human rights based on the ECHR (see paras. 5.2.1-5.5.3, below)

The European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) requires the states which are parties to the convention to protect the rights and freedoms established in the convention for their inhabitants. Article 2 ECHR protects the right to life, and Article 8 ECHR protects the right to respect for private and family life. According to the case law of the European Court of Human Rights (ECtHR), a contracting state is obliged by these provisions to take suitable measures if a real and immediate risk to people's lives or welfare exists and the state is aware of that risk.

The obligation to take suitable measures also applies when it comes to environmental hazards that threaten large groups or the population as a whole, even if the hazards will only materialise over the long term. While Articles 2 and 8 ECHR are not permitted to result in an impossible or disproportionate burden being imposed on a state, those provisions do oblige the state to take measures that are actually suitable to avert the imminent hazard as much as reasonably possible. Pursuant to Article 13 ECHR, national law must offer an effective legal remedy against a violation or imminent violation of the rights that are safeguarded by the ECHR. This means that the national courts must be able to provide effective legal protection.

Global problem and national responsibility (see paras. 5.6.1-5.8, below)

The risk of dangerous climate change is global in nature: [GHG] are emitted not just from Dutch territory, but around the world. The consequences of those emissions are also experienced around the world.

The Netherlands is a party to the United Nations Framework Convention on Climate Change (UNFCCC). The objective of that convention is to keep the concentration of [GHG] in the atmosphere to a level at which a disruption of the climate system through human action can be prevented. The UNFCCC is based on the premise that all member countries must take measures to prevent climate change, in accordance with their specific responsibilities and options.

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 [GHG] 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.

What, specifically, does the State's obligation to do 'its part' entail? (see paras. 6.1-7.3.6, below)

When giving substance to the positive obligations imposed on the State pursuant to Articles 2 and 8 ECHR, one must take into account broadly supported scientific insights and internationally accepted standards. Important in this respect are, among other things, the reports from the IPCC. The IPCC is a scientific body and intergovernmental organisation that was set up in the context of the United Nations to handle climatological studies and developments. The IPCC's 2007 report contained a scenario in which the warming of the Earth could reasonably be expected to be limited to a maximum of 2°C. In order to achieve this target, the Annex I countries (these being the developed countries, including the Netherlands) would have to reduce their emissions in 2020 by 25-40%, and in 2050 by 80 95%, compared to 1990.

At the annual climate conferences held in the context of the UNFCCC since 2007, virtually every country has regularly pointed out the necessity of acting in accordance with the scenario of the IPCC and achieving a 25-40% reduction of [GHG] emissions in 2020. The scientifically supported necessity of reducing emissions by 30% in 2020 compared to 1990 has been expressed on multiple occasions by and in the EU.

Furthermore, since 2007, a broadly supported insight has arisen that, to be safe, the warming of the Earth must remain limited to 1.5°C, rather than 2°C. The Paris Agreement of 2015 therefore expressly states that the states must strive to limit warming to 1.5°C. That will require an even greater emissions reduction than was previously assumed.

All in all, there is a great degree of consensus on the urgent necessity for the Annex I countries to reduce [GHG] emissions by at least 25-40% in 2020. The consensus on this target must be taken into consideration when interpreting and applying Articles 2 and 8 ECHR. The urgent necessity for a reduction of 25-40% in 2020 also applies to the Netherlands on an individual basis.

The policy of the State (see paras. 7.4.1-7.5.3, below)

The State and Urgenda are both of the opinion that it is necessary to limit the concentration of [GHG] in the atmosphere in order to achieve either the 2C target or the 1.5C target. Their views differ, however, with regard to the speed at which [GHG] emissions must be reduced.

Until 2011, the State's policy was aimed at achieving an emissions reduction in 2020 of 30% compared to 1990. According to the State, that was necessary to stay on a credible pathway to keep the 2C target within reach.

After 2011, however, the State's reduction target for 2020 was lowered from a 30% reduction by the Netherlands to a 20% reduction in an EU context. After the reduction in 2020, the State intends to accelerate the reduction to 49% in 2030 and 95% in 2050. Those targets for 2030 and 2050 have since been laid down in the Dutch Climate Act. The State has not explained, however, that – and why – a reduction of just 20% in 2020 is considered responsible in an EU context, in contrast to the 25-40% reduction in 2020, which is internationally broadly supported and is considered necessary.

There is a broad consensus within climate science and the international community that the longer reduction measures to achieve the envisaged final target are postponed, the more comprehensive and more expensive they will become. Postponement also creates a greater risk of an abrupt climate change occurring as the result of a tipping point being reached. In light of that generally endorsed insight, it was up to the State to explain that the proposed acceleration of the reduction after 2020 would be feasible and sufficiently effective to meet the targets for 2030 and 2050, and thus to keep the 2C target and the 1.5C target within reach. The State did not do this, however. The Court

of Appeal was thus entitled to rule that the State must comply with the target, considered necessary by the international community, of a reduction by at least 25% in 2020.

The courts and the political domain (see paras. 8.1-8.3.5, below)

The State has asserted that it is not for the courts to undertake the political considerations necessary for a decision on the reduction of [GHG] emissions.

In the Dutch system of government, the decision-making on [GHG] emissions belongs to the government and parliament. They have a large degree of discretion to make the political considerations that are necessary in this regard. It is up to the courts to decide whether, in taking their decisions, the government and parliament have remained within the limits of the law by which they are bound. Those limits ensue from the ECHR, among other things. The Dutch Constitution requires the Dutch courts to apply the provisions of this convention, and they must do so in accordance with the ECtHR's interpretation of these provisions. This mandate to the courts to offer legal protection, even against the government, is an essential component of a democratic state under the rule of law.

The Court of Appeal's judgment is consistent with the foregoing, as the Court of Appeal held that the State's policy regarding [GHG] reduction is obviously not meeting the requirements pursuant to Articles 2 and 8 ECHR to take suitable measures to protect the residents of the Netherlands from dangerous climate change. Furthermore, the order which the Court of Appeal issued to the State was limited to the lower limit (25%) of the internationally endorsed, minimum necessary reduction of 25-40% in 2020.

The order that was issued leaves it up to the State to determine which specific measures it will take to comply with that order. If legislative measures are required to achieve such compliance, it is up to the State to determine which specific legislation is desirable and necessary.

Conclusion

In short, the essence of the Supreme Court's judgment is that the order which the District Court issued to the State and which was confirmed by the Court of Appeal, directing the State to reduce [GHG] by the end of 2020 by at least 25% compared to 1990, will be allowed to stand. Pursuant to Articles 2 and 8 ECHR, the Court of Appeal can and may conclude that the State is obliged to achieve that reduction, due to the risk of dangerous climate change that could have a severe impact on the lives and welfare of the residents of the Netherlands."

5. Norway

262. In a judgment of 22 December 2020[160], the Supreme Court of Norway ruled on the compliance with the right to a healthy environment (Article 112 of the Constitution) of a Royal Decree of 10 June 2016 concerning petroleum production licences awarded for blocks on the Norwegian continental shelf in the marine areas (referred to as the south Barents Sea South and the southeast Barents Sea). The case also raised the issue of whether the decisions complied with Article 93 on the right to life or Article 102 on the right to respect for private and family life, and with the

[160] Supreme Court of Norway, *Nature and Youth Norway and Greenpeace Nordic v. the Ministry of Petroleum and Energy*, HR-2020-2472-P (case no. 20-051052SIV-HRET).

corresponding Articles 2 and 8 of the Convention. The Supreme Court concluded that the decision in question to award the licences violated neither Article 2 nor Article 8 of the Convention. Nor did it find a violation of Article 112 of the Constitution. The case is currently pending before the Court (*Greenpeace Nordic and Others v. Norway*, application no. 34068/21).

263. The relevant parts of the judgment read as follows:

"Subject matter

(2) This case concerns the validity of a royal decree of 10 June 2016. The decree – the decision – concerns ten petroleum production licences awarded for a total of 40 blocks or parts of blocks on the Norwegian continental shelf in the marine areas referred to as the south Barents Sea South and the southeast Barents Sea – the 23rd licensing round.

(3) The decision has its legal basis in section 3-3 of the Petroleum Act. The key issue raised is the decision's compliance with Article 112 of the Constitution on the right to a healthy environment. The case also raises the issue of whether the decisions complies with Article 93 on the right to life or Article 102 on the right to respect for private and family life, and with the corresponding Articles 2 and 8 of the European Convention on Human Rights – ECHR – or whether the decision is otherwise invalid due to procedural errors. The crux of the matter is the interpretation of Article 112 of the Constitution and to which extent it confers substantive rights on individuals that may be asserted in court.

(4) The parties agree that we are facing major challenges related to climate change, that at least a considerable share of the last century's temperature increase on Earth is due to [GHG] emissions, and that these emissions must be reduced to halt, and hopefully reverse, the trend.

(5) The overall constitutional issue is which role the courts are to play in the environmental work. The case touches upon the principle of separation of powers and the tripartite system of the legislature, the executive and the judiciary.

...

Is the decision incompatible with Article 2 or 8 of the ECHR, or Article 93 or 102 of the Constitution?

(167) There is no doubt that the consequences of climate change in Norway may lead to loss of human lives, for instance through floods or landslides. The question is yet whether there is an adequate link between production licences in the 23rd licensing round and possible loss of human lives, which would meet the requirement of 'real and immediate' risk.

(168) In my view, the answer is no. First, it is uncertain whether or to which extent the decision will actually lead to [GHG] emissions. Second, the possible impact on the climate will be discernible in the more distant future. Although the climate threat is real, the decision does not involve, within the meaning of the ECHR, a 'real and immediate' risk of loss of life for citizens in Norway. Thus, no violation of Article 2 of the ECHR is found.

...

(171) To this point, the Court of Human Rights has not assessed applications related to climate. However, the Court has recently communicated an application from six youths against Norway and 32 other countries. The case concerned the failure to cut emissions with particular reference to forest fires and heatwaves in Portugal in 2017

and 2018. Nonetheless, there is nothing in present case law to suggest that the subject matter in climate cases will differ from that in cases concerning environmental harm in general. With the significance the Court until now has ascribed to 'direct and immediate', I find it clear that the effects of possible future emissions due to the licences awarded in the 23rd licensing round do not fall within Article 8 of the ECHR.

(172) During the appeal hearing, particular attention has been given to the Urgenda case from the Netherlands. In this case, a declaratory judgment was sought by the Dutch environmental organisation Urgenda against the Dutch State. Urgenda requested a judgment affirming that the Dutch state had a duty within 2020 to reduce [GHG] emissions by 40 percent, or at least 25 percent, compared with 1990. The Dutch Supreme Court – Hoge Raad – upheld in a judgment 20 December 2019 (ECLI:NL:HR:2019:2007, unofficial English translation) the rulings of the lower instances, ordering the Dutch state to reduce [GHG] emissions by 25 percent within 2020, compared with 1990. Among other things, Hoge Raad cited Articles 2 and 8 of the ECHR.

(173) The judgment from the Netherlands has little transfer value to the case at hand. First, the Urgenda case questioned whether the Dutch government could reduce the general emission targets it had already set. It was thus not a question of prohibiting a particular measure or possible future emissions. Secondly, it was not a question of challenging the validity of an administrative decision.

(174) The environmental groups have finally mentioned that the Court of Human Rights may identify the content of the rights on the basis of international agreements constituting 'common ground' between the Member States, see the Grand Chamber judgment 12 November 2008 Demir and Baykara v. Turkey paragraphs 85–86. Such a principle may hardly be applied to environmental issues, as the ECHR does not have a separate environment provision. In any case, it has not been demonstrated that the production licences constitute a breach of our international obligations.

(175) I add that most of the supporting documents that have been submitted and added to the case in accordance with section 15-8 of the Dispute Act, generally relate to international obligations, both under the ECHR and international law in general. These contain nothing that changes my assessments.

(176) Against this background, the decision is not a violation of Article 2 or 8 of the ECHR."

6. Spain

264. In the case of *Greenpeace Spain and Others v. Spain*, several associations and five individuals challenged the relevant national Energy and Climate Plan on the grounds that its GHG emissions reduction target (reduction of GHG emissions of 23% by 2030, compared to 1990 levels) did not comply with the Paris Agreement. They asked the courts to modify the Plan by imposing a 55% GHG reduction target, compared to 1990 levels, by 2030.

265. On 24 July 2023 the Supreme Court (STS 3556/2023) dismissed the claimants' action holding that under the relevant domestic law, courts could not impose on the government a measure such as that requested in the present case unless there was a clear conflict of regulations with a higher norm that left no discretion to the executive, which had not been the case in the case at

hand. The Supreme Court noted that GHG reduction targets had very significant implications for the national economy and the government's socio-economic policies. Tightening them would impose significant sacrifices on present generations and granting the claim would amount to an excessive invasion into the prerogatives of the government. Moreover, the Plan was compliant with EU law, which reflected ambitious efforts in the fight against climate change. The European Union was in the process of updating its GHG reduction targets and Spain would have to coordinate its actions with EU law.

7. The United Kingdom

266. In *Plan B Earth and four other citizens v. Prime Minister*[161], the appellants unsuccessfully challenged before the High Court of Justice the lawfulness of the policies of the United Kingdom government relating to climate change. They alleged a breach of section 6 of the Human Rights Act 1998 by way of Article 2 and/or Article 8 of the Convention.

267. Discussing these claims, Mr Justice Bourne held, in particular:

> "The insuperable problem with the Article 2 claim (and with any Article 8 claim based on the physical or psychological effects of climate change on the Claimants) is that there is an administrative framework to combat the threats posed by climate change, in the form of the 2008 Act and all the policies and measures adopted under it.
>
> 49. That framework includes and contemplates the role of the CCC in advising on, and assessing, policies and measures. That framework is constantly evolving.
>
> ...
>
> 51. ... [T]he Court is not well equipped to form its own views on the matters in question. I am being invited to adopt the views expressed in selective quotations from the work of the CCC and others. When I refer to selective quotation I am not questioning the good faith of any of the parties. Rather I am pointing out that the Court does not have and cannot acquire expertise in this complex area, and will always be dependent on competing extracts from a global debate. Even if I could overcome the problem of selective quotation, I would not be equipped to assess the correctness of what is being quoted."

268. In the same case, ruling on an application to the Court of Appeal for permission to appeal against the High Court's refusal to grant permission to apply for judicial review, Lord Justice Singh refused the application and noted as follows[162]:

> "5. ... The fundamental difficulty which the Claimants face is that there is no authority from the European Court of Human Rights on which they can rely, citing the Paris Agreement as being relevant to the interpretation of the ECHR, Articles 2 and 8. They do rely on decisions of the highest courts of other parties to the ECHR, in particular the Supreme Court of the Netherlands, but, as the Judge observed in the present case, we do not know what the constitutional context was for such decisions.

[161] High Court of Justice, 21 December 2021, [2021] EWHC 3469 (Admin).
[162] Court of Appeal, 18 March 2022, CA-2021-003448.

> Section 2 of the HRA requires courts in this country to take into account relevant decisions of the European Court of Human Rights. In general, we follow those decisions."

8. Belgium

269. In the case of *VZW Klimaatzaak v. the Kingdom of Belgium and Others*, an association and 58,000 individuals brought an action against the Federal government, the Walloon Region, the Flemish Region and the Brussels-Capital Region, alleging that they had failed to meet the relevant GHG emissions reduction targets and asking the court to order the necessary measures to be undertaken in that respect.

270. On 17 June 2021 the Brussels Court of First Instance, accepting the standing of the association and the individuals, held that the defendants had breached their duty of care under the relevant domestic law, and the preventive duty under Articles 2 and 8 of the Convention, by failing to take necessary measures as regards the harmful effects of climate change. The court declined to set specific reduction targets on the grounds of the separation of powers.

271. On 30 November 2023 the Brussels Court of Appeal confirmed the finding of breaches of the domestic law and Articles 2 and 8 of the Convention by the defendants, save the Walloon Region. Considering, in particular, that the courts would not be infringing the principle of the separation of powers provided that the judge did not take the place of the authorities in choosing the means to remedy the breaches found, that court ordered the defendants to reduce GHG emissions by at least 55% compared to 1990 levels by 2030.

272. Unlike the domestic case-law noted in paragraphs 236 to 266 above, the Brussels Court of Appeal's judgment is, as at today, susceptible to a further challenge before the Court of Cassation.

THE LAW

I. PRELIMINARY ISSUES

A. The second applicant

273. In the course of the proceedings before the Court, the second applicant passed away. By letters of 12 August and 8 September 2021, Ms Schaub's representative informed the Court that her son and heir, Mr André Seidenberg, wished to continue the proceedings before the Court on his mother's behalf. The respondent Government did not object to this. In these circumstances, having regard to the Court's well-established case-law, the Court is the view that Ms Schaub's son has a legitimate interest and is entitled to pursue the proceedings (see *Taşkın and Others v. Turkey*,

no. 46117/99, § 102, ECHR 2004-X; *Jivan v. Romania*, no. 62250/19, §§ 25-26, 8 February 2022; and *Pavlov and Others v. Russia*, no. 31612/09, § 51, 11 October 2022). Indeed, having regard to the fact that the second applicant was a woman of advanced age, and that her complaint was linked to the effects of climate change on the category of population to which she belonged, it could be considered contrary to the Court's mission to refrain from ruling on the complaints raised by the recently deceased applicant just because she did not have the strength, owing to her advanced age, to live long enough to see the outcome of the proceedings before it (see, *mutatis mutandis*, *Hristozov and Others v. Bulgaria*, nos. 47039/11 and 358/12, § 73, ECHR 2012 (extracts)).

274. For practical reasons, Ms Schaub will continue to be considered the second applicant in the present judgment.

B. Scope of the complaint

275. In their additional observations of 13 October 2021 in the proceedings before the Chamber, the applicants explicitly elaborated on the issue of GHG emissions generated abroad and attributed to Switzerland through the import of goods for household consumption and as such forming part of Switzerland's "embedded emissions". The question arose, however, whether this complaint formed part of the applicants' complaints or "claims" referred to the Court in their original application. In the course of the Grand Chamber proceedings, this question was explicitly put to the parties and their answers to it differ.

1. The parties' submissions

276. The Government argued that the issue of GHG emissions generated abroad and attributed to Switzerland had not formed part of the applicants' complaints or "claims" made in the original application before the Court. The applicants had only raised this issue in their additional observations of 13 October 2021 before the Chamber. In any event, they had not raised this issue before the domestic courts but had rather explicitly asked the latter to oblige Switzerland to reduce GHG emissions on its own territory. In addition, a major part of the applicants' arguments before the Court was based on the State's commitments under the Paris Agreement, which concerned the level of national contributions and the domestic measures that needed to be taken. The Government were therefore of the view that the issue of GHG emissions generated abroad was either outside the scope of the present case or inadmissible for non-exhaustion of domestic remedies or for non-compliance with the six-month time-limit.

277. The applicants argued that the arguments they had raised in their observations during the Chamber proceedings concerning GHG emissions generated abroad and attributed to the respondent State formed part of their

complaints or "claims" made in the original application before the Court. In particular, in their observations they had explained that the effort that the State was obliged to make should be determined by reference not merely to the emissions that occurred on its territory but also by reference to external emissions. That had been an elaboration on their original complaint made in the application form, namely that the State had failed to take preventive measures to reduce emissions in line with the 1.5°C limit. Moreover, the Court could also *ex officio* seek to clarify their original complaint by taking the aspect of external emissions into account.

2. The Court's assessment

278. The relevant principles of the Court's case-law concerning the scope of the case before it may be summarised as follows (see, for instance, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 126, 20 March 2018, and, most recently, *Grosam v. the Czech Republic* [GC], no. 19750/13, § 88, 1 June 2023):

> "126. [T]he scope of a case 'referred to' the Court in the exercise of the right of individual application is determined by the applicant's complaint. A complaint consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto and has the power to decide on the characterisation to be given in law to the facts of a complaint by examining it under Articles or provisions of the Convention that are different from those relied upon by the applicant. It cannot, however, base its decision on facts that are not covered by the complaint. To do so would be tantamount to deciding beyond the scope of a case; in other words, to deciding on matters that have not been 'referred to' it, within the meaning of Article 32 of the Convention."

279. In the case at hand, it is important to note that it has been accepted in the reports by the relevant Swiss authorities[163], and elsewhere[164], that the GHG emissions attributable to Switzerland through the import of goods and their consumption form a significant part (an estimate of 70% for 2015)[165] of the overall Swiss GHG footprint. Indeed, the FOEN has stressed the following: "In a globalised economy, both the GHG emitted in Switzerland and those emitted abroad as a result of Swiss final demand must be recorded (total final consumption expenditure of households and the public sector). A large part of Switzerland's footprint is created abroad because imports make up a high proportion of the country's total consumption."[166]

280. It would therefore be difficult, if not impossible, to discuss Switzerland's responsibility for the effects of its GHG emissions on the

[163] See FOEN "Climate Change in Switzerland" (2020).
[164] See Our World in Data "CO_2 emissions embedded in trade" (available at www.ourworldindata.org; last accessed 14.02.2024).
[165] FOEN "Climate Change in Switzerland" (2020), p. 6.
[166] FOEN, Indicator Economy and Consumption (available at www.admin.ch ; last accessed 14.02.2024).

applicants' rights without taking into account the emissions generated through the import of goods and their consumption or, as the applicants labelled them, "embedded emissions". As the FOEN noted, these emissions "must be" taken into account in the overall assessment of Switzerland's GHG emissions. This means, in terms of the above-noted principles of the Court's case-law, that the Court needs to clarify, if necessary even of its own motion, these facts when assessing the applicants' original – and rather general – complaint that Switzerland had failed to reduce its GHG emissions in line with the 1.5°C target.

281. Moreover, it is important to note that in an annex submitted together with the application form, when elaborating on their complaints, the applicants underlined that the "Respondent [should] do everything in its power to do its share to prevent a *global temperature increase* of more than 1.5°C above pre-industrial levels" (emphasis added). As far as the present discussion is concerned, this suggests that the applicants did indeed intend to cover in their complaints the overall Swiss contribution to the global effects of climate change. It is therefore acceptable, in terms of the Court's case-law, that they sought to complete and clarify their complaints later in the written proceedings by elaborating on, *inter alia*, the issue of "embedded emissions".

282. As regards the Government's argument that the applicants failed to raise this issue at the domestic level, it should be noted that in their request for a legal remedy they raised the same issue as the one raised before the Court relating to Switzerland's overall contribution to global temperature increase (see paragraph 22 above). While it is not possible to draw any conclusion as regards the domestic courts' position on this matter (including the issue of "embedded emissions"), as they did not examine the merits of the applicants' legal action, it is indicative to note that the DETEC rejected the applicants' action on the grounds that the general purpose of their request was to achieve a reduction in CO_2 emissions worldwide and not only in their immediate surroundings (see paragraph 30 above).

283. In these circumstances, it follows that the applicants' complaint regarding the "embedded emissions" falls within the scope of the case and that the respondent Government's objection in that respect must be dismissed. This is, of course, without prejudice to the examination of the actual effects of "embedded emissions" (namely Switzerland's import of goods for household consumption) on the State's responsibility under the Convention.

C. Jurisdiction

1. The parties' submissions

284. The Government did not contest that Switzerland had jurisdiction in regard to the applicants as regards the complaint about the domestic GHG emissions and their effects on climate change. However, as regards GHG emissions generated abroad, the Government, relying on the Court's

well-established case-law (citing, *inter alia*, *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, 5 May 2020), argued that the issue did not fall under any of the exceptional criteria for establishing the State's extraterritorial jurisdiction.

285. In the Government's view, the only issue that could arise was whether the Court had jurisdiction to examine whether Switzerland had complied with any obligations it might have to take measures within the limits of its own jurisdiction and its own powers to reduce GHG emissions generated abroad. However, the Government pointed out, in particular, that the Court's case-law did not accept the cause-effect notion of jurisdiction and that the sole capacity of a State to act could not establish its jurisdiction (citing, *inter alia*, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 199, 14 September 2022). The Government therefore argued that GHG emissions generated abroad could not be considered to attract the responsibility of Switzerland as those emissions could not be directly linked to any alleged omissions on the part of Switzerland, whose authorities did not have direct control over the sources of emissions. Moreover, the whole system established by the UNFCCC, the Kyoto Protocol and the Paris Agreement was based on the principle of territoriality and the responsibility of States for emissions on their territory. In this context, the Government also submitted that the principle of interpreting the Convention as a living instrument was not applicable as regards the issue of jurisdiction under Article 1 of the Convention (citing *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, §§ 63-66, ECHR 2001-XII). Thus, in their view, establishing jurisdiction for GHG emissions generated abroad would go too far and would run counter to the very nature of the concept of jurisdiction under the Convention.

286. The applicants argued that no issue arose as to jurisdiction under Article 1 of the Convention. Their complaint concerned the failure of the respondent State to take the necessary measures to reduce GHG emissions within its territorial jurisdiction. The applicants did not argue that the State should take or had taken measures outside of its territory, nor that it was violating the rights of persons outside of its territory nor that it should exercise jurisdiction over persons outside its territory.

2. The Court's assessment

287. The Court is of the view that no genuine issue of jurisdiction, within the meaning of Article 1 of the Convention, arises in the context of the complaint about "embedded emissions". The Court notes in particular that all the applicants are residents of Switzerland, and thus under its territorial jurisdiction, which means that under Article 1 of the Convention Switzerland must answer for any infringement attributable to it of the rights and freedoms protected by the Convention in respect of the applicants (see *Duarte Agostinho and Others*, cited above, § 178). Thus, the applicants' complaint

concerning "embedded emissions", although containing an extraterritorial aspect, does not raise an issue of Switzerland's jurisdiction in respect of the applicants, but rather one of Switzerland's responsibility for the alleged effects of the "embedded emissions" on the applicants' Convention rights. The issue of responsibility, however, is a separate matter to be examined, if necessary, in relation to the merits of the complaint (ibid.).

288. Against the above background, the Court dismisses the Government's objection concerning the lack of jurisdiction.

D. Compliance with the six-month time-limit

289. The Government pointed out that the application had been lodged with the Court on 26 November 2020, and the final domestic court decision had been adopted on 5 May 2020, namely more than six months earlier. Although in the relevant period the Court had published a press release indicating that the time-limit for the lodging of individual applications had been extended owing to the exceptional circumstances of the COVID-19 pandemic, the Government were of the view that the six-month time-limit set out in Article 35 § 1 of the Convention could not be extended in this manner. In any event, the applicants had not been affected by any *force majeure* in the relevant period and could have lodged their application within the relevant six-month time-limit.

290. The Court notes that the issue raised by the Government in the present case as regards the extension of the time-limit for the lodging of individual applications in the context of the exceptional circumstances of the COVID-19 pandemic has already been clarified in the case-law (see *Saakashvili v. Georgia* (dec.), nos. 6232/20 and 22394/20, §§ 57-58, 1 March 2022; *Makarashvili and Others v. Georgia*, nos. 23158/20 and 2 others, §§ 47-48, 1 September 2022; *Kitanovska and Barbulovski v. North Macedonia*, no. 53030/19, § 40, 9 May 2023; and *X and Others v. Ireland*, nos. 23851/20 and 24360/20, § 58, 22 June 2023). The Court sees no reason to revisit this case-law. The Government's objection is therefore dismissed.

II. INTRODUCTORY REMARKS REGARDING THE COMPLAINTS RAISED IN THE PRESENT CASE

291. Complaining about the failures by the Swiss authorities to mitigate climate change, and in particular the effects of global warming, including a lack of access to a court in that connection, the applicants relied on Articles 2, 6, 8 and 13 of the Convention.

292. The Court notes that there is a close link between the substantive obligations under the various Convention provisions which come into play in the present context. This is owing to the fact that the Convention should be interpreted so as to achieve internal consistency and harmony between the

various provisions (see paragraph 455 below) and the fact that the State's positive obligations in the environmental context under Articles 2 and 8 largely overlap (see *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, §§ 85 and 102, 24 July 2014).

293. Similarly, while Article 6 affords a procedural safeguard, namely the "right to a court" for the determination of one's "civil rights and obligations", Article 8 serves the wider purpose of ensuring proper respect for, *inter alia*, private life. The decision-making process leading to measures of interference must be fair and such as to afford due respect to the interests safeguarded by Article 8 (see, for instance, *Zammit Maempel v. Malta*, no. 24202/10, § 32, 22 November 2011, with further references). It may, therefore, in some instances be sufficient to examine the case, including the issues of the requisite procedural safeguards, from the perspective of Article 8 (ibid., § 33), while in others, the Court may decide to examine both provisions separately (see, for instance, *Taşkın and Others*, cited above, §§ 118-25 and 135-38). This is a matter that can only be decided on the basis of the circumstances of a particular case.

294. The same approach applies as regards the procedural safeguards under Article 13 of the Convention, which the Court may or may not find it necessary to examine in addition to its assessment under the relevant substantive provision (see, for instance, *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, §§ 227-28, 28 February 2012, and *Cordella and Others v. Italy*, nos. 54414/13 and 54264/15, §§ 175-76, 24 January 2019). In any event, and as regards the relationship between Articles 6 and 13, it is the established case-law of the Court that the requirements of the latter are less strict than those of the former. Thus, the Court often considers that the requirements of Article 13 are absorbed by those of Article 6 (see, for instance, *FU QUAN, s.r.o. v. the Czech Republic* [GC], no. 24827/14, § 85, 1 June 2023; see also *Association Burestop 55 and Others v. France*, nos. 56176/18 and 5 others, § 64, 1 July 2021).

295. With these considerations in mind, the Court will first proceed by identifying the content of the State's obligations under the substantive Convention provisions – Articles 2 and 8 of the Convention. It will examine separately the complaints raised under Articles 6 and 13.

III. ALLEGED VIOLATION OF ARTICLES 2 AND 8 OF THE CONVENTION

296. The applicants complained of various failures by the Swiss authorities to mitigate climate change – and in particular the effect of global warming – which had adversely affected the lives, living conditions and health of the individual applicants and members of the applicant association. They relied on Articles 2 and 8 of the Convention.

297. The relevant part of Article 2 provides as follows:

"1. Everyone's right to life shall be protected by law ..."

298. The relevant part of Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home ..."

A. The parties' submissions

1. The applicants

(a) Preliminary remarks

299. According to the applicants, there was no doubt that climate change-induced heatwaves had caused, were causing and would cause further deaths and illnesses to older people and particularly women. This message had been part of the respondent State's communication with its citizens regarding the public-health impacts of climate change.

300. The individual applicants argued that they were part of a vulnerable group owing to their age and gender. In particular, many members of the applicant association explained how they were affected by climate change. The second applicant had suffered, and the third applicant still suffered, from cardiovascular diseases, while the fourth and fifth applicants suffered from respiratory diseases. The relevant risk to the second to fourth applicants had already materialised, as evidenced by their medical certificates. In addition, the second to fifth applicants had described in personal statements how their health and well-being were affected by heatwaves.

301. The Swiss authorities were well aware of the risks associated with climate change and the necessity to address them. They had acknowledged these risks in their public communications, by endorsing the findings of the IPCC and by taking part in the UNFCCC and in the Paris Agreement. However, the authorities had failed to set binding climate targets for 2030 and 2050 and their climate strategy was not in line with the 1.5°C limit. Moreover, the authorities had failed to meet their own inadequate climate targets. At the same time, Switzerland was able to do its share, namely, to reduce the risk of heat-related excess mortality and morbidity.

302. In this connection, the applicants argued that Switzerland's 2020 climate target had been intended to meet the (outdated) 2°C limit. After committing to the 1.5°C limit, the Swiss 2030 target underwent only a superficial update. The intended reductions were not only wholly inadequate, but their inadequacy had been aggravated by a reduction in domestic ambition. Neither the 1.5°C long-term temperature goal itself nor 1.5°C compatible emission reduction targets had been enshrined in national law, nor was there an intention to do so. The applicants' complaint therefore related to the current climate situation in Switzerland and to the inadequacy of the targets set for 2030 and 2050.

303. Under its current climate strategy, Switzerland planned to emit more emissions than an "equal per capita emissions" quantification approach

would entitle it to do. In any event, an "equal per capita emissions" burden-sharing approach was not a valid approach to determine national "fair shares" in reducing GHG emissions. The general understanding, embodied in the Paris Agreement and the Rio Declaration[167], was that a fair level of contribution reflected the "highest possible ambition" and "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances".

304. The applicants argued that Switzerland's current climate strategy fell far short of meeting a "fair share" contribution towards the global mitigation target of 1.5°C. A fair contribution would require Switzerland to strengthen domestic reductions and – through financing emission reduction in other countries – attain a net-negative GHG emission level in 2030 with reductions of 160% and up to 200% below the 1990 emission levels for a 50% chance of meeting the 1.5°C limit. As regards the strengthening of the domestic emission reduction commitments within the "fair share" standard, Switzerland would need to ensure domestic GHG emission reductions of more than 60% below 1990 levels by 2030. However, this could not be realistically achieved with the measures currently envisaged in the domestic legislation.

(b) Victim status

305. The applicants contended that they were all (the applicant association and applicants nos. 2-5) victims, within the autonomous meaning of Article 34 of the Convention, of a violation of Articles 2 and 8 of the Convention on account of the ongoing failure of the respondent State to afford them effective protection against the effects of global warming. In particular, the applicants considered that they were victims as they were directly affected by the impugned measures. The term "victim" was an autonomous concept which should be interpreted in an evolutive manner and not applied in a rigid, mechanical, or inflexible way. It was sufficient that a violation was conceivable, whether it had materialised should be decided on the merits.

(i) The applicant association

306. As regards, specifically, the victim status of the applicant association, the applicants submitted that, albeit it had legal personality, it should simply be seen as a group of individuals, every single member of which was an individual directly affected by the failures of the respondent State in a similar way to applicants nos. 2-5 (who are also members of the applicant association). Accordingly, this complaint was not an *actio popularis*. The applicant association was not bringing an action in the general or public interest (even if the interests of its members aligned with those of the general public) since climate change mitigation measures could never

[167] Rio Declaration on Environment and Development, 1992.

benefit certain population groups exclusively. Rather, the applicant association should be seen as a means enabling the physical persons to bring their complaint before the Court. To preclude the applicant association's application under Articles 2 and 8 by virtue of the fact that it was a legal person, would be to ignore reality and would be out of line with the principle that the Convention rights should be practical and effective. Moreover, the Court should ensure that its approach to the notion of victim status was in line with the Aarhus Convention which essentially provided for a possibility that associations could substitute individuals in pursuit of environmental actions.

307. Referring to *Gorraiz Lizarraga and Others v. Spain* (no. 62543/00, ECHR 2004-III), the applicants pointed out that, similar to in that case, the applicant association had been set up for the specific purpose of bringing its members' interests before the courts. Its members, as part of a particularly vulnerable group, were directly concerned by the respondent State's omissions regarding climate protection and the applicant association was there to ensure that they had the ability to bring their claim before the Court. Thus, allowing the applicant association to claim victim status in respect of its individual members meant ensuring that members of this particular group were able to exercise their rights in the long term. This was particularly true given the fact that bringing a standalone case of this dimension through the domestic courts in Switzerland before approaching the Court would have been prohibitively expensive for most individuals. Indeed, given the complexity and cost of climate litigation it was not surprising that associations had played an increasingly significant role in such cases in recent years and had been more successful than individual plaintiffs in doing so.

(ii) Applicants nos. 2-5

308. Applicants nos. 2-5 had suffered and continued to suffer directly and personally from heat-related afflictions, and with every heatwave they had been and continued to be at a real and serious risk of mortality and morbidity greater than the general population solely because they were women over the age of 75. The risk to the present applicants was even higher compared with other older women owing to their respiratory and cardiovascular diseases. Applicants nos. 2-5 were also direct victims owing to the cumulative effect of all the consequences they had already experienced and would experience in the future. Thus, their complaint was specific and did not concern a general degradation of the environment.

309. In the applicants' view, it was beyond reasonable doubt that the risks posed by climate change-induced heatwaves to the particularly vulnerable group of older women would inevitably materialise in individual cases. The burden of proof was therefore on the State to show that their health afflictions had not been caused by excessive heat, contrary to the medical evidence provided by them.

310. In addition, applicants nos. 2-5 were potential victims because the respondent State's ongoing failure to take the necessary steps to reduce emissions in line with the 1.5°C limit would significantly increase their risk of heat-related mortality and morbidity. In their view, it was beyond doubt that climate change-induced heatwaves would increasingly cause further deaths and illnesses in older women with chronic diseases, which was a group of people to which they belonged. The applicants submitted that they had established this by reference to sound and detailed evidence (epidemiological data and other scientific evidence) so as to demonstrate the real probability of the occurrence of further violations of their rights. The IPCC had found that, on current trajectories, 1.5°C would be reached by the first half of the 2030s, or even the late 2020s.[168] The applicants hoped and expected to be alive at that time.

311. The applicants were members of a particularly vulnerable group. Heat-related deaths were not distributed randomly across the population but occurred especially in older women. Both the members of the applicant association and applicants nos. 2-5 belonged to this specific segment of the population which was particularly affected by climate change owing to their age and gender. Applicants nos. 2-5 were even more vulnerable owing to their chronic diseases. They were both personally, and as members of the particularly vulnerable group of women aged over 75, especially affected by the effects of rising temperatures in comparison with the general population.

(c) Applicability of the relevant Convention provisions

(i) Article 2 of the Convention

312. The applicants argued that Article 2 was engaged by the failure of the respondent State to take the necessary steps to reduce emissions in line with the 1.5°C limit so as to mitigate the effect of increasing temperatures. As a result of increasing temperatures, the lives of applicants nos. 2-5 and of the members of the applicant association were at real and serious risk. The recurring heatwaves had already led to heat-related excess mortality and morbidity in the older-women group; there was evidence of the seriousness of the risk presented to the applicants by ongoing climate change and proof that the applicants had, owing to their chronic diseases, already suffered harm and continued to be at particularly high risk.

313. In these circumstances, under Article 2, the State had the obligation to take appropriate steps to safeguard the lives of applicants nos. 2-5 and of the members of the applicant association. This related, in particular, to the positive obligation of the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. In the applicants' view, this obligation arose where there was a known and serious risk to life. However, for this obligation to arise it was not

[168] Citing AR6 (cited above), Summary for policymakers, B.1 and footnote 29.

necessary to demonstrate the existence of an imminent or immediate risk to life, which was relevant only in relation to an operational duty, and that duty was not at issue in the present case.

314. In any event, there was an immediate risk posed by climate change related to the adverse events to which it led, as had been demonstrated with sufficient scientific evidence. Even assuming that there was any lack of certainty as to the effects of climate change, consistent with the principle that the Convention could not be interpreted in a vacuum, the precautionary principle would have to be applied, so as to encompass the concepts of directness, inevitability and irreversibility.

315. The applicants argued that they had provided sufficient evidence to demonstrate the facts as regards the causal link between the respondent State's failure to tackle climate change and the physical and psychological effects on them. As regards the causation test, they stressed that the fact that multiple States were responsible for GHG emissions did not absolve the respondent State of its responsibility. The causal test that should be applied in the context of climate change was whether there was individual, partial or joint responsibility to contribute to the fight against dangerous climate change (which they considered to be in line with Article 47 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts[169]). In this context, partial responsibility arose from partial causation, even if a single State could not prevent an outcome on its own. This accorded with the Court's approach to causation in the context of the rejection of the "but for" test (citing, *inter alia*, *O'Keeffe v. Ireland* [GC], no. 35810/09, § 149, ECHR 2014 (extracts)) and with the approach taken at the level of national jurisdictions in the context of climate-change litigation. Moreover, in this latter context, the argument of States that their emissions were only a small contributing cause to climate change (the so-called "drop-in-the-ocean argument") had been rejected. That could not absolve the State of its responsibility. Indeed, a single State's actions in combating climate change contributed substantively to creating the mutual trust necessary for other States to act.

(ii) Article 8 of the Convention

316. The applicants argued that the serious threat to their health, well-being and quality of life posed by dangerous climate change sufficed to trigger positive obligations under Article 8, which would also have been the case even if their state of health had not deteriorated or had not been seriously endangered. In the applicants' view, Article 8 included their right to personal autonomy and their right to age with dignity.

317. When examining the applicability of Article 8, the Court should have regard to the fact that the relevant circumstances and data established the real

[169] International Law Commission, Responsibility of States for Internationally Wrongful Acts, 2001 ("ILC Articles").

and serious risk posed by climate change-induced heatwaves to their health and well-being. The respondent State was aware of the real and serious risk of harm to the applicants. The applicants considered that they had established a direct causal link between the respondent State's omissions contributing to climate change and its harmful effects on them. In any event, proof of a direct causal link was not a necessary precondition for Article 8 to be engaged (citing *Tătar v. Romania*, no. 67021/01, § 107, 27 January 2009).

318. The applicants rejected the possibility that the respondent State could take the position that increased temperatures caused by climate change should be treated as a normal part of everyday life. The extreme consequences of climate change and the fact that Switzerland had engaged itself under international law to take steps to mitigate its effects showed that it was anything other than part of "normal life". Referring to their submissions under Article 2, the applicants argued that the cumulative effects of all the consequences they had already experienced and would experience showed that the necessary threshold for applicability of Article 8 had been reached.

(d) Merits

319. The applicants submitted that under Article 2 of the Convention the Court needed to determine whether, given the circumstances of the case, the State had done all that could have been required of it to prevent their life from being avoidably put at risk (citing *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III). The risks climate change posed to the lives of applicants nos. 2-5 and the other members of the applicant association were comparable to, and potentially greater than, those with which the Court had been faced to date. In particular, in view of the magnitude of the risks posed by climate change, the clear science, the urgency of the situation and the clear ultimate objective of the UNFCCC, the State had a positive obligation to take all measures that were not impossible or disproportionately economically burdensome with the objective of reducing GHG emissions to a safe level. The situation required the State to do everything in its power to protect the applicants.

320. The scope of the respondent State's obligation to protect derived in particular from relevant rules and principles of international law, evolving norms of national and international law, and the consensus emerging from specialised international instruments and from the practice of Contracting States. Having regard to the harmonious interpretation of the Convention taken together with these considerations, the applicants argued that to comply with its positive obligation to protect them effectively, the State was required to do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels. This necessarily included establishing a legislative and administrative framework to achieve that objective. The principle of harmonious interpretation also helped to clarify the ambiguity around the respondent State's exact "fair share" of the

required global mitigation effort, and the question whether the scope of the obligation to protect extended to emissions occurring abroad. In this respect, the commitments undertaken by the State under the UNFCCC and the Paris Agreement were of particular importance as they, together with the IPCC findings, demonstrated the State's knowledge of the real and serious risk of harm posed to the applicants by climate change, including extreme heatwaves. Moreover, the relevant scientific studies and the established standards[170] needed to inform the scope of the State's obligations.

321. In view of these considerations, the applicants contended that the respondent State had failed to take the necessary steps to mitigate the harm and risk to them caused by climate change. Specifically, it had done significantly less than its share to prevent a global temperature increase of more than 1.5°C. Contrary to what was required, the Swiss climate strategy was not in line with the 1.5°C limit. Instead, there was a long history of failed climate action. Also, the State had failed to set any domestically binding climate targets for 2030 and 2050 and had failed to meet its (inadequate) 2020 climate target. The mitigation potential in Switzerland remained largely unused, partly without any justification, partly on the justification of high costs, which was not evidenced and was – in so far as Switzerland was concerned – not a relevant consideration. The applicants stressed that the burden of proof was on the Government to demonstrate, using detailed and rigorous data, that the State had taken the necessary action. However, in Switzerland, the decisions had not been based on scientific studies and the State had in fact decided to dispense with its consultative body on climate change which had pointed to the inadequacy of the climate targets as long ago as 2012.

322. With respect to the Government's explanation as to Switzerland's failure to determine a national carbon budget – and thus to establish its climate policy on the basis of a quantitative assessment (see paragraph 360 below) – the applicants were of the view that there were fundamental misconceptions underlying the State's approach.

323. In this connection, the applicants had commissioned an expert report[171] to assess the methodology used in the 2012 Policy Brief on which the State relied[172]. The expert report applied the methodology of the Policy Brief to the remaining global 1.5°C budget from the IPCC's AR6 and determined a remaining budget for Switzerland of 381 Mt CO_2e from 1 January 2022 onwards. The expert report calculated that, based on Switzerland's current and planned emission reduction targets, this budget would be depleted by between 2030 and 2033. On the basis of its current and planned targets, Switzerland would apportion itself 0.2073% of the remaining

[170] Citing, *inter alia*, the 2015 Oslo Principles on Global Climate Change Obligation.
[171] Robiou du Pont and Nicholls, "Calculation of an emissions budget for Switzerland based on Bretschger's (2012) methodology" (2023).
[172] See footnote 180 below.

global CO_2 budget as of 2022, compared to a population share of 0.1099%. For Switzerland to stay within the budget as defined by the methodology of the Policy Brief, it would need to achieve net-zero emissions by 2040, and thus well before its current target of net zero by 2050. The expert report also noted several shortcomings of the methodology in the Policy Brief which made it unsuitable to inform "fair share" targets for countries.

324. The IPCC had also engaged with assessments of effort-sharing methodologies. In its most recent AR6, the IPCC had explicitly recognised the importance for countries to explain how fairness principles were "operationalised" and to express their targets in terms of the portion of the remaining global budget.[173] The same approach of the necessity to quantify a State's fair share had been followed in the national climate litigation in Germany and the Netherlands. On the other hand, and as regards the respondent State's reliance on the IPCC's global emission reduction pathways, the applicants stressed that it had been recognised by the IPCC itself that these could not be taken as explicit assumptions about global equity, environmental justice or intra-regional income distribution[174].

325. The studies provided by the applicants – notably by the CAT and Climate Analytics[175] and Rajamani et al. – provided an appropriate common ground for the applicants' submissions. They built upon the assessment of effort-sharing studies as reported by the IPCC in its AR5, updated with more recent studies and historical data. They therefore covered an even broader spectrum of effort-sharing methodologies as compared to the AR4 assessment. In contrast, the respondent State had not provided *any* quantified justification for the fairness of its emission target. Its reliance on an approach that came close to a budgetary approach was flawed and clearly insufficient. Upon the applicants' explicit request for it to do so, in a letter of 10 March 2021, the FOEN had, however, failed to demonstrate that in its assessment of Switzerland's climate policy it had relied on the Policy Brief or the internal assessment now provided by the Government before the Court, which were in any event documents based on flawed methodology (see paragraph 323 above).

326. The effort-sharing studies provided by the applicants only determined the "fair share" level of emission reductions for a country, and whether these reductions needed to be achieved domestically. Alleged technical difficulties and the high costs of reducing emissions within the respondent State's territory were irrelevant for the determination of the level of responsibility for overall emission reductions, which could also be achieved through supporting countries with lower levels of responsibility and

[173] Citing AR6 WGIII (full report), p. 1468.
[174] AR6 SYR (cited above), p. 29.
[175] The applicants provided letters by Climate Analytics and CAT of 26 April 2023 providing further explanations as regards the applied methodologies.

capability. Switzerland would therefore clearly be capable of achieving the requisite mitigation measures.

327. In short, the applicants submitted that Switzerland's action to tackle climate change was inadequate for the following reasons: (a) Switzerland had failed to legislate for the minimum possible requisite emissions reduction targets for 2020, and had then failed to meet that inadequate emissions reduction target; (b) the 2030 proposed target was manifestly inadequate and had not even been given legislative effect; and (c) Switzerland's 2050 proposed target was inadequate in so far as it did not commit Switzerland to net-zero domestic emissions and this too had not yet even been given legislative effect.

328. Against the above background, the applicants contended that the State had failed and continued to fail to protect them effectively, in violation of their right to life under Article 2 of the Convention.

329. The applicants also pointed out that in environmental matters, the scope of the positive obligations under Article 2 largely overlapped with those under Article 8 (citing, *inter alia*, *Kolyadenko and Others*, cited above, § 216). They therefore considered that the same considerations outlined above concerning Article 2 also applied to their complaint under Article 8. In addition, as regards a fair balance between the competing interests of the individual and the community as a whole (which was of relevance under Article 8), the applicants stressed that in the present context there was no conflict of interest. On the contrary, it was in the interests of the community as a whole that the State adopt preventive measures to reduce the likelihood of global temperatures exceeding the 1.5°C limit, as provided in the Paris Agreement. However, it would be a misrepresentation of their complaint to consider that they sought from the Court for the Paris Agreement to be applied. They only asked the Court to rule on whether Switzerland had violated their rights under the Convention.

330. The scope of the State's margin of appreciation was limited because the complaint concerned an issue of compliance with international standards recognised by the State itself. It also concerned the risk of a man-made disaster and a violation of fundamental rights protected by Article 2 of the Convention. The urgency of the situation and the risk of irreversible harm also pointed to a narrow margin of appreciation. While the applicants accepted that it was for Switzerland to decide what measures to take to give effect to targets and to that extent it had a margin of appreciation, no such margin existed in relation to the fixing of the targets themselves, nor the need for legislation to give them practical effect. This was because there was only one way to prevent the 1.5°C limit from being breached and that was for global emissions to not exceed the remaining carbon budget, which should be shared fairly between States.

331. The scope of the respondent State's obligation to protect under Articles 2 and 8 needed to be interpreted in the light of the relevant

international instruments, which manifested an international trend (and international obligations) on the measures that needed to be taken to address the serious and profound risks of climate change. This related, in particular, to the commitments undertaken by the State under the UNFCCC and the Paris Agreement, as well as the 2021 Glasgow Climate Pact which had confirmed 1.5°C as the primary global temperature rise ceiling.

332. The prevention principle and the precautionary principle were important sources in determining the scope of the obligation to protect through harmonious interpretation of the Convention (citing Article 3 § 3 of the UNFCCC and the Draft Articles on Prevention of Transboundary Harm[176]). The requirements of "prevention" and "precaution" covered the full range of preventive measures, whether taken in the context of scientific uncertainty or not. In its case-law, the Court had also referred to the precautionary principle (citing *Tătar*, cited above, §§ 109-20).

333. Further important sources for determining the scope of the obligation to protect through harmonious interpretation of the Convention were evolving norms of national and international law and the consensus emerging from specialised international instruments and from the practice of States. Over the past decade, a wide range of judicial, quasi-judicial and other institutions at the national, regional and international level had recognised the significant impact that climate change was already having, and would have in future, on the enjoyment of a wide range of human rights, including the rights to life and health. In this respect, the UN General Assembly Resolution 76/300 was to be seen as a major and recent development at the international level which explicitly recognised "the right to a clean, healthy and sustainable environment as a human right". All the Contracting States had voted in favour of this Resolution. The common ground could also be seen in the European Climate Law[177], which contained the agreement as to the minimum emissions reductions that had to be made and which was far more ambitious than the reductions envisaged by Switzerland.

334. As scientific developments had shown, there was now no doubt as to the catastrophic implications of climate change and the real urgency of taking the necessary measures to address it. This had been recognised in the UNFCCC. However, since its adoption, the urgency had increased significantly, as recognised in the need for and adoption of the Paris Agreement. The scientific consensus now was that there remained very little time, if any, to prevent catastrophic temperature increases. Accordingly, in the applicants' view, in construing and applying Convention rights, the Court had to have regard to this scientific consensus: that climate change had existential implications for life on Earth, that there was a real risk of exceeding critical further thresholds known as "tipping points", and that

[176] International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, 2001.
[177] Regulation (EU) 2021/1119, cited above.

significant climate change mitigation measures had to be taken as a matter of extreme urgency to avoid the most catastrophic impacts, even if all impacts could no longer be avoided.

335. Although the applicants could agree that adaptation was also crucial, it was not an answer to what Switzerland should have done to mitigate climate change. Even with adaptation measures, there would be increases in heat-related mortality overall, and with increasing temperatures, the potential for adaptation was increasingly limited.[178]

336. It was widely recognised internationally that averting climate change was an inherent part of the obligation on States to protect human rights.[179] This had also been recognised at the national level by the domestic courts. Were the Court to decide that those domestic courts had been wrong in their analysis that the failure of States and corporate entities to take sufficient measures to mitigate climate change engaged (and indeed on the facts of those cases, violated) Articles 2 and 8 of the Convention, that would amount to a significant setback in tackling climate change. The risks associated with such a setback could not be adequately averted by a possible reliance by the Court on the fact that under Article 53 of the Convention, domestic courts were entitled to go beyond what was required by the Convention.

2. The Government

(a) Preliminary remarks

337. The Government pointed out that global warming was one of the most important challenges for humanity. It had already created effects in different regions of the world and would certainly be felt even more in the future. There was therefore urgency to put in place, and effectively apply, a series of measures to tackle climate change and to limit its effects to the maximum possible extent. Only collective action by the States, combined with the individual effort of citizens, could provide a durable solution to the effects of global warming. Switzerland, as an Alpine State particularly affected by climate change, had already recognised the problem of global warming and had taken various measures to address it. However, it was important to note that globally Switzerland's contribution to GHG emissions was only some 0.1%.

338. While the Government accepted that in democratic societies the public legitimately sought to put pressure on the authorities to address climate change, they were of the view that the system of individual application under the Convention was not the appropriate means to do that given, in particular, the principle of subsidiarity. The democratic institutions in the political

[178] Citing AR6 WGII (cited above); study Rupert Stuart-Smith, Ana Vicedo-Cabrera, Sihan Li et al., "Quantifying heat-related mortality attributable to human-induced climate change" (2023).
[179] Citing HRC, *Daniel Billy et al. v. Australia*, cited above.

system of Switzerland provided sufficient and appropriate means to address concerns relating to climate change, and a "judicialisation" of the matter at the international level would only create tension from the perspective of the principle of subsidiarity and the separation of powers. In any event, the Court could not act as a supreme court for the environment, given, in particular, the evidentiary and scientific complexity of the matter. In the present case the Court could examine the facts relating to climate change only up to 5 May 2020, which was the date of the final domestic court decision in the applicants' case, since the period after that date had not been examined by the domestic courts.

339. Moreover, the present case could only be relevant in so far as Articles 6 and 13 were concerned in relation to a complaint that the domestic courts had not examined the merits of the applicants' complaint (owing to their failure to meet the admissibility requirements). However, as regards Articles 2 and 8 of the Convention the Court could not act as a first-instance court concerning climate-change issues.

(b) Victim status

(i) The applicant association

340. The Government noted that in the present case the domestic courts had left open the question whether the applicant association had victim status. However, it was clear that nothing prevented the applicant association from exercising its activities in the realisation of the objectives for which it had been established.

341. They further stressed that since the Convention did not recognise the possibility of an *actio popularis* complaint, associations could not have victim status unless they were directly affected by the impugned measure. Moreover, some Convention rights could not, by definition, be exercised by associations. In the Government's view, the applicant association could not claim to be the victim of a violation of Articles 2 and 8 as it could not rely on the right to life or the right to respect for private and family life.

(ii) Applicants nos. 2-5

342. The Government accepted that heatwaves (temperatures above 30°C for several days and not falling below 20°C at night) could pose a health risk and could even be fatal for older persons or those suffering from (chronic) illnesses, pregnant women or young children. However, studies had found that not all deaths caused by heat were linked to global warming. While applicants nos. 2-5 belonged to one of the categories at risk from heatwaves, the exact age of the person concerned was only one factor, which made it impossible to take all older persons as a single category at particular risk. It would not appear that women were at a higher risk compared to men of the same age. In any event, it was not possible to establish the victim status of an

applicant solely on the grounds that he or she belonged to a vulnerable group. In the present case, the applicants had failed to demonstrate the existence of a sufficient link between the harm they had allegedly suffered (or would suffer in the future) and the alleged omissions on the part of the State. Their complaint was essentially of an *actio popularis* nature.

343. As regards the individual circumstances of applicants nos. 2-5, the Government considered that the impugned effects they had suffered had not been sufficiently specific to them, nor of a sufficient intensity for them to be accorded direct victim status under the Convention. Thus, for instance, the adaptation to heatwaves they needed to make were a common feature during heatwaves which affected the rest of the population as well, and it had not been sufficiently demonstrated that the health issues from which the applicants suffered were linked to the alleged omissions and actions of the State. Moreover, the applicants' different health issues had either not been solely related to heatwaves or their complaints in that respect had been vague.

344. As regards the applicants' status as potential victims of a violation of Articles 2 and 8, the IPCC work had demonstrated that a real risk of them seeing their rights under Articles 2 and 8 of the Convention violated in the near future could not be established. Acknowledging potential risks for the future was uncertain and raised the question whether the applicants, who were women already over the age of 80, would themselves be individually affected by the effects invoked when global warming reached 1.5°C in 2040 in line with the relevant predictions. The further away the date damage would occur was, the more uncertain it was that it would occur and what the impact on the persons concerned would be.

345. In view of these considerations, the Government considered that the applicants were neither direct nor potential victims under Articles 2 and 8 of the Convention.

(c) Applicability of the relevant Convention provisions

346. The Government maintained that the applicants had not established a causal link between the alleged omissions of Switzerland and the interferences with their Articles 2 and 8 rights. Global warming was a global phenomenon and only resolute action by all States, combined with changes in behaviour on the part of private actors and all citizens, could make it possible to find lasting solutions to this immense challenge. GHG emissions were caused by the community of States and different States emitted different GHG emissions. Given Switzerland's current low GHG intensity, the omissions imputed to Switzerland were not of such a nature as to cause, on their own, the suffering claimed by the applicants and to have serious consequences for their lives and private and family life. There was therefore not a sufficient link between polluting emissions and the respondent State to raise the question of its positive obligations under Articles 2 and 8 of the Convention.

(i) Article 2 of the Convention

347. As regards more specifically Article 2, the Government argued that although the reality of the dangers linked to global warming was obvious, the applicants had failed to demonstrate the existence of an "imminent" risk to their lives, necessary to trigger the applicability of that provision. In addition, the gravity of the adverse effects of global warming was not such as to reach the necessary intensity for Article 2 to come into play.

(ii) Article 8 of the Convention

348. With respect to Article 8, having regard to the fact that the Court had recognised that serious damage to the environment could affect the well-being of a person and deprive him or her of the peaceful enjoyment of his or her home in such a way as to harm his or her private and family life, the Government could not completely exclude that this provision might apply in the context of climate change. Indeed, it was well known that the acceleration of global warming was an extremely worrying phenomenon for humanity and that it resulted from CO_2 emissions of human origin. Global warming was undoubtedly likely to impact the quality of life of individuals, even if their health was not seriously endangered.

349. However, global warming had not reached the necessary level to create a tangible effect on the private and family life of applicants nos. 2-5, including on their mental well-being. The applicants had not argued that GHG emissions were directly harmful to their health. They had rather argued that these emissions caused global warming and heatwaves which would be harmful to their health. However, the applicants were not constantly exposed to such effects and thus affected in their daily lives. Moreover, there were simple measures of prevention that could be taken in order to reduce the mortality risk during heatwaves.

350. In these circumstances, the Government expressed doubts as to the applicability of Article 8 but considered that this question could be left open given their arguments on the merits of this complaint.

(d) Merits

351. The Government argued that in a technical and complex area such as climate change, the State needed to have a wide margin of appreciation and the Court's scrutiny should be limited to verifying that there had not been a manifest error in the assessment by the State. As for the factors to be taken into account in this context, the Government stressed that global warming posed unprecedented questions and challenges of a high degree of complexity. The problem also included difficult social and technical issues. Its treatment required the study of scientific data and a risk assessment. The choice of the best means to combat global warming was delicate and should take into account many different, even competing, interests. Measures to

protect the climate could also restrict fundamental rights and individual freedoms. It was therefore necessary to find the most appropriate solutions after balancing all the interests at stake. Operational choices required setting priorities, including in the allocation of resources. In accordance with the principle of subsidiarity, the definition and choice of the measures to be taken, the range of which was wide, fell within the competence of national governments and parliaments as well as, in the case of Switzerland, within a system of direct democracy and choice of the people. This all spoke in favour of according a wide margin of appreciation to the State in the present case.

352. As regards the principle of harmonious interpretation of the Convention, the Government were of the view that it could not be used to fill an alleged gap in the international legal framework in relation to climate change and – as the applicants in reality wanted – to circumvent the mechanism established under the Paris Agreement by seeking to establish an international judicial control mechanism to review the measures to limit GHG emissions. Indeed, when negotiating the Paris Agreement, the parties had decided not to create a binding mechanism of control of States' commitments. Thus, the applicants could not seek for such a mechanism to be established under the Convention, particularly since not all the parties to the Paris Agreement were parties to the Convention, which risked creating inequality between them should issues regulated by the Paris Agreement be subject to judicial control under the Convention. It followed that the issues of climate change would be better addressed under international instruments other than the Convention.

353. However, if the Court considered that it should take some international instruments on climate change into account, all these instruments were the result of negotiations between sovereign States and provided for a collective objective and individual obligations, leaving various aspects of the matter to the discretion of the States. This was, in particular, the case for the UNFCCC and the Paris Agreement.

354. The Draft Articles on Prevention of Transboundary Harm were not of direct relevance for the present case given that it did not concern transboundary harm. Similarly, the European Climate Law was not relevant as Switzerland was not a European Union member State and, in any event, that document post-dated the domestic courts' decisions. As regards the developments under UN General Assembly Resolution 76/300, the Government stressed that this was not a legally binding document. The same was the case for Recommendation CM/Rec(2022)20 (cited above) and the current work being carried out by the Council of Europe in the field of climate change.

355. In this context, noting that the Convention did not guarantee the right to a healthy environment, the living-instrument doctrine did not allow the Convention to be interpreted in a way that undermined the basic principles of the system, such as the principle of subsidiarity. The living-instrument

doctrine could not be invoked to justify a radical change in the Court's case-law which would disregard the situation prevailing in the High Contracting Parties. It was in this light that the evolutive interpretation of the fundamental rights at the national level in the field of climate change (notably in the Netherlands, Ireland, France and Germany) should be viewed.

356. As regards the substance of the State's obligations, Switzerland had put in place an adequate legislative and administrative framework aimed at ensuring a reduction of GHG emissions and was committed to adapting this framework depending on the evolution of the situation, scientific discoveries and political and legal developments. The series of measures put in place at the domestic level were compatible with the objective of the Paris Agreement.

357. The Government further explained that the various actions taken at the domestic level demonstrated the desire to be within the range indicated by the IPCC to contribute to stabilisation of global warming at 1.5°C. The adoption of the net-zero emissions target by 2050 would be used as the starting-point for the development of a long-term climate strategy. The fact that the new CO_2 Act had been rejected in a referendum did not mean that Switzerland was not committed to tackling climate change or that its NDC had changed. In fact, citizens had not rejected the idea of the necessity of combating global warming but rather the proposed means to do so. Moreover, the Federal Council had envisaged a series of measures aimed at finding other solutions. In any event, it was within the State's margin of appreciation to find the best means to address climate change and Switzerland and its population were best placed to find the appropriate solutions. Since Switzerland had fulfilled, and had undertaken to fulfil, fully its commitments under the Paris Agreement, it had not exceeded and would not exceed its margin of appreciation.

358. The Government also argued that Switzerland had met its international objective under the Kyoto Protocol (to reduce GHG emissions between 2013 and 2020 by an average of 15.8% compared to 1990) by, in particular, reducing its emissions by an average of 11%. Moreover, at the national level, the objective set out in the existing CO_2 Act (20% by 2020 compared to 1990) had only been negligibly missed (19% GHG reduction). In this connection, however, it was important to bear in mind that the costs of reducing GHG emissions in Switzerland were high as the only sectors where reductions could be made were the housing and transport sectors, which required longer periods of conversion.

359. The Government were of the view that the assessments relating to the Swiss mitigation measures on which the applicants had relied – notably by the CAT, Climate Analytics and Rajamani et al. (2021) (see paragraph 325 above) – had been based on subjective hypotheses and could not be taken as suggesting that the pathway set by the State could not be achieved. In particular, the CAT's classification of countries into categories was debatable, and the methodology unclear. The CAT itself had acknowledged

that there was no single, agreed framework for what constituted a fair contribution to global efforts. And some studies used other methodologies. As regards Climate Analytics, its analysis did not propose a statistical range in their projections and the modelling was practically linear, with a starting-point in 2020 and an end point in 2030. It was not clear how Climate Analytics had accurately calculated a modelled pathway for 1.5°C warming. Climate Analytics had analysed the rejected amendments to the CO_2 Act, however, there was a new law that would be subject to a popular vote in 2023. Climate Analytics had not taken into account bilateral agreements into which Switzerland had entered with other countries concerning mitigation measures and had suggested reductions in GHG emissions which would have put a disproportionate strain on the domestic system. For its part, the study of Rajamani et al. (2021) had been based on considerations of various principles of international environmental law and was therefore partially subjective and also suggested measures which would have placed a disproportionate strain on the domestic system.

360. In any event, there was no established methodology to determine a country's carbon budget or a country's "fair share".[180] Switzerland had not determined a specific carbon budget, although its national climate policy could be considered as being close to an approach of establishing a carbon budget. Swiss climate policy was based on the relevant internal assessments[181], and through its NDCs Switzerland had determined its carbon reduction targets and was on a clear trajectory to achieving net-zero emissions by 2050. The Swiss NDC reflected its fair share through the principles of: responsibility (having regard to the low global contribution to GHG emissions), capacity to contribute to the resolution of the problem of climate change, and the potential to bear the financial burden of measures to reduce GHG emissions.

361. The adaptation measures were also important in this context, particularly since Switzerland could not prevent global warming through its own efforts alone. Switzerland had put in place various effective adaptation measures. Thus, the mortality rates linked to heat had been much lower in 2018 and 2019 when compared to the period between 2003 and 2015. There had been various initiatives at the cantonal and federal level to raise awareness about the risks posed by global warming and heatwaves.

362. The legislative and decision-making process concerning the development of measures to reduce Switzerland's GHG emissions had been characterised by openness and total transparency. There had also been the systematic inclusion of surveys and scientific studies as well as very broad

[180] Citing, in this context, study L. Bretschger, "Climate Policy and Equity Principles: Fair Burden Sharing in a Dynamic World", Center of Economic Research at ETH Zurich, Policy Brief 12/16, March 2012.

[181] Citing an internal document (available to the Court) "Klimawandel und das Pariser Abkommen: Welcher NDC der Schweiz ist 'fair und ambitiös'?" (2020).

participation of all interested stakeholders. A referendum on the matter had also been organised. The system of direct democracy in Switzerland was not a threat to minorities but rather a means of their integration and protection.

363. The above-noted efforts at the domestic level had been in line with the principles set out in the Aarhus Convention, although it had only later come into force as regards Switzerland (1 June 2014) and did not provide for such details as the necessity to have scientific studies when engaging public participation. Public participation and information had also been ensured by other means, notably through the Consultative Body on Climate Change (*Organe consultatif sur le changement climatique*) and the National Centre for Climate Services, as well as on the basis of the principle of transparency in the work of the administration.

364. In so far as the applicants relied on the principle of precaution, this principle had not been established as an uncontroversial rule of international law and had in fact been relied upon by the Court only in a rather specific context in the *Tătar* case (cited above). While the Government accepted that the precautionary principle could shed some light on the positive obligation of States under Articles 2 and 8 of the Convention, it considered that this principle was too vague to properly guide the decision-making process. In any event, Switzerland had never relied on scientific uncertainty in order to delay the adoption of measures in the field of climate change. Similarly to the principle of precaution, the principle of intergenerational solidarity had not been established as a rule of international law and was, in any event, irrelevant in the present case.

365. In sum, the Government argued that Switzerland had complied with its obligations under Articles 2 and 8 of the Convention and that the applicants' complaints should be declared inadmissible as manifestly ill-founded.

B. The third-party interveners

1. Intervening Governments

(a) The Government of Austria

366. The Government of Austria considered it important to clarify the nature of the Paris Agreement. They stressed that only some provisions of the Agreement were legally binding (Articles 2-4) while others were recommendations. The Paris Agreement provided that each State could autonomously define its intent to reduce emissions as regards quantity and means, on the basis of the respective national circumstances (the concept of "self-differentiation"). Moreover, the obligations under Articles 2 to 4 of the Agreement were obligations of conduct, and not of result. The Agreement did not provide for legal sanctions for non-achievement of the reduction goals or for non-compliance with the NDCs. In the intervening Government's view,

the present application represented an attempt to make the Paris Agreement justiciable and, *de facto*, to introduce the possibility for an application under the Convention in relation to the Agreement, which would not be in line with the very nature and purpose either of the Convention mechanism or the Paris Agreement. There was no room to establish the right to a healthy environment under the Convention and, in any event, it was not possible to do so under the Paris Agreement. Moreover, as to any relevance of the precautionary principle, it was not a universal principle under customary international law.

(b) The Government of Ireland

367. The Government of Ireland recognised the severity of the threat facing the global community as a result of climate change and the imperative for urgent action to address that threat. However, they considered that the response should be an effective global response and that the Court could not engage in a form of law-making and regulation which would bypass the role of the democratic process and institutions in the response to climate change. The intervening Government further argued that any notion of jurisdiction in this context should be territorial. They also considered that an association could not claim victim status under Articles 2 and 8 by reason of a risk to life and health, and that the age factor could not be sufficient to regard a group of applicants as victims in relation to climate change. Furthermore, the intervening Government pointed to the high threshold necessary for Articles 2 and 8 to apply in this context. They also submitted that, in accordance with the principle of subsidiarity and the wide margin of appreciation, the Court's main role in environmental claims was the procedural assessment of the decision-making process and only in "exceptional circumstances" should the Court proceed to a substantive assessment of environmental policy.

368. While the intervening Government accepted that the Convention should be interpreted in harmony with other norms of international law, they suggested that the current state of international law under the UNFCCC and the Paris Agreement should serve to inform the limits of the scope of obligation arising under the Convention. The Convention should be interpreted in line with, and in the light of, these specialised international instruments which were the more pertinent reference points in the field. The interpretation adopted by one or more domestic courts – particularly where it went beyond the settled case-law of this Court – could not be regarded as setting the standard under the Convention.

369. In sum, the intervening Government were of the view that the present application sought to create a far-reaching expansion of the Court's case-law on the admissibility and merits of Articles 2 and 8, that it sought to bypass the democratic process through which climate action should take place if it was to be legitimate and effective and that the application was inconsistent

with the dedicated international framework governing climate change to which the Contracting Parties were committed.

(c) The Government of Italy

370. The Government of Italy considered it important to stress that the Court's jurisdiction was primarily territorial. In their view, the "special" circumstances of a given case did not, as such, imply extraterritorial jurisdiction, nor was the "living instrument" principle of interpretation applicable to Article 1 of the Convention. Furthermore, in order to claim victim status as regards environmental damage and risk, the applicants would have to show that they were directly affected, and mere conjecture of a violation would not suffice. In order for Article 2 to apply, life should be put at risk, and from the perspective of Article 8 the adverse effects of environmental pollution should attain a certain minimum level of seriousness. In any event, in difficult and technical spheres, the State enjoyed a wide margin of appreciation.

(d) The Government of Latvia

371. The Government of Latvia were of the view that the international consensus on the need to tackle climate change created a very wide margin of appreciation for the States in the determination of what the appropriate balance of the competing interests should be. The choice of means and terms within which they ought to be implemented belonged to the State concerned. The principle of subsidiarity underpinning the Convention system was of particular importance, especially in the context of a possible application of Article 46 of the Convention. In the present context the Court's jurisdiction should be territorial and any developments at the international level should not be interpreted as extending that jurisdiction. While the intervening Government agreed that the relevant international instruments on climate change should be taken into account by the Court in determining the scope of States' obligations under the Convention, the Court could not establish an autonomous right for individuals to request that States adopt specific actions and measures or policies to tackle climate change, as such a right did not exist in the international instruments in question.

(e) The Government of Norway

372. The Government of Norway stressed that Norway was deeply committed to reducing national emissions and contributing to the global long-term target set out in Article 2 of the Paris Agreement. However, establishing climate and energy policy should be predominantly a political and democratic exercise. The Convention was not an instrument for the protection of collective interests, and the Court was not a supervisor of society-wide policy decisions. There was no legal basis for the expansion of

the territorial, personal, and material scope of the obligations under the Convention in the present context as that would run counter to the principle of subsidiarity and the State's margin of appreciation. In particular, there was no basis to extend the notion of territorial jurisdiction in the present climate context, or to call into question the Court's rejection of the "cause and effect" notion of jurisdiction. The various international instruments on climate change had no bearing on the interpretation of the Convention. They rather reflected the fact that the sovereign States retained their competence in the field of climate change. This was also evidenced by the fact that the Council of Europe member States were actually negotiating to decide whether they wished to introduce enforceable rights pertaining directly to the environment and climate. In any event, at present, the right to a healthy environment was not recognised as a rule of customary international law. When adopting UN General Assembly Resolution 76/300, Norway had made it clear that that Resolution had provided for a political recognition and that it had not had any legal effect.

(f) The Government of Portugal

373. The Government of Portugal recognised the urgency of climate change but stressed that it was for the States to take the initiative and put in place the relevant strategies to tackle climate change. With respect to the Convention requirements for establishing victim status, the intervening Government stressed the necessity for the applicants to provide evidence to show that they were directly affected by the measure complained of in the context of climate change. Thus, as regards the applicants belonging to a particular age group, they would need to demonstrate that: (a) there was an actual inaction on the part of the authorities, (b) such an inaction or omission actually affected differently distinct groups or segments of the population, and (c) this inaction amounted to a failure to afford effective protection against the effects of climate change. Moreover, as regards the applicability of Articles 2 and 8 of the Convention in the context of the environment, the measure complained of should reach a minimum threshold of severity. There should therefore be a real and imminent risk to life or health, or a direct and serious effect on an applicant's right to respect for his or her private and family life or home. The intervening Government also stressed that the Paris Agreement essentially established procedural obligations and the substantive obligation was only for the States to take appropriate measures to achieve the aims pursued. However, the Paris Agreement established no sanctioning or enforcement mechanism, and it was therefore questionable whether the Court had jurisdiction or competence to intervene in this context.

(g) The Government of Romania

374. The Government of Romania submitted that climate change represented a global challenge that required international reaction. It was by definition a transboundary challenge, and coordinated action – particularly at the EU level – was needed to effectively supplement and reinforce national policies. As regards the applicability of the Convention in relation to complaints concerning climate change, applicants needed to demonstrate the existence of a direct and immediate link between the effect on their rights and the impugned situation. Moreover, the violation complained of needed to reach a certain level of severity. In any event, the Convention system did not recognise the possibility of lodging *actio popularis* complaints and the Convention could not be expanded to cover the UNFCCC and the Paris Agreement. The intervening Government also considered it important that the Court should take into account the fact that national jurisdictions had often dealt with cases pertaining to climate change, in accordance with national and international standards related to the domain of environmental law. However, the Court should be mindful of its subsidiary role and the States' margin of appreciation. In the intervening Government's view, it was highly debatable whether a State or any other entity could be held directly responsible today – individually and separately from other entities – for the cumulative consequences of a process which had started more than a hundred years ago.

(h) The Government of Slovakia

375. The Government of Slovakia agreed that there was a real urgency to the need to implement a series of effective measures to combat global warming and to minimise its effects. In their view, nowadays it was commonly accepted that human rights and the environment were interdependent even to the point that it was suggested that environmental rights belonged to a "third generation of human rights". However, the Convention rights were not specifically designed to provide for a general protection of the environment as such. Given the global nature of the threat posed by climate change and its effects, it was not possible to interpret the concept of victim status under Article 34 of the Convention so as to cover every potentially vulnerable group. It would therefore be inappropriate, and could lead to an inaccurate outcome, if the Court were to try to deduce from statistical data the existence of a particular risk to a group or if it were to otherwise generalise the effects of climate change, such as global warming. The States should have a wide margin of appreciation when addressing the issues relating to climate change.

2. United Nations High Commissioner for Human Rights

376. The intervener submitted that according to the available data, Switzerland had not undertaken the efforts needed to meet the GHG

emissions reduction target for 2020. Moreover, its emission reduction target for 2030 was not compatible with climate change mitigation objectives set by the international community. With regard to victim status in climate-change cases, the intervener pointed out that international and national case-law developments suggested that the alleged victim's risk of being affected needed to be more than a theoretical possibility. However, the fact that a large segment of the population was affected by climate change did not preclude the applicants from being individually affected. The criterion of imminent harm should also be addressed holistically, taking into account the particular characteristic of slower onset impacts such as those often posed by climate change in which evolving risks could become irreparable given the extended timelines needed for effective remediation. The legal assessment of victim status had to take into account best available science. Moreover, the obligations associated with the adverse impacts of climate change required the existence of a remedial role of courts giving effect to such legal obligations.

377. The intervener also noted that the UN Human Rights Committee had "made clear that the duty to protect life also [implied] that states parties should take appropriate measures to address the general conditions in society that [could] give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity" including environmental degradation.[182] The intervener further referred to the studies finding that older persons', and in particular older women's, right to life and enjoyment of health were disproportionately affected by the adverse impacts of climate change. The enjoyment of health fell under the right to respect for private and family life and home which was in turn violated by the degradation of the environment. The States' obligations under Articles 2 and 8 should be read in the light of the precautionary principle, the principle of intergenerational equity and the duty of international cooperation.

3. United Nations Special Rapporteurs on toxics and human rights; on human rights and the environment; and the Independent Expert on the enjoyment of all human rights by older persons

378. The interveners submitted that the world faced a climate crisis. The climate emergency was causing widespread adverse impacts already and posed an existential threat to the effective enjoyment of human rights in the future. In climate cases, the interests of the individual and the community were not competing. Both the individual and the community shared a common interest in a safe climate system. This interest was common to all Convention Parties, as well as to the international community as a whole. There was therefore no room for the Court to balance between the competing

[182] CCPR, General comment No. 36 on article 6: right to life, CCPR/C/GC/36, 2019, paragraph 26.

interests of the individual and the community. When assessing whether a State was adequately carrying out its positive protective obligations to avert climate risks, the Court should be guided by scientific progress which could aid it to scrutinise the sufficiency of governmental action in the face of the catastrophic risks posed by climate change. The interveners noted that the best available science had reaffirmed the reality of anthropogenic climate change, including in respect of extreme weather events, and the necessity for an urgent and dramatic reduction of GHG emissions. The interveners further submitted that climate change had an effect on the full enjoyment of human rights of older persons. Ageing and climate change also had differential impacts when it came to gender, and older women faced a particular risk of vulnerability to climate impacts, including in relation to a greater likelihood of facing chronic diseases and air pollution harms, and had higher rates of mortality from extreme heat events.

379. Noting the legal developments at the international and national levels, the interveners stressed that the question was no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights. There was a need for a dialogue between human rights and environmental norms. To the extent that international environmental law contained customary and conventional norms and general principles which imposed substantive obligations – such as in relation to the principles of precaution and prevention of harm; the duty to conduct an environmental impact assessment; rights of access to information, participation and justice; and intergenerational equity – that enabled their use by human rights bodies. In this context, the Court's examination of the climate cases should, in particular, focus on the following: the precautionary principle (providing for a normative basis for ambitious climate action by governments, requiring them to act with determination to reduce their GHG emissions); the principle of prevention of environmental harm (duty to prevent significant transboundary environmental harm); extraterritorial human rights obligations; and the principle of highest possible ambition (premised on due-diligence requirements) set out in the Paris Agreement.

4. International Commission of Jurists (ICJ) and the ICJ Swiss Section (ICJ-CH)

380. The interveners pointed out that the fact that an applicant's climate-change action would contribute to the general public interest did not qualify that complaint as an *actio popularis*. The Court's case-law allowed for the possibility of recognising the victim status of applicants who were exposed to the broader effects of pollution, and it did not therefore require an element of immediate proximity. Moreover, it was critical to recognise the possibility for associations to bring climate-change complaints before the Court. That was mandated by the fact that in a demanding area such as climate change (in terms of costs and scientific evidence), associations were uniquely

positioned to bring such complaints to the Court. In any event, the interveners argued that in climate-related cases, which addressed the issues considered under the Paris Agreement as "a common concern of humankind", the assessment of victim status required documented scientific evidence and was thus closely linked to the substance of the applicants' complaints.

381. The interveners further submitted that it was critical to ensure that applicants had access to courts in matters concerning climate change. As regards Articles 2 and 8, scientific evidence confirmed the existence of a particular risk posed by climate change on, *inter alia*, older persons and women. The scale, intensity and imminence of the environmental damage posed by anthropogenic climate change were such as to engage Articles 2 and 8. Under those provisions, States had a positive obligation to take the necessary mitigation and adaptation measures. The State's positive obligations should be interpreted in the light of the goals established under the Paris Agreement and the precautionary principle under the UNFCCC and the Rio Declaration. In this regard, the State's margin of appreciation should be constrained by their international environmental-law undertakings, which required the implementation of NDCs and long-term strategies for reducing GHG emissions.

5. European Network of National Human Rights Institutions (ENNHRI)

382. The intervener submitted that since it was often difficult to quantify the negative effects of environmental pollution in each individual case, applicants should not need to prove a direct causal link between an environmental issue and its effect on them. Causality could be proved on the basis of statistical evidence. Moreover, the Court could take other materials into account, such as studies in scientific journals, and the reports of the IPCC should carry particular weight. The IPCC and other scientific studies had found that climate change induced by GHG emissions had already caused a significant increase in heatwave frequency, intensity and duration in Europe, and this was projected to worsen if warming exceeded 1.5°C, particularly in central European cities. Several heatwaves in Europe over the past twenty years would have been extremely unlikely to occur without human-induced climate change and extreme temperatures were likely to become commonplace by the 2040s. The negative impacts of heatwaves on mortality and morbidity were well documented and were projected to worsen with every incremental increase in warming. In Switzerland, between 1991 and 2018, 31.3% of heat-related deaths were attributable to human-induced climate change, with older women and infants being particularly affected. Older persons, especially those living in urban areas, were particularly vulnerable to heatwaves owing to both social and physiological factors. Women over 75 had the highest risk of heat-related health impacts in Switzerland.

383. The fact that climate change was caused by cumulative, global emissions did not absolve individual States from responsibility for the conduct attributable to them. Since GHG emissions caused territorial harm no matter where in the world they were combusted, a State's jurisdiction for the purposes of Article 1 of the Convention should encompass all emissions under the State's effective control. Moreover, as regards victim status, the above-noted scientific data demonstrated the existence of an immediate and direct impact of climate change on individuals and it also showed the existence of a real, rather than hypothetical, risk of future adverse impacts of climate change. Older women were a class of people particularly at risk from climate-attributed heat. In this context, as recognised in the Aarhus Convention, the environmental associations played an essential role. When examining their victim status, it was important to bear in mind that individuals might be prevented from lodging an application with the Court and effective protection of individuals' long-term interest in living in a safe environment might depend on environmental associations being able to bring complaints to protect against irreversible climate harm while there was still time to prevent it.

384. As regards the applicability of Article 2 of the Convention, GHG-induced climate change was inherently dangerous and thus the right to life might be at stake. In this context, when interpreting the immediacy of the risk to life, flexibility was required. It should also be taken into account that dangerous climate change had already posed a serious, real, and immediate risk to life, particularly for vulnerable individuals, and that every incremental increase in emissions led to further warming, with a certain and exponential increase in heat mortality. Similar considerations should be taken into account as regards the assessment of the applicability of Article 8, which applied not only where there was direct and immediate or serious and substantial risks of pollution or nuisance, but also to exposure of future environmental risks with a sufficiently close link to the enjoyment of home, private or family life.

385. The Convention was relevant to climate harm because it had to be interpreted in the light of present-day conditions. In this context, the Court had not been asked to break new ground but simply to confirm the jurisprudential developments in Europe (notably in the Netherlands and Germany) and elsewhere concerning climate change. Furthermore, scrutiny of emission cuts would strengthen democracy and that would be consistent with the requirements of international law. In the intervener's view, there would be a violation of the Convention in three instances: first, if the State adopted adaptation measures without mitigation; secondly, if the State pursued policies that undermined efforts to limit the warming to 1.5°C; and, thirdly, if the State failed to substantiate that its emission reduction measures were compatible with its fair share of the remaining carbon budget to limit the warming to 1.5°C.

6. The coordinated submission of the International Network for Economic, Social and Cultural Rights (ESCR-Net)

386. The interveners submitted that various international bodies had found that environmental degradation and climate change interfered with the enjoyment of the right to health and the right to life. In this context, the human rights mechanisms played a role in protecting human rights by ensuring that States avoid taking measures that could accelerate climate change, and that they dedicate the maximum available resources to the adoption of measures that could mitigate climate change. There had been national and regional judicial findings of violations of the right to a healthy environment and the right to life by the States for failing to sufficiently address climate change and reduce emissions. Older persons were particularly vulnerable in relation to climate change. There was therefore a need for States to take positive measures to ensure that this vulnerability was addressed. The States had a duty to take measures within their territories to prevent the effects of a foreseeable harm of climate change abroad.

7. The Human Rights Centre of Ghent University

387. The intervener submitted that the negative impact of climate change on human lives was increasingly recognised in international law as a human rights issue. Several international judicial and quasi-judicial bodies had outlined States' human rights obligations in this regard. Moreover, the domestic courts were increasingly recognising the links between climate change and human rights. Indeed, the past few years had seen a surge in complaints concerning climate change introduced before national courts and several pending cases had made explicit reference to the rights enshrined in the Convention. In this context, as regards the issue of causality, the domestic courts (in the Netherlands, Germany and Belgium) had held that State responsibility should be established not on the basis of causality, but on the basis of the principle of attribution, which meant that individual States were responsible, *pro rata*, for their own contribution to climate change. In the domestic litigation, the precautionary principle had also been very important when discussing the States' positive obligations, as well as the relevant climate science and the States' corresponding duties assumed under international climate-change treaties, in particular the Paris Agreement. This approach should also inform the Court's examination of the climate cases.

388. The recognition in the Court's case-law of the potentially adverse impact on human rights of environmental disasters and degradation (of both anthropogenic and natural causes) should, *a priori*, be expanded to climate change because climate change represented a longer-lasting, more forceful and potentially graver harm than more isolated, local and situational environmental damages. Similarly, the Court's existing vulnerability jurisprudence, including the rights of older people, should be acknowledged

and applied in the climate-change context. The interveners also suggested that recognising applicants as belonging to a particularly vulnerable group should lead to a narrow margin of appreciation for the States.

389. The issue of evidence was the key aspect of the climate cases. Attribution science had demonstrated more precisely the causal relationship between GHG emissions and climaterelated events. The interveners also invited the Court to recognise the specific evidentiary difficulties that applicants faced in climate-change cases and that Governments were better placed to control much of the domestic production of evidence. Thus, the burden of proof should not rest solely on the applicants. Where Governments argued that their environmental policies were sufficient to protect individuals against the adverse effects of climate change, they should be required to substantiate these assertions. Moreover, the precautionary principle could further guide the Court in setting the appropriate standard of proof.

8. Professors Evelyne Schmid and Véronique Boillet (University of Lausanne)

390. The interveners pointed out that it was important to differentiate between, on the one hand, the protective positive obligation (which addressed punctual specific threats) and, on the other hand, the positive obligation to provide a legislative and administrative framework ensuring the protection of the Convention rights (which addressed danger that was not necessarily punctual, specific and emanating from a specific source). In the present climate-change context, there was no doubt as regards the issue of attribution in terms of the responsibility of the State organs for the impugned omissions. However, when interpreting the issue of victim status under Article 34 it would be important to examine, first, the positive obligations under Articles 2 and 8, and then the link between the alleged omissions in this context and the actual applicants. Moreover, the issue of victim status should be examined in the light of the principles of prevention and precaution. In any event, by undertaking the obligations under various international climate-change initiatives, the States admitted to limiting their margin of appreciation regarding climate risks and the implementation of positive obligations under the Convention.

391. As regards the holding of a referendum concerning the issues of climate change, the interveners pointed to the principle under Article 27 of the Vienna Convention on the Law of Treaties[183] according to which a State could not invoke its internal law to justify non-compliance with its international obligations. In any event, a popular initiative could not be considered as a means to put in place the relevant obligations to protect the fundamental rights of applicants.

[183] Vienna Convention on the Law of Treaties, 1969.

9. Professors Sonia I. Seneviratne and Andreas Fischlin (Swiss Federal Institute of Technology Zurich)

392. The interveners submitted that there was a clear scientific consensus that humans had interfered with the climate system and caused global warming. There was also a clear scientific consensus on the role of global warming in the impacts and risks that were caused by climate change, notably for the most vulnerable. Impacts on health associated with increasing human-induced global warming were also well established. Limiting global warming to 1.5°C, as mentioned in the Paris Agreement, offered at present a large reduction of risk compared to higher levels of global warming (2°C or more). However, failing to halt global warming led to additional health risks and impacts for humans, especially for the most vulnerable.

393. On the basis of an analysis of the relevant GHG emissions measurements, the interveners submitted that despite some progress in climate policies made in recent years, Switzerland's contribution to human-induced climate change, including its historical responsibility, were roughly as high as, if not higher than, those of many other European countries. At the same time, Switzerland was long overdue in implementing legislation to reduce CO_2 emissions and other GHG emissions. The scientific evidence made it obvious that Switzerland was currently not contributing sufficiently to limit global warming to 1.5°C. While it was clear that no solely science-based set of criteria could be used to determine precisely and quantitatively what a country's ultimate fair share to limit global warming consisted of, in the case of Switzerland, all criteria pointed in the same direction, namely that Switzerland was obliged to make a bigger contribution than the average of all countries of which many had, for instance, a much lower consumption or historical responsibility. However, Switzerland was actually lagging behind the average of countries in a comparable situation.

10. Global Justice Clinic, Climate Litigation Accelerator and Professor C. Voigt (University of Oslo)

394. The interveners submitted that since 2015 there had been more than eighty human rights-based climate-change cases filed in courts around the world. The recurring issues in these cases were victim status and the substantive human rights obligations of States in the light of their commitments under international climate law. In the interveners' view, older persons could appropriately be considered both direct and potential victims under Article 34 of the Convention in climate cases given the climate impacts on them, notably heat, flooding and other extreme weather events, and disease, which placed them at increased risk of suffering grievous harms, including serious bodily injury and death. Moreover, NGOs could appropriately be considered victims of Convention violations owing to climate change if they could demonstrate that their personal interests had

been directly impacted by the harms alleged to violate the Convention. In any event, the Court should interpret the concept of victim status with some flexibility. The interveners also considered that the mere fact that the challenged act or omission impacted a large swath of the population – or even virtually all of the population – should not stop the Court from recognising the victim status of the particular applicants and assessing the merits of the case.

395. The interveners further submitted that the States' duties under Articles 2 and 8 of the Convention should be interpreted in the light of the provisions and commitments under the Paris Agreement. While this did not mean that the Court should be prescriptive in what the State had to do or what exact type of measures it had to adopt, it would need to determine whether the measures were adopted with due diligence, namely whether they were reasonable and adequate to prevent risk to the enjoyment of human rights from climate change. More specifically, the Court should assess whether the climate measures were at the level of the highest possible ambition and aimed at and effective for achieving rapid and deep reductions of GHG emissions so as to achieve a global net phaseout of GHG emissions around 2050, in line with the Paris Agreement.

11. ClientEarth

396. The intervener submitted that the science of climate change had shown that there were both present and future effects of global temperature increases on human health. Failing to act with sufficient urgency and scale posed grave threats to the health and well-being of current and future generations, with over nine million climate-related deaths per year projected by the end of the century. In this context, adaptation (measures to adapt to climate change and reduce its impacts) formed a vital part of States' climate-change duties. However, adaptation measures could not replace taking adequate mitigation measures (measures to reduce GHG emissions). Only with the required emissions reductions was the scale of required adaptation likely to be manageable.

397. When assessing the adequacy of action by States, the following key conclusions of the international scientific consensus on climate change were to be borne in mind: there was an urgency to reduce emissions to limit warming to 1.5ºC (the IPCC reports showed that the overall trend of global GHG emissions had not yet gone in the right direction, let alone reduced at the necessary rate); there was a likely irreversibility of temperature increases (global warming involved the risk of long-lasting and irreversible impacts); there was a real risk of "tipping points" (natural events that could result in major shifts in the scale and pace of climate change and related impacts) being exceeded and of dramatically worse impacts than under high-confidence projections; and there was a significant "lag" in the geophysical effects of

GHG emissions and in actions to transform human systems and reduce emissions.

398. The intervener also suggested that States were under a duty under international climate-change law to take the mitigation and adaptation measures arising in particular from the UNFCCC and the Paris Agreement. In this context, it would be important to develop the due-diligence standard under the Convention addressing the "highest possible ambition'" principle and the urgency of reducing global emissions. The requirement for State action in this context should include: early action on reducing emissions; credible and effective action based on binding near-term and long-term targets that aligned with a State's highest possible ambition; a "whole-systems" approach that recognised the need for action at all levels of government and in all sectors of the economy; independent expert advisory bodies to allow for effective scrutiny of the adequacy of targets and progress; and transparency regarding government plans and progress to allow for civil society scrutiny with a clear allocation of responsibilities within government to allow for accountability (including legal accountability through recourse to the courts).

12. Our Children's Trust, Oxfam France and Oxfam International and its affiliates (Oxfam)

399. The interveners submitted that the Court should base its decisions on the most up-to-date and best available scientific evidence, which meant evidence that: maximised the quality, objectivity and integrity of information, including statistical information; used multiple peer-reviewed and publicly available data; and clearly documented and communicated risks and uncertainties in the scientific basis for its conclusions. In this connection, the interveners were of the view that the 1.5°C and 2°C temperature targets specified in the Paris Agreement were the result of a political consensus and not scientific reality and were therefore insufficient to protect human rights. The Court should rather focus on the method of Earth's energy imbalance as the scientific metric for determining whether actions to combat climate change were working. In this connection, scientific consensus indicated that to restore the stability of the Earth's climate so as to protect human life and health, States should take the necessary measures to reduce atmospheric concentrations of CO_2 to an equitable and environmentally sustainable level of 350 parts per million (ppm; in 2021 this had been approximately 416 ppm and in 2022 it was expected to be even higher after the measurements were completed). While States had already overshot safe and stable levels of atmospheric CO_2, there remained a narrow window of opportunity to bring the dangerous levels of warming back down to levels that protected human life, health and well-being by the end of the century. However, immediate and ambitious action was required in order to achieve that.

400. In this connection, the interveners submitted that the Court should also act decisively and without delay. In their view, there was a solid evidentiary basis allowing the Court to reach, *inter alia*, the following critical conclusions:

(a) The rights to life and respect for private life, family life and the home under Articles 2 and 8 encompassed the right to a stable climate system that protected human life, health, and well-being;

(b) States' actions to address human-caused climate change should be based on the best available scientific evidence and therefore aligned to restore the Earth's energy balance which called on States to pursue a pathway to reduce atmospheric concentrations from current levels to 350 ppm as rapidly as possible;

(c) States whose laws, policies and commitments were not aligned with achieving the 350 ppm standard should take specific, immediate and adequate measures to phase out emissions of CO_2 and other GHG pollution and remove as much CO_2 from the atmosphere to stabilise the climate system and protect resources upon which human life, health and well-being depended. While the State had a margin of appreciation in designing the means to reach the 350 ppm standard, it had no discretion in revisiting that standard which was based on scientific evidence;

(d) Exceptional circumstances existed which would justify the Court indicating specific measures under Article 46 to guide States as to the relevant actions and pathway timetables in sufficiently specific terms.

401. The interveners also submitted that in its assessment the Court should take into account the fact that there was universal scientific consensus and research which demonstrated that climate change presented a clearly identifiable and present danger to individual life and human health. Moreover, the State authorities had been well aware of the effects of climate change. The interveners considered that it would be particularly important if the Court were to recognise under Article 2 of the Convention the right to a stable climate system which protected human life, health and well-being.

13. Group of academics from the University of Bern (Professors Claus Beisbart, Thomas Frölicher, Martin Grosjean, Karin Ingold, Fortunat Joos, Jörg Künzli, C. Christoph Raible, Thomas Stocker, Ralph Winkler and Judith Wyttenbach, and Doctors Ana M. Vicedo-Cabrera and Charlotte Blattner)

402. The interveners submitted that the Court should reaffirm the existence of the State's positive obligations to secure human rights in the environmental context. The issue of immediate and real risk from adverse climate effects should be viewed against the scientific evidence about the existing risks to older women in Switzerland from human-induced and, specifically, heat-related climate change. The scope of the State's positive obligations depended on the extent to which the risk was susceptible to

mitigation. When determining this extent, due regard should be paid to the legal landscape tasked with regulating such risks, namely the international climate-law regime. The relevant question to assess was whether the State's measures were aimed at and effectively contributed to its fair share of preventing dangerous levels of climate change.

403. As regards Switzerland's compliance with its climate commitments, the interveners argued that the relevant promises had not been met and, in particular, the commitments under the Paris Agreement had still not been incorporated into law. Switzerland's policies stood in stark contrast to scientific assessments of downscaled pathways compatible with the 1.5°C limit, even with a narrow view of ambition and progression. Switzerland had previously had no plan that would effectively contribute to mitigating global warming, and it still had no such plan. The chances that it would meet its ambitions were diminishing because the window of opportunity was closing, at the expense of the protection of especially vulnerable groups. Since the Paris Agreement had been adopted, Switzerland had made no progress on its climate targets and set no binding climate targets. In other words, Switzerland's climate policy had continuously been off track to achieve its already low mitigation targets. These were the considerations that the Court needed to take into account when assessing Switzerland's margin of appreciation and its compliance with the positive obligations under the Convention. In this context, the Court should also be mindful of the importance of access to justice and effective legislative initiative by the authorities.

14. Center for International Environmental Law and Dr Margaretha Wewerinke-Singh

404. The interveners submitted that, in the light of the principle of harmonious interpretation of the Convention, the Court should have regard to the relevant international developments, notably the recognition of the right to a clean, healthy and sustainable environment under UN General Assembly Resolution 76/300, as well as the consensus on the States' duties to avert the threat of climate change under the UNFCCC, the Paris Agreement, and best available science, in particular the IPCC reports. This best available science recognised that current levels of warming were already causing harm and infringing on human rights. Warming of 1.5°C or higher was not safe for most countries and communities. Exceeding 1.5°C even temporarily could unleash further irreversible harm such as excess deaths. The science therefore demonstrated that protecting human rights from further foreseeable climate harm required keeping warming below 1.5°C. The IPCC had shown that the most effective mitigation measures for reducing GHG emissions by 2030 – the period most important for avoiding overshoot of 1.5°C – were replacing fossil fuels with renewable energy and energy efficiency.

405. Citing scientific reports on the subject, including the IPCC Special Report, the interveners submitted that carbon dioxide removal and offset credits derived from extraterritorial activities did not deliver those reductions. The interveners considered that the precautionary principle and the principle of prevention precluded the States from forgoing available and proven measures to immediately and steeply reduce GHG emissions in reliance on speculative technologies such as engineered carbon dioxide removal that increased the likelihood of overshooting 1.5°C. To the extent that the State's climate mitigation plans relied on the purchase of carbon offset credits from conduct outside its territory or CDR technologies, they failed to satisfy the State's duties to respect and ensure the rights to life and private and family life.

15. The Sabin Center for Climate Change Law at Columbia Law School

406. The intervener submitted that the existing case-law from international and national fora demonstrated that the Court's assessment of the existence of victim status might properly be understood as a question of merit. The intervener suggested that where such a question existed courts tended to give applicants the opportunity to prove that an alleged omission by a State in mitigating climate change caused them particularised individual harms. In the intervener's view, the science was clear that climate change had widespread and dramatic negative impacts on the lives and livelihoods of individuals and communities worldwide, and it was absolutely necessary that the international community, and individual nations, drastically and in short order reduced GHG emissions. However, in Europe as elsewhere, there was a gap between what a global carbon budget demanded, the time frames and extent of countries' climate commitments, and countries' implementation of the commitments they had.

407. As regards the States' margin of appreciation, the intervener pointed out that in the comparative context courts had addressed in three different ways the issue of separation of powers relating to climate-change obligations. First, courts had found that governments were given limited deference and that courts should provide judicial review where government action or inaction threatened human rights. Secondly, courts had found that they were authorised to provide judicial review of the legality of government action or inaction, but that governments held a great deal of discretion in establishing ultimate climate targets. Thirdly, courts had found that they could not dictate particular standards or remedies on the issues of the appropriateness of a State's mitigation action (or lack thereof), even where the court might grant certain forms of declaratory relief.

16. Germanwatch, Greenpeace Germany and Scientists for Future

408. The interveners submitted that there might be four different ways to construe an interference by the State with individual rights in the context of climate change: (a) interference by GHG emissions from public services; (b) interference by omission in relation to GHG emissions from private sources; (c) the anticipatory prevention of future interference, which was a concept developed by the German Constitutional Court in its climate change case-law; and (d) interference through allocation of emission rights, which arose where the State allocated GHG emission rights to emitters and thus it should take responsibility for these emissions. The interveners further submitted that there were seven dimensions of causality in the present context: (a) certainty, which arose in relation to the IPCC reports establishing that climate change and its effects were uncontested with highest confidence; (b) individualisation of the effects on the applicant; (c) intensity, which related to the severity of the interference and which should be determined concerning effects on human health and the environment as collective goods; (d) the time element, requiring the interference to be present or imminent or immediate; (e) interdependence with the environment "as such", which, irrespective of whether the Court were to recognise the existence of a right to a healthy environment, related to the fact that its case-law had recognised a link between the Convention rights and the environment as such; (f) attribution to a State, relating to three types of emissions – emissions from the territory of a State impacting on the same territory, emissions from the territory of a State impacting abroad, and external emissions originating in/resulting from human activities in the relevant State; and (g) "drop in the ocean" or shared contributions, whereby any extent of contribution should be considered as being relevant.

409. The interveners considered that there were three criteria which could be applied to determine the level of GHG emission reduction necessary to abide by fundamental rights: (a) fair shares in the global emissions budget, which was to be established by first determining the global budget, and then determining the allocation of budgets to States that could be done either through the model used by the CAT or on the basis of the equal per capita model; (b) modelled emission pathways (which were to be derived from the measures that were consistent with the upper temperature limits) and the model of differing budgets and insufficiency of mere financial compensation in this context; or (c) exploration of the technical, economic and social capabilities, which would correspond to an obligation of the respondent State to do whatever was technically, economically and socially feasible to reduce GHG emissions. The interveners were also of the view that the principles concerning attribution and jurisdiction should be developed and refined to cover emissions caused abroad.

C. The Court's assessment

1. Preliminary points

410. At the outset, the Court notes that climate change is one of the most pressing issues of our times. While the primary cause of climate change arises from the accumulation of GHG in the Earth's atmosphere, the resulting consequences for the environment, and its adverse effects on the living conditions of various human communities and individuals, are complex and multiple. The Court is also aware that the damaging effects of climate change raise an issue of intergenerational burden-sharing (see paragraph 420 below) and impact most heavily on various vulnerable groups in society, who need special care and protection from the authorities

411. The Court, however, can deal with the issues arising from climate change only within the limits of the exercise of its competence under Article 19 of the Convention, which is to ensure the observance of the engagements undertaken by the High Contracting Parties to the Convention and the Protocols thereto. In this regard, the Court is, and must remain, mindful of the fact that to a large extent measures designed to combat climate change and its adverse effects require legislative action both in terms of the policy framework and in various sectoral fields. In a democracy, which is a fundamental feature of the European public order expressed in the Preamble to the Convention together with the principles of subsidiarity and shared responsibility (see, *inter alia*, *United Communist Party of Turkey and Others v. Turkey*, 30 January 1998, § 45, *Reports* 1998-I, and *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022), such action thus necessarily depends on democratic decision-making.

412. Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and the Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements. The legal basis for the Court's intervention is always limited to the Convention, which empowers the Court to also determine the proportionality of general measures adopted by the domestic legislature (see *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 108, ECHR 2013 (extracts)). The relevant legal framework determining the scope of judicial review by domestic courts may be considerably wider and will depend on the nature and legal basis of the claims introduced by litigants.

413. At the same time, the Court must also be mindful of the fact that the widely acknowledged inadequacy of past State action to combat climate change globally entails an aggravation of the risks of its adverse

consequences, and the ensuing threats arising therefrom, for the enjoyment of human rights – threats already recognised by governments worldwide. The current situation therefore involves compelling present-day conditions, confirmed by scientific knowledge, which the Court cannot ignore in its role as a judicial body tasked with the enforcement of human rights. Given the necessarily primary responsibility of the legislative and executive branches and the inherently collective nature of both the consequences and the challenges arising from the adverse effects of climate change, however, the question of who can seek recourse to judicial protection under the Convention in this context is not just a question of who can seek to address this common problem through the courts, first domestically and subsequently by engaging the Court, but raises wider issues of the separation of powers.

414. The present case, and the two other cases heard by the same composition of the Grand Chamber (see paragraph 5 above), raise unprecedented issues before the Court. The particular nature of the problems arising from climate change in terms of the Convention issues raised has not so far been addressed in the Court's case-law. While the Court's environmental case-law to date (see, in particular, paragraph 538 below) can offer guidance up to a point, there are important differences between the legal questions raised by climate change and those addressed until now.

415. The Court's existing case-law in environmental matters concerns situations involving specific sources from which environmental harm emanates. Accordingly, those exposed to that particular harm can be localised and identified with a reasonable degree of certainty, and the existence of a causal link between an identifiable source of harm and the actual harmful effects on groups of individuals is generally determinable. Furthermore, the measures taken, or omitted, with a view to reducing the impugned harm emanating from a given source, whether at the regulatory level or in terms of implementation, can also be specifically identified. In short, there is a nexus between a source of harm and those affected by the harm, and the requisite mitigation measures may be identifiable and available to be applied at the source of the harm.

416. In the context of climate change, the key characteristics and circumstances are significantly different. First, there is no single or specific source of harm. GHG emissions arise from a multitude of sources. The harm derives from aggregate levels of such emissions[184]. Secondly, CO_2 – the primary GHG – is not toxic *per se* at ordinary concentrations[185]. The emissions produce harmful consequences as a result of a complex chain of effects. These emissions have no regard for national borders.

417. Thirdly, that chain of effects is both complex and more unpredictable in terms of time and place than in the case of other emissions of specific toxic

[184] See, for instance, AR6 WGIII, Summary for policymakers, p. 8.
[185] See IPCC, "Carbon Dioxide Capture and Storage" (2005), Annex I, pp. 385-95.

pollutants. Aggregate levels of CO_2 give rise to global warming and climate change, which in turn cause incidents or periods of extreme weather; these in turn cause various harmful phenomena such as excessive heatwaves, droughts, excessive rainfall, strong winds and storms, which in turn give rise to disasters such as wildfires, floods, landslides and avalanches. The immediate danger to humans arises from those kinds of consequences in the given climate conditions. In the longer term, some of the consequences risk destroying the basis for human livelihoods and survival in the worst affected areas. Whole populations are, or will be, affected, albeit in varying ways, to varying degrees and with varying severity and imminence of consequences.

418. Fourthly, the sources of GHG emissions are not limited to specific activities that could be labelled as dangerous. In many places, the major sources of GHG emissions are in fields such as industry, energy, transport, housing, construction and agriculture, and thus arise in the context of basic activities in human societies. Consequently, mitigation measures cannot generally be localised or limited to specific installations from which harmful effects emanate. The mitigation measures are necessarily a matter of comprehensive regulatory policies in various sectors of activity[186]. Adaptation measures may to a greater extent depend on local action[187]. However, without effective mitigation (which is at the centre of the applicants' arguments in the present case; see paragraphs 304, 306 and 335 above), adaptation measures cannot in themselves suffice to combat climate change (see paragraph 115 above).

419. Fifthly, combating climate change, and halting it, does not depend on the adoption of specific localised or single-sector measures. Climate change is a polycentric issue. Decarbonisation of the economies and ways of life can only be achieved through a comprehensive and profound transformation in various sectors. Such "green transitions" necessarily require a very complex and wide-ranging set of coordinated actions, policies and investments involving both the public and the private sectors. Individuals themselves will be called upon to assume a share of responsibilities and burdens as well. Therefore, policies to combat climate change inevitably involve issues of social accommodation and intergenerational burden-sharing, both in regard to different generations of those currently living and in regard to future generations.

420. In this connection, the Court notes that, in the specific context of climate change, intergenerational burden-sharing assumes particular importance both in regard to the different generations of those currently living and in regard to future generations. While the legal obligations arising for States under the Convention extend to those individuals currently alive who, at a given time, fall within the jurisdiction of a given Contracting Party, it is

[186] See further AR6 WGIII.
[187] See further AR6 WGII.

clear that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change (see paragraph 119 above) and that, at the same time, they have no possibility of participating in the relevant current decision-making processes. By their commitment to the UNFCCC, the States Parties have undertaken the obligation to protect the climate system for the benefit of present and future generations of humankind (see paragraph 133 above; Article 3 of the UNFCCC). This obligation must be viewed in the light of the already existing harmful impacts of climate change, as well as the urgency of the situation and the risk of irreversible harm posed by climate change. In the present context, having regard to the prospect of aggravating consequences arising for future generations, the intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review.

421. Lastly, while the challenges of combating climate change are global, both the relative importance of various sources of emissions and the necessary policies and measures required for achieving adequate mitigation and adaptation may vary to some extent from one State to another depending on several factors such as the structure of the economy, geographical and demographic conditions and other societal circumstances. Even if in the longer term, climate change poses existential risks for humankind, this does not detract from the fact that in the short term the necessity of combating climate change involves various conflicts, the weighing-up of which falls, as stated previously, within the democratic decision-making processes, complemented by judicial oversight by the domestic courts and this Court.

422. Because of these fundamental differences, it would be neither adequate nor appropriate to follow an approach consisting in directly transposing the existing environmental case-law to the context of climate change. The Court considers it appropriate to adopt an approach which both acknowledges and takes into account the particularities of climate change and is tailored to addressing its specific characteristics. In the present case, therefore, while drawing some inspiration from the principles set out in the Court's existing case-law, the Court will seek to develop a more appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change.

2. General considerations relating to climate-change cases

423. Before proceeding with the assessment of the legal issues arising in the present case, the Court finds it necessary to address at the outset some of the general considerations relating to climate-change cases.

(a) Questions of causation

424. As indicated above, the specificity of climate-change disputes, in comparison with classic environmental cases, arises from the fact that they are not concerned with single-source local environmental issues but with a more complex global problem. In the context of human rights-based complaints against States, issues of causation arise in different respects which are distinct from each other and have a bearing on the assessment of victim status as well as the substantive aspects of the State's obligations and responsibility under the Convention.

425. The first dimension of the question of causation relates to the link between GHG emissions – and the resulting accumulation of GHG in the global atmosphere – and the various phenomena of climate change. This is a matter of scientific knowledge and assessment. The second relates to the link between the various adverse effects of the consequences of climate change, and the risks of such effects on the enjoyment of human rights at present and in the future. In general terms, this issue pertains to the legal question of how the scope of human rights protection is to be understood as regards the impacts arising for human beings from an existing degradation, or risk of degradation, in their living conditions. The third concerns the link, at the individual level, between a harm, or risk of harm, allegedly affecting specific persons or groups of persons, and the acts or omissions of State authorities against which a human rights-based complaint is directed. The fourth relates to the attributability of responsibility regarding the adverse effects arising from climate change claimed by individuals or groups against a particular State, given that multiple actors contribute to the aggregate amounts and effects of GHG emissions.

426. The Court will address these issues in turn in paragraphs 427 to 444 below.

(b) Issues of proof

427. One of the key features of climate-change cases is the necessity for the relevant court to engage with a body of complex scientific evidence. In the context of environmental cases, as regards general principles on the standard and burden of proof, the Court has held as follows (see *Fadeyeva v. Russia*, no. 55723/00, § 79, ECHR 2005-IV):

> "The Court reiterates at the outset that, in assessing evidence, the general principle has been to apply the standard of proof 'beyond reasonable doubt'. Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. It should also be noted that it has been the Court's practice to allow flexibility in this respect, taking into consideration the nature of the substantive right at stake and any evidentiary difficulties involved. In certain instances, only the respondent Government have access to information capable of corroborating or refuting the applicant's allegations; consequently, a rigorous application of the principle *affirmanti, non neganti, incumbit probatio* is impossible ..."

428. A mere allegation that the State failed to comply with certain domestic rules and environmental or technical standards is not in itself sufficient to ground the assertion that the applicant's rights have been affected in a manner giving rise to an issue under the Convention (compare, for instance, *Fägerskiöld v. Sweden* (dec.), no. 37664/04, 26 February 2008, and *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 75, 2 December 2010). Nevertheless, the Court attaches importance to the fact that the situation complained of breached the relevant domestic law (see, for instance, *Yevgeniy Dmitriyev v. Russia*, no. 17840/06, § 33, 1 December 2020). Moreover, in some cases, the Court may need to have regard to the relevant international standards concerning the effects of environmental pollution when ascertaining whether the rights of an individual have been affected (see, for instance, *Oluić v. Croatia*, no. 61260/08, § 60, 20 May 2010; *Hardy and Maile v. the United Kingdom*, no. 31965/07, § 191, 14 February 2012; and *Thibaut v. France* (dec.), nos. 41892/19 and 41893/19, § 42, 14 June 2022).

429. The Court also relies on studies and reports by relevant international bodies as regards the environmental impacts on individuals (see *Tătar*, cited above, § 95). As regards climate change, the Court points to the particular importance of the reports prepared by the IPCC, as the intergovernmental body of independent experts set up to review and assess the science related to climate change, which are based on comprehensive and rigorous methodology, including in relation to the choice of literature, the process of review and approval of its reports as well as the mechanisms for the investigation and, if necessary, correction of possible errors in the published reports. These reports provide scientific guidance on climate change regionally and globally, its impact and future risks, and options for adaptation and mitigation[188].

430. Lastly, the Court attaches particular importance to the findings of the domestic courts and other competent authorities in establishing the factual circumstances of the case (see, for instance, *Taşkın and Others*, cited above, § 112). As a general rule, where domestic proceedings have taken place, it is not the Court's task to substitute its own assessment of the facts for that of the domestic courts and it is for the latter to establish the facts on the basis of the evidence before them. However, it reiterates in this connection that, while sensitive to the subsidiary nature of its role and cautious about taking on the role of a first-instance tribunal of fact, the Court is nevertheless not bound by the findings of domestic courts and may depart from them where this is rendered unavoidable by the circumstances of a particular case. It is the Court's function to review the reasoning adduced by domestic judicial authorities from the point of view of the Convention and to determine whether the national authorities have struck a fair balance between the competing

[188] See, for further details, www.ipcc.ch/about; last accessed 14.02.2024.

interests at stake (see *Pavlov and Others*, cited above, § 76, with further references).

(c) Effects of climate change on the enjoyment of Convention rights

431. In recent times there has been an evolution of scientific knowledge, social and political attitudes and legal standards concerning the necessity of protecting the environment, including in the context of climate change. There has also been a recognition that environmental degradation has created, and is capable of creating, serious and potentially irreversible adverse effects on the enjoyment of human rights. This is reflected in the scientific findings, international instruments and domestic legislation and standards, and is being recognised in domestic and international case-law (see paragraphs 173, 176, 225 and 236-267 above).

432. The findings of the IPCC reports noted in paragraphs 107 to 120 above have not been challenged or called into doubt by the respondent or intervening States. It should also be noted that the clear indications as regards the adverse effects of climate change, both existing and those associated with an overshoot of 1.5°C global temperature rise, noted by the IPCC, have been shared by many environmental experts and scientists intervening as third parties in the present proceedings before the Court (see, for instance, paragraphs 392-393, 397, 399, 404-405 and 406 above).

433. Moreover, the IPCC findings correspond to the position taken, in principle, by the States in the context of their international commitments to tackle climate change. They also underpin the general policy aims in the respondent State in terms of the urgency of addressing climate change and its adverse effects on the lives, health and well-being of individuals (see paragraphs 84-102 above)[189]. This also includes the activities of the environmental bodies – such as the FOEN – which follow climate-change developments and regularly issue alerts as to the adverse effects which climate change creates for individuals. Moreover, the respondent Government in the present case, as well as the many third-party intervener Governments, have not contested that there is a climate emergency (see paragraphs 337, 367 and 373-375 above).

434. The Court cannot ignore the above-noted developments and considerations. On the contrary, it should be recalled that the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to reflect the increasingly high standard being required in the area of the protection of human rights, thus necessitating greater firmness in assessing breaches of the fundamental values of democratic societies (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 146, ECHR 2008). Indeed, an

[189] For a global database of climate laws see www.climate-laws.org; last accessed 14.02.2024).

appropriate and tailored approach as regards the various Convention issues which may arise in the context of climate change, required for the reasons set out in paragraph 422 above, needs to take into account the existing and constantly developing scientific evidence on the necessity of combating climate change and the urgency of addressing its adverse effects, including the grave risk of their inevitability and their irreversibility, as well as the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights.

435. As the Court has already recognised, Article 8 is capable of being engaged because of adverse effects not only on individuals' health but on their well-being and quality of life (see paragraph 514 below) and not only because of actual adverse effects but also sufficiently severe risks of such effects on individuals (see paragraph 470 below). The Court has already established that Article 8 may apply in environmental cases whether the pollution is directly caused by the State or whether State responsibility arises from the failure to regulate private industry properly (see, for instance, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 98, ECHR 2003-VIII). It has also held that the duty to regulate not only relates to actual harm arising from specific activities but extends to the inherent risks involved (see, for instance, *Di Sarno and Others v. Italy*, no. 30765/08, § 106, 10 January 2012). In other words, issues of causation must always be regarded in the light of the factual nature of the alleged violation and the nature and scope of the legal obligations at issue.

436. In sum, on the basis of the above findings, the Court will proceed with its assessment of the issues arising in the present case by taking it as a matter of fact that there are sufficiently reliable indications that anthropogenic climate change exists, that it poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention, that States are aware of it and capable of taking measures to effectively address it, that the relevant risks are projected to be lower if the rise in temperature is limited to 1.5°C above pre-industrial levels and if action is taken urgently, and that current global mitigation efforts are not sufficient to meet the latter target.

(d) The question of causation and positive obligations in the climate-change context

437. In its case-law relating to adverse effects arising from environmental harm, the Court has often merged the assessment of the questions of victim status and the applicability of Article 8 (see, for instance, *Hardy and Maile v. the United Kingdom*, no. 31965/07, §§ 187-92, 14 February 2012). It has also not articulated the issue of causality in specific terms. This is linked with the following circumstances. First, the applicability of Article 8 – as indicated above – is triggered not only by actual damage to the health or well-being of an applicant but by the risk of such effects, where such risks present

a sufficiently close link with the applicant's enjoyment of his or her rights under Article 8. Secondly, the complaints in such cases have concerned alleged failures by the authorities to comply with positive obligations directed at the avoidance or reduction of harm. Thirdly, such obligations have been formulated in terms of a duty to take measures to ensure the effective protection of those who might be endangered by the risks inherent in the harmful activity (see paragraph 538 below).

438. The notion of measures to ensure effective protection as far as positive obligations are concerned may vary considerably from case to case, depending on the gravity of the impact on an applicant's Convention rights and the extent of any burden the obligation would impose on the State. Nonetheless, certain factors relevant for the assessment of the content of those positive obligations on States in the context of environmental harm have been identified by the Court (see paragraphs 538-539 below). In any event, for a State's positive obligations to be engaged there has to be evidence of a risk meeting a certain threshold. There must be a relationship of causation between the risk and the alleged failure to fulfil positive obligations.

439. In the context of climate change, the particularity of the issue of causation becomes more accentuated. The adverse effects on and risks for specific individuals or groups of individuals living in a given place arise from aggregate GHG emissions globally, and the emissions originating from a given jurisdiction make up only part of the causes of the harm. Accordingly, the causal link between the acts or omissions on the part of State authorities in one country, and the harm, or risk of harm, arising there, is necessarily more tenuous and indirect compared to that in the context of local sources of harmful pollution. Furthermore, from the perspective of human rights, the essence of the relevant State duties in the context of climate change relates to the reduction of the risks of harm for individuals. Conversely, failures in the performance of those duties entail an aggravation of the risks involved, although the individual exposures to such risks will vary in terms of type, severity and imminence, depending on a range of circumstances. Accordingly, in this context, issues of individual victim status or the specific content of State obligations cannot be determined on the basis of a strict *conditio sine qua non* requirement.

440. It is therefore necessary to further adapt the approach to these matters, taking into account the special features of the problem of climate change in respect of which the State's positive obligations will be triggered, depending on a threshold of severity of the risk of adverse consequences on human lives, health and well-being. This will be developed in detail in the Court's assessment of victim status and the applicability of the relevant Convention provisions (see paragraphs 478-488 and 507-520 below) and in the determination of the content of the States' positive obligations in this context (see paragraphs 544-554 below).

(e) The issue of the proportion of State responsibility

441. The respondent Government raised an issue concerning the proportion of the respondent State's contributions to global GHG emissions and the capacity of individual States to take action and to bear responsibility for a global phenomenon that requires action by the community of States (see paragraph 346 above). Such arguments have been examined and rejected by the domestic courts in some national climate-change cases (see paragraphs 253 and 257 above).

442. For its part, the Court notes that while climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, the global climate regime established under the UNFCCC rests on the principle of common but differentiated responsibilities and respective capabilities of States (Article 3 § 1). This principle has been reaffirmed in the Paris Agreement (Article 2 § 2) and endorsed in the Glasgow Climate Pact (cited above, paragraph 18) as well as in the Sharm el-Sheikh Implementation Plan (cited above, paragraph 12). It follows, therefore, that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is determined by the State's own capabilities rather than by any specific action (or omission) of any other State (see *Duarte Agostinho and Others*, cited above, §§ 202-03). The Court considers that a respondent State should not evade its responsibility by pointing to the responsibility of other States, whether Contracting Parties to the Convention or not.

443. This position is consistent with the Court's approach in cases involving a concurrent responsibility of States for alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question (see, albeit in other contexts, *M.S.S. v. Belgium and Greece*, cited above, §§ 264 and 367, and *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, §§ 160-61 and 179-81, 19 November 2019). It is also consistent with the principles of international law relating to the plurality of responsible States, according to which the responsibility of each State is determined individually, on the basis of its own conduct and by reference to its own international obligations (see ILC, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Commentary on Article 47, paragraphs 6 and 8). Similarly, the alleged infringement of rights under the Convention through harm arising from GHG emissions globally and the acts and omissions on the part of multiple States in combating the adverse effects of climate change may engage the responsibility of each Contracting Party, subject to it having jurisdiction within the meaning of Article 1 of the Convention (see *Duarte Agostinho and Others*, cited above). Indeed, given that the Article 1 jurisdiction is principally territorial, each State has its own responsibilities within its own territorial jurisdiction in respect of climate change.

444. Lastly, as regards the "drop in the ocean" argument implicit in the Government's submissions – namely, the capacity of individual States to affect global climate change – it should be noted that in the context of a State's positive obligations under the Convention, the Court has consistently held that it need not be determined with certainty that matters would have turned out differently if the authorities had acted otherwise. The relevant test does not require it to be shown that "but for" the failing or omission of the authorities the harm would not have occurred. Rather, what is important, and sufficient to engage the responsibility of the State, is that reasonable measures which the domestic authorities failed to take could have had a real prospect of altering the outcome or mitigating the harm (see, among many other authorities, *O'Keeffe v. Ireland* [GC], no. 35810/09, § 149, ECHR 2014 (extracts), and *Baljak and Others v. Croatia*, no. 41295/19, § 124, 25 November 2021, with further references). In the context of climate change, this principle should also be understood in the light of Article 3 § 3 of the UNFCCC according to which States should take measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects.

(f) Scope of the Court's assessment

445. The Court has repeatedly stressed that no Article of the Convention is specifically designed to provide general protection of the environment as such (see *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI (extracts), and *Cordella and Others*, cited above, § 100). To that effect, other international instruments and domestic legislation are more adapted to dealing with such protection.

446. At the same time, the Court has often dealt with various environmental problems deemed to *affect* the Convention rights of individuals, particularly Article 8 (see *Hatton and Others*, cited above, § 96). It has, however, explained that in contrast with *actio popularis* type of complaints – which are not permitted in the Convention system (see paragraph 460 below) – the crucial element which must be present in determining whether, in the circumstances of a given case, an environmental harm has adversely affected one of the rights safeguarded by the Convention is the existence of a harmful effect on a person and not simply the general deterioration of the environment (see, for instance, *Di Sarno and Others*, cited above, §§ 80-81).

447. While the Court has on occasion referred to "the right of the people concerned ... to live in a safe and healthy environment" (see *Tătar*, cited above, § 112, and *Di Sarno and Others*, cited above, § 110), this language cannot be understood without regard to the distinction that must be made between, on the one hand, the rights protected under the Convention and, on the other hand, the weight of environmental concerns in the assessment of legitimate aims and the weighing-up of rights and interests in the context of

the application of the Convention. In this latter context, the Court has, for instance, in the context of Article 1 of Protocol No. 1 held as follows (see *Turgut and Others v. Turkey*, no. 1411/03, § 90, 8 July 2008):

> "[I]n today's society the protection of the environment is an increasingly important consideration ... The Court notes that it has on various occasions dealt with questions relating to environmental protection and stressed the importance of this issue ... The protection of nature and forests, and, more generally, the environment, is a cause whose defence arouses the constant and sustained interest of the public, and consequently the public authorities. Financial imperatives and even certain fundamental rights, such as ownership, should not be afforded priority over environmental protection considerations ..."

448. It is also from this dual perspective of the Court's engagement with environmental issues – namely, ensuring the protection of Convention rights and having due regard for environmental concerns in the assessment of legitimate aims and the weighing-up of rights and interests in the context of the application of the Convention – that the relevance of the recent international initiatives for the recognition of the human right to a clean, healthy and sustainable environment (see, in particular, UN General Assembly Resolution 76/300, and Committee of Ministers Recommendation CM/Rec(2022)20, both cited above) should be understood from the perspective of the Convention. It is therefore not for the Court to determine whether the general trends regarding the recognition of such a right give rise to a specific legal obligation (see paragraph 372 above concerning the arguments raised by the intervening Norwegian Government). Such a development forms part of the international-law context in which the Court assesses Convention issues before it (see *Demir and Baykara*, cited above, § 76), notably as regards the recognition by the Contracting Parties of a close link between the protection of the environment and human rights.

449. The Court is mindful of the fact that in a context such as the present one it may be difficult to clearly distinguish issues of law from questions of policy and political choices and, therefore, of the fundamentally subsidiary role of the Convention, particularly given the complexity of the issues involved with regard to environmental policy-making (see *Dubetska and Others v. Ukraine*, no. 30499/03, § 142, 10 February 2011). It has stressed that national authorities have direct democratic legitimation and are in principle better placed than an international court to evaluate the relevant needs and conditions. In matters of general policy, or political choices, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker is given special weight (see *Hatton and Others*, cited above, § 97).

450. However, this does not exclude the possibility that where complaints raised before the Court relate to State policy with respect to an issue affecting the Convention rights of an individual or group of individuals, this subject matter is no longer merely an issue of politics or policy but also a matter of

law having a bearing on the interpretation and application of the Convention. In such instances, the Court retains competence, albeit with substantial deference to the domestic policy-maker and the measures resulting from the democratic process concerned and/or the judicial review by the domestic courts. Accordingly, the margin of appreciation for the domestic authorities is not unlimited and goes hand in hand with a European supervision by the Court, which must be satisfied that the effects produced by the impugned national measures were compatible with the Convention.

451. It follows from the above considerations that the Court's competence in the context of climate-change litigation cannot, as a matter of principle, be excluded. Indeed, given the necessity of addressing the urgent threat posed by climate change, and bearing in mind the general acceptance that climate change is a common concern of humankind (see paragraphs 420 and 436 above), there is force in the argument put forward by the UN Special Rapporteurs that the question is no longer whether, but how, human rights courts should address the impacts of environmental harms on the enjoyment of human rights (see paragraph 379 above).

(g) Relevant principles regarding the interpretation of the Convention

452. The well-established case-law principles regarding the interpretation of the Convention as an international treaty have been summarised by the Court in *Magyar Helsinki Bizottság v. Hungary* ([GC], no. 18030/11, §§ 118-25, 8 November 2016, with further references) and *Slovenia v. Croatia* ((dec.) [GC], no. 54155/16, § 60, 18 November 2020).

453. The Court must address the concerns expressed by the respondent Government about the harmonious and evolutive interpretation of the Convention in the light of the developing rules and principles of international environmental law (see paragraphs 352 and 355 above). In the view of the respondent Government, supported by most of the intervening Governments, the principles of the harmonious and evolutive interpretation of the Convention should not be used to interpret the Convention as a mechanism of international judicial enforcement in the field of climate change and to transform the rights enshrined in the Convention into rights to combat climate change (see paragraphs 366, 368, 371-373 and 375 above).

454. The Court reiterates that it only has the authority to ensure that the Convention is complied with. This is the instrument which the Court is entrusted to interpret and apply. The Court does not have the authority to ensure compliance with international treaties or obligations other than the Convention. Thus, the Court has acknowledged that while other instruments can offer wider protection than the Convention, it is not bound by interpretations given to similar instruments by other bodies, having regard to possible differences in the content of the provisions of other international instruments and/or possible differences in the role of the Court and the other

bodies (see *Caamaño Valle v. Spain*, no. 43564/17, §§ 53-54, 11 May 2021, with further references).

455. Nevertheless, the interpretation and application of the rights provided for under the Convention can and must be influenced both by factual issues and developments affecting the enjoyment of the rights in question and also by relevant legal instruments designed to address such issues by the international community. The Court has consistently held that the Convention should be interpreted, as far as possible, in harmony with other rules of international law (ibid.). Moreover, a failure by the Court to maintain a dynamic and evolutive approach would risk rendering it a bar to reform or improvement (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 167, 17 January 2023).

456. The Court cannot ignore the pressing scientific evidence and the growing international consensus regarding the critical effects of climate change on the enjoyment of human rights (see paragraph 436 above). This consideration relates, in particular, to the consensus flowing from the international-law mechanisms to which the member States voluntarily acceded and the related requirements and commitments which they undertook to respect (see *Demir and Baykara*, cited above, §§ 85-86; compare *Guberina v. Croatia*, no. 23682/13, § 92, 22 March 2016), such as those under the Paris Agreement. The Court must bear these considerations in mind when conducting its assessment under the Convention (see paragraphs 445-451 above).

457. At the same time, the Court must also bear in mind its subsidiary role and the necessity of affording the Contracting States a margin of appreciation in the implementation of policies and measures to combat climate change, as well as the need to observe appropriate respect for the prevailing constitutional principles, such as those relating to the separation of powers.

3. Admissibility

(a) Victim status/*locus standi* (representation)

458. There are, in general, three possible approaches in the Court's case-law to examining the existence of victim status under Article 34 of the Convention. It may be examined as a separate preliminary issue in the case (see, for instance, *S.A.S. v. France* [GC], no. 43835/11, §§ 53-58, ECHR 2014 (extracts)); it may be examined in the context of an assessment of the applicability of the relevant Convention provision (see, for instance, *Greenpeace e.V. and Others v. Germany* (dec.), no. 18215/06, 12 May 2009); or it may be considered to be "closely bound up with" the issues to be considered on the merits and thus joined to the examination of the complaint on the merits (see, for instance, *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 111, ECHR 2012).

459. For the sake of methodological clarity, and having regard to the fact that the issue of victim status is one of the salient issues of the climate-change cases, the Court finds it necessary at this point to elaborate on the general principles concerning victim status separately. However, given the close link between victim status and the applicability of the relevant Convention provisions (see paragraphs 513 and 519 below), whether the applicants have victim status in the present case will be examined together with the Court's assessment of the applicability of Articles 2 and 8 of the Convention.

(i) General principles

460. The Convention does not provide for the institution of an *actio popularis*. The Court's task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention (see, for instance, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, with further references). Accordingly, a person, non-governmental organisation or group of individuals must be able to claim to be a victim of a violation of the rights set forth in the Convention. The Convention does not permit individuals or groups of individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, §§ 50-51, ECHR 2012).

461. The Court has repeatedly stressed that the victim-status criterion is not to be applied in a rigid, mechanical and inflexible way (see *Albert and Others v. Hungary* [GC], no. 5294/14, § 121, 7 July 2020). Moreover, like the other provisions of the Convention, the term "victim" in Article 34 must also be interpreted in an evolutive manner in the light of conditions in contemporary society (see *Gorraiz Lizarraga and Others*, cited above, § 38, and *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), no. 37857/14, § 39, 7 December 2021). In this context, the Court has cautioned that any excessively formalistic interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory (see *Gorraiz Lizarraga and Others*, cited above, § 38).

462. The Court interprets the concept of "victim" autonomously and irrespective of domestic concepts such as those concerning an interest or capacity to act, even though the Court should have regard to the fact that an applicant was a party to the domestic proceedings (see *Aksu*, cited above, § 52). Moreover, the existence of victim status does not necessarily imply the existence of prejudice (see *Brumărescu v. Romania* [GC], no. 28342/95, § 50, ECHR 1999-VII).

463. In general, the word "victim" under Article 34 denotes the following categories of persons (see *Centre for Legal Resources on behalf of Valentin*

Câmpeanu v. Romania [GC], no. 47848/08, §§ 96-101, ECHR 2014): those *directly* affected by the alleged violation of the Convention (the direct victims); those *indirectly* affected by the alleged violation of the Convention (the indirect victims); and those *potentially* affected by the alleged violation of the Convention (the potential victims). In *Mansur Yalçın and Others v. Turkey* (no. 21163/11, § 40 *in fine*, 16 September 2014) the Court noted that, in any event, whether the victim is direct, indirect or potential, there must be a link between the applicant and the harm which he or she claims to have sustained as a result of the alleged violation.

464. The Court reiterates that the issue of victim status should be distinguished from the issue of *locus standi*. The latter relates to the questions of representation of the (direct) victims' complaints before the Court. It may therefore also be referred to as "representation" (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, §§ 102-03).

(α) Victim status of individuals

465. In order to fall into the category of direct victims, the applicant must be able to show that he or she was "directly affected" by the measure complained of (see *Lambert and Others v. France* [GC], no. 46043/14, § 89, ECHR 2015 (extracts)). This implies that the applicant has been personally and actually affected by the alleged violation of the Convention, which is normally the result of a measure applying the relevant law or a decision allegedly in breach of the Convention or, in some instances, of the acts or omissions of State authorities or private parties allegedly infringing the applicant's Convention rights (see, for instance, *Aksu*, cited above, § 51; see also *Karner v. Austria*, no. 40016/98, §§ 24-25, ECHR 2003-IX, and *Berger-Krall and Others v. Slovenia*, no. 14717/04, § 258, 12 June 2014).

466. However, this does not necessarily mean that the applicant needed to be personally targeted by the act or omission complained of. What is important is that the impugned conduct personally and directly affected him or her (see, for instance, *Aksu*, cited above, §§ 51-54).

467. The issues relating to the category of indirect victims normally concern the question of the standing of the direct victim's next of kin to submit or pursue an application before the Court concerning issues affecting the direct victim (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, §§ 97-100, with further references).

468. The Court has consistently held that "Article 34 concerns not just the direct victim or victims of the alleged violation, but also any indirect victims to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end" (see *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 47, ECHR 2013 (extracts), and the cases cited therein). Thus, indirect victims must demonstrate a "ricochet effect" created by the alleged violation affecting one person (the direct victim) on the Convention rights of another person (the

indirect victim) in order for the latter to demonstrate harm or a valid personal interest in bringing the situation complained of to an end.

469. Two types of potential victim status may be found in the case-law (see, for instance, *Senator Lines GmbH v. Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom* (dec.) [GC], no. 56672/00, ECHR 2004-IV). The first type concerns persons who claim to be presently affected by a particular general legislative measure. The Court has specified that it may accept the existence of victim status where applicants contend that a law violates their rights, in the absence of an individual measure of implementation, if they belong to a class of people who risk being directly affected by the legislation, or if they are required either to modify their conduct or risk being prosecuted (see *Tănase v. Moldova* [GC], no. 7/08, § 104, ECHR 2010, and *Sejdić and Finci*, cited above, § 28).

470. The second type concerns persons who argue that they may be affected at some future point in time. The Court has made clear that the exercise of the right of individual petition cannot be used to prevent a potential violation of the Convention and that, in theory, the Court cannot examine a violation other than *a posteriori*, once that violation has occurred. It is only in highly exceptional circumstances that an applicant may nevertheless claim to be a victim of a violation of the Convention owing to the risk of a future violation (see *Berger-Krall and Others*, cited above, § 258, with further references). In general, the relevant test to examine the existence of such victim status is that the applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting him or her personally will occur; mere suspicion or conjecture being insufficient in this regard (see *Asselbourg and Others v. Luxembourg* (dec.), no. 29121/95, ECHR 1999-VI, and *Senator Lines GmbH*, cited above).

471. The term "potential" therefore refers, in some circumstances, to victims who claim that they are at present, or have been, affected by the general measure complained of, and, in other circumstances, to those who claim that they might be affected by such a measure in the future. In some instances, these two types of situations may coexist or may not be easily distinguishable (see, for instance, *Tănase*, cited above, § 108) and the relevant case-law principles may apply interchangeably (see, for instance, *Shortall and Others v. Ireland* (dec.), no. 50272/18, §§ 50-61, 19 October 2021).

472. In environmental cases, the Court has not considered it sufficient for an applicant to complain of general damage to the environment (see *Di Sarno and Others*, cited above, § 80). According to the Court's existing case-law in this context, in order to claim victim status, the applicant needs to show that he or she is impacted by the environmental damage or risk complained of. The criteria on which the Court has relied to establish victim status includes most notably issues such as the minimum level of severity of the harm in question, its duration and the existence of a sufficient link with the applicant

or applicants, including, in some instances, the geographical proximity between the applicant and the impugned environmental harm (see, for instance, *Tătar*, cited above, §§ 95-97; *Greenpeace e.V. and Others*, cited above; *Caron and Others v. France* (dec.), no. 48629/08, 29 June 2010; *Hardy and Maile*, cited above, §§ 190-92; *Cordella and Others*, cited above, §§ 104-08; and *Pavlov and Others*, cited above, §§ 64-70).

(β) *Locus standi* (representation) by associations

473. In accordance with the Court's case-law, an association is in principle not in a position to rely on health considerations to allege a violation of Article 8 (see *Greenpeace e.V. and Others*, cited above) and in general it cannot complain of nuisances or problems which can only be encountered by natural persons (see *Besseau and Others v. France* (dec.), no. 58432/00, 7 February 2006).

474. Most recently, in an environmental context, the Court reasoned as follows as regards the victim status of associations (see *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği*, cited above, § 41):

> "The first reason is the prohibition on the bringing of an *actio popularis* under the Convention system; this means that an applicant cannot lodge a claim in the public or general interest if the impugned measure or act does not affect him or her directly. It follows that in order for an applicant to be able to argue that he is a victim, he must produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur; mere suspicion or conjecture is insufficient in this respect ... The second reason concerns the nature of the Convention right at stake and the manner in which it has been invoked by the applicant association in question. Certain Convention rights, such as those under Article 2, 3 and 5, by their nature, are not susceptible of being exercised by an association, but only by its members ... In *Asselbourg and Others* (cited above), when declining to grant victim status to the applicant association, the Court noted that the applicant association could only act as a representative of its members or employees, in the same way as, for example, a lawyer represented his client, but could not itself claim to be the victim of a violation of Article 8."

475. However, although in the absence of a measure directly affecting them the Court does not normally grant victim status to associations, even if the interests of their members could be at stake, there may be "special considerations" where an association represents individuals, even in the absence of a measure directly affecting the association in question.

476. In *Centre for Legal Resources on behalf of Valentin Câmpeanu* (cited above, §§ 103 and 105), the Court found that there might be "special considerations" where it could be accepted that applications could be lodged by others on behalf of the victims without a specific authority to act. The Court stressed that its judgments "[served] not only to decide those cases brought before [it] but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance

by the States of the engagements undertaken by them as Contracting Parties". At the same time, the Court was mindful of the need to ensure that the conditions of admissibility governing access to it were interpreted in a consistent manner.

477. On the basis of the case-law principles set out in *Centre for Legal Resources on behalf of Valentin Câmpeanu*, in several similar subsequent cases the Court accepted the *locus standi* of associations to lodge or pursue applications on behalf of direct victims, including where the victim had been able, while alive, to lodge complaints himself or herself (see *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, no. 2959/11, §§ 42-46, 24 March 2015).

*(ii) Victim status/*locus standi *in the climate-change context*

(α) Victim status of individuals

478. The Court notes that there is cogent scientific evidence demonstrating that climate change has already contributed to an increase in morbidity and mortality, especially among certain more vulnerable groups, that it actually creates such effects and that, in the absence of resolute action by States, it risks progressing to the point of being irreversible and disastrous (see paragraphs 104-120 above). At the same time, the States, being in control of the causes of anthropogenic climate change, have acknowledged the adverse effects of climate change and have committed themselves – in accordance with their common but differentiated responsibilities and their respective capabilities – to take the necessary mitigation measures (to reduce GHG emissions) and adaptation measures (to adapt to climate change and reduce its impacts). These considerations indicate that a legally relevant relationship of causation may exist between State actions or omissions (causing or failing to address climate change) and the harm affecting individuals, as noted in paragraph 436 above.

479. Given the nature of climate change and its various adverse effects and future risks, the number of persons affected, in different ways and to varying degrees, is indefinite. The resolution of the climate crisis requires, and depends on, a comprehensive and complex set of transformative policies involving legislative, regulatory, fiscal, financial and administrative measures as well as both public and private investment. The critical issues arise from failures to act, or inadequate action. In other words, they arise from omissions. In key respects, the deficiencies reside at the level of the relevant legislative or regulatory framework. The need, in this context, for a special approach to victim status, and its delimitation, therefore arises from the fact that complaints may concern acts or omissions in respect of various types of general measures, the consequences of which are not limited to certain identifiable individuals or groups but affect the population more widely. The outcome of legal proceedings in this context will inevitably have an effect

beyond the rights and interests of a particular individual or group of individuals, and will inevitably be forward-looking, in terms of what is required to ensure effective mitigation of the adverse effects of climate change or adaptation to its consequences.

480. That being said, the Court notes that the assessment of victim status in the present context of complaints concerning alleged omissions in general measures relating to the prevention of harm, or the reduction of the risk of harm, affecting indefinite numbers of persons is without prejudice to the determination of victim status in circumstances where complaints by individuals concern alleged violations arising from a specific individual loss or damage already suffered by them (see, for instance, *Kolyadenko and Others*, cited above, §§ 150-55).

481. The question for the Court in the present case is how and to what extent allegations of harm linked to State actions and/or omissions in the context of climate change, affecting individuals' Convention rights (such as the right to life under Article 2 and/or the right to respect for private and family life under Article 8), can be examined without undermining the exclusion of *actio popularis* from the Convention system and without ignoring the nature of the Court's judicial function, which is by definition reactive rather than proactive.

482. In this connection, the Court has already accepted, albeit in the context of the application of Article 6 in an environmental context, that the issue of victim status must be interpreted in an evolutive manner in the light of conditions in contemporary society and that any excessively formalistic interpretation of that concept would make protection of the rights guaranteed by the Convention ineffectual and illusory (see *Gorraiz Lizarraga and Others*, cited above, § 38).

483. The Court's case-law on victim status is premised on the existence of a direct impact of the impugned action or omission on the applicant or a real risk thereof. However, in the climate-change context, everyone may be, one way or another and to some degree, directly affected, or at a real risk of being directly affected, by the adverse effects of climate change. Leaving aside the issue of jurisdiction, the fact remains that potentially a huge number of persons could claim victim status under the Convention on this basis. While it is true that in the context of general situations/measures, the class of persons who could claim victim status "may indeed be very broad" (see *Shortall and Others*, cited above, § 53), it would not sit well with the exclusion of *actio popularis* from the Convention mechanism and the effective functioning of the right of individual application to accept the existence of victim status in the climate-change context without sufficient and careful qualification.

484. If the circle of "victims" within the overall population of persons under the jurisdiction of the Contracting Parties actually or potentially adversely affected is drawn in a wide-ranging and generous manner, this

would risk disrupting national constitutional principles and the separation of powers by opening broad access to the judicial branch as a means of prompting changes in general policies regarding climate change. If, on the other hand, this circle is drawn too tightly and restrictively, there is a risk that even obvious deficiencies or dysfunctions in government action or democratic processes could lead to the Convention rights of individuals and groups of individuals being affected without them having any judicial recourse before the Court. In addition, in view of the considerations of intergenerational burden-sharing related to the impacts and risks of climate change, the members of society who stand to be most affected by the impact of climate change can be considered to be at a distinct representational disadvantage (see paragraph 420 above). The need to ensure, on the one hand, effective protection of the Convention rights, and, on the other hand, that the criteria for victim status do not slip into *de facto* admission of *actio popularis* is particularly acute in the present context.

485. In this regard, although the lack of State action, or insufficient action, to combat climate change does entail a situation with general effect, the Court does not consider that the case-law concerning "potential" victims under which victim status could be claimed by a "class of people" who have "a legitimate personal interest" in seeing the impugned situation being brought to an end (see paragraphs 471 above), could be applied here. In the context of climate change, this could cover virtually anybody and would therefore not work as a limiting criterion. Everyone is concerned by the actual and future risks, in varying ways and to varying degrees, and may claim to have a legitimate personal interest in seeing those risks disappear.

486. Therefore, having regard to the special features of climate change, when determining the criteria for victim status – which is premised on the existence of a real risk of a "direct impact" on the applicant (see paragraphs 465-466 and 483 above) – the Court will rely on distinguishing criteria such as a particular level and severity of the risk of adverse consequences of climate change affecting the individual(s) in question (see paragraph 440 above), taking into account the pressing nature of their need for individual protection.

487. In sum, the Court finds that in order to claim victim status under Article 34 of the Convention in the context of complaints concerning harm or risk of harm resulting from alleged failures by the State to combat climate change, an applicant needs to show that he or she was personally and directly affected by the impugned failures. This would require the Court to establish, having regard to the principles concerning issues of proof set out in paragraphs 427 to 430 above, the following circumstances concerning the applicant's situation:

(a) the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk

of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and

(b) there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.

488. The threshold for fulfilling these criteria is especially high. In view of the exclusion of *actio popularis* under the Convention, as discussed in paragraphs 483 to 484 above, whether an applicant meets that threshold will depend on a careful assessment of the concrete circumstances of the case. In this connection, the Court will have due regard to circumstances such as the prevailing local conditions and individual specificities and vulnerabilities. The Court's assessment will also include, but will not necessarily be limited to, considerations relating to: the nature and scope of the applicant's Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant's life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant's vulnerability.

(β) Standing of associations

489. As the Court already noted in *Gorraiz Lizarraga and Others* (cited above, § 38), in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively. This is especially true in the context of climate change, which is a global and complex phenomenon. It has multiple causes and its adverse effects are not the concern of any one particular individual, or group of individuals, but are rather "a common concern of humankind" (see the Preamble to the UNFCCC). Moreover, in this context where intergenerational burden-sharing assumes particular importance (see paragraph 420 above), collective action through associations or other interest groups may be one of the only means through which the voice of those at a distinct representational disadvantage can be heard and through which they can seek to influence the relevant decision-making processes.

490. These general observations concerning the importance of recourse to collective entities such as associations to defend the rights and interests of affected or concerned individuals, as far as issues of the environment are concerned, are reflected in international instruments such as the Aarhus Convention. That Convention recognises that "every person has the right to live in an environment adequate to his or her health and well-being, and the duty, both individually and in association with others, to protect and improve the environment for the benefit of present and future generations" (see paragraph 141 above).

491. The Aarhus Convention also emphasises the importance of the role which non-governmental organisations play in the context of environmental protection. It envisages the need to ensure that non-governmental organisations have wide access to justice in matters concerning environmental protection (see, in particular, the Preamble and Article 9 of the Aarhus Convention). Article 2 § 5 of the Aarhus Convention explicitly incorporates within the category of "the interested public" non-governmental organisations whose statutory goals include the promotion of environmental protection, provided that they also meet "any requirements under national law". According to the Implementation Guide[190], whether a non-governmental organisation promotes environmental protection or not can be ascertained in a variety of ways, such as through its charter, by-laws or activities. In this context, "environmental protection" may concern any purpose consistent with the implied definition of environment found in Article 2 § 3. Moreover, it is specified that the reference to "meeting any requirements under national law" should not be read as leaving absolute discretion to States in defining these requirements, but rather in the context of the important role the Aarhus Convention assigns to non-governmental organisations.

492. The Court further notes that the EU has developed a set of legal instruments concerning the implementation of the Aarhus Convention (see paragraphs 212-214 above). The CJEU has found that Article 9 § 3 of the Aarhus Convention must be read in conjunction with Article 47 of the Charter of Fundamental Rights in ensuring that "a duly constituted environmental organisation operating in accordance with the requirements of national law" is able to contest a measure affecting the environment[191].

493. In this connection, it should also be noted that a comparative study from 2019 found that broad legal standing was granted by law and in practice in a number of EU member States (thirteen out of twenty-eight at the time). In addition, while access had broadened over the years in some countries, either through jurisprudence (Austria, Belgium) or by law (Greece, Ireland, Slovakia, Slovenia, Sweden), in some others, recent jurisprudence (Slovenia) or legal reforms planned (the United Kingdom) or enacted (the Netherlands) aimed to restrict access to courts[192]. An earlier comparative study from 2013 had found that the EU member States' legislation required one or more of the following conditions to be met for the legal standing of associations before the courts to be recognised: the condition that the statutes of the organisation

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[190] Cited above, pp. 57-58 and 194-95; see also Maastricht Recommendations, cited above, p. 12.

[191] Judgment of 20 December 2017 in *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd*, C-664/15, EU:C:2017:987, paragraph 58. See also, more recently, judgment of 8 November 2022 in *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland*, C-873/19, EU:C:2022:857, paragraph 81.

[192] Implementation Study, cited above, pp. 102-06.

should cover environmental protection or whatever was relevant for the challenged decision; a requirement of activity in the area in question; geographical proximity; a certain number of years of registration and activity; a certain number of members; representation of a significant percentage of the population or the existence of support from the public; openness and democratic structure; and non-profit activity[193].

494. The findings of the above studies were confirmed by a broader comparative survey conducted by the Court for the purposes of the present proceedings (see paragraphs 232-234 above). This survey found that there was a nearly universal ratification of the Aarhus Convention by Council of Europe member States and that associations – meeting certain criteria noted in paragraph 233 above – were generally granted standing to bring court cases in the interests of the protection of the environment and/or in the interests of private individuals who may be affected by specific environmental hazards or industrial projects. While the standing of associations in the context of climate-change litigation – which is not covered by the Aarhus Convention – was still a developing issue, it would appear that in most member States there may at least be a theoretical possibility for environmental associations to bring a climate-change case, and in some States the criteria for such standing have already been established either in domestic legislation or in the domestic courts' case-law (see paragraph 234 above).

495. In the light of the above considerations, in order to devise an approach to the matter in the present case, in which the applicant association also claims victim status, the Court notes some key principles which must guide its decision in that respect.

496. First, it is necessary to make, and to maintain, the distinction between the victim status of individuals and the legal standing of representatives who are acting on behalf of persons whose Convention rights are alleged to be violated (see paragraphs 465-477 above). In regard to the former, there seems to be no reason to call into question the principle in the case-law that an association cannot rely on health considerations or nuisances and problems associated with climate change which can only be encountered by natural persons (see paragraph 474 above). This, by the nature of things, places a constraint on the possibility of granting victim status to an association with regard to any substantive issue under Articles 2 and/or 8 of the Convention.

497. Secondly, there has been an evolution in contemporary society as regards recognition of the importance of associations to litigate issues of climate change on behalf of affected persons. Indeed, climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical resources and coordination, and the outcome of a dispute will inevitably affect the position of many individuals (see

[193] "Effective Justice?", Synthesis report of the study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union (2013), pp. 14-15.

paragraph 410 above). As is apparent from the circumstances of domestic climate-change litigation (see, for instance, paragraphs 258, 260 and 262 above; see also *Carême*, cited above), associations regularly appear as one of the applicants, or sometimes the sole applicant, or as a key intervener in the case.

498. The specific considerations relating to climate change weigh in favour of recognising the possibility for associations, subject to certain conditions, to have standing before the Court as representatives of the individuals whose rights are or will allegedly be affected. Indeed, as the Court noted previously in *Asselbourg and Others* and *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği* (cited above, §§ 41 and 43), it may be possible for an association to have standing before the Court despite the fact that it cannot itself claim to be the victim of a violation of the Convention.

499. Moreover, the special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context (see paragraph 489 above), speak in favour of recognising the standing of associations before the Court in climate-change cases. In view of the urgency of combating the adverse effects of climate change and the severity of its consequences, including the grave risk of their irreversibility, States should take adequate action notably through suitable general measures to secure not only the Convention rights of individuals who are currently affected by climate change, but also those individuals within their jurisdiction whose enjoyment of Convention rights may be severely and irreversibly affected in the future in the absence of timely action. The Court therefore considers it appropriate in this specific context to acknowledge the importance of making allowance for recourse to legal action by associations for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change, instead of exclusively relying on proceedings brought by each individual on his or her own behalf.

500. However, similarly to what was observed above concerning the victim status of natural persons in this context (see paragraph 483 *in fine* above), the exclusion of *actio popularis* under the Convention requires that the possibility for associations to lodge applications before the Court be subject to certain conditions. It is clear that the Convention mechanism cannot accept an abstract complaint about a general deterioration of the living conditions of people without considering its impact on a particular person or group of persons.

501. In this connection, when devising the test for the standing of associations in climate-change litigation under the Convention, the Court finds it pertinent to have regard to the Aarhus Convention, the importance of which has already been noted in its case-law (see *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et*

Mox v. France (dec.), no. 75218/01, 28 March 2006). The Court must, however, be mindful of the difference between the basic nature and purpose of the Aarhus Convention, which is designed to enhance public participation in environmental matters, and that of the Convention, which is designed to protect individuals' human rights. It must also bear in mind the specific features of climate-change litigation (see paragraphs 410-422 above) and the difference between climate change and the more linear and localised (traditional) environmental issues which the Aarhus Convention is designed to address. Moreover, in so far as the Aarhus Convention provides for a very broad standing of associations where the existence of an effect on the "public concerned" is assumed to exist (provided that the association is duly established under domestic law), the Court must be mindful of the fact that its own approach cannot result in an acceptance of *actio popularis* which, as a matter of principle and established case-law, is not provided for in the Convention system.

502. Thus, taking into account the above-noted considerations, the following factors will determine the standing of associations before the Court in the present context.

In order to be recognised as having *locus standi* to lodge an application under Article 34 of the Convention on account of the alleged failure of a Contracting State to take adequate measures to protect individuals against the adverse effects of climate change on human lives and health, the association in question must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.

In this connection, the Court will have regard to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice.

In accordance with the specific features of recourse to legal action by associations in this context (see paragraphs 497-499 above), the standing of an association to act on behalf of the members or other affected individuals within the jurisdiction concerned will not be subject to a separate requirement

of showing that those on whose behalf the case has been brought would themselves have met the victim-status requirements for individuals in the climate-change context as established in paragraphs 487 to 488 above.

503. In the event of existing limitations regarding the standing before the domestic courts of associations meeting the above Convention requirements, the Court may also, in the interests of the proper administration of justice, take into account whether, and to what extent, its individual members or other affected individuals may have enjoyed access to a court in the same or related domestic proceedings.

(iii) Application of these principles to the present case

504. The respondent Government challenged the standing/victim status of all the applicants as regards the substantive Convention provisions relied on, namely Articles 2 and 8 (see paragraphs 341 and 345 above).

505. Having regard to the approach outlined in paragraph 459 above, the Court will examine the issues of the victim status of applicants nos. 2-5 and the standing of the applicant association in the context of its assessment of the applicability of Articles 2 and 8 of the Convention.

(b) Applicability of the relevant Convention provisions

506. Similarly to what was observed above concerning victim status (see paragraph 458 above), the issue of applicability of the relevant Convention provisions may be examined separately as an issue of admissibility or in the context of the examination of the complaint on the merits (compare, for instance, *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 146, ECHR 2008 (extracts), and *M. Özel and Others v. Turkey*, nos. 14350/05 and 2 others, § 171 *in fine*, 17 November 2015). For the sake of methodological clarity, the Court will elaborate on the general principles concerning applicability separately (see the approach adopted in paragraph 459 above).

(i) General principles

(α) Article 2

507. In *Nicolae Virgiliu Tănase v. Romania* ([GC], no. 41720/13, §§ 140-41, 25 June 2019), the Court elaborated on the general principles for the applicability of Article 2 in instances where the right to life was at stake and where the person concerned did not die. In so far as may be relevant for the present case, the Court reasoned as follows:

> "140. It further emerges from the Court's case-law that, where the victim was not killed but survived and where he or she does not allege any intent to kill, the criteria for a complaint to be examined under this aspect of Article 2 are, firstly, whether the person was the victim of an activity, whether public or private, which by its very nature put his or her life at real and imminent risk and, secondly, whether he or she has suffered injuries that appear life-threatening as they occur. Other factors ... may also come into

play. The Court's assessment depends on the circumstances. While there is no general rule, it appears that if the activity involved by its very nature is dangerous and puts a person's life at real and imminent risk ... the level of injuries sustained may not be decisive and, in the absence of injuries, a complaint in such cases may still fall to be examined under Article 2 (see ... *Kolyadenko and Others*, cited above, § 155, in the context of natural disasters).

141. The Court has found this positive procedural obligation to arise under Article 2 in regard to a number of different kinds of activities, such as, for example, ... in respect of the management of dangerous activities resulting in industrial or environmental disasters (see *Öneryıldız* [*v. Turkey* [GC], no. 48939/99, ECHR 2004 XII], and *Budayeva and Others*, cited above) ... [This] list is not exhaustive ..."

508. The common thread in the relevant principles under Article 2 in the existing case-law concerning environmental degradation is that in order for a positive obligation to arise for the State, a threat to the right to life must be at stake. This flows from the case-law cited in *Nicolae Virgiliu Tănase* (see, for instance, *Öneryıldız*, cited above, § 71, and *Budayeva and Others*, cited above, § 130). This may then apply, for instance, to the case of industrial activities, which by their very nature are dangerous (see *Kolyadenko and Others*, cited above, § 158) or to instances where the right to life is threatened by a natural disaster (see *M. Özel and Others*, cited above, § 170).

509. It follows from the above-noted general principles that complaints concerning the alleged failures of the State to combat climate change most appropriately fall into the category of cases concerning an activity which is, by its very nature, capable of putting an individual's life at risk. Indeed, the applicants referred the Court to compelling scientific evidence showing a link between climate change and an increased risk of mortality, particularly in vulnerable groups (see paragraphs 65-68 above). At present, there is nothing in the arguments provided by the respondent Government or the intervening Governments to call into question the relevance and reliability of this evidence.

510. Thus, the IPCC has found (with *medium confidence*) that anthropogenic climate change, particularly through increased frequency and severity of extreme events, increases heat-related human mortality[194]. Other scientific studies have also found that heatwaves have caused tens of thousands of premature deaths in Europe since 2000[195]. In this context, the IPCC has also found (with *high confidence*) that populations at "highest risk" of temperature-related morbidity and mortality include older adults, children, women, those with chronic diseases, and people taking certain medications[196].

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[194] AR6 WGII, Summary for policymakers, p. 9.

[195] European Environment Agency, "Extreme temperatures and health" (2021). See also the study published in the *Lancet Countdown* (Vol 400, 2022, p. 1619) which found that, globally, heat-related deaths increased by 68% between 2000-04 and 2017-21, a death toll that was significantly exacerbated by the confluence of the COVID-19 pandemic.

[196] IPCC 2018 Special report, pp. 240-41.

511. The applicability of Article 2, however, cannot operate *in abstracto* in order to protect the population from any possible kind of environmental harm arising from climate change. In accordance with the case-law cited in paragraph 507 above, in order for Article 2 to apply in the context of an activity which is, by its very nature, capable of putting an individual's life at risk, there has to be a "real and imminent" risk to life. This may accordingly extend to complaints of State action and/or inaction in the context of climate change, notably in circumstances such as those in the present case, considering that the IPCC has found with high confidence that older adults are at "highest risk" of temperature-related morbidity and mortality.

512. It may be impossible to devise a general rule on what constitutes a "real and imminent" risk to life, as that will depend on the Court's assessment of the particular circumstances of a case. However, the Court's case-law indicates that the term "real" risk corresponds to the requirement of the existence of a serious, genuine and sufficiently ascertainable threat to life (see, for instance, *Fadeyeva v. Russia* (dec.), no. 55723/00, 16 October 2003, and *Brincat and Others*, cited above, §§ 82-84). The "imminence" of such a risk entails an element of physical proximity of the threat (see, for instance, *Kolyadenko and Others*, cited above, §§ 150-55) and its temporal proximity (see *Brincat and Others*, cited above, § 84).

513. In sum, in order for Article 2 to apply to complaints of State action and/or inaction in the context of climate change, it needs to be determined that there is a "real and imminent" risk to life. However, such risk to life in the climate-change context must be understood in the light of the fact that there is a grave risk of inevitability and irreversibility of the adverse effects of climate change, the occurrences of which are most likely to increase in frequency and gravity. Thus, the "real and imminent" test may be understood as referring to a serious, genuine and sufficiently ascertainable threat to life, containing an element of material and temporal proximity of the threat to the harm complained of by the applicant. This would also imply that where the victim status of an individual applicant has been established in accordance with the criteria set out in paragraphs 487 to 488 above, it would be possible to assume that a serious risk of a significant decline in a person's life expectancy owing to climate change ought also to trigger the applicability of Article 2.

(β) Article 8

514. According to the existing case-law, in order to fall within the scope of Article 8 of the Convention, complaints relating to environmental nuisances have to show, first, that there was an "actual interference" with the applicant's enjoyment of his or her private or family life or home, and, secondly, that a certain level of severity was attained. In other words, they have to show that the alleged environmental nuisance was serious enough to affect adversely, to a sufficient extent, the applicants' enjoyment of their right

to respect for their private and family life and their home (see *Pavlov and Others*, cited above, § 59, with further references; see also *Çiçek and Others v. Turkey* (dec.), no. 44837/07, § 22, 4 February 2020, with further references).

515. The question of "actual interference" in practice relates to the existence of a direct and immediate link between the alleged environmental harm and the applicant's private or family life or home (see *Ivan Atanasov*, cited above, § 66, and *Hardy and Maile*, cited above, § 187). In this context, the general deterioration of the environment is not sufficient. There must be a negative effect on an individual's private or family sphere (see *Kyrtatos*, cited above, § 52), which is essentially a matter to be decided on the basis of the criteria set out in paragraphs 487 to 488 above concerning the existence of victim status.

516. As regards the question of the seriousness of the interference, the Court has held that the adverse effects of environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8 (see, for instance, *Yevgeniy Dmitriyev*, cited above, § 32). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental impact on the applicant's health or quality of life (see *Çiçek and Others*, cited above, § 22). Moreover, breaches of the right to respect for one's home are not confined to concrete or physical breaches, such as unauthorised entry into a person's home, but also include those that are not concrete or physical, such as noise, emissions, smells or other forms of interference. A serious interference may result in the breach of a person's right to respect for his or her home if it prevents him or her from enjoying the amenities of his or her home (see *Udovičić v. Croatia*, no. 27310/09, § 136, 24 April 2014).

517. The Court has made clear that there will be no arguable claim under Article 8 if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city. Conversely, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes, in such a way as to affect their private and family life adversely, without, however, seriously endangering their health (see *Jugheli and Others v. Georgia*, no. 38342/05, § 62, 13 July 2017, with further references). Moreover, the Court has explained that it is often impossible to quantify the effects of the environmental nuisance at issue in each individual case and to distinguish them from the influence of other relevant factors such as age, profession or personal lifestyle. The same applies to the possible worsening of quality of life, which is a subjective characteristic that hardly lends itself to a precise definition (ibid., § 63).

518. It should further be noted that, in some instances, the exposure of a person to a serious environmental risk may be sufficient to trigger the applicability of Article 8. For instance, in *Hardy and Maile* (cited above,

§§ 189-92), the Court found that Article 8 applied where the dangerous effects of an activity to which the individuals concerned could potentially be exposed established a sufficiently close link with private and family life for the purposes of that provision. In *Jugheli and Others* (cited above, § 71), the Court found that even assuming that the air pollution complained of had not caused any quantifiable harm to the applicants' health, "it [could] have made them more vulnerable to various illnesses". In *Dzemyuk v. Ukraine* (no. 42488/02, §§ 82-84, 4 September 2014), the Court found that the available evidence confirmed the existence of potential risks to the environment caused by the location of a cemetery close to the applicant's house with the consequent impact on the environment and the applicant's "quality of life" under Article 8 of the Convention.

519. Drawing on the above considerations, and having regard to the causal relationship between State actions and/or omissions relating to climate change and the harm, or risk of harm, affecting individuals (see paragraphs 435, 436 and 478 above), Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.

520. However, in this context, the question of "actual interference" or the existence of a relevant and sufficiently serious risk entailing the applicability of Article 8 essentially depends on the assessment of similar criteria to those set out in paragraphs 487 to 488 above concerning the victim status of individuals, or in paragraph 502 above concerning the standing of associations. These criteria are therefore determinative for establishing whether Article 8 rights are at stake and whether this provision applies. In each case, these are matters that remain to be examined on the facts of a particular case and on the basis of the available evidence.

(ii) Application of these principles to the present case

(α) Article 8 of the Convention

– *The applicant association*

521. Having regard to the criteria set out in paragraph 502 above, the Court notes that the applicant association, according to its Statute, is a non-profit association established under Swiss law to promote and implement effective climate protection on behalf of its members. It has more than 2,000 female members who live in Switzerland and whose average age is 73. Close to 650 members are 75 or older. The applicant association's Statute further provides that it is committed to engaging in various activities aimed at reducing GHG emissions in Switzerland and addressing their effects on global warming. It acts not only in the interest of its members, but also in the interest of the general public and future generations, with the aim of ensuring effective climate protection. The applicant association pursues its aims

through various actions, including by taking legal action to address the effects of climate change in the interests of its members (see paragraph 10 above).

522. The FSC and the FAC limited their assessment of standing to the individual applicants, considering it unnecessary to examine that of the applicant association. As a result, the Court does not have the benefit of the assessment of the legal status of the applicant association under domestic law or of the nature and extent of its activities within the respondent State.

523. The Court further notes that in its submissions before the Court, the applicant association explained that it acted to ensure that its members were able to exercise their rights regarding the effects of climate change on them (see paragraph 307 above). Given the membership basis and representativeness of the applicant association, as well as the purpose of its establishment, the Court accepts that it represents a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the respondent State (see paragraph 497 above). The Court, furthermore, notes that the individual applicants did not have access to a court in the respondent State. Thus, viewed overall, the grant of standing to the applicant association before the Court is in the interests of the proper administration of justice.

524. Having regard to the above considerations, the Court finds that the applicant association is lawfully established, it has demonstrated that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members and other affected individuals against the threats arising from climate change in the respondent State and that it is genuinely qualified and representative to act on behalf of those individuals who may arguably claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being and quality of life as protected under the Convention (see paragraph 519 above).

525. In these circumstances, the Court finds that the complaints pursued by the applicant association on behalf of its members fall within the scope of Article 8.

526. Accordingly, it follows that the applicant association has the necessary *locus standi* in the present proceedings and that Article 8 is applicable to its complaint. The Government's objections must therefore be dismissed.

– *Applicants nos. 2-5*

527. Two key criteria have been set out for recognising the victim status of natural persons in the climate-change context: (a) high intensity of exposure of the applicant to the adverse effects of climate change; and (b) a pressing need to ensure the applicant's individual protection (see paragraphs 487-488 above). The threshold for fulfilling these criteria is especially high (see paragraph 488 above).

528. The applicants' complaint before the Court in the present case concerns the adverse effects of climate change which they, as older women, suffer as a result of the respondent State's allegedly inadequate action concerning climate change. The factual circumstances underlying their complaint may be seen as being localised and focused on the specific circumstances – namely, the past, present and future adverse effects of climate change and, in particular, heatwaves – prevailing at their places of residence in Switzerland.

529. In this connection, the applicants provided information and evidence showing how climate change affects older women in Switzerland, in particular in relation to the increasing occurrence and intensity of heatwaves. The data provided by the applicants, emanating from domestic and international expert bodies – the relevance and probative value of which has not been called into question – shows that several summers in recent years have been among the warmest summers ever recorded in Switzerland and that heatwaves are associated with increased mortality and morbidity, particularly in older women (see paragraphs 65-67 above).

530. Older people have been found by the IPCC to belong to some of the most vulnerable groups in relation to the harmful effects of climate change on physical and mental health[197]. Similar findings were made by the Swiss FOEN, which noted, more specifically, that heatwaves placed strain on the human body and that they could cause dehydration and the impairment of heart and lung function, leading to an increase in emergency hospital admissions. In this context, older people were found to be particularly at risk[198]. Moreover, the adverse effects of climate change on older women, and the need to protect them from the adverse effects of climate change, have been stressed in many international documents[199].

531. While the above findings undoubtedly suggest that the applicants belong to a group which is particularly susceptible to the effects of climate change, that would not, in itself, be sufficient to grant them victim status within the meaning of the criteria set out in paragraphs 487 to 488 above. It is necessary to establish, in each applicant's individual case, that the requirement of a particular level and severity of the adverse consequences affecting the applicant concerned is satisfied, including the applicants'

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[197] See AR6 WGII, Technical summary, p. 50.

[198] FOEN "Climate change in Switzerland", Management Summary (2020), p. 9.

[199] See, for instance, Reports of the Office of the United Nations High Commissioner for Human Rights: "Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women", A/HRC/41/26, 1 May 2019, and "Analytical study on the promotion and protection of the rights of older persons in the context of climate change", A/HRC/47/46, 30 April 2021; Note by the Secretary General "Human rights of older women: the intersection between ageing and gender", A/76/157, 16 July 2021, paragraph 61; and Report of the Secretary General "The impacts of climate change on the human rights of people in vulnerable situations", A/HRC/50/57, 6 May 2022, paragraph 4.

individual vulnerabilities which may give rise to a pressing need to ensure their individual protection.

532. In this connection, as regards applicants nos. 2-4, it should be noted that in their written declarations and their medical records they provided accounts of the various difficulties they encountered during heatwaves, including the effects on their medical conditions. They also submitted that they needed to take various personal adaptation measures during heatwaves.

533. However, while it may be accepted that heatwaves affected the applicants' quality of life, it is not apparent from the available materials that they were exposed to the adverse effects of climate change, or were at risk of being exposed at any relevant point in the future, with a degree of intensity giving rise to a pressing need to ensure their individual protection, not least given the high threshold which necessarily applies to the fulfilment of the criteria set out in paragraphs 487 to 488 above. It cannot be said that the applicants suffered from any critical medical condition whose possible aggravation linked to heatwaves could not be alleviated by the adaptation measures available in Switzerland or by means of reasonable measures of personal adaptation given the extent of heatwaves affecting that country (see paragraphs 88-90 above). It should also be reiterated that victim status in relation to future risk is only exceptionally admitted by the Court and the individual applicants have failed to demonstrate that such exceptional circumstances exist in their regard (see paragraph 470 above).

534. Finally, the fifth applicant provided a very general declaration not indicating any particular morbidity or other serious adverse effects created by heatwaves that would go beyond the usual effects which any person belonging to the group of older women might experience. Moreover, while she provided a medical certificate attesting that she suffered from asthma, in her declaration she stated that she had never seen a doctor concerning heatwaves (see paragraphs 20-21 above). It is therefore not possible to establish a correlation between the applicant's medical condition and her complaints before the Court.

535. It follows from the above considerations that applicants nos. 2-5 do not fulfil the victim-status criteria under Article 34 of the Convention. This suffices for the Court to conclude that their complaints should be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3.

(β) Article 2 of the Convention

536. While Article 8 undoubtedly applies in the circumstances of the present case as regards the complaints of the applicant association concerning the effects of the alleged shortcomings on the part of the respondent State in its measures to combat the adverse effects and threats of climate change on human health, whether those alleged shortcomings also had such life-threatening consequences as could trigger the applicability of Article 2 is

more questionable. However, for the reasons stated in paragraphs 537 and 538 below, the Court finds it unnecessary to analyse further the issues pertinent to the threshold of applicability of Article 2. The Court also finds that, having regard to the reasons set out in paragraphs 527 to 535 above, the complaints of applicants nos. 2-5 under Article 2 should be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3.

(γ) Conclusion

537. The Court finds it appropriate to examine the applicant association's complaint from the angle of Article 8 alone. That said, in its case-law analysis below it will have regard to the principles developed also under Article 2, which to a very large extent are similar to those under Article 8 (see paragraph 292 above) and which, when seen together, provide a useful basis for defining the overall approach to be applied in the climate-change context under both provisions.

4. Merits

(a) General principles

538. To a great extent the Court has applied the same principles as those set out in respect of Article 2 when examining cases involving environmental issues under Article 8, notably by affirming that:

(a) The States have a positive obligation to put in place the relevant legislative and administrative framework designed to provide effective protection of human health and life. In particular, States have an obligation to put in place regulations geared to the specific features of the activity in question, particularly with regard to the level of risk potentially involved. 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 the citizens whose lives might be endangered by the inherent risks (see, for instance, *Jugheli and Others*, cited above, § 75; *Di Sarno and Others*, cited above, § 106; and *Tătar*, cited above, § 88).

(b) The States also have an obligation to apply that framework effectively in practice; indeed, regulations to protect guaranteed rights serve little purpose if they are not duly enforced and the Convention is intended to protect effective rights, not illusory ones. The relevant measures must be applied in a timely and effective manner (see *Cuenca Zarzoso v. Spain*, no. 23383/12, § 51, 16 January 2018).

(c) In assessing whether the respondent State complied with its positive obligations, the Court must consider whether, in the manner of devising and/or implementing the relevant measures, the State remained within its margin of appreciation. In cases involving environmental issues, the State

must be allowed a wide margin of appreciation (see *Hardy and Maile*, cited above, § 218, with further references), in particular with regard to the substantive aspect (see *Hatton and Others*, cited above, § 100).

(d) The choice of means is in principle a matter that falls within the State's margin of appreciation; even if the State has failed to apply one particular measure provided for by domestic law, it may still fulfil its positive duty by other means. An impossible or disproportionate burden must not be imposed on the authorities without consideration being given, in particular, to the operational choices which they must make in terms of priorities and resources (see *Kolyadenko and Others*, cited above, § 160, and *Kotov and Others v. Russia*, nos. 6142/18 and 13 others, § 134, 11 October 2022).

(e) While it is not in the Court's remit to determine what exactly should have been done, it can assess whether the authorities approached the matter with due diligence and gave consideration to all competing interests (see *Mileva and Others v. Bulgaria*, nos. 43449/02 and 21475/04, § 98, 25 November 2010).

(f) The State has a positive obligation to provide access to essential information enabling individuals to assess risks to their health and lives (see *Guerra and Others v. Italy*, 19 February 1998, §§ 57-60, *Reports* 1998-I, developing *López Ostra v. Spain*, 9 December 1994, § 55, Series A no. 303-C; see, further, *McGinley and Egan v. the United Kingdom*, 9 June 1998, §§ 98-104, *Reports* 1998-III, and *Roche v. the United Kingdom* [GC], no. 32555/96, §§ 157-69, ECHR 2005-X).

(g) In assessing whether the respondent State complied with its positive obligations, the Court must consider the particular circumstances of the case. The scope of the positive obligations imputable to the State in the particular circumstances will depend on the origin of the threat and the extent to which one or the other risk is susceptible to mitigation (see *Kolyadenko and Others*, cited above, § 161, and *Brincat and Others*, cited above, §§ 101-02).

539. In environmental cases examined under Article 8 of the Convention, the Court has frequently reviewed the domestic decision-making process, taking into account that the procedural safeguards available to the individual will be especially material in determining whether the respondent State has remained within its margin of appreciation (see, for instance, *Flamenbaum and Others v. France*, nos. 3675/04 and 23264/04, § 137, 13 December 2012). In this context, the Court has had particular regard to the following principles and considerations:

(a) The complexity of the issues involved with regard to environmental policy-making renders the Court's role primarily a subsidiary one. The Court must therefore first examine whether the decision-making process was adequate (see *Taşkın and Others*, cited above, §§ 117-18);

(b) The Court is required to consider all the procedural aspects, including the type of policy or decision involved, the extent to which the views of individuals were taken into account throughout the decision-making

procedure, and the procedural safeguards available (see *Hatton and Others*, cited above, § 104).

(c) In particular, a governmental decision-making process concerning complex issues such as those in respect of environmental and economic policy must necessarily involve appropriate investigations and studies in order to allow the authorities to strike a fair balance between the various conflicting interests at stake. However, this does not mean that decisions can only be taken if comprehensive and measurable data are available in relation to each and every aspect of the matter to be decided (ibid., § 128). What is important is that the effects of activities that might harm the environment and thus infringe the rights of individuals under the Convention may be predicted and evaluated in advance (see *Hardy and Maile*, cited above, § 220, with further references).

(d) The public must have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed (see *Tătar*, cited above, § 113, with further references). Moreover, in some instances, relying on the Aarhus Convention, the Court has noted the obligation that in the event of any imminent threat to human health or the environment, whether caused by human activities or owing to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and which is held by a public authority be disseminated immediately and without delay to members of the public who may be affected (see *Di Sarno and Others*, cited above, § 107).

(e) The individuals concerned must have an opportunity to protect their interests in the environmental decision-making process, which implies that they must be able to participate effectively in relevant proceedings and to have their relevant arguments examined, although the actual design of the process is a matter falling within the State's margin of appreciation (see, for instance, *Flamenbaum and Others*, cited above, § 159).

540. It is with these principles in mind that the Court will proceed by identifying the content of the State's positive obligations under Articles 2 and 8 of the Convention in the context of climate change (see paragraphs 292 and 537 above) However, given the special nature of the phenomenon as compared with the isolated sources of environmental harm previously addressed in the Court's case-law, the general parameters of the positive obligations must be adapted to the specific context of climate change.

(b) The States' positive obligations in the context of climate change

(i) The States' margin of appreciation

541. In accordance with the principle of subsidiarity, the national authorities have the primary responsibility to secure the rights and freedoms defined in the Convention, and in doing so they enjoy a margin of appreciation, subject to the Court's supervisory jurisdiction (see, among

many other authorities, *Garib v. the Netherlands* [GC], no. 43494/09, § 137, 6 November 2017; see also see the Preamble to the Convention, introduced on the basis of Article 1 of Protocol No. 15).

542. Having regard, in particular, to the scientific evidence as regards the manner in which climate change affects Convention rights, and taking into account the scientific evidence regarding the urgency of combating the adverse effects of climate change, the severity of its consequences, including the grave risk of their reaching the point of irreversibility, and the scientific, political and judicial recognition of a link between the adverse effects of climate change and the enjoyment of (various aspects of) human rights (see paragraph 436 above), the Court finds it justified to consider that climate protection should carry considerable weight in the weighing-up of any competing considerations. Other factors militating in the same direction include the global nature of the effects of GHG emissions, as opposed to environmental harm that occurs solely within a State's own borders, and the States' generally inadequate track record in taking action to address the risks of climate change that have become apparent in the past several decades, as evidenced by the IPCC's finding of "a rapidly closing window of opportunity to secure a liveable and sustainable future for all" (see paragraph 118 above), circumstances which highlight the gravity of the risks arising from non-compliance with the overall global objective (see also paragraph 139 above).

543. Taking as a starting-point the principle that States must enjoy a certain margin of appreciation in this area, the above considerations entail a distinction between the scope of the margin as regards, on the one hand, the State's commitment to the necessity of combating climate change and its adverse effects, and the setting of the requisite aims and objectives in this respect, and, on the other hand, the choice of means designed to achieve those objectives. As regards the former aspect, the nature and gravity of the threat and the general consensus as to the stakes involved in ensuring the overarching goal of effective climate protection through overall GHG reduction targets in accordance with the Contracting Parties' accepted commitments to achieve carbon neutrality, call for a reduced margin of appreciation for the States. As regards the latter aspect, namely their choice of means, including operational choices and policies adopted in order to meet internationally anchored targets and commitments in the light of priorities and resources, the States should be accorded a wide margin of appreciation.

(ii) Content of the States' positive obligations

544. As stated above, the Court already held long ago that the scope of protection under Article 8 of the Convention extends to adverse effects on human health, well-being and quality of life arising from various sources of environmental harm and risk of harm. Similarly, the Court derives from Article 8 a right for individuals to enjoy effective protection by the State

authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change (see paragraph 519 above).

545. Accordingly, the State's obligation under Article 8 is to do its part to ensure such protection. In this context, the State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change. This obligation flows from the causal relationship between climate change and the enjoyment of Convention rights, as noted in paragraphs 435 and 519 above, and the fact that the object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied such as to guarantee rights that are practical and effective, not theoretical and illusory (see, for instance, *H.F. and Others v. France*, cited above, § 208 *in fine*; see also paragraph 440 above).

546. In line with the international commitments undertaken by the member States, most notably under the UNFCCC and the Paris Agreement, and the cogent scientific evidence provided, in particular, by the IPCC (see paragraphs 104-120 above), the Contracting States need to put in place the necessary regulations and measures aimed at preventing an increase in GHG concentrations in the Earth's atmosphere and a rise in global average temperature beyond levels capable of producing serious and irreversible adverse effects on human rights, notably the right to private and family life and home under Article 8 of the Convention.

547. Bearing in mind that the positive obligations relating to the setting-up of a regulatory framework must be geared to the specific features of the subject matter and the risks involved (see paragraphs 107-120 and 440 above) and that the global aims as to the need to limit the rise in global temperature, as set out in the Paris Agreement, must inform the formulation of domestic policies, it is obvious that the said aims cannot of themselves suffice as a criterion for any assessment of Convention compliance of individual Contracting Parties to the Convention in this area. This is because each individual State is called upon to define its own adequate pathway for reaching carbon neutrality, depending on the sources and levels of emissions and all other relevant factors within its jurisdiction.

548. It follows from the above considerations that effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades. In this context, in order for the measures to be effective, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see, *mutatis mutandis*, *Georgel and Georgeta Stoicescu v. Romania*, no. 9718/03, § 59, 26 July 2011).

549. Moreover, in order for this to be genuinely feasible, and to avoid a disproportionate burden on future generations, immediate action needs to be taken and adequate intermediate reduction goals must be set for the period leading to net neutrality. Such measures should, in the first place, be incorporated into a binding regulatory framework at the national level, followed by adequate implementation. The relevant targets and timelines must form an integral part of the domestic regulatory framework, as a basis for general and sectoral mitigation measures. Accordingly, and reiterating the position taken above, namely that the margin of appreciation to be afforded to States is reduced as regards the setting of the requisite aims and objectives, whereas in respect of the choice of means to pursue those aims and objectives it remains wide, the Court finds it appropriate to outline the States' positive obligations (see paragraph 440 above) in this domain as follows.

550. When assessing whether a State has remained within its margin of appreciation (see paragraph 543 above), the Court will examine whether the competent domestic authorities, be it at the legislative, executive or judicial level, have had due regard to the need to:

(a) adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame, or another equivalent method of quantification of future GHG emissions, in line with the overarching goal for national and/or global climate-change mitigation commitments;

(b) set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) that are deemed capable, in principle, of meeting the overall national GHG reduction goals within the relevant time frames undertaken in national policies;

(c) provide evidence showing whether they have duly complied, or are in the process of complying, with the relevant GHG reduction targets (see sub-paragraphs (a)-(b) above);

(d) keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence; and

(e) act in good time and in an appropriate and consistent manner when devising and implementing the relevant legislation and measures.

551. The Court's assessment of whether the above requirements have been met will, in principle, be of an overall nature, meaning that a shortcoming in one particular respect alone will not necessarily entail that the State would be considered to have overstepped its relevant margin of appreciation (see paragraph 543 above).

552. Furthermore, effective protection of the rights of individuals from serious adverse effects on their life, health, well-being and quality of life requires that the above-noted mitigation measures be supplemented by adaptation measures aimed at alleviating the most severe or imminent consequences of climate change, taking into account any relevant particular needs for protection. Such adaptation measures must be put in place and

effectively applied in accordance with the best available evidence (see paragraphs 115 and 119 above) and consistent with the general structure of the State's positive obligations in this context (see paragraph 538 (a) above).

553. Lastly, it has already been noted in the Court's case-law that the procedural safeguards available to those concerned will be especially material in determining whether the respondent State has remained within its margin of appreciation (see paragraph 539 above). This is also true in matters of general policy, which include the approach to the choice of means to combat climate change through mitigation and adaptation.

554. In this context, drawing on the approach taken in environmental cases (see paragraph 539 above), and noting the specific features and complexities of the issues concerning climate change, the following types of procedural safeguards are to be taken into account as regards the State's decision-making process in the context of climate change:

(a) The information held by public authorities of importance for setting out and implementing the relevant regulations and measures to tackle climate change must be made available to the public, and in particular to those persons who may be affected by the regulations and measures in question or the absence thereof. In this connection, procedural safeguards must be available to ensure that the public can have access to the conclusions of the relevant studies, allowing them to assess the risk to which they are exposed.

(b) Procedures must be available through which the views of the public, and in particular the interests of those affected or at risk of being affected by the relevant regulations and measures or the absence thereof, can be taken into account in the decision-making process.

(c) Application of the above principles to the present case

(i) Preliminary remarks

555. In the present case, and having regard to the nature of the complaint of the applicant association, acting on behalf of its members (see paragraph 296 above), the Court will assess the respondent State's compliance with its duty to put in place, and effectively apply in practice, the relevant mitigation measures. Failure by the State to comply with this aspect of its positive obligations would suffice for the Court to conclude that the State failed to comply with its positive obligations under Article 8 of the Convention without it being necessary to examine whether the ancillary adaptation measures were put in place (see paragraph 552 above).

556. Moreover, having regard to the nature of the applicant association's complaint relating to the existing and future adverse effects of climate change on the rights of the individuals on whose behalf it acts, and contrary to the arguments of the respondent Government (see paragraph 338 *in fine* above), the Court's assessment may take into account the overall situation in the respondent State, including any relevant information that has come to light as

regards the situation since the completion of the domestic proceedings. However, noting the currently ongoing domestic legislative process (see paragraph 97 above), the Court's assessment is limited to examining the domestic legislation as it stands on the date of adoption of the present judgment, namely 14 February 2024, and on which the parties have provided their submissions.

557. The Court also takes note of the applicant association's reference to several studies suggesting deficiencies in Switzerland's measures to tackle climate change (see paragraph 325 above), which the Government challenged, considering them to be based in essence on subjective hypotheses. For its part, and having regard to its findings in paragraph 573 below, the Court does not find it necessary for its determination of the present case to resolve the disagreements between the parties concerning the findings made in those studies.

(ii) The respondent State's compliance with its positive obligations

558. At the outset, the Court notes that the currently existing 2011 CO_2 Act (in force since 2013) required that by 2020 GHG emissions should be reduced overall by 20% compared with 1990 levels (see paragraph 84 above). However, as pointed out by the applicants, in an assessment dating back to August 2009, the Swiss Federal Council[200] found that at that time the existing scientific evidence[201] relating to the limitation of global warming to 2 to 2.4°C above pre-industrial levels (thus above the currently required 1.5°C limit) required a reduction in global emissions of at least 50-85% by 2050 compared with 1990 levels. This meant that the industrialised countries (such as the respondent State) had to reduce their emissions by 25-40% by 2020 compared to 1990 levels. The study in question also found that in order for the UNFCCC commitments (which were higher than the 1.5°C limit) to be met, GHG emissions would have to decline continuously in order not to exceed 1 to 1.5 tonnes of CO_2eq per capita at the end of the century. However, the pathway which targeted a reduction of 20% by 2020 was considered to be insufficient to achieve that objective in the long term, which required an additional effort for the period after 2020.

559. Moreover, as the Government acknowledged, the relevant domestic assessments found that even the GHG reduction target for 2020 had been missed. Indeed, on average over the period between 2013 and 2020, Switzerland reduced its GHG emissions by around 11% compared with 1990 levels (see paragraph 87 above), which indicates the insufficiency of the

[200] FF 2009 6723 "Message relatif à la politique climatique suisse après 2012 (Révision de la loi sur le CO2 et initiative populaire fédérale « pour un climat sain »)" (2009), pp. 6737-38 and 6757.
[201] See AR4 "Climate Change 2007: Impacts, Adaptation, and Vulnerability".

authorities' past action to take the necessary measures to address climate change.

560. In December 2017, for the period from 2020 to 2030, the Federal Council tabled a revision of the 2011 CO_2 Act, proposing an overall reduction of 50% of GHG emissions, which included a domestic reduction of 30% by 2030 compared with 1990 levels, while the rest was to be achieved by measures to be taken abroad ("external emissions").

561. However, this proposed revision of the 2011 CO_2 Act was rejected in a popular referendum in June 2021. According to the Government, this did not suggest that citizens rejected the necessity of combating global warming or reducing national GHG emissions but rather the proposed means to do so (see paragraph 357 above). In this connection, the Court reiterates that with respect to the choice of means to tackle climate change, the States are accorded a wide margin of appreciation (see paragraph 543 above). In any event, and irrespective of the way in which the legislative process is organised from the domestic constitutional point of view (see *G.S.B. v Switzerland*, no. 28601/11, §§ 72-73, 22 December 2015; see also *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, §§ 71-72, 14 December 2023), the fact is that after the referendum a legislative lacuna existed for the period after 2020. The State sought to address this lacuna by enacting, on 17 December 2021, a partial revision of the existing 2011 CO_2 Act, according to which the reduction target for the years 2021 to 2024 was set at 1.5% per year compared with 1990 levels, on the understanding that from 2022 onwards, a maximum of 25% of this reduction could be achieved by measures implemented abroad (see paragraph 95 above). This also left the period after 2024 unregulated and thus incompatible with the requirement of the existence of general measures specifying the respondent State's mitigation measures in line with a net neutrality timeline (see paragraph 550 (a) above).

562. These lacunae point to a failure on the part of the respondent State to fulfil its positive obligation derived from Article 8 to devise a regulatory framework setting the requisite objectives and goals (see paragraph 550 (a)-(b) above). In this context, it should be noted that in its latest AR6 Synthesis Report (Climate Change 2023) the IPCC stressed that the choices and actions implemented in this decade would have impacts now and for thousands of years (see paragraphs 118-119 above).

563. There have, however, been other developments and regulatory initiatives at the domestic level in relation to climate change. In December 2021 Switzerland submitted an updated NDC undertaking to comply with the targets set out in the Paris Agreement.[202] Switzerland therefore aligned its climate policy with the international commitments set

[202] See UNFCCC, Nationally Determined Contributions Registry, available at www.unfccc.int/NDCREG; last accessed 14.02.2024.

out in that agreement. In particular, the commitments under this updated NDC were summarised in a subsequent communication[203] as follows:

> "Switzerland is committed to following the recommendations of science in order to limit warming to 1.5 degrees Celsius. In view of its climate neutrality target by 2050, Switzerland's NDC is to reduce its [GHG] emissions by at least 50 percent by 2030 compared with 1990 levels, corresponding to an average reduction of [GHG] emissions by at least 35 percent over the period 2021-2030. By 2025, a reduction of [GHG] by at least 35 percent compared with 1990 levels is anticipated. Internationally transferred mitigation outcomes (ITMOs) from cooperation under Article 6 of the Paris Agreement will partly be used."

564. On 30 September 2022, reflecting the commitments in the updated NDC, the Climate Act[204] was enacted (see paragraph 93 above). This Act – which was confirmed in a referendum only on 18 June 2023 but has not yet come into force – envisages the principle of a net-zero emissions target by 2050 by providing that the GHG emissions should be reduced "as far as possible". It also provides for an intermediate target for 2040 (75% reduction compared with 1990 levels) and for the years 2031 to 2040 (average of at least 64%) and 2041 to 2050 (average of at least 89% compared with 1990 levels). It also set indicative values for the reduction of emissions in the building, transport and industrial sectors for the years 2040 and 2050.

565. In this connection, the Court notes that the Climate Act sets out the general objectives and targets but that the concrete measures to achieve those objectives are not set out in the Act but rather remain to be determined by the Federal Council and proposed to Parliament "in good time" (section 11(1) of the Climate Act). Moreover, the adoption of the concrete measures is to be provided under the 2011 CO_2 Act (section 11(2) of the Climate Act), which, as already noted in paragraphs 558 to 559 above, in its current form cannot be considered as providing for a sufficient regulatory framework.

566. It should also be noted that the new regulation under the Climate Act concerns intermediate targets only for the period after 2031. Given the fact that the 2011 CO_2 Act provides for legal regulation of the intermediate targets only up until 2024 (see paragraph 561 above), this means that the period between 2025 and 2030 still remains unregulated pending the enactment of new legislation.

567. In these circumstances, given the pressing urgency of climate change and the current absence of a satisfactory regulatory framework, the Court has difficulty accepting that the mere legislative commitment to adopt the concrete measures "in good time", as envisaged in the Climate Act, satisfies the State's duty to provide, and effectively apply in practice, effective

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[203] See the Report "Switzerland's information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 of its updated and enhanced nationally determined contribution (NDC) under the Paris Agreement (2021 – 2030)".

[204] FF 2022 2403 Loi fédérale sur les objectifs en matière de protection du climat, sur l'innovation et sur le renforcement de la sécurité énergétique.

protection of individuals within its jurisdiction from the adverse effects of climate change on their life and health (see paragraph 555 above).

568. While acknowledging the significant progress to be expected from the recently enacted Climate Act, once it has entered into force, the Court must conclude that the introduction of that new legislation is not sufficient to remedy the shortcomings identified in the legal framework applicable so far.

569. The Court further observes that the applicant association has provided an estimate of the remaining Swiss carbon budget under the current situation, also taking into account the targets and pathways introduced by the Climate Act (see paragraph 323 above). Referring to the relevant IPCC assessment of the global carbon budget, and the data of the Swiss greenhouse gas inventory[205], the applicant association provided an estimate according to which, assuming the same per capita burden-sharing for emissions from 2020 onwards, Switzerland would have a remaining carbon budget of 0.44 $GtCO_2$ for a 67% chance of meeting the 1.5°C limit (or 0.33 $GtCO_2$ for an 83% chance). In a scenario with a 34% reduction in CO_2 emissions by 2030 and 75% by 2040, Switzerland would have used the remaining budget by around 2034 (or 2030 for an 83% change). Thus, under its current climate strategy, Switzerland allowed for more GHG emissions than even an "equal per capita emissions" quantification approach would entitle it to use.

570. The Court observes that the Government relied on the 2012 Policy Brief to justify the absence of any specific carbon budget for Switzerland. Citing the latter, the Government suggested that there was no established methodology to determine a country's carbon budget and acknowledged that Switzerland had not determined one. They argued that Swiss national climate policy could be considered as being similar in approach to establishing a carbon budget and that it was based on relevant internal assessments prepared in 2020 and expressed in its NDCs (see paragraph 360 above). However, the Court is not convinced that an effective regulatory framework concerning climate change could be put in place without quantifying, through a carbon budget or otherwise, national GHG emissions limitations (see paragraph 550 (a) above).

571. In this regard the Court cannot but note that the IPCC has stressed the importance of carbon budgets and policies for net-zero emissions (see paragraph 116 above), which can hardly be compensated for by reliance on the State's NDCs under the Paris Agreement, as the Government seemed to suggest. The Court also finds convincing the reasoning of the GFCC, which rejected the argument that it was impossible to determine the national carbon budget, pointing to, *inter alia*, the principle of common but differentiated responsibilities under the UNFCCC and the Paris Agreement (see *Neubauer and Others*, cited in paragraph 254 above, paragraphs 215-29). This principle

[205] See FOEN, Switzerland's greenhouse gas inventory, available at www.bafu.admin.ch; last accessed 14.02.2024.

requires the States to act on the basis of equity and in accordance with their own respective capabilities. Thus, for instance, it is instructive for comparative purposes that the European Climate Law provides for the establishment of indicative GHG budgets (see paragraph 211 above).

572. In these circumstances, while acknowledging that the measures and methods determining the details of the State's climate policy fall within its wide margin of appreciation, in the absence of any domestic measure attempting to quantify the respondent State's remaining carbon budget, the Court has difficulty accepting that the State could be regarded as complying effectively with its regulatory obligation under Article 8 of the Convention (see paragraph 550 above).

(iii) Conclusion

573. In conclusion, there were some critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework, including a failure by them to quantify, through a carbon budget or otherwise, national GHG emissions limitations. Furthermore, the Court has noted that, as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction targets (see paragraphs 558 to 559 above). By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework, the respondent State exceeded its margin of appreciation and failed to comply with its positive obligations in the present context.

574. The above findings suffice for the Court to find that there has been a violation of Article 8 of the Convention.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

575. The applicants complained that they had not had access to a court, for the purposes of Article 6 § 1 of the Convention, concerning the State's failure to take the necessary action to address the adverse effects of climate change.

576. The relevant part of Article 6 § 1 of the Convention reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

1. The applicants

577. The applicants stressed that access to a court was crucial in climate cases. In their view, given their participation in the domestic proceedings, there was no doubt that they had victim status for the purposes of their

complaint under Article 6 § 1 of the Convention. They also considered that the civil limb of Article 6 was applicable in the present case. In particular, the protection of physical integrity was a "civil right" within the meaning of Article 6. The dispute concerned the right to life under Article 10 § 1 of the Swiss Constitution as well as the rights under Articles 2 and 8 of the Convention (all of which had a legal basis in domestic law) in relation to the inadequate enforcement of the CO_2 Act and the inadequacy of the climate targets. The dispute at issue was about the scope of the above-mentioned rights.

578. The dispute in question was genuine and serious, and the outcome of the proceedings was directly decisive for the rights in question. There was a clear connection, and thus more than a tenuous connection or remote consequences, between the rights invoked, on the one hand, and the reduction of GHG (outcome of the proceedings), on the other. In the domestic proceedings, the applicants had sought an order which would force the respondent State to take the necessary action to tackle dangerous climate change. This would have gone hand in hand with a reduction of GHG emissions and the heatwaves linked to them, a matter which had a clear connection to the protection of their rights. In the domestic proceedings they had not merely complained about hypothetical consequences for the environment and human health but had pointed to concrete health risks from excessive GHG emissions which they faced as members of a particularly vulnerable group and which had also materialised for some of the applicants. Thus, the outcome of the domestic proceedings had affected the very substance of their rights to life and private life.

579. The applicants contended that they had not had an effective judicial remedy at their disposal by which to assert their civil rights. The domestic authorities had declared their claims inadmissible on the grounds that they lacked standing under section 25a of the APA, and the domestic courts had upheld that decision. The domestic courts had not assessed the applicants' claim or, alternatively, had only done so arbitrarily. Specifically, none of the courts had effectively analysed the merits of the critical questions, such as those relating to the applicants' vulnerability to extreme heatwaves, the harm from heat-related afflictions suffered by applicants nos. 2-5, and the legislative and administrative framework necessary to protect the applicants' rights to life and their family and private life.

580. In the applicants' view, the domestic courts had applied the standing requirements arbitrarily and in a manifestly unreasonable way, impairing the very essence of their right of access to a court. The assessment of the FAC that the applicants were not "particularly" affected by the impacts of climate change had been in clear contrast to the best available scientific evidence and the medical certificates submitted by the applicants. Moreover, the FSC's conclusion that there was still some time available to combat dangerous climate change had been arbitrary and contrary to any scientific evidence. It

had been the result of the judges' own fact-finding exercise without the involvement of (climate) scientists and despite the fact that the FSC's appellate function was normally limited to the examination of breaches of the law. In any event, that finding had been based on a false premise and was manifestly unreasonable.

581. The applicants also submitted that the domestic courts had applied the standing requirements disproportionately, given their duty to consider the nature of the rights at stake, and the fact that on the basis of their interpretation of the standing requirements, acts and failures by the State in fighting climate change would remain entirely outside the scope of human rights law. This would be an unacceptable consequence in the light of the magnitude of the threat posed by climate change and the practice in comparable environmental-law cases. Moreover, the domestic courts' arbitrary application of the standing requirements was inconsistent with the respondent State's commitments under the Aarhus Convention.

2. The Government

582. For the reasons set out in paragraphs 340 to 341 above concerning the applicant association's victim status under the substantive provisions (Articles 2 and 8), the Government argued that the applicant association could also not be considered to have victim status under Article 6 § 1 of the Convention. On the other hand, the Government did not contest that applicants nos. 2-5 could claim victim status under that provision.

583. Relying on the findings of the domestic courts, the Government submitted that the applicants had not been affected with the required intensity in the enjoyment of their rights arising from Article 10 § 1 of the Constitution and Articles 2 and 8 of the Convention to claim victim status for the purposes of Article 34 of the Convention. Their request had been of an *actio popularis* nature and they could not arguably claim that there had been a dispute over a right recognised in domestic law. The Government also stressed that neither the Swiss Constitution nor any other domestic legislation recognised the right to a clean, healthy and sustainable environment.

584. The Government further stressed that the applicants had not established the existence of a sufficient link between the alleged omissions and the rights invoked. Moreover, they had not demonstrated that there had been a serious and imminent threat to the rights invoked, and the requested actions had not been likely to immediately contribute to the reduction of CO_2 emissions in Switzerland. Consequently, neither the threat nor the actions requested presented a degree of probability making the outcome of the dispute directly decisive for the rights invoked by the applicants. The link between the alleged omissions and the rights invoked by the applicants was therefore too tenuous and remote.

585. In the present case, in reality, the applicants had sought to obtain the replacement of the CO_2 Act by a law providing for stricter measures. It was

therefore the general interest in protection of the climate that had constituted the object of the proceedings and the issue at stake, and not a dispute over a civil right of the applicants. The Government therefore argued that Article 6 § 1 was not applicable.

586. Furthermore, the Government pointed out that the applicants had had access to two levels of domestic jurisdiction. Both the FAC and the FSC had carefully examined the applicants' case and had provided duly reasoned decisions. Moreover, in the Government's view, the domestic administrative procedure was not particularly complex and was based on the inquisitory principle whereby the domestic authorities sought to establish the facts of their own motion. However, in order to bring an action under section 25a of the APA certain conditions needed to be fulfilled so as to avoid *actio popularis* claims.

587. In the Government's view, the conditions laid down by the procedural law to allow an authority to examine a particular matter served the proper administration of justice. The requirement for the person making the claim to be affected to some extent in his or her personal legal sphere resulted from the fact that section 25a of the APA was a means of individual legal protection. This allowed for a delimitation in relation to *actio popularis* claims. This requirement also contributed to respect for the separation of powers. It could not therefore be said to restrict access to a court in such a way that the individual's right to a court would be impaired in its very essence. Moreover, there was a reasonable relationship of proportionality between this requirement and the aims pursued.

588. The careful examination of the case carried out by the FSC with regard to the formal criterion of an interest worthy of protection, as well as the characteristics of the political system specific to Switzerland, demonstrated that the courts could not play a determining role in the sphere of climate change, and could certainly not themselves define the measures to be taken. In the view of the Government, the FSC had therefore rightly considered that the applicants' complaints should not be answered by judicial means, but rather by political means. Their appeal had not served the purpose of individual legal protection but rather had aimed to examine in an abstract manner the current climate protection measures, and those planned up to 2030. This element in particular had led the FSC to find that the applicants' appeal was of an *actio popularis* nature, which was incompatible with the means of individual legal protection. These findings were neither arbitrary nor manifestly unreasonable and the Court should not therefore call them into question.

589. In sum, in the Government's view, there had been no disproportionate restriction on the applicants' right of access to the domestic courts in a manner impairing the very essence of that right. The applicants' Article 6 § 1 complaint was therefore manifestly ill-founded.

B. The Court's assessment

1. Admissibility

(a) Victim status

590. In order to claim to be a "victim" in the context of an alleged violation of Article 6 of the Convention, and to complain of alleged procedural shortcomings under that provision, it is normally sufficient that the applicant was affected as a party to the proceedings brought by him or her before the domestic courts. This is true for individuals (see, for instance, *Balmer-Schafroth and Others v. Switzerland*, 26 August 1997, § 26, *Reports* 1997-IV, and *Çöçelli and Others v. Türkiye*, no. 81415/12, §§ 39-40, 11 October 2022) and for associations (see, for instance, *Gorraiz Lizarraga and Others*, cited above, § 36, and *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği*, cited above, § 40, with further references).

591. Where the *locus standi* of an applicant has been denied at the domestic level (see, for instance, *Bursa Barosu Başkanlığı and Others v. Turkey*, no. 25680/05, §§ 114-16, 19 June 2018), including in instances where the applicant was not recognised as possessing an interest in bringing an action, and where the applicant complains of a lack of access to a court or of another procedural deficiency in that respect, the matter of victim status may more appropriately be examined in the context of the assessment of the applicability of Article 6 to the dispute in question (see, for instance, *Asselbourg and Others*, cited above; *Folkman and Others v. the Czech Republic* (dec.), no. 23673/03, 10 July 2006; *Sarl du Parc d'Activités de Blotzheim v. France*, no. 72377/01, §§ 18-20, 11 July 2006; and *Association Burestop 55 and Others*, cited above, §§ 52-60).

592. In the present case, the Government challenged the standing/victim status of all the applicants as regards the substantive Convention provisions (Articles 2 and 8), whereas they did not challenge the victim status of applicants nos. 2-5 under the procedural provisions (Articles 6 and 13) (see paragraphs 341 and 345 above).

593. Having regard to the fact that the issue of victim status under Article 34 is, in any event, a matter that goes to the Court's jurisdiction and which the Court examines of its own motion (see *Fedotova and Others*, cited above, § 88), the issue of the victim status of the applicants under Article 6 § 1 of the Convention will be examined by joining it to the assessment of the applicability of that provision.

(b) Applicability of Article 6 § 1 of the Convention

(i) General principles

594. Article 6 of the Convention does not guarantee a right of access to a court with power to invalidate or override a law enacted by the legislature

(see, for example, *Ruiz-Mateos v. Spain*, no. 14324/88, Commission decision of 19 April 1991, Decisions and Reports 69, p. 22; *Posti and Rahko v. Finland*, no. 27824/95, § 52, ECHR 2002 VII; and *Project-Trade d.o.o. v. Croatia*, no. 1920/14, § 68, 19 November 2020).

595. For Article 6 § 1 in its civil limb to be applicable, there must be a "dispute" ("*contestation*" in French) over a right which can be said, at least on arguable grounds, to be recognised under domestic law, irrespective of whether that right is protected under the Convention. The provision does not in itself guarantee any particular content for (civil) "rights and obligations" in the substantive law of the Contracting States. The dispute must be genuine and serious; it may relate not only to the actual existence of a right but also to its scope and the manner of its exercise; and, finally, the result of the proceedings must be directly decisive for the right in question, mere tenuous connections or remote consequences not being sufficient to bring Article 6 § 1 into play. Lastly, the right must be a "civil" right (see, most recently, *Grzęda*, cited above, § 257, with further references; see also, in the environmental context, *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 43, ECHR 2000-IV, and *Association Burestop 55 and Others*, cited above, § 52).

596. As indicated previously, the Convention does not recognise a right to bring an *actio popularis*, this prohibition being intended to avoid cases being brought before the Court by individuals complaining of the mere existence of a law applicable to any citizen of a country, or of a judicial decision to which they are not party (see *L'Erablière A.S.B.L. v. Belgium*, no. 49230/07, § 29, ECHR 2009 (extracts)). Thus, an environmental association relying on Article 6 must show that the dispute or claim raised by it has a sufficient link with a specific civil right on which the association itself can rely (see *Association Burestop 55 and Others*, cited above, § 55).

(α) The existence of a "right" and its "civil" nature

597. The notion of "civil" rights is an autonomous one. The Court has held that the character of the legislation which governs how the matter is to be determined or that of the authority invested with jurisdiction in the matter are of little consequence (see *Ivan Atanasov*, cited above, § 90). Thus, the classification of the legislation (civil, commercial, administrative or other), or of the competent tribunal (ordinary, administrative court or other) are not as such decisive. What matters is that the right is exercisable by the person in question and can be characterised as a "civil" right.

598. Article 6 § 1 does not guarantee any particular content for "civil rights and obligations" in the substantive law of the Contracting States: the Court may not create by way of interpretation of Article 6 § 1 a substantive right which has no legal basis in the State concerned. In order to decide whether the right in question has a basis in domestic law, the starting-point must be the provisions of the relevant law and their interpretation by the

domestic courts. It is primarily for the national authorities, in particular the courts, to resolve problems of interpretation of domestic legislation. Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Grzęda*, cited above, §§ 258-59).

599. When carrying out its assessment, the Court needs to establish whether the applicant's claim was frivolous or vexatious or otherwise lacking in foundation (see, for instance, *Miller v. Sweden*, no. 55853/00, § 28, 8 February 2005). Moreover, it is necessary for the Court to look beyond the appearances and the language used and to concentrate on the realities of the situation (see *Boulois v. Luxembourg* [GC], no. 37575/04, § 92, ECHR 2012, with further references).

600. In the environmental context, the Court has recognised the existence of a civil right where the domestic law recognises an individual right to environmental protection where the rights to life, to physical integrity and of property are at stake (see, for instance, *Zander v. Sweden*, 25 November 1993, § 24, Series A no. 279-B; *Balmer-Schafroth and Others*, cited above, §§ 33-34; *Athanassoglou and Others*, cited above, § 44; and *Taşkın and Others*, cited above, §§ 132-33).

601. As regards associations, in *Gorraiz Lizarraga and Others* (cited above, §§ 45-47), Article 6 was found to apply with respect to proceedings intended to defend certain specific interests of the association's members, namely their lifestyle and properties. The Court noted that the applicant association had complained of a direct and specific threat hanging over its members' personal assets and lifestyles, which, without a doubt, had an economic and civil dimension. While the relevant domestic proceedings had "ostensibly [borne] the hallmark of public-law proceedings", the final outcome of the proceedings had nonetheless been decisive for the applicants' complaints of interference with their property and lifestyles. Thus, the Court found that the proceedings as a whole could be considered to concern the civil rights of the members of the association (see also, for similar considerations, *L'Erablière A.S.B.L.*, cited above, §§ 29-30).

602. It is also clear that associations can rely on Article 6 in disputes concerning their own "civil" rights (see *Association Burestop 55 and Others*, cited above, § 55). In the context of environmental litigation, the Court has remarked that on a strict reading, Article 6 would not be applicable to proceedings aimed at environmental protection as a public-interest value as there would not be a dispute over a civil right which the association itself could claim. However, relying on the case-law in *Gorraiz Lizarraga and Others* (cited above), the Court considered that such an approach would be at variance with the realities of today's civil society, where associations play an important role, *inter alia* by defending specific causes before the domestic authorities or courts, particularly in the environmental-protection sphere (see *Collectif national d'information et d'opposition à l'usine Melox – Collectif*

Stop Melox et Mox, cited above). In this connection, the Court has also relied on the principles flowing from the Aarhus Convention (see *Association Burestop 55 and Others*, cited above, § 54; see also paragraph 491 above).

(β) The existence of a genuine and serious dispute

603. In order for Article 6 to apply there has to be a dispute, which must be genuine and serious and which may relate not only to the actual existence of a right but also to its scope and the manner of its exercise (see paragraph 596 above). The existence of a dispute ("*contestation*" in French) implies the existence of a disagreement. However, conformity with the spirit of the Convention requires that this word should not be construed too technically and that it should be given a substantive rather than a formal meaning (see *Le Compte, Van Leuven and De Meyere v. Belgium*, 23 June 1981, § 45, Series A no. 43, and *Cipolletta v. Italy*, no. 38259/09, §§ 31-32, 11 January 2018, with further references).

604. In the environmental context, the Court has been prepared to accept that disputes concerning environmental matters were genuine and serious. It has drawn that conclusion from, in particular, the fact that the relevant appeal had been declared admissible at the domestic level (see, for instance, *Balmer-Schafroth and Others*, cited above, § 38, and *Athanassoglou and Others*, cited above, § 45), from the substance of the applicant's pleadings before the domestic courts (see *Association Burestop 55 and Others*, cited above, § 59), or from the arguments used by the domestic courts to dismiss a given action (see *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox*, cited above).

(γ) Whether the outcome of the proceedings is "directly decisive" for the applicant's right

605. Whether the result of the proceedings can be considered directly decisive for the right in question depends on the nature of the right relied on as well as on the object of the proceedings in question.

606. In the environmental context, the Court considered in *Balmer-Schafroth and Others* (cited above, § 40) that the applicants had failed to demonstrate that the operation of the power station had exposed them personally to a danger that was not only serious but also specific and, above all, imminent. The Court reached a similar conclusion in *Athanassoglou and Others* (cited above, §§ 53-54), in which it held that the applicants had in reality sought to contest the very principle of the use of nuclear energy, which was a policy decision for each Contracting State to take according to its democratic processes and not an issue to be examined under Article 6 § 1. The Court followed the same approach in several other cases where the applicants essentially complained of a hypothetical environmental impact rather than a specific infringement of, or an adverse impact on, their rights (see, for instance, *Folkman and Others*, cited above; *Zapletal v. the Czech*

Republic (dec.), no. 12720/06, 30 November 2010; and *Ivan Atanasov*, cited above, § 92).

607. By contrast, where the adverse environmental effects on an applicant's rights were immediate and certain, the Court considered that the dispute concerning the matter fell under Article 6 § 1 (see, for instance, *L'Erablière A.S.B.L.*, cited above, §§ 28-29; *Zander*, cited above, § 26; *Taşkın and Others*, cited above, § 133; and *Association Burestop 55 and Others*, cited above, § 59).

(ii) Applicability of Article 6 § 1 in the climate-change context

608. The above-noted general principles concerning the applicability of Article 6 § 1 also prevail in the present climate-change context, it being understood that their application may need to take into account the specificities of climate-change litigation. In other words, while characteristics of the subject matter do not at present prompt the Court to revise its firmly established case-law on Article 6, they will nonetheless inevitably have implications for the application of that case-law, both in regard to the conditions for its applicability and to the assessment of compliance with the requirements flowing from that provision.

609. As pointed out above, Article 6 does not guarantee a right of access to a court with power to invalidate or override laws enacted by Parliament (see paragraphs 594 and 600 above). This accordingly means that Article 6 cannot be relied upon to institute an action before a court for the purpose of compelling Parliament to enact legislation. However, where domestic law does provide for individual access to proceedings before a Constitutional Court or another similar superior court which does have the power to examine an appeal lodged directly against a law, Article 6 may be applicable (see *Xero Flor w Polsce sp. Z o.o. v. Poland*, no. 4907/18, § 190, 7 May 2021, with further references).

610. As already addressed above, a legally relevant relationship of causation may exist between State actions and/or omissions and the harm, or risk of harm, affecting individuals (see paragraphs 431 and 519 above). Where such rights are recognised under domestic law, a "civil" right within the meaning of Article 6 may be at issue. Moreover, it is important to note that in so far as participation of the public and access to information in matters concerning the environment (as widely acknowledged in international environmental law) constitute rights recognised in domestic law, this may lead to a conclusion that there is a "civil" right within the meaning of Article 6. Thus, in so far as such rights can be found in domestic law, this may also lead to a conclusion that a "civil" right within the meaning of Article 6 § 1 is at issue.

611. As to the further question – whether there is a genuine and serious dispute or disagreement over the manner of ensuring respect for such a right

– this is a matter to be determined on the facts of each particular case (see paragraphs 603 to 604 above).

612. As regards, lastly, the requirement that the outcome of the proceedings in question must be "directly decisive" for the applicant's right, the Court notes that there is a certain link between the requirement under Article 6 that the outcome of the proceedings must be directly decisive for the applicants' rights relied on under domestic law, and the considerations it has found relevant with a view to setting out criteria for victim status as well as those relating to the applicability of Article 8 (see, for instance, the approach in *Athanassoglou and Others*, cited above, § 59, and *Ivan Atanasov*, cited above, §§ 78 and 93).

613. Furthermore, the object of the proceedings also has a bearing on whether the outcome can be considered decisive for the right relied on. In this connection, in most of the environmental cases examined by the Court so far, the proceedings have concerned issues relating to the operating permits for specific facilities, or the conditions for their operation. In such circumstances, where the harmful operation or its continuation depends on the outcome of the proceedings, it may often be clear that the outcome of the proceedings would be directly decisive for the rights relied on by the affected individuals who have victim status (see, for instance, *Zander*, cited above, § 24 *in fine*; see also, by contrast, *Balmer-Schafroth and Others*, cited above, § 40, and *Athanassoglou and Others*, cited above, §§ 54-55). In the context of climate litigation, however, the object of the proceedings may well be broader, which is why the question whether their object can be considered directly decisive for the rights relied on becomes more critical and distinct.

614. At the same time, the various elements of the analysis under this limb of the test, and in particular the notion of imminent harm or danger, cannot be applied without properly taking into account the specific nature of climate change-related risks, including their potential for irreversible consequences and corollary severity of harm. Where future harms are not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action, the fact that the harm is not strictly imminent should not, on its own, lead to the conclusion that the outcome of the proceedings would not be decisive for its alleviation or reduction. Such an approach would unduly limit access to a court for many of the most serious risks associated with climate change. This is particularly true for legal actions instituted by associations. In the climate-change context, their legal actions must be seen in the light of their role as a means through which the Convention rights of those affected by climate change, including those at a distinct representational disadvantage, can be defended and through which they can seek to obtain an adequate corrective action for the alleged failures and omissions on the part of the authorities in the field of climate change.

(iii) Application of the above principles and considerations to the present case

615. The Court notes that the applicants' action instituted at the domestic level largely concerned requests for legislative and regulatory action falling outside the scope of Article 6 § 1 (see points 1-3 and some items under point 4 of their claims in paragraph 22 above). In part, however, the action concerned the implementation of measures within the competence of the respective authorities, required to achieve the current reduction target of 20%, and thus for ending the unlawful omissions (see the opening part of point 4 in paragraph 22 above). They also requested a declaratory ruling of unlawfulness of the alleged governmental omissions in the field of climate change (see point 5 of the request). The applicants have acknowledged this dual nature of the complaint they raised in their legal action before the FAC (see paragraph 33 above).

616. While the complaint concerning policy decisions that are subject to the relevant democratic processes is not a matter falling within the scope of Article 6 (see paragraph 594 above), the applicants' complaint concerning effective implementation of the mitigation measures under existing law is a matter capable of falling within the scope of that provision, provided that the other conditions for the applicability of Article 6 § 1 are satisfied.

617. As to the "civil" nature of the right, the applicants relied, *inter alia*, on the right to life under Article 10 of the Swiss Constitution (see paragraph 121 above), which the Court has previously found to be a right from which not only the right to life but also the right to the protection of physical integrity can be derived (see *Balmer-Schafroth and Others*, cited above, §§ 33-34). In accordance with the Court's well-established case-law these are rights which are civil in nature for the purpose of the first limb of the test for the applicability of Article 6 (see paragraph 600 above).

618. In this regard the Court notes that the FSC did not reject the legal action of applicants nos. 2-5 for lack of a right on which they could rely, but rather because it considered their action to be of an *actio popularis* nature and that the individual applicants were not affected with sufficient intensity (see paragraph 59 above). In sum, it cannot be said that the individual applicants' claim was frivolous or vexatious or otherwise lacking in foundation in terms of the relevant domestic law (see paragraph 599 above). The Court is unable to agree with the finding of the FSC that the individual applicants' claim could not be considered arguable for the purposes of Article 6 § 1 of the Convention (see paragraph 61 above). Moreover, as regards the applicant association, while the FSC left open whether it had legal standing before it, the Court notes that the association's action was based on the threat arising from the adverse effects of climate change as they affected its members' health and well-being (see *Gorraiz Lizarraga and Others*, cited above, § 46). The Court is satisfied that the interests defended by the association are such that the "dispute" raised by it had a direct and sufficient link to its members'

rights in question, bearing in mind the specific role of associations in the climate-change context (see paragraph 614 above).

619. The above considerations are also important for informing the second criterion for the applicability of Article 6, namely the existence of a genuine and serious dispute or disagreement over respect for the relevant right (see paragraph 611 above), which undoubtedly existed in the present case.

620. Lastly, as regards the third criterion – whether the outcome of the proceedings was "directly decisive" for the applicants' rights – the Court notes the following.

621. As regards the dispute brought by the applicant association, and in so far as that dispute arose out of a relevant part of its claim at the domestic level – namely, the complaint concerning the failure to effectively implement mitigation measures under the existing law (see paragraph 615 above) – the applicant association has demonstrated that it had an actual and sufficiently close connection to the matter complained of and to the individuals seeking protection against the adverse effects of climate change on their lives, health and quality of life. In other words, the applicant association sought to defend the specific civil rights of its members in relation to the adverse effects of climate change (see also paragraphs 521-526 above). It acted as a means through which the rights of those affected by climate change could be defended and through which they could seek to obtain an adequate corrective action for the State's failure to effectively implement mitigation measures under the existing law (see paragraph 614 above).

622. In this connection, the Court refers to its above findings regarding the applicant association's standing for the purposes of the complaint under Article 8 of the Convention (see paragraphs 521-526 above). It reiterates the important role of associations in defending specific causes in the sphere of environmental protection, as already found in its case-law (see paragraph 601 above), as well as the particular relevance of collective action in the context of climate change, the consequences of which are not specifically limited to certain individuals. Similarly, in so far as a dispute reflects this collective dimension, the requirement of a "directly decisive" outcome must be taken in the broader sense of seeking to obtain a form of correction of the authorities' actions and omissions affecting the civil rights of its members under national law.

623. Article 6 § 1 therefore applies to the complaint of the applicant association and it can be considered to have victim status under that provision regarding its complaint of lack of access to a court (see paragraph 593 above). The Government's preliminary objection in that regard is therefore dismissed.

624. With respect to applicants nos. 2-5, it cannot be considered that the dispute they had brought concerning the failure to effectively implement mitigation measures under the existing law was or could have been directly decisive for their specific rights. For similar reasons as those stated above

with respect to Article 8 of the Convention (see paragraphs 527-535 above), it cannot be held that applicants nos. 2-5 have made out a case demonstrating that the requested action by the authorities – namely, effectively implementing mitigation measures under the existing national law – alone would have created sufficiently imminent and certain effects on their individual rights in the context of climate change. It therefore follows that their dispute had a mere tenuous connection with, or remote consequences for, their rights relied upon under national law (compare *Balmer-Schafroth and Others*, cited above). Thus, the outcome of the dispute was not directly decisive for their civil rights (see paragraph 612 above).

625. Against this background the Court finds that the complaint of applicants nos. 2-5 is inadmissible as being incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Merits

(a) General principles

626. In the present case, an issue under Article 6 § 1 arises in relation to the requirement of access to a court. The relevant general principles concerning this matter are as follows (see *Zubac v. Croatia* [GC], no. 40160/12, §§ 76-79, 5 April 2018):

> "76. The right of access to a court was established as an aspect of the right to a tribunal under Article 6 § 1 of the Convention in *Golder v. the United Kingdom* (21 February 1975, §§ 28-36, Series A. no. 18). In that case, the Court found the right of access to a court to be an inherent aspect of the safeguards enshrined in Article 6, referring to the principles of the rule of law and the avoidance of arbitrary power which underlay much of the Convention. Thus, Article 6 § 1 secures to everyone the right to have a claim relating to his civil rights and obligations brought before a court (see *Roche v. the United Kingdom* [GC], no. 32555/96, § 116, ECHR 2005-X; see also *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 91, ECHR 2001-V; *Cudak v. Lithuania* [GC], no. 15869/02, § 54, ECHR 2010; and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 84, ECHR 2016 (extracts)).
>
> 77. The right of access to a court must be 'practical and effective', not 'theoretical or illusory' (see, to that effect, *Bellet v. France*, 4 December 1995, § 36, Series A no. 333-B). This observation is particularly true in respect of the guarantees provided for by Article 6, in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII, and *Lupeni Greek Catholic Parish and Others*, cited above, § 86).
>
> 78. However, the right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State, which regulation may vary in time and in place according to the needs and resources of the community and of individuals (see *Stanev v Bulgaria* [GC], no. 36760/06, § 230, ECHR 2012). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court,

it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Lupeni Greek Catholic Parish and Others*, cited above, § 89, with further references).

79. The Court would also stress that it is not its function to deal with errors of fact or law allegedly made by a national court, unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, *inter alia*, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I; and *Perez v. France* [GC], no. 47287/99, § 82, ECHR 2004-I). Normally, issues such as the weight attached by the national courts to given items of evidence or to findings or assessments in issue before them for consideration are not for the Court to review. The Court should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015)."

627. It should also be reiterated that Article 6 does not go so far as to guarantee a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the grounds of being incompatible with the Convention or to equivalent domestic legal norms (see *Berger-Krall and Others*, cited above, § 322, with further references, and paragraph 600 above). Furthermore, the Court has also accepted, albeit in another context, that maintaining the separation of powers between the legislature and the judiciary is a legitimate aim as regards limitations on the right of access to a court (see *A. v. the United Kingdom*, no. 35373/97, § 77, ECHR 2002-X).

628. The relevant principles concerning limitations on the right of access to a court reflect the process, inherent in the Court's task under the Convention, of striking a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see *Fayed*, cited above, § 65 *in fine*). It thus remains to be determined, on the facts of the particular case, whether there has been a disproportionate limitation on the right of access to a court (see *Association Burestop 55 and Others*, cited above, §§ 71-72).

(b) Application of the above principles to the present case

629. At the outset, the Court reiterates that the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court. This flows from the fact that the right of access to a court must be "practical and effective", not theoretical or illusory (see, for instance, *Lupeni Greek Catholic Parish and Others*, cited above, § 86).

630. In the present case, the applicant association's legal action was rejected, first by an administrative authority, the DETEC, and then by the domestic courts at two levels of jurisdiction, without the merits of its

complaints being assessed (see paragraphs 28-31, 34-42 and 52-63 above). There was therefore a limitation on the right of access to a court and the Court must assess whether the manner in which the limitation at issue operated in the present case restricted the applicant association's access to a court in such a way or to such an extent that the very essence of the right was impaired (see paragraphs 626 to 628 above).

631. As regards the legitimate aim pursued by the limitation at issue, in so far as the decisions of the domestic courts sought to distinguish the issue of individual protection from the relevant democratic processes and general challenges to legislation, thereby preventing *actio popularis* complaints, it should be reiterated that the Court has previously accepted that maintaining the separation of powers between the legislature and the judiciary is a legitimate aim as regards limitations on the right of access to a court (see paragraph 627 above). Moreover, as already discussed in paragraphs 596 and 627 to 628 above, Article 6 § 1 does not require the provision of access to a court as regards challenges to the state of domestic legislation, or for *actio popularis* complaints.

632. However, and as the last step of the relevant test, it remains to be seen whether the limitation on the applicant association's right of access to a court, to the extent that the proceedings did not fall outside the scope of Article 6, was proportionate, namely whether there was a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see paragraph 626 above).

633. In this connection, it should be reiterated that the action which the applicant association instituted at the domestic level could be seen as being hybrid in nature. In its main part, it clearly concerned issues pertaining to the democratic legislative process and falling outside the scope of Article 6 § 1, but it also concerned issues pertaining specifically to alleged failures in the enforcement of the existing domestic law affecting the protection of the rights defended by the applicant association. Some of the claims thus raised issues going to the lawfulness of the impugned governmental actions or omissions, alleging adverse effects on the right to life and the protection of physical integrity, which are enshrined in the domestic law, notably in Article 10 of the Constitution (see paragraphs 615-617 above).

634. To the extent that it was seeking to vindicate these rights in the face of the threats posed by the allegedly inadequate and insufficient action by the authorities to implement the relevant measures for the mitigation of climate change already required under the existing national law, this kind of action cannot automatically be seen as an *actio popularis* or as involving a political issue which the courts should not engage with. This position is consistent with the reasoning set out in paragraph 436 above as regards the manner in which climate change may affect human rights and the pressing need to address the threats posed by climate change.

635. The Court is not persuaded by the domestic courts' findings that there was still some time to prevent global warming from reaching the critical limit (see paragraphs 56-59 above). This was not based on sufficient examination of the scientific evidence concerning climate change, which was already available at the relevant time, as well as the general acceptance that there is urgency as regards the existing and inevitable future impacts of climate change on various aspects of human rights (see paragraph 436 above; see also paragraph 337 above as regards the respondent Government's acceptance that there was a climate emergency). Indeed, the existing evidence and the scientific findings on the urgency of addressing the adverse effects of climate change, including the grave risk of their inevitability and their irreversibility, suggest that there was a pressing need to ensure the legal protection of human rights as regards the authorities' allegedly inadequate action to tackle climate change.

636. The Court further notes that the domestic courts did not address the issue of the standing of the applicant association, an issue which warranted a separate assessment irrespective of the domestic courts' position as regards the individual applicants' complaints. The domestic courts did not engage seriously or at all with the action brought by the applicant association.

637. What is more, before resorting to the courts the applicant association, and its members, had raised their complaints before various expert and specialised administrative bodies and agencies, but none of them dealt with the substance of their complaints (see paragraph 22 above). Despite the fact that such an examination by the administrative authorities alone could not satisfy the requirements of access to a court under Article 6, the Court notes that, judging by the DETEC's decision, the rejection of the applicants' complaint by the administrative authorities would seem to have been based on inadequate and insufficient considerations similar to those relied upon by the domestic courts (see paragraphs 28-31 above). The Court notes, furthermore, that individual applicants/members of the association were not given access to a court, and nor was there any other avenue under domestic law through which they could bring their complaints to a court. There were therefore no other relevant safeguards to be taken into account in its assessment of the proportionality of the limitation on the applicant association's right of access to a court (see paragraph 628 above).

638. The foregoing considerations are sufficient to enable the Court to conclude that, to the extent that the applicant association's claims fell within the scope of Article 6 § 1, its right of access to a court was restricted in such a way and to such an extent that the very essence of the right was impaired.

639. In this connection, the Court considers it essential to emphasise the key role which domestic courts have played and will play in climate-change litigation, a fact reflected in the case-law adopted to date in certain Council of Europe member States, highlighting the importance of access to justice in this field. Furthermore, given the principles of shared responsibility and

subsidiarity, it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed.

640. In the present case, the Court finds that there has been a violation of Article 6 § 1 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

641. The applicants complained that they had not had an effective remedy at their disposal, within the meaning of Article 13 of the Convention, concerning their complaints about the authorities' omission to address the adverse effects of climate change.

642. Article 13 of the Convention reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

643. The Government contested the applicants' complaint.

644. The Court notes that the role of Article 6 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 (see, for instance, *Baka v. Hungary* [GC], no. 20261/12, § 181, 23 June 2016). Given the Court's findings under Article 6 § 1 of the Convention concerning the applicant association (see paragraph 640 above), the present complaint does not give rise to any separate issue in its regard. Consequently, the Court holds that it is not necessary to examine the complaint under Article 13 of the Convention separately.

645. As regards applicants nos. 2-5, having regard to its findings in paragraphs 527 to 535 and 625 above, the Court finds that they have no arguable claim under Article 13 and that their complaint is incompatible *ratione materiae* with the provisions of the Convention (see, for instance, *Athanassoglou and Others*, cited above, §§ 59-60) and must be rejected in accordance with Article 35 § 4 of the Convention.

VI. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

A. Article 41 of the Convention

646. Article 41 of the Convention provides as follows:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

1. Damage

647. The applicant association did not submit a claim for damages. The Court therefore makes no award under this head.

2. Costs and expenses

648. In the Chamber proceedings the applicant association claimed a total amount of 324,249.25 Swiss Francs (CHF) in respect of cost and expenses. The sum comprised, first, lawyers' fees (CHF 315,249.25), and, secondly, the costs imposed by the Swiss courts at the domestic level (totalling CHF 9,000). In the proceedings before the Grand Chamber, the applicant association submitted a claim for newly incurred costs and expenses in the amount of CHF 187,988.45. It also provided invoices and supporting documents in relation to the payments made by the applicant association. Subsequently, the applicant association submitted additional fee notes and invoices for services provided by the legal representatives to the applicant association totalling CHF 79,181.50, 63,057.92 euros (EUR) and 27,504.50 British pounds (GBP).

649. The Government contested the applicant association's claim as being unsubstantiated and excessive. They considered that the claim should be rejected or, in the alternative, that a maximum amount of CHF 13,000 should be awarded.

650. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum (see, for instance, *Halet v. Luxembourg* [GC], no. 21884/18, § 214, 14 February 2023). Having regard to the above criteria, the Court is not convinced that all the costs and expenses incurred in the proceedings before it were necessarily incurred and considers it reasonable to award EUR 80,000 covering all costs and expenses under this head. The remainder of the applicant association's claim for costs and expenses is rejected.

3. Default interest

651. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

B. Article 46 of the Convention

652. The relevant parts of Article 46 of the Convention provide as follows:

> "1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.
>
> 2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

1. The parties' submissions

653. The applicants submitted that in the event of a finding of a violation by the Court, Article 46 of the Convention should also be applied. However,

given that the choice of means to implement the Court's judgment was primarily for the respondent State, the Court should not specify the measures to be taken. It should rather indicate that the State would need to take all suitable measures to allow it to achieve a level of annual emissions compatible with its target of attaining a minimum reduction of 40% in GHG emissions by 2030, and carbon neutrality by 2050.

654. The Government pointed out that the applicants had not requested before the domestic courts or before the Court that any specific general measures be indicated to the State. They had in fact accepted that there were several measures available to the respondent State to ensure compliance with the relevant carbon budget. The Government further noted that various mitigation measures had been developed at the international level, notably by the IPCC. In the Government's view, it was also important to bear in mind the wide margin of appreciation accorded to the State in a complex and technical area such as climate change, Moreover, indicating any specific measures under Article 46 would run counter to the principle of subsidiarity and the necessary separation of powers. In any event, there was no systemic issue at the domestic level that would warrant the application of Article 46. The Government therefore submitted that the Court should not indicate any general measures under that provision.

2. The Court's assessment

655. The Court reiterates that under Article 46 of the Convention the High Contracting Parties have undertaken to abide by the final judgments of the Court in any case to which they are parties, execution being supervised by the Committee of Ministers. It follows, *inter alia*, that a judgment in which the Court finds a breach of the Convention or the Protocols thereto imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and to redress as far as possible the effects (see, among other authorities, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 293, 14 September 2022).

656. The Court further points out that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions and spirit of the Court's judgment. However, in certain special circumstances the Court has found it useful to indicate to a respondent State the type of measure – individual and/or general – that might be taken to put an end to the situation which has given rise to the finding of a violation (ibid., § 294).

657. In the present case, having regard to the complexity and the nature of the issues involved, the Court is unable to be detailed or prescriptive as regards any measures to be implemented in order to effectively comply with the present judgment. Given the differentiated margin of appreciation accorded to the State in this area (see paragraph 543 above), the Court considers that the respondent State, with the assistance of the Committee of Ministers, is better placed than the Court to assess the specific measures to be taken. It should thus be left to the Committee of Ministers to supervise, on the basis of the information provided by the respondent State, the adoption of measures aimed at ensuring that the domestic authorities comply with Convention requirements, as clarified in the present judgment.

FOR THESE REASONS, THE COURT,

1. *Holds*, unanimously, that the second applicant's son and heir has standing to continue the present proceedings in the applicant's stead;

2. *Dismisses*, unanimously, the Government's preliminary objections concerning the scope of the complaint, jurisdiction, and compliance with the six-month time-limit;

3. *Joins*, by sixteen votes to one, the issue of the victim status/*locus standi* of the applicants under Articles 2 and 8 of the Convention to the assessment of the applicability of those provisions;

4. *Holds*, by sixteen votes to one, that the applicant association has *locus standi* in the present proceedings and that its complaint should be examined under Article 8 of the Convention alone, and *dismisses* the Government's objection in that regard;

5. *Upholds*, unanimously, the Government's objection as regards the victim status of applicants nos. 2-5 under Articles 2 and 8 of the Convention, and *declares* their complaints inadmissible;

6. *Holds*, unanimously, that it is not necessary to examine the applicability of Article 2 of the Convention;

7. *Holds*, by sixteen votes to one, that there has been a violation of Article 8 of the Convention;

8. *Joins*, by sixteen votes to one, the issue of the victim status of the applicants under Article 6 § 1 of the Convention to the assessment of the applicability of that provision;

9. *Holds*, by sixteen votes to one, that Article 6 § 1 of the Convention applies to the complaint of the applicant association and that it can be considered to have victim status under that provision, and *dismisses* the Government's objection in that regard;

10. *Holds*, by sixteen votes to one, that Article 6 § 1 of the Convention is not applicable to the complaint of applicants nos. 2-5, and *declares* their complaint inadmissible;

11. *Holds*, unanimously, that there has been a violation of Article 6 § 1 of the Convention;

12. *Holds*, unanimously, that there is no need to examine separately the applicant association's complaint under Article 13 of the Convention, and *declares* the complaints of applicants nos. 2-5 inadmissible;

13. *Holds*, unanimously,
    (a) that the respondent State is to pay the applicant association, within three months, EUR 80,000 (eighty thousand euros), plus any tax that may be chargeable, in respect of costs and expenses;
    (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

14. *Dismisses*, unanimously, the remainder of the applicant association's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Prebensen	Síofra O'Leary
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Eicke is annexed to this judgment.

S.O.L.
S.P.R.

PARTLY CONCURRING PARTLY DISSENTING OPINION OF JUDGE EICKE

INTRODUCTION

1. To my regret, I am unable to agree with the majority either in relation to the methodology they have adopted or on the conclusions which they have come to both in relation to the admissibility (and, in particular, the question of "victim" status) as well as on the merits. In so far as I have voted for a violation of Article 6, the right of access to court, as I will explain in a little more detail below, my conclusion was reached on the basis of a very different (and, arguably, a more orthodox) approach to the Convention and the case-law thereunder.

2. Despite a careful and detailed engagement with the arguments advanced both by the parties and interveners in this case (and those in the two linked cases of *Carême v. France*, app. no. 7189/21, and *Duarte Agostinho and Others v. Portugal and 32 Others*, app. no. 39371/20) as well as by my colleagues in the course of the deliberations, I find myself in a position where my disagreement goes well beyond a mere difference in the assessment of the evidence or a minor difference as to the law. The disagreement is of a more fundamental nature and, at least in part, goes to the very heart of the role of the Court within the Convention system and, more generally, the role of a court in the context of the unique and unprecedented challenges posed to humanity (including in but also across our societies) by anthropogenic climate change.

3. It is, of course, perfectly understood and accepted that, under Article 32 of the Convention, the Court's jurisdiction extends to "all matters concerning the interpretation and application of the Convention" (Article 32 § 1) and that "[i]n the event of dispute as to whether the Court has jurisdiction, the Court shall decide" (Article 32 § 2). However, it is equally clear that this ultimate interpretative authority comes with immense responsibility; a responsibility which, in my view, is reflected in the Court's normally careful, cautious and gradual approach to the evolutive interpretation of the Convention under what is frequently described as the "living instrument" doctrine. Unfortunately, for the reasons set out in a little more detail below, I have come to the conclusion that the majority in this case has gone well beyond what I consider to be, as a matter of international law, the permissible limits of evolutive interpretation.

4. In doing so, it has, in particular, unnecessarily expanded the concept of "victim" status/standing under Article 34 of the Convention and has created a new right (under Article 8 and, possibly, Article 2) to "effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change" (§§ 519 and 544 of the Judgment) and/or imposed

a new "primary duty" on Contracting Parties "to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change" (§ 545, emphasis added), covering both emissions emanating from within their territorial jurisdiction as well as "embedded emissions" (i.e. those generated through the import of goods and their consumption); none of which have any basis in Article 8 or any other provision of or Protocol to the Convention.

BACKGROUND

5. It is worth repeating that, my disagreement with the majority does not relate in any way to the nature or magnitude of the risks and the challenges posed by anthropogenic climate change. I completely share their understanding of the urgent need to address this issue, both on its own and, perhaps as importantly, as (a major) aspect of what the Reykjavík Declaration "United around our values", adopted at the end of the 4th Summit of Heads of State and Government of the Council of Europe (Reykjavík, 16-17 May 2023), refers to as the "triple planetary crisis of pollution, climate change and loss of biodiversity" (see § 200 of the judgment)[1] currently confronting humanity. In fact, it seems clear to me that this is not just a question of ultimately achieving the target of limiting the temperature increase to 1.5°C above pre-industrial levels identified in the Paris Agreement (important though that is). After all, every tenth of a degree increase has an immediate impact and leads to an increase in the damage and danger created by climate change and, in fact, we all need to take immediate and effective steps to avoid any further increase. My principal disagreement with the majority therefore solely relates to the role this Court can play at this point in time in identifying and taking the steps necessary – and frequently already overdue – to ensure the survival of our planet.

6. In fact, the assessment set out by the European Environment Agency's ("EEA") "European climate risk assessment", published shortly after this judgment was adopted,[2] serves to confirm our shared understanding. In its Executive Summary, the EEA identified its "key takeaways" as follows:

> "-Human-induced climate change is affecting the planet; globally, 2023 was the warmest year on record, and the average global temperature in the 12-month period between February 2023 and January 2024 exceeded pre-industrial levels by 1.5°C.
>
> -Europe is the fastest-warming continent in the world. Extreme heat, once relatively rare, is becoming more frequent while precipitation patterns are changing. Downpours and other precipitation extremes are increasing in severity, and recent years have seen catastrophic floods in various regions. At the same time, southern Europe can expect considerable declines in overall rainfall and more severe droughts.

[1] https://rm.coe.int/4th-summit-of-heads-of-state-and-government-of-the-council-of-europe/1680ab40c1

[2] EEA Report No 1/2024, published on 11 March 2024

-These events, combined with environmental and social risk drivers, pose major challenges throughout Europe. Specifically, they compromise food and water security, energy security and financial stability, and the health of the general population and of outdoor workers; in turn, this affects social cohesion and stability. In tandem, climate change is impacting terrestrial, freshwater and marine ecosystems.

-Climate change is a risk multiplier that can exacerbate existing risks and crises. Climate risks can cascade from one system or region to another, including from the outside world to Europe. Cascading climate risks can lead to system-wide challenges affecting whole societies, with vulnerable social groups particularly affected. Examples include mega-droughts leading to water and food insecurity, disruptions of critical infrastructure, and threats to financial markets and stability.

-When applying the scales of severity used in the European climate risk assessment, several climate risks have already reached critical levels. If decisive action is not taken now, most climate risks identified could reach critical or catastrophic levels by the end of this century. Hundreds of thousands of people would die from heatwaves, and economic losses from coastal floods alone could exceed EUR 1 trillion per year.

-Climate risks to ecosystems, people and the economy depend on non-climatic risk drivers as much as on the climate-related hazards themselves. Effective policies and action at European and national levels can therefore help reduce these risks to a very significant degree. The extent to which we can avoid damages will largely depend on how quickly we can reduce global greenhouse gas emissions, and how fast and effectively we can prepare our societies and adapt to the unavoidable impacts of climate change.

-The EU and its Member States have made considerable progress in understanding the climate risks they are facing and preparing for them. National climate risk assessments are increasingly used to inform adaptation policy development. However, societal preparedness is still low, as policy implementation is lagging substantially behind quickly-increasing risk levels. Most of the climate risks are co-owned by the EU and its Member States; therefore, coordinated and urgent additional action is required at all governance levels.

-Most policies and actions to strengthen Europe's resilience to climate change are made for the long term, and some actions have long lead times. Urgent action is needed now to prevent rigid choices that are not fit for the future in a changing climate, such as in land-use planning and long-lived infrastructure. We must prevent locking ourselves into maladaptive pathways and avoid potentially catastrophic risks.

-Adaptation policies can both support and conflict with other environmental, social and economic policy objectives. Thus, an integrated policy approach considering multiple policy objectives is essential for ensuring efficient adaptation."

7. The two major aspects of this challenge one can derive from all the evidence, however, are (a) the absolute need for urgent action and (b) the sheer complexity of the challenges climate change (and the other aspects of the "triple planetary crisis") pose (geo-)politically, practically, logistically as well as legal.

8. In relation to the latter, Sir David Attenborough, the British biologist, natural historian, broadcaster and author, in his address to the UN Security

Council on 23 February 2021,[3] expressed the challenge in these stark (but realistic) terms:

> "Perhaps the most significant lesson brought by these last 12 months has been that we are no longer separate nations, each best served by looking after its own needs and security. We are a single truly global species whose greatest threats are shared and whose security must ultimately come from acting together in the interests of us all.
>
> Climate change is a threat to global security that can only be dealt with by unparalleled levels of global co-operation. It will compel us to: question our economic models and where we place value; invent entirely new industries; recognise the moral responsibility that wealthy nations have to the rest of the world; and put a value on nature that goes far beyond money."

9. It is also this spirit of global (rather than merely regional or bilateral) cooperation which has underpinned the increasingly detailed treaty regime addressing climate change as well as other, frequently interlinked or overlapping, aspects of the "triple planetary crisis". These, of course, include the UN Framework Convention on Climate Change ("UNFCCC") and the subsequent Protocols and other agreements concluded by or under the auspices of its annual Conference of the Parties ("COP"), including the Paris Agreement adopted at COP21. As the German Constitutional Court (*Bundesverfassungsgericht*) rightly stated, in § 204 of its judgment of 24 March 2021 (referred to in the judgment as *Neubauer and Others v. Federal Republic of Germany*):

> "The Paris Agreement very much relies on mutual trust as a precondition for effectiveness. In Art. 2(1)(a) PA, the Parties agreed on a climate target (well below 2°C and preferably 1.5°C) without committing themselves to any specific reduction measures. In this respect, the Paris Agreement establishes a voluntary mechanism by which the Parties determine their own measures for reaching the agreed temperature target. These measures must, however, be made transparent. The purpose of the transparency provisions is to ensure that all states are able to trust that other states will act in conformity with the target ([...]). Creating and fostering trust in the willingness of the Parties to achieve the target is therefore seen as a key to the effectiveness of the Paris Agreement. Indeed, the Agreement is highly reliant on the individual states making their own contributions."

10. It is in this context and in light of the need, in order to address the issue effectively, for mutual trust and cooperation amongst all the nations of the World or at least the now 198 Contracting Parties to the UNFCCC (including other major GHG emitters such as the United States, China and India) that it seems to me that this Court should act with extreme caution and prudence. This is even more so where:

(a) as it has repeatedly acknowledged, the Convention is not "specifically designed to provide general protection of the environment as such; to that effect, other international instruments and domestic legislation are more

[3] https://www.gov.uk/government/speeches/pm-boris-johnsons-address-to-the-un-security-council-on-climate-and-security-23-february-2021

pertinent in dealing with this particular aspect" (*Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI (extracts)); and

(b) none of the proposals of the Parliamentary Assembly of the Council of Europe ("PACE")[4] to provide the Court with an express competence in relation to a clean and healthy environment through the adoption of a protocol or otherwise have so far[5] found the approval of the Contracting Parties to the Convention.

11. Furthermore, it seems to me that the potentially enormous evidential and scientific complexities which, by definition, have to inform any effective – cross-sectoral and cross-border – engagement with the issue of anthropogenic climate change also pose a very real question as to whether (and, if so, how) this Court (and, on the majority's approach, the Committee of Ministers in the context of the execution of judgments under Article 46 of the Convention), can adequately or at all contribute to (rather than hinder) the fight against climate change in the absence of any clear or agreed measures or guidelines. After all, the necessary (and detailed) engagement with scientific evidence in the context of what the Court in *Powell and Rayner v. the United Kingdom*, 21 February 1990, § 44, Series A no. 172 described (in the context of the arguably simpler issue of aircraft noise) as "this difficult social and technical sphere" is not currently part of the Court's working practices.

12. Just by way of example, in the week between 29 January and 2 February 2024, i.e. shortly before this judgment was adopted, an expert review team of the Subsidiary Body for Implementation ("SBI"),[6] set up to assist the governing bodies of the UNFCCC,[7] the Kyoto Protocol[8] and the Paris Agreement,[9] was due to review Switzerland's Eighth National

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[4] Parliamentary Assembly of the Council of Europe, *Future Action to be Taken by the Council of Europe in the Field of Environment Protection* (4 November 1999) Recommendation 1431 (1999); Parliamentary Assembly of the Council of Europe, *Environment and Human Rights* (27 June 2003) Recommendation 1614 (2003); Parliamentary Assembly of the Council of Europe, *Drafting an Additional Protocol to the European Convention on Human Rights Concerning the Right to a Healthy Environment* (30 September 2009) Recommendation 1885 (2009).

[5] That said, the need for and feasibility of a further instrument or instruments on human rights and the environment has, of course, been under active consideration by CDDH-ENV at least since September 2022 which, at its last meeting on 19-21 March 2024, adopted its draft report with a view to it being transmitted to the CDDH for adoption at the latter's meeting in June 2024 (https://rm.coe.int/steering-committee-for-human-rights-comite-directeur-pour-les-droits-h/1680aefdb5).

[6] Status of submission and review of national communications and biennial reports - Note by the secretariat (FCCC/SBI/2023/INF.8 of 22 September 2023)

[7] Conference of the Parties ("COP")

[8] Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol ("CMP")

[9] Conference of the Parties serving as the meeting of the Parties to the Paris Agreement ("CMA")

Communication and Fifth Biennial Report under the UNFCCC/Fifth National Communication under the Kyoto Protocol to the UNFCCC, of 16 September 2022.[10] This report, which runs to 297 densely typed pages, covers *inter alia* detailed evidence in relation to Switzerland's compliance with the clearly quantified emissions limitations and reduction commitments incumbent upon it as an Annex I Party to the Kyoto Protocol. The expert review team which considered and reported on Switzerland's previous (2022) Submissions consisted of 21 experts from different Contracting Parties covering six specialist review areas ("Generalist", "Energy", "IPPU" (industrial processes and product use), "Agriculture", "LULUCF and KP-LULUCF" (land use, land-use change and forestry; and activities under Article 3, paragraphs 3–4, of the Kyoto Protocol) and "Waste") with two lead reviewers.[11]

13. It seems to me to be clear that the Court (or the Committee of Ministers) does not, in fact, have the capacity to engage in anything approaching such a review process to ensure, as the majority seems to envisage, that Contracting Parties have "adopt[ed], and ... effectively appl[ied] in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change".

14. As an aside, it is also noteworthy – and serves to reinforce the point made by the *Bundesverfassungsgericht* (above) – that the move, in the context of the Paris Agreement, away from binding and specific reduction measures (binding only on some Contracting Parties, i.e. the Annex I Parties to the Kyoto Protocol) to the voluntary mechanism by which the (all) Contracting Parties determine their own Nationally Determined Contributions (NDC)appears to have been a deliberate shift in approach. This shift was intended to ensure that this "common concern of mankind" is addressed by all States on the basis of "the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (Article 2(2) Paris Agreement); a principle or concept which seems to be difficult to reconcile (if not wholly inconsistent) with the Court's primary role of ensuring observance of a common minimum standard of protection applicable equally to all Contracting Parties (see § 20(b) below).

15. In relation to the clear need for "urgent" action, it also seems to me that, even more so in light of the political complexities arising in the context of identifying and implementing the necessary measures to counter climate change effectively and swiftly, there must be significant doubt that proceedings before this Court can make a meaningful contribution. In fact, there must be a real risk that

(a) as is frequently the case when the Court is concerned with an "abstract" review of a legislative or regulatory regime, the

[10] https://unfccc.int/documents/614139

[11] Report on the individual review of the annual submission of Switzerland submitted in 2022 (FCCC/ARR/2022/CHE of 24 February 2023)

legislation/regulatory regime before the Court (as considered, where applicable, by the national courts in the process of exhausting domestic remedies, as required under Article 35 § 1 of the Convention) has long been replaced or changed substantially (see by way of recent example *Big Brother Watch and Others v. the United Kingdom* [GC], nos. 58170/13 and 2 others, §§ 269-270, 25 May 2021); and/or

(b) in any event, proceedings before this Court are much more likely to distract the Contracting Parties and slow down the necessary processes and, even if a judgment is obtained, any delay and/or failure in the implementation of any judgment is only likely to undermine the need for urgent action and, potentially, the rule of law.

THE COURT'S ROLE AND EVOLUTIVE INTERPRETATION

16. As the Court has consistently made clear, its principal role is "to ensure the observance of the engagements undertaken by the Contracting States (Article 19 of the Convention). In accordance with Article 32 of the Convention, the Court provides the final authoritative interpretation of the rights and freedoms defined in Section I of the Convention" (see most recently *Humpert and Others v. Germany* [GC], nos. 59433/18 and 3 others, § 69, 14 December 2023).

17. The applicable principles of interpretation applied by the Court in this context were recently summarised in *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, § 60, 18 November 2020 (based on the judgment in *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, §§ 118-22 and 125, 8 November 2016; with further references):

> "(a) As an international treaty, the Convention must be interpreted in the light of the rules of interpretation provided for in Articles 31 to 33 of the Vienna Convention on the Law of Treaties of 23 May 1969 (...). In accordance with those provisions, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn.
>
> (b) Regard must also be had to the fact that the context of the provision is a treaty for the effective protection of individual human rights and that the Convention must also be read as a whole, and interpreted in such a way as to promote internal consistency and harmony between its various provisions.
>
> (c) The object and purpose of the Convention, as an instrument for the protection of human rights, requires that its provisions must be interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. Moreover, as an instrument for the protection of human rights, the Convention comprises more than mere reciprocal engagements between Contracting States.
>
> (d) When interpreting the Convention, recourse may also be had to supplementary means of interpretation, including the travaux préparatoires of the treaty, either to confirm a meaning determined in accordance with other methods, or to establish the meaning where it would otherwise be ambiguous, obscure, or manifestly absurd or unreasonable."

18. However, the Court has also always explained that there are clear limits as to what can legitimately be achieved by means of interpretation; limits which flow from the fact that its role is limited to interpreting the provisions of the Convention (and its Protocols):

(a) while it must take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties and the Convention should so far as possible be interpreted in harmony with other rules of international law of which it forms part (see *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 235, 29 January 2019 and authorities cited there; and Article 31 § 3 (c) of the Vienna Convention of 23 May 1969 on the Law of Treaties), the Court only "has authority to ensure that the text of the European Convention on Human Rights is respected (...). It is the Convention which the Court can interpret and apply; it does not have authority to ensure respect for international treaties or obligations other than the Convention (...)" (*Caamaño Valle v. Spain*, no. 43564/17, § 53, 11 May 2021); and

(b) "the Court cannot, by means of an evolutive interpretation, derive from these instruments a right that was not included therein at the outset. This is particularly so here, where the omission was deliberate" (see *Johnston and Others v. Ireland*, 18 December 1986, § 53, Series A no. 112; *Austin and Others v. the United Kingdom* [GC], nos. 39692/09 and 2 others, § 53, ECHR 2012; and *Ferrazzini v. Italy* [GC], no. 44759/98, § 30, ECHR 2001-VII).

19. As is clear from the historic refusal of the Contracting Parties to the Convention to respond positively to the repeated calls by the Parliamentary Assembly of the Council of Europe for the adoption of an additional protocol to the Convention which would provide for (and give the Court jurisdiction to ensure the observance of) a right to a clean and healthy environment (see above) and was, again, clear from the submissions of those Contracting Parties who were third party interveners in this case[12] and/or defendants in *Duarte Agostinho and Others* (cited above),[13] even if this issue was not, perhaps, considered at the time of the drafting of the original Convention, the omission from the Convention as it stands today of such a right was not coincidental.

20. In the context of the present case it is further important to have regard to the following:

(a) the Court has consistently recognised the fundamental (foundational) importance within the Convention system of the concept of "effective political democracy" governed by the rule of law as reflected in the Court's approach to subsidiarity and the (usually wide) margin of appreciation:

[12] Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania and Slovakia

> "... the Court reiterates the fundamentally subsidiary role of the Convention. The national authorities have direct democratic legitimation and are, as the Court has held on many occasions, in principle better placed than an international court to evaluate local needs and conditions (...). In matters of general policy, on which opinions within a democratic society may reasonably differ widely, the role of the domestic policy-maker should be given special weight (see James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, p. 32, § 46, where the Court found it natural that the margin of appreciation "available to the legislature in implementing social and economic policies should be a wide one")" (*Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 97, ECHR 2003-VIII with further authorities, see also *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, § 54, ECHR 2000-IV);

(b) while "nothing prevents the Contracting States from adopting a broader interpretation entailing a stronger protection of the rights and freedoms in question within their respective domestic legal systems (Article 53 of the Convention)" (see e.g. *Gestur Jónsson and Ragnar Halldór Hall v. Iceland* [GC], nos. 68273/14 and 68271/14, § 93, 22 December 2020) or through other international treaties or European Union law (*Krombach v. France* (Dec), no. 67521/14, § 39, 20 February 2018), the role of the Convention (and within it the Court) is clearly to lay down (and to ensure observance of) minimum standards of human rights protection; and

(c) as the principles of subsidiarity and the margin of appreciation (both now, following the entry into force of Protocol No 15, provided for in the Preamble of the Convention and reflected, even if not exactly, in domestic law by the principle of the separation of powers between the legislature and the judiciary (see *A. v. the United Kingdom*, no. 35373/97, § 77, ECHR 2002-X)) make clear that, in relation to questions of social and economic policy requiring the careful weighing up of competing rights and interests (frequently, if not invariably in this context, including the rights and interests of parties not before the court), in a functioning democracy as envisaged by the Convention, this Court (and the courts more generally) take a subsidiary role to the democratically legitimated legislature and executive (or, in the context of an international treaty, the authorities of the Contracting Parties).

21. This latter point is, of course, of particular relevance in the present case where the most recent 2020 (Third) CO_2 Act, though adopted by Parliament, was expressly rejected by a popular vote in the course of a referendum in June 2021 (see e.g. §§ 92 and 94 of the judgment). It seems to me that great care is required in such a context not to be perceived to be relying (at least in part) on this very expression of the democratic will of the people of Switzerland as a basis for finding a violation of Article 8.

"VICTIM" STATUS/STANDING

22. When considering the question of "victim" status in this case, it is important to note at the outset that there was, in fact, no dispute and no uncertainty about the "victim" status of the individual applicants in relation

to the Article 6 § 1 complaint in this case; and therefore no need to join that question to the merits. The only real issue on this question arose in relation to the complaints brought under Article 2 and/or 8 of the Convention.

23. This is, of course, not surprising. After all, as the majority note in § 590 of the judgment, relying *inter alia* on the judgment in *Balmer-Schafroth and Others v. Switzerland*, 26 August 1997, § 26, *Reports of Judgments and Decisions* 1997-IV, "[i]n order to claim to be a 'victim' in the context of an alleged violation of Article 6 of the Convention, and to complain of alleged procedural shortcomings under that provision, it is normally sufficient that the applicant was affected as a party to the proceedings brought by him or her before the domestic courts". In *Balmer-Schafroth and Others* the Court was concerned with an objection to the extension of an operating licence for a nuclear power station. Rejecting the Government's objection that the applicants in that case were not victims, the Court expressly confirmed that:

> "Under the Court's case-law, for the purposes of Article [34] the word "victim" means the person directly affected by the act or omission in issue....
>
> In the instant case, the fact that the Federal Council declared admissible the objections the applicants wish to raise before a tribunal (...) justifies regarding them as victims. The first preliminary objection must therefore be dismissed."

24. This rationale, of course, applies with equal force in the present case where the Federal Administrative Court, at first instance, expressly recognised that the individual applicants had "an 'interest worthy of protection' in the revocation or amendment of the impugned DETEC decision, which made the appeal admissible from that perspective" (§ 35).

25. Furthermore and in any event,

(a) the Swiss Government (perhaps as a result of the judgment in *Balmer-Schafroth and Others*) did not, in fact, challenge the "victim" status of the individual applicants (§ 592); and

(b) in § 618, the majority expressly asserts that "the interests defended by the association are such that the 'dispute' raised by it had a direct and sufficient link to its members' rights in question", sufficient to confirm the latter as the real "victims" (see also § 621).

26. In light of this clear and uncontested position as to the "victim" status of the individual applicants under Article 6 § 1 it would, in my view, have been more obvious and more appropriate to address the complaint about the denial of access to court first; before then, if necessary, moving on to consider the complaint(s) under Articles 2 and 8 of the Convention.

27. Nevertheless, the majority decided to approach the latter issue(s) first and, as a result, once they came to consider Article 6, were inevitably compelled to join the question of "victim" status under Article 6 § 1 to the question of the admissibility of that provision (§ 593) and to conclude, ultimately, that only the association has "victim" status (§ 623).

28. This approach and conclusion was, in my view, the inevitable consequence of the novel approach the majority decided to take to the

question of "victim" status under Article(s 2 and) 8 and the resulting need to find a way to reconcile this approach with both the existing case-law on "victim" status and the uncontested "victim" status of the individual applicants under Article 6.

29. In relation to the approach to "victim" status more generally, the judgment rightly notes (§ 460) that:

> "The Convention does not provide for the institution of an *actio popularis*. The Court's task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention (see, for instance, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, with further references). Accordingly, a person, non-governmental organisation or group of individuals must be able to claim to be a victim of a violation of the rights set forth in the Convention. The Convention does not permit individuals or groups of individuals to complain about a provision of national law simply because they consider, without having been directly affected by it, that it may contravene the Convention (see *Aksu v. Turkey* [GC], nos. 4149/04 and 41029/04, §§ 50-51, ECHR 2012)."

30. As the Court confirmed this position again in *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), no. 37857/14, § 41, 7 December 2021, this time in relation to associations:

> "... there are two principal reasons why an association may not be considered to be a direct victim of an alleged violation of the Convention. The first reason is the prohibition on the bringing of an *actio popularis* under the Convention system; this means that an applicant cannot lodge a claim in the public or general interest if the impugned measure or act does not affect him or her directly. It follows that in order for an applicant to be able to argue that he is a victim, he must produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur; mere suspicion or conjecture is insufficient in this respect (...). ..."

31. In *Asselbourg and Others v. Luxembourg (dec.),* no. 29121/95, ECHR 1999-VI, in the specific context of environmental protection, the Court further explained that:

> "From the terms "victim" and "violation" in Article 34 of the Convention, like the underlying philosophy of the obligation to exhaust all domestic remedies imposed by Article 35, it can be deduced that, in the system for the protection of human rights as envisaged by the framers of the Convention, exercise of the right of individual petition cannot have the aim of preventing a violation of the Convention. It is only in wholly exceptional circumstances that the risk of a future violation may nevertheless confer the status of "victim" on an individual applicant, and **only then if he or she produces reasonable and convincing evidence of the probability of the occurrence of a violation concerning him or her personally: mere suspicions or conjectures are not enough in that respect**.
>
> In the instant case, the Court considers that the mere mention of the pollution risks inherent in the production of steel from scrap iron is not enough to justify the applicants' assertion that they are the victims of a violation of the Convention. **They must be able to assert, arguably and in a detailed manner, that for lack of adequate precautions taken by the authorities the degree of probability of the occurrence of damage is such that it can be considered to constitute a violation, on condition that the**

consequences of the act complained of are not too remote (see, mutatis mutandis, the Soering v. the United Kingdom judgment of 7 July 1989, Series A no. 161, p. 33, § 85 (emphasis added))."

32. This approach was developed further, in relation to non-governmental organisations, in *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), § 41, cited above:

"... there are two principal reasons why an association may not be considered to be a direct victim of an alleged violation of the Convention. .... The second reason concerns the nature of the Convention right at stake and the manner in which it has been invoked by the applicant association in question. Certain Convention rights, such as those under Article 2, 3 and 5, by their nature, are not susceptible of being exercised by an association, but only by its members (...). In Asselbourg and Others (cited above), when declining to grant victim status to the applicant association, the Court noted that the applicant association could only act as a representative of its members or employees, in the same way as, for example, a lawyer represented his client, but could not itself claim to be the victim of a violation of Article 8."

33. In fact the Court, in *Asselbourg and Others*, cited above, explained its conclusion on the basis that:

"With regard to the association Greenpeace-Luxembourg, the Court considers that a non-governmental organisation cannot claim to be the victim of an infringement of the right to respect for its "home", within the meaning of Article 8 of the Convention, merely because it has its registered office close to the steelworks that it is criticising, where the infringement of the right to respect for the home results, as alleged in this case, from nuisances or problems which can be encountered only by natural persons. In so far as Greenpeace-Luxembourg sought to rely on the difficulties suffered by its members or employees working or spending time at its registered office in Esch-sur-Alzette, the Court considers that the association may only act as a representative of its members or employees, in the same way as, for example, a lawyer represents his client, but it cannot itself claim to be the victim of a violation of Article 8 (...)."

34. As a result it is only in "highly exceptional circumstances" that a person can either (a) seek a review of the relevant law and practice *in abstracto* or (b) claim to be a "victim" in relation to the risk of a "future violation". As the Court summarised the position in relation to the latter in *Berger-Krall and Others v. Slovenia*, no. 14717/04), § 258, 12 June 2014:

"... the exercise of the right of individual petition [under Article 34] cannot be used to prevent a potential violation of the Convention: in theory, the Court cannot examine a violation other than a posteriori, once that violation has occurred."

There is, therefore, other than in "highly exceptional circumstances" no basis on which the applicants in this case can be the victim of a "future risk" under Articles 2 and/or 8 or seek an *in abstracto* review of the relevant law and practice.

35. The principal examples of such "highly exceptional circumstances" recognised to date are

(a) in relation to "future" risk,

(i) complaints concerning a *prima facie* risk of inhuman and degrading treatment faced by the individual applicant in the receiving country in case of expulsion or extradition (starting with *Soering v. the United Kingdom*, 7 July 1989, Series A no. 161); and

(ii) where, in the context of a negative obligation arising under the Convention, "a person [...] contend[s] that a law violates his rights, in the absence of an individual measure of implementation, if he is required either to modify his conduct or risk being prosecuted (...) or if he is a member of a class of people who risk being directly affected by the legislation" (*Burden v. the United Kingdom* [GC], no. 13378/05, § 34, ECHR 2008; see also *Norris v. Ireland*, 26 October 1988, § 32, Series A no. 142); and

(b) in relation to an alleged present or past risk, in cases of secret surveillance (also primarily a question of the negative obligation of the state not to interfere with the applicant's right to respect for private life) where "an exception to the rule denying individuals the right to challenge a law *in abstracto* is justified ... only if [the individual] is able to show that, due to his personal situation, he is potentially at risk of being subjected to such measures" (see e.g. *Roman Zakharov v. Russia* [GC], no. 47143/06, § 171, ECHR 2015).

36. By contrast, the Commission decision in *Noël Narvii Tauira and 18 Others v. France* (application no. 28204/95, Commission decision of 4 December 1995, Decisions and Reports (DR) 83-B, p. 112), expressly relied on by the Court in *Berger-Krall and Others*, did not fall within this category of "highly exceptional circumstances". In that case, the Commission declared inadmissible for lack of "victim" status complaints concerning the decision of the French President to resume nuclear testing in Tahiti. It explained that in order for applicants to be able to claim to be victims of a violation of the Convention, they must have "an arguable and detailed claim that, owing to the authorities' failure to take adequate precautions, the degree of probability that damage will occur is such that it may be deemed to be a violation, on condition that the consequences of the act complained of are not too remote". Despite having been provided with a whole series of scientific reports and evidence of the experience of past Nuclear tests, it concluded that the applicants had failed to satisfy this test and that the application was therefore inadmissible for lack of "victim status".

37. The one crucial factor which is common to these very few recognised and legitimate cases of "highly exceptional circumstances" permitting apparent derogation from the mandatory requirement for the alleged victim to have been "directly affected" (in the past) by the measure in question, or, in so far as applicable in cases of positive obligations, by the respondent government's failure to act, seems to be that identified by Mr. Justice Clarke, the then Chief Justice of Ireland, in his judgment in *Friends of the Irish Environment v The Government of Ireland & Ors* [2020] IESC 49 (31 July 2020) at § 7.21:

> "... there are circumstances in which an overly strict approach to standing could lead to important rights not being vindicated. However, that does not take away from the importance of standing rules in our constitutional order. The underlying position was reiterated in the recent decision of this Court in Mohan, which re-emphasised the need, ordinarily, for a plaintiff to be able to demonstrate that they have been affected in reality or as a matter of fact by virtue of the measure which they seek to challenge on the basis that it breaches rights. That remains the fundamental proposition. The circumstances in which it is permissible to accord standing outside the bounds of that basic principle must necessarily be limited and involve situations where there would be a real risk that important rights would not be vindicated unless a more relaxed attitude to standing were adopted."

38. This is, of course, also the underlying rationale for granting standing for associations who are not (or cannot be) direct victims such as in *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, §§ 111 - 113, ECHR 2014, where "the Court [was] satisfied that in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, it should be open to the CLR to act as a representative of Mr Câmpeanu, notwithstanding the fact that it had no power of attorney to act on his behalf and that he died before the application was lodged under the Convention".

39. As a consequence, I fully accept that it might, in principle, be permissible, exceptionally and subject to clear conditions including the availability and effectiveness of the available domestic remedies, for the Court to recognise an exception to the established rules on "victim" status and standing under Article 34 of the Convention. This is, of course, little more than an expression of the principle of effectiveness, seeking "to render [the Convention] safeguards practical and effective, not theoretical and illusory" (see *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, § 122, 15 October 2020 with further authorities).

40. However, it is also absolutely clear from the Court's case-law that this could only be the case (again following the approach identified) where it is accepted – as I think it has to be in the context of climate change – that, in fact, no individual applicant complaining about a State's failure to take adequate mitigation measures is likely ever to be able to establish that "for lack of adequate precautions taken by the authorities the degree of probability of the occurrence of damage is such that it can be considered to constitute a violation, on condition that the consequences of the act complained of are not too remote" (*Asselbourg and Others,* cited above and *Noël Narvii Tauira and 18 Others*).

41. Unfortunately, rather than go down this path, the majority has chosen what, in my view, is the worst of both worlds. After all, the majority has (at least implicitly) accepted that the application of the established "victim" test would not, in fact, lead to a situation where there would be a real risk that important rights of the individual applicants "would not be vindicated" at all as:

(a) the reasons given for the conclusion that the individual applicants in the present case did not satisfy the "victim" test neither rely on nor establish any such impossibility. In fact, the only reason given is that these individual applicants had failed to produce sufficient evidence to establish the necessary "direct impact" (§§ 532 -533 "... as regards applicants nos. 2-4 ... it is not apparent from the available materials that they were exposed to the adverse effects of climate change, or were at risk of being exposed at any relevant point in the future, with a degree of intensity giving rise to a pressing need to ensure their individual protection" and § 534 "... the fifth applicant provided a very general declaration not indicating any particular morbidity or other serious adverse effects created by heatwaves that would go beyond the usual effects which any person belonging to the group of older women might experience. ... It is therefore not possible to establish a correlation between the applicant's medical condition and her complaints before the Court"); and

(b) the test laid down in §§ 486 – 488 for the assessment of "a real risk of a 'direct impact' on the applicant", while described in § 488 as "especially high", does not, in fact, seem to me to differ significantly (if at all) from the test summarised in *Asselbourg and Others,* cited above.

42. Of course, I also, in principle, perfectly understand (and share) the majority's desire to ensure inter-generational justice and to "avoid a disproportionate burden on future generations" (§ 549). However, not having sought (or having been unable) to establish the necessary "highly exceptional circumstances" to justify the need for an exception to the traditional "victim"/standing test and absent an express provision in the Convention akin to Article 20a of the German Basic Law (*Grundgesetz*) (as considered by the *Bundesverfassungsgericht* in *Neubauer*) or Articles 2 and 3 of the proposed text for an additional protocol to the European Convention on Human Rights set out in the Appendix to PACE Recommendation 2211 (2021) *Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe*, the inevitable conclusion is that there is no basis for drawing any enforceable obligation from the current text of the Convention to combat "future risk" in respect of the applicants before the Court and even less to combat a "future risk" in respect of "future generations", i.e. by or on behalf of individuals who are, by definition, not even before the Court.

43. That being the case, the conclusions reached in §§ 532 – 534 of the judgment should have led the Court to declare this part of the application (under Articles 2 and/or 8) inadmissible; leaving the issues raised in relation to the alleged failure to take the necessary and/or appropriate mitigation measures in relation to the risks created by climate change for an appropriate future case in which the applicants could show, by reference either to the traditional test or the test identified in the judgment, that they were "directly affected" (or, of course, in the context of a request for an advisory opinion under Protocol No 16).

44. A further result of the approach adopted by the majority in relation to the individual applicants was that there was no need and no justification for the innovation of granting "victim" status/standing to the applicant association whether "as representatives of the individuals whose rights are or will allegedly be affected" (§ 498) or at all:

(a) such a development has no basis in the language of Article 34 of the Convention, which expressly makes the standing of a "non-governmental organisation or group of individuals" subject to them "claiming to be victims of a violation" themselves;

(b) for the reasons set out above, there is no justification in terms of the need to ensure effective access to the Court for creating such a right to bring proceedings before the Court, effectively by means of law making rather than interpretation; and

(c) the fact that "climate-change litigation often involves complex issues of law and fact, requiring significant financial and logistical resources and coordination, and the outcome of a dispute will inevitably affect the position of many individuals", while perhaps justifying allowing associations to act as legal representatives of individual "victims" (which they, of course, can and do already), cannot justify giving them standing in their own right (and, even less so, giving them standing independently of whether their members are "victims" or not).

45. Nevertheless, that is exactly what the majority did and, in my view, in doing so, they created exactly what the judgment repeatedly asserts it wishes to avoid, namely a basis for *actio popularis* type complaints (see e.g. §§ 446, 481, 484, 488, 500 and 596). After all:

(a) the majority recognise that

(i) "[g]iven the nature of climate change and its various adverse effects and future risks, the number of persons affected, in different ways and to varying degrees, is indefinite" (§ 479);

(ii) "the fact that complaints may concern acts or omissions in respect of various types of general measures, the consequences of which are not limited to certain identifiable individuals or groups but affect the population more widely. The outcome of legal proceedings in this context will inevitably have an effect beyond the rights and interests of a particular individual or group of individuals, and will inevitably be forward-looking, in terms of what is required to ensure effective mitigation of the adverse effects of climate change or adaptation to its consequences" (§ 479); and

(iii) "in the climate-change context, everyone may be, one way or another and to some degree, directly affected, or at a real risk of being directly affected, by the adverse effects of climate change. Leaving aside the issue of jurisdiction, the fact remains that potentially a huge number of persons could claim victim status under the Convention on this basis" (§ 483); and

(b) while purporting to maintain the principle in the case-law that an association cannot, itself, rely on health considerations or nuisances and

problems associated with climate change which can only be encountered by natural persons (§ 496), associations are nevertheless now granted the broadest standing "for the purpose of seeking the protection of the human rights of those affected, as well as those at risk of being affected, by the adverse effects of climate change" (§ 499), without, however, even being limited to protecting the rights of/representing their members. After all, the test for such standing laid down in § 502 expressly

(i) extends the remit of their standing to representing "members or other affected individuals within the jurisdiction"; and

(ii) does not require that those "members or other affected individuals within the jurisdiction", on whose behalf the case has been brought, have to meet the "victim" status requirements for individuals. This aspect is further underlined by the fact that, in relation to the applicant association in the present case, the majority considered it enough to be satisfied that the association "represents a vehicle of collective recourse aimed at defending the rights and interests of individuals against the threats of climate change in the respondent State" (§ 523, emphasis added).

46. This, of course, has to be read in light of the stated overall rationale (§ 499) that "[i]n view of the urgency of combating the adverse effects of climate change and the severity of its consequences, including the grave risk of their irreversibility, States should take adequate action notably through suitable general measures to secure not only the Convention rights of individuals who are currently affected by climate change, but also those individuals within their jurisdiction whose enjoyment of Convention rights may be severely and irreversibly affected in the future in the absence of timely action."

47. There is one further aspect of the issue of "victim" status/standing of associations, alluded to in § 503, which is worth noting. The majority there recognises that there exist in numerous Contracting Parties "existing limitations regarding the standing before the domestic courts of associations". This, of course, potentially raises difficulties in relation to the requirement (under Article 35 § 1 of the Convention) that "the Court may only deal with the matter after all domestic remedies have been exhausted", an essential component of the principle of subsidiarity. How is the Court to deal with an application brought before it by an association against a Contracting Party whose domestic procedural law does not provide for standing to be accorded to associations (generally or, at least, outside the very clear and narrow confines of the Aarhus Convention)?

48. The traditional answer would, of course, be that, unless there are domestic remedies which are available in theory and in practice at the relevant time and which the applicant (association) can directly institute themselves, an application can be made directly to the Court which would then, effectively, act as a first instance court. However, the majority seeks to answer this question by stating that "the Court may also, in the interests of

the proper administration of justice, take into account whether, and to what extent, its individual members or other affected individuals may have enjoyed access to a court in the same or related domestic proceedings" (§ 503, emphasis added). The weakness of this "may" is clearly demonstrated by the facts of this case. After all, not only is the applicant association granted standing despite the fact that neither it nor its "individual members or other affected individuals" had effective access to court before applying to the Court; in fact, the very absence of access to court for the individual applicants in this case is used as the final justification for granting it standing "in the interests of the proper administration of justice" (§ 523).

49. Furthermore, even if this criterion were to be taken "into account" in future cases it will remain to be seen whether (and, if so, how) the Court is going to determine whether the exhaustion requirement has been fulfilled by reference to possible domestic litigation brought by "other affected individuals" over which litigation, by definition, the association will not have had any control or influence (for an example of the inverse situation in this context see *Kósa v. Hungary (Dec.)*, no. 53461/15, §§ 59-63, 21 November 2017). After all, the Grand Chamber has only recently had cause to reaffirm that "[i]n order to be able to lodge an application in accordance with Article 34 of the Convention, an individual must be able to show that he or she was directly affected by the measure complained of; this is indispensable for putting the protection mechanism of the Convention into motion (...). Likewise, the Court can base its decision only on the facts complained of (...). Therefore, it is not sufficient that a violation of the Convention is 'evident' from the facts of the case or the applicant's submissions. Rather, the applicant must complain that a certain act or omission entailed a violation of the rights set forth in the Convention or the Protocols thereto (...), in a manner which should not leave the Court to second-guess whether a certain complaint was raised or not (...)" (*Grosam v. the Czech Republic* [GC], no. 19750/13, § 90, 1 June 2023).

50. As a consequence, it seems to me that a very real question that arises is whether the approach adopted by the majority means that:

(a) Contracting Parties will ultimately feel the need, or even be required, to introduce rules to permit such standing under domestic law, whether as a matter of strict legal obligation (under Articles 2, 8 and/or 13) or "just" in order to ensure that their national courts can consider the Convention complaint before it is brought before and considered by the Court (in application of the principle of subsidiarity); or

(b) where no such standing for an association is provided for in national law, the Court will, in fact, find itself having to consider these applications as a court of first instance and without the benefit of any prior consideration by the national courts. While this is clearly a role which this Court is not designed and is generally ill equipped to fulfil, this would be even more challenging when confronted with the inevitably detailed and complex

evidence seeking to establish whether or not the respondent State has "adopted, and effectively applied in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change", as envisaged by the majority.

51. This dilemma, of course, assumes a yet further relevance – especially in relation to the question of "adoption" of regulations and measures - for those 27 Contracting Parties to the Convention who are also member states of the European Union ("EU") and, in case of the planned accession by the EU to the Convention, the EU itself. After all,

(a) as the EU Commission stated in their intervention in the case of *Duarte Agostinho and Others*, "the EU sets Union-wide binding targets for climate and energy that all Member States have to comply with and achieve through national implementation", under the umbrella of, *inter alia*, Regulation (EU) 2018/1999 *on the Governance of the Energy Union and Climate Action* and/or Regulation (EU) 2021/1119 *establishing the framework for achieving climate neutrality* ("European Climate Law") as well as a broad range of individual (general and sectoral) legislative acts;[14] and

(b) as the judgment records in §§ 215–220, as the law stands it appears that individuals and associations only have very limited standing before the Court of Justice of the European Union ("CJEU") under Article 263 TFEU.

ARTICLE 6 – ACCESS TO COURT

52. In relation to the substantive complaint under Article 6 concerning the alleged denial of access to court, it is perhaps helpful that the leading authorities on this question are, in fact, two Grand Chamber cases against Switzerland (and in the context of environment law): *Balmer-Schafroth and Others*, and *Athanassoglou and Others v. Switzerland* [GC], both cited above.

53. Before considering (briefly) the individual components required to be satisfied in relation to the applicability and a finding of a violation of Article 6 § 1, I want to make it clear that I agree with the majority (see e.g. §§ 594, 609, 616 and 627) that Article 6 § 1 does not guarantee a right of access to a court with power to invalidate or override laws enacted by parliament and/or to compel the adoption of laws. In fact, the Grand Chamber in *Athanassoglou and Others*, § 54, cited above expressly underlined that the question "how best to regulate the use of nuclear power is a policy decision for each Contracting State to take according to its democratic processes". As a result, I also agree that only the "applicants' complaint concerning effective implementation of the mitigation measures under existing law is a matter

[14] the EU Commission identified, in form of a non-exhaustive list, legislative acts such as "the Emission Trading System ("ETS"), Effort Sharing Regulation ("ESR"), Land Use, Land Change and Forestry Regulation ("LULUCF") and Regulation setting CO_2 emission performance standards for new passenger cars and for new light commercial vehicles"

capable of falling within the scope of that provision" (§ 616) while those seeking "legislative and regulatory action" fall outside the scope of Article 6 § 1 (§ 615, referring to e.g. points 1-3 and some items under point 4 of the applicants' claims identified in § 22 of the judgment).

54. The majority of the questions concerning the applicability of (the civil limb of) Article 6 § 1 are readily answered by reference to the Court's judgments in the two previous cases against Switzerland, mentioned above, which apply with equal force in the present case:

(a) in relation to the necessary "existence of one or more 'rights' recognised under domestic law", the judgment in *Balmer-Schafroth and Others*, cited above, § 34, held that "the right to have their physical integrity adequately protected", in that case from the risks entailed by the use of nuclear energy, "is recognised in Swiss law, as is apparent in particular from section 5 (1) of the Nuclear Energy Act – to which both the applicants and the Federal Council expressly referred – and from the constitutional right to life, on which the Federal Council commented in its decision". This was, again, confirmed in *Athanassoglou and Others*, § 44, cited above, where the Court noted that these rights "are, as the Government have always conceded, ones accorded to individuals under Swiss law, notably in the Constitution and in the provisions of the Civil Code governing neighbours' rights". Just as in *Balmer-Schafroth and Others* and *Athanassoglou and Others* there would seem to me to be no reason why the "civil right" in this case could not also be defined not only as enshrined in Article 10 of the Federal Constitution (the right to life and to personal freedom) but also by reference to the CO_2 legislation (i.e. the CO_2 Act and the CO_2 Ordinance) as invoked by the applicants before the domestic authorities and courts and as summarised in §§ 123 – 126 of the judgment; and

(b) in relation to the existence of a "genuine and serious" dispute ("*contestation*") of a justiciable nature over those "rights", the Court, in *Balmer-Schafroth and Others*, §§ 37 – 38, cited above, confirmed that "[i]nasmuch as it sought to review whether the statutory requirements had been complied with, the Federal Council's decision was therefore more akin to a judicial act than to a general policy decision ... Moreover, in the light of the above considerations and the fact that the Federal Council declared the applicants' objection admissible, there can be no doubt that the dispute was genuine and serious". In *Athanassoglou and Others*, § 45, cited above, the Court recorded that "[i]t was not contested by the Government in the light of the Court's *Balmer-Schafroth and Others* judgment that there was a 'genuine and serious' dispute of a justiciable nature between the applicants and the decision-making authorities ...". Applying these *dicta* to the present case, it is clear from the facts that "the FAC held that applicants nos. 2-5 had an 'interest worthy of protection' in the revocation or amendment of the impugned DETEC decision, which made the appeal admissible from that perspective" (§ 35). A similar approach was taken by the Federal Supreme

Court: "The FSC considered that applicants nos. 2-5 had standing to lodge an appeal against the FAC's judgment. The FSC, however, left it open whether the applicant association also had standing to lodge the appeal and considered it more appropriate to limit its considerations to applicants nos. 2-5." (§ 53).

55. The only question which remains open, in light of the fact that the Court in both *Balmer-Schafroth and Others* and *Athanassoglou and Others* answered this question in the negative, is whether the outcome of the "dispute"/procedure was directly decisive for those domestic-law rights.

56. In *Balmer-Schafroth and Others* § 40, cited above, the Court based its conclusion on the fact that the applicants "did not for all that establish a direct link between the operating conditions of the power station which were contested by them and their right to protection of their physical integrity, as they failed to show that the operation of Mühleberg power station exposed them personally to a danger that was not only serious but also specific and, above all, imminent. In the absence of such a finding, the effects on the population of the measures which the Federal Council could have ordered to be taken in the instant case therefore remained hypothetical". In *Athanassoglou and Others*, § 48, cited above, the Court identified the "remoteness" test to be applied as being "whether the applicants' arguments were sufficiently tenable; it does not have to decide whether they were well-founded in terms of the applicable Swiss legislation". After a detailed consideration of the assessment and inspection reports concerning the relevant power plant as well as the back-fitting to address the major on-going developments in nuclear power plant safety technology, the Court, nevertheless and contrary to the conclusion reached by the Commission (reported as *Greenpeace Schweiz and others v Switzerland* (Dec), no. 27644/95, 7 April 1997), concluded (at § 51) that "the facts of the present case provide an insufficient basis for distinguishing it from the *Balmer-Schaffroth and Others* case". By contrast, the Commission, relying on the Court's judgment in *Zander v. Sweden*, 25 November 1993, § 25, Series A no. 279-B, had concluded that "the Federal Council's discretion was not unfettered and there was serious disagreement between the authorities and the applicants. Finally, the outcome of the dispute was directly decisive for the applicants' entitlement to protection against the effects of the nuclear power plant".

57. In the context of the present case, it seems to me that the conclusion of the majority set out in § 618 would – *mutatis mutandis* – equally justify concluding that the outcome of the proceedings brought by the individual applicants was directly decisive for those domestic-law "civil" rights. The majority there held that "the association's action was based on the threat arising from the adverse effects of climate change as they affected its members' health and well-being (see *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 46, ECHR 2004-III). The Court is satisfied that the interests defended by the association are such that the "dispute" raised by it had a direct

and sufficient link to its members' [i.e. including the individual applicants'] rights in question". This is further underlined by the fact that it would ultimately only have been through these proceedings before the national courts that the applicants could have sought a remedy e.g. in relation to the acknowledged failure by the Swiss authorities to meet even the GHG reduction target for 2020 (referred to in § 559).

58. Having established that Article 6 § 1, the right of access to court, was, in principle, applicable to the individual applicants it seems to me that, applying the reasoning of the majority in §§ 629 – 637 *mutatis mutandis*, to the extent that the applicants claims fell within the scope of Article 6 § 1, their "right of access to a court was restricted in such a way and to such an extent that the very essence of the right was impaired" (§ 638).

ARTICLES 2 AND 8 – THE CREATION OF A NEW RIGHT

59. Turning to the substantive complaints under Articles 2 and/or 8, it is telling of the majority's whole approach, in the context of Article 2, that the reasoning moves from a quote taken from *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, 25 June 2019 (in § 507) requiring evidence of an individual having been "the victim of an activity, whether public or private, which by its very nature put his or her life at real and imminent risk" (§ 140, emphasis added) to the (first, but in my view, questionable) conclusion (at § 509) that "the alleged failures of the State to combat climate change most appropriately fall into the category of cases concerning an activity which is, by its very nature, capable of putting an individual's life at risk". In so far as there is a causal connection at all, for the reasons set out above (when considering the question of "victim" status/standing) this is plainly too remote to be capable of engaging Article 2.

60. Having, therefore, at this early stage significantly underplayed (if not ignored) the need for any such risk to life to be "real and imminent" in order to fall within the competence of the Court, this question is then later addressed in §§ 512 – 513 of the judgment but not by reference to the further clarification provided in *Nicolae Virgiliu Tănase* at § 142. Recapitulating and rationalising the then (2019) existing case-law of the Court, the Grand Chamber in that case had made clear that "[w]here the real and imminent risk of death stemming from the nature of an activity is not evident, the level of the injuries sustained by the applicant takes on greater prominence. In such cases a complaint falls only to be examined under Article 2 where the level of the injuries was such that the victim's life was put in serious danger". Again, this is clearly not the scenario presented by these applicants. In legal terms, this difficulty is also not overcome by reference (in § 512) to the decisions in *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, 28 February 2012 (determining "imminence" of risk by reference to whether applicants were present or absent when their homes were flooded on

7 August 2001) or *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, 24 July 2014 (where a complaint about exposure to asbestos was rejected on the basis that "[i]t can neither be said that their conditions constitute an inevitable precursor to the diagnosis of that disease, nor that their current conditions are of a life-threatening nature"). If anything, these decision confirm that any risk created by the alleged failure to act in this case cannot satisfy the "real and imminent" test.

61. Furthermore, even subject to this higher threshold, the test quoted – by its position in the reasoning in the *Nicolae Virgiliu Tănase* judgment - clearly only relates to "this procedural obligation" (§ 141), namely the "procedural obligation" identified in § 137 of that judgment: "Thirdly, the Court reiterates that the State's duty to safeguard the right to life must be considered to involve not only these substantive positive obligations, but also, in the event of death, the procedural positive obligation to have in place an effective independent judicial system". It does not and cannot relate to the separate "substantive positive obligation" entailing "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", identified much earlier (in § 135) of *Nicolae Virgiliu Tănase* but which forms the blueprint for the positive obligation ultimately imposed by the majority under Article 8.

62. Arguably, therefore, (always assuming admissibility) the "procedural obligation" referred to in § 507 of the judgment (by reference to §§ 140 – 141 of *Nicolae Virgiliu Tănase*) might have been capable of being considered together with the complaint under Article 6 of the Convention and, if they had wanted to, enabled the majority to find a procedural violation of Article 2 and/or 8. However, the substantive violation of Article 8 which the majority seeks to construct from this starting premise has no basis either in the text of the Convention nor in any of the Court's case-law.

63. As the judgment rightly notes (§ 445), the Court has repeatedly stressed that no Article of the Convention is specifically designed to provide general protection of the environment as such (see *Kyrtatos v. Greece*, no. 41666/98, § 52, ECHR 2003-VI (extracts), and *Cordella and Others*, cited above, § 100) and that, to that effect, other international instruments and domestic legislation are more adapted to dealing with such protection. In *Jugheli and Others v. Georgia*, no. 38342/05, § 62, 13 July 2017 the Court further clarified that:

> "The Court reiterates at the outset that Article 8 is not violated every time an environmental pollution occurs. There is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8 (...). Furthermore, the adverse effects of the environmental pollution must attain a certain minimum level if they are to fall within the scope of Article 8 (...). The assessment of that minimum is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance, and its physical or psychological effects. There would be no

> arguable claim under Article 8 if the detriment complained of was negligible in comparison to the environmental hazards inherent to life in every modern city (...)."

64. It is, of course, one of the characteristics of climate change that, in fact, its effects have become – at least by reference to any comparators within the respondent State – "environmental hazards inherent to life in every modern city" and, as such, no applicability of Article 8 is capable of being derived from such a comparison which, in the Court's case-law, tended to be tied to or triggered by an identified source of (potential) pollution within the geographical vicinity.

65. Nevertheless, the majority went on, by reference to some of that very case-law, to

(a) create a new "right for individuals to effective protection by the State authorities from serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change" (§§ 519 and 544 of the judgment); and

(b) impose a new "primary duty" on High Contracting Parties "to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change" (§ 545, emphasis added), an obligation which the majority translates into a requirement "that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades" (§ 548); neither of which have any basis in Article 8 or any other provision of or Protocol to the Convention.

66. Not only that, but the majority, in what seems to me to be a clear break with the Court's traditional approach in relation to "difficult social and technical spheres" developed in the context of, arguably, (much) less complex spheres than the fight against anthropogenic climate change (see e.g. *Powell and Rayner v. the United Kingdom*, § 44, cited above and *Hatton and Others*, cited above, § 100), also considered that, in relation to this new obligation imposed on Contracting States, at least as far as "the State's commitment to the necessity of combating climate change and its adverse effects, and the setting of the requisite aims and objectives in this respect" is concerned Contracting States will only be accorded a "reduced margin of appreciation" (§ 543). Only when concerned with the "choice of means, including operational choices and policies adopted in order to meet internationally anchored targets and commitments in the light of priorities and resources" does the majority allow for a "wide margin of appreciation".

67. Compliance with either margin of appreciation will now be supervised by the Court (by means of an overall assessment relating both to mitigation as well as adaptation measures) and, it is to be assumed (in light of the requirement for exhaustion of domestic remedies under Article 35 § 1 of the Convention (see the discussion at §§ 47 *et seq* above) and the principle of subsidiarity) national courts and tribunals. This assessment is due to be

carried out by reference to a detailed catalogue of criteria set out in § 550, including by reference to "the need to ... keep the relevant GHG reduction targets updated with due diligence, and based on the best available evidence" (§ 550 (d)), an assessment which, in my respectful view, the Court is ill-equipped and ill-suited to perform. The nature of this part of the test alone, of course, underlines why "the nature and gravity of the threat and the general consensus as to the stakes involved in ensuring the overarching goal of effective climate protection through overall GHG reduction targets in accordance with the Contracting Parties' accepted commitments to achieve carbon neutrality" (§ 543) is wholly inadequate to explain or justify the adoption of such a fundamentally different approach to the margin of appreciation than the one Court has hitherto adopted.

CONCLUSION

68. In light of the above, and plainly recognising the nature or magnitude of the risks and the challenges posed by anthropogenic climate change and the urgent need to address them, the Court would already have achieved much if it had focussed on a violation of Article 6 of the Convention and, at a push, a procedural violation of Article 8 relating in particular to (again) the right of access to court and of access to information necessary to enable effective public participation in the process of devising the necessary policies and regulations and to ensure proper compliance with and enforcement of those policies and regulations as well as those already undertaken under domestic law. However, in my view, the majority clearly "tried to run before it could walk" and, thereby, went beyond what was legitimate for this Court, as the court charged with ensuring "the observance of the engagements by the High Contracting Parties in the Convention" (Article 19) by means of "interpretation and application of the Convention" (Article 32), to do.

69. I also do worry that, in having taken the approach and come to the conclusion they have, the majority are, in effect, giving (false) hope that litigation and the courts can provide "the answer" without there being, in effect, any prospect of litigation (especially before this Court) accelerating the taking of the necessary measures towards the fight against anthropogenic climate change. In fact, there is a significant risk that the new right/obligation created by the majority (alone or in combination with the much enlarged standing rules for associations) will prove an unwelcome and unnecessary distraction for the national and international authorities, both executive and legislative, in that it detracts attention from the on-going legislative and negotiating efforts being undertaken as we speak[15] to address the – generally

[15] Including (but not exclusively) under the auspices of the Council of Europe. In this context it is worth noting again that the CDDH-ENV has, in fact, been engaged in actively considering the need for and feasibility of a further instrument or instruments on human rights and the environment since at least September 2022: see footnote 5 above

accepted – need for urgent action. Not only will those authorities now have to assess and, if considered necessary, design and adopt (or have adopted) new "regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change" but there is also a significant risk that they will now be tied up in litigation about whatever regulations and measures they have adopted (whether as a result or independently) or how those regulations and measures have been applied in practice and, where an applicant was successful, lengthy and uncertain execution processes in relation to any judgments. After all, under Article 46 § 2 of the Convention supervision of the execution of any judgment of the Court lies with the Committee of Ministers, i.e. representatives of the very states who have now, contrary to their "intention" as reflected in the terms of the Convention, had significant new obligations imposed on them by the Court. In this context, I would note that the Committee of Ministers is also not likely to be helped in any way by the generality of the majority's conclusion under Article 46 (§ 657).

70. Consequently, while I understand and share the very real sense of and need for urgency in relation to the fight against anthropogenic climate change, I fear that in this judgment the majority has gone beyond what it is legitimate and permissible for this Court to do and, unfortunately, in doing so, may well have achieved exactly the opposite effect to what was intended.