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CLIMATE INACTION, RULED OUT!

EUROPEAN COURT CLARIFIES STATE OBLIGATIONS TO TACKLE THE CLIMATE CRISIS

LEGAL BRIEFING

AMNESTY INTERNATIONAL

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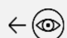
Applicants and climate activists hold placards during a rally before the European Court of Human Rights decides in three separate climate cases, 9 April 2024, Strasbourg (France)
© AFP via Getty Images

This briefing provides an overview of the key findings of three decisions issued by the European Court of Human Rights on 9 April 2024, clarifying states' human rights obligations in the context of the climate crisis.

1. INTRODUCTION

Strategic litigation can be an effective tactic to advance the respect, protection and fulfilment of human rights and enforce accompanying obligations and responsibilities of both state and non-state actors. Strategic litigation **leverages the power of courts to effect lasting change** – the enjoyment and realization of human rights. Impactful strategic litigation does not function in a vacuum and is most effective when combined with research, campaigns, advocacy, and media engagement throughout the litigation process. Collaboration amongst a diversity of actors including human rights defenders, community leaders, rights holders, media, researchers, fundraisers, campaigners and litigators – who contribute in various ways to the outcome of strategic litigation – before, during and after the completion of legal proceedings, is key to fruitful strategic litigation.

Activists demonstrate in front of a US courthouse against Chevron, October 2013, New York City (United States)
© 2013 Getty Images

Strategic litigation aimed at addressing the climate crisis provides a unique opportunity for various human rights actors including individuals, civil society, human rights defenders and frontline communities to address efforts to obfuscate or mislead, lack of action, and / or insufficient responses by governments and the private sector to the climate crisis.[1] These actors can **use the courts to compel more ambitious** efforts to reduce greenhouse gas (GHG) emissions (**mitigation**),[2] adjust natural and human systems to climate change (**adaption**) and remediate climate impacts (**loss and damage**). Climate litigation has in some cases "influenced the outcome and ambition of climate governance."[3] It has also led litigators to learn from each other and collaborate in developing novel

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[1] UN Environnent Programme (UNEP), *Global Climate Litigation Report: 2023 Status Review*, (Climate Litigation Report), 27 July 2023, www.unep.org/resources/report/global-climate-litigation-report-2023-status-review, p. 7.
[2] UNEP Climate Litigation Report (previously cited), p. 7.
[3] Dubash et al. 2022 as cited in UNEP Climate Litigation Report (previously cited). See also, Intergovernmental Panel on Climate Change (IPCC), Sixth Assessment Report (AR6), IPCC_AR6_SYR_LongerReport.pdf, p. 18.

legal arguments, setting new human rights standards by which states, and non-states actors must abide by within the context of the climate crisis.

This briefing provides an overview of the key findings and implications of the three rulings on climate (in)action issued by the European Court of Human Rights (ECtHR) on 9 April 2024. Amnesty International recognizes that many international, regional and domestic courts have issued decisions on climate litigation across the globe, some which have been ground breaking and spoke more decisively and firmly about state obligations in the context of the climate crisis.[4] However, before the decision in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*,[5] the ECtHR had not yet ruled substantively on the implications of the climate crisis on the enjoyment of the rights guaranteed in the European Convention on Human Rights (ECHR) despite several attempts seeking the Court to make such legal determinations. Given the limited enforcement mechanisms available to compel states to implement their multilateral climate commitments, the ECtHR plays an important role in holding member states of the Council of Europe (CoE), some counting among the world's worst historical GHG emitters, accountable for climate justice.

1.1 OVERVIEW OF THE THREE CLIMATE CASES

By the end of 2023, 12 cases had been filed before the ECtHR focused on rights violations in the context of the climate crisis.[6] In line with its 2021 case management strategy[7] and Rule 41 of the Rules of Court, the ECtHR identified the three climate cases analysed in this briefing as "impact" cases it would prioritize and announced that they would be heard by the Grand Chamber in 2022.[8] The Court adjourned its examination of six other climate cases[9] until after the Grand Chamber had ruled on the three climate cases discussed in this briefing. In the interest of the proper administration of justice, the Court decided that these three cases would be assigned to and decided by the same composition of the Grand Chamber. Two separate hearings were held on 29 March 2023 and a third hearing was held on 27 September 2023.[10]

The first case, *Duarte Agostinho and Others v. Portugal and 32 Others*,[11] was filed in September 2020 by six young Portuguese nationals concerned by the present and future impacts of climate change.

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[4] See for example Client Earth, *10 Landmark Climate Change Cases*, July 2022, 10-landmark-climate-change-cases_clientearth_compressed.pdf.
[5] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Application 53600/20, Grand Chamber judgement, date, https://hudoc.echr.coe.int/eng/#{%22itemid%22:[%22001-233206%22]}.
[6] ECtHR, Factsheet on Climate Change, April 2024, https://www.echr.coe.int/documents/d/echr/fs_climate_change_eng.
[7] ECtHR, "*A Court that matters/Une Cour qui compte," A strategy for more targeted and effective case-processing*, 17 March 2021, https://echr.coe.int/documents/d/echr/Court_that_matters_ENG.
[8] Article 30 of the European Convention on Human Rights (ECHR) states that: "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favor of the Grand Chamber."
[9] This relates to ECtHR, *Uricchiov v. Italy and 31 Other States* (Application 14615/21); *De Conto v. Italy and 32 Other States* (Application 14620/21); *Müllner v. Austria* (Application 18859/21); *Greenpeace Nordic and Others v. Norway* (Application 34068/21); *The Norwegian Grandparents' Climate Campaign and Others v. Norway* (Application 19026/21) and *Engels v. Germany* (Application 46906/22). The ECtHR declared the following three cases inadmissible: *Humane Being and Others v. the United Kingdom* (Application 36959/22); *Plan B. Earth and Others v. the United Kingdom* (Application 35057/22) and *Asociacion Instituto Metabody v. Spain* (Application 32068/23). See ECtHR, Factsheet on Climate Change (previously cited).
[10] ECtHR, Factsheet on Climate Change (previously cited).
[11] *Duarte Agostinho and Others v. Portugal and 32 Others*, Application 39371/20, Grand Chamber judgment, 9 April 2024, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-233261%22]}, ¶¶ 1, 158. Together with other non-state third party interveners, the following states intervened: The Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Swiss Confederation, the Republic of Cyprus, the Czech Republic, the Federal Republic of Germany, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Estonia, the Republic of Finland, the French Republic , the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic , the Republic of Croatia, Hungary, Ireland, the Italian Republic, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Latvia, the Republic of Malta, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Sweden, the Republic of Türkiye and Ukraine.

They alleged that Portugal and the 32 other CoE countries are responsible for climate harms,[12] such as extreme heat as a major driver of wildfires, and that they are not doing enough to mitigate these impacts. They argued that the respondent states failed to comply with their obligations as set in Article 2 of the ECHR which guarantees the right to life, and Article 8 which entrenches the right to respect for private and family life. The state obligations related to Articles 2 and 8 were understood in the context of commitments under the Paris Agreement, which, among other obligations, specifies that the 196 parties shall pursue efforts to limit the global average temperature increase to 1.5° Celsius above pre-industrial levels in order to avoid the worst impacts of climate change. Their complaint also outlined how these failures affect younger generations specifically, which they argued violates the prohibition of discrimination set out in Article 14 of the Convention. Amnesty International, together with other members of the Extraterritorial Obligations (ETO) Consortium intervened as a third party[13] seeking to clarify the nature of the ECtHR's jurisdiction in the context of the urgent and transboundary harm caused by climate change. This submission is further discussed below.

The second case, ***Verein KlimaSeniorinnen Schweiz and Others v. Switzerland***,[14] was filed in November 2020 by four older women and Verein KlimaSeniorinnen Schweiz (Senior Women for Climate Protection Switzerland),[15] a Swiss association representing the interest of more than 2,500 older Swiss women. The complaint focused on the consequences of global heating on their living conditions and health. The applicants claimed that Switzerland had failed to adopt suitable legislation and sufficient measures to ensure that it attains the emissions reduction targets in line with its international commitments. The applicants argued that their government's failure to mitigate climate change puts them at risk of dying during heatwaves violating their rights to life under Article 2, along with their right to private and family life, including their home, under Article 8. The applicants also highlighted how the domestic courts had not properly adjudicated their case and issued arbitrary decisions relating to Switzerland's climate policy, violating their right of access to court, as guaranteed under Article 6(1) of the Convention.

← *Members of Swiss association Senior Women for Climate Protection react after the announcement of decisions of European Court of Human Rights in their case, 9 April 2024, Strasbourg (France)* *© AFP via Getty Images*

[12] The case was originally filed against all 27 Member States of the European Union in addition to Norway, Russia, Switzerland, Türkiye, Ukraine and the UK. The applicants withdrew their case against Ukraine. See *Duarte Agostinho* (previously cited) ¶¶ 1, 158.
[13] This amicus briefing was drafted jointly with The Extraterritorial Obligations Consortium; Amnesty International; the Center for Legal and Social Studies; the Center for Transnational Environmental Accountability; the Economic and Social Rights Centre (Hakijamii); FIAN International; the Great Lakes Initiative for Human Rights and Development; the University of Antwerp Law and Development Research Group; Prof. Dr. Mark Gibney; Dr. Gamze Erdem Turkelli; Dr. Sara Seck; Prof. Dr. Sigrun Skogly; Dr. Nicolas Carrillo-Santarelli; Prof. Dr. Jernej Letnar Cernic; Tom Mulisa; Dr. Nicholas Orago; Prof. Dr. Wouter Vandenhole; and Jingjing Zhan. The full briefing is available at https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR0140922021ENGLISH.pdf.
[14] The Governments of Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania, and Slovakia intervened in the written proceedings as third parties to the court together with many other third-party interveners discussed in *KlimaSeniorinnen* (previously cited), ¶¶ 366 – 409.
[15] To learn more about the association, see https://en.klimaseniorinnen.ch/.

The third case, ***Carême v. France***, was filed in January 2021 by Damien Carême, a **French national** who is a **former resident and mayor of the municipality of Grande-Synthe**. The town is home to 23,000 inhabitants living along the coast of the English Channel. Grande-Synthe is particularly exposed to risks of climate-induced rapid onset events, including flooding. The applicant had requested the government of France to take all necessary measures to curb GHG emissions produced on its national territory to comply with the country's global climate commitments. He also requested that France take all necessary legislative and regulatory initiatives to make it obligatory to give priority to climate matters and to prohibit all measures likely to increase GHG emissions. Lastly, he requested that France implement immediate climate-change adaptation measures.[16] The French government failed to respond which prompted his legal action. Before the ECtHR, the applicant also argued that France's insufficient steps to mitigate the climate crisis violated his right to life under Article 2 and the right to respect for his private and family life set out in Article 8 of the Convention.

In deciding the cases above, the ECtHR issued three separate but interconnected judgments. The ECtHR found the ***KlimaSeniorinnen* case** admissible and ruled on its merits making it the **first comprehensive decision** from this Court **on states' human rights obligations in the context of the climate crisis**. As a result, this ruling is discussed more extensively in this briefing. The Court found the *Duarte Agostinho* and the *Carême* cases to be inadmissible. However, in doing so, it clarified some procedural requirements for climate cases to proceed before the Court within the context of climate change, also discussed in this briefing.

1.2 LOCATING THE THREE CLIMATE RULINGS WITHIN THE ECTHR'S JURISPRUDENCE

THE UNIQUE NATURE OF CLIMATE LITIGATION

> **Climate change is one of the most pressing issues of our times.**
> ECtHR, in *KlimaSeniorinnen,* ¶ 410

In *KlimaSeniorinnen*, the Court recognized the "unprecedented" and novel character of the issues presented by the three climate litigations before the Grand Chamber. It underlined the relevance of the issue, while acknowledging the limitations of the Court's environmental case-law to date.[17] The Court stressed that environmental matters tend to involve "specific sources,"[18] in contrast with the inherent **"polycentric" drivers of the climate crisis**.[19] As a result, it found that "it would be neither adequate nor appropriate to follow an approach consisting of directly transposing the existing environmental case-law to the context of climate change."[20]

The Court emphasized the **magnitude, urgency and intergenerational impacts of the climate crisis**, asserting that: "[C]limate change is one of the most pressing issues of our times. […] [T]he damaging effects of climate change raise an issue of intergenerational burden-sharing […] and impact most

[16] ECtHR, *Carême v. France*, Application 7189/21, Grand Chamber judgment, 9 April 2024 https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-233174%22]}, ¶ 11.
[17] *KlimaSeniorinnen Schweiz and Others v. Switzerland,* Application 53600/20, Grand Chamber judgement, date, https://hudoc.echr.coe.int/eng/#{%22itemid%22:[%22001-233206%22]}, ¶ 414.
[18] *KlimaSeniorinnen* (previously cited), ¶ 415.
[19] *KlimaSeniorinnen* (previously cited), ¶ 419.
[20] *KlimaSeniorinnen* (previously cited), ¶ 422.

heavily on various vulnerable groups in society, who need special care and protection from the authorities."[21]

CAUSATION AND STANDARD OF PROOF IN THE CONTEXT OF CLIMATE LITIGATION

> **Each State has its own share of responsibilities to take measures to tackle climate change and (…) the taking of those measures is determined by the State's own capabilities.**
> ECtHR, in *KlimaSeniorinnen,* ¶ 442

In *KlimaSeniorinnen*, the Court noted the **distinct issues of causation and proof** posed by climate cases. It stated that "failure to comply with domestic rules and environmental or technical standards" is not sufficient to demonstrate a state's breach of its duty to protect human rights affected by climate change.[22] Instead, the Court explained that competent **courts must engage with a body of "complex scientific evidence"**,[23] including "international standards concerning the effects of environmental pollution"[24] and studies by relevant international bodies. The Court pointed to the particular importance of reports by the Intergovernmental Panel on Climate Change (IPCC), that "provide scientific guidance on climate change regionally and globally, its impacts and future risks, and options for adaptation and mitigation."[25] Importantly, the Court stated that "IPCC findings correspond to the position taken, in principle, by […] States in the context of their international commitments to tackle climate change."[26]

The Court found 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…."[27] Drawing from the IPCC Sixth Assessment Report, the Court noted that "**human activities**, principally through **GHG emissions** (…) had **unequivocally caused global warming**" and that "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".[28]

Under the Paris Agreement, parties are required to develop Nationally Determined Contributions (NDCs) regarding their plans for climate mitigation. The Court pointed out that if parties were to realize the mitigation objectives outlined in their 2021 NDCs, it is likely that global warming would exceed 1.5°C in the 21st century, and that every increment of global warming would intensify multiple and concurrent hazards.[29] It highlighted that: "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."[30] The Court noted that the IPCC has stressed that limiting human-caused global warming required net zero emissions of carbon dioxide (CO_2), and that levels of mitigation achieved this decade would

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[21] *KlimaSeniorinnen* (previously cited), ¶ 410.
[22] *KlimaSeniorinnen* (previously cited), ¶ 428.
[23] *KlimaSeniorinnen* (previously cited), ¶ 427 (emphasis added).
[24] *KlimaSeniorinnen* (previously cited), ¶ 428.
[25] *KlimaSeniorinnen* (previously cited), ¶ 429.
[26] *KlimaSeniorinnen* (previously cited), ¶ 433.
[27] *KlimaSeniorinnen* (previously cited), ¶ 436.
[28] *KlimaSeniorinnen* (previously cited), ¶ 114 (emphasis added).
[29] *KlimaSeniorinnen* (previously cited), ¶ 115.
[30] *KlimaSeniorinnen* (previously cited), ¶ 118.

largely determine whether warming could be limited to 1.5° or 2°C.[31] In that regard, it noted that "[p]rojected CO_2 emissions from existing fossil fuel infrastructure without additional abatement would exceed the remaining carbon budget for 1.5°C."[32]

More specifically, the Court highlighted the IPCC's finding that all global modelled mitigation pathways limiting global heating to either 1.5°C or 2°C **involve a rapid, deep and, in most cases, immediate GHG emissions reductions in all sectors this decade**,[33] supporting global calls for an urgent phase out of all fossil fuels.[34] The Court further observed that according to the IPCC, delayed mitigation and adaptation action would lock in high-emissions infrastructure, reduce feasibility of achieving net-zero, and increase losses and damages.[35]

The Court also emphasized that "**finance flows fell short of the levels needed to meet climate goals across all sectors and regions**"[36] and that climate-resilient development would be "enabled by increased international cooperation, including improved access to adequate financial resources and inclusive governance and coordinated policies,"[37] in line with Amnesty International and other civil society organizations' calls for an urgent escalation of climate finance.[38]

COMMON BUT DIFFERENTIATED RESPONSIBILITIES AND RESPECTIVE CAPABILITIES

The notion of "common but differentiated responsibilities and respective capabilities" (CBDR-RC) is a principle first formulated in the 1992 **UN Framework Convention on Climate Change** (UNFCCC) and refined in the 2015 **Paris Agreement**, acknowledging the different capabilities and differing responsibilities of individual countries in addressing climate change, while allowing for all parties to increase ambition over time.

The principle of CBDR-RC is also implicitly reflected in **human rights law**.

The Court rejected Switzerland's "drop in the ocean" argument, questioning the capacity of individual states to make a difference in addressing climate change.[39] Instead, the ECtHR restated the importance of the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), enshrined, among others, in Article 3(1) of the UNFCCC, emphasizing 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 […]. 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.**" [40]

Finally, the Court underlined that its judicial review cannot exceed the scope of rights protected under the Convention, resulting in the exclusion of cases related to the "general deterioration of the

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[31] *KlimaSeniorinnen* (previously cited), ¶ 116.
[32] *KlimaSeniorinnen* (previously cited), ¶ 116.
[33] *KlimaSeniorinnen* (previously cited), ¶ 116.
[34] Amnesty International, *Fatal Fuels, Why human rights protection urgently requires a full and equitable fossil fuel phase out* (Index: POL 30/7382/2023), 13 November 2024, https://www.amnesty.org/en/documents/pol30/7382/2023/en/.
[35] *KlimaSeniorinnen* (previously cited), ¶ 119.
[36] *KlimaSeniorinnen* (previously cited), ¶ 115.
[37] *KlimaSeniorinnen* (previously cited), ¶ 118.
[38] Amnesty International, *Key meetings must fix broken climate finance pledges to safeguard human rights*, 20 May 20 2024, https://www.amnesty.org/en/latest/news/2024/05/global-key-climate-meetings-must-fix-broken-pledges-to-safeguard-human-rights/
[39] *KlimaSeniorinnen* (previously cited), ¶ 444.
[40] *KlimaSeniorinnen* (previously cited), ¶ 442 (emphasis added).

environment", with no direct and immediate link between the alleged environmental harm and the applicant's private or family life or home.[41] Procedural hurdles

Before the ECtHR can consider substantive legal arguments, it must declare any application received admissible.[42] At the outset, any application to the ECtHR must meet the format requirements set out in Rule 47 of Rules of Court.[43] To introduce any case before the ECtHR, individual applicants must also demonstrate that they have exhausted domestic remedies, have standing and that their complaint fits within the perimeter of the Court's jurisdiction. In its 9 April rulings, the ECtHR provided a distinct interpretation of those procedural requirements in the context of climate litigation.

1.3 EXHAUSTION OF DOMESTIC REMEDIES, SUBSIDIARITY AND EXTRA-TERRITORIAL JURISDICTION

The ECtHR has explained that the **protection afforded by the ECHR** is **subsidiary** to the national systems safeguarding human rights, the Court's main responsibility being to supervise the implementation of the Convention by state parties.[44] Applicants must therefore exhaust domestic remedies before bringing a case to the ECtHR; a requirement premised on Article 13 that guarantees the right to effective remedy before a national authority for all violations of Convention rights.[45] Accordingly, the ECtHR requires applicants to seek all judicial or non-judicial remedies available domestically and raise the rights violations before national courts to afford the relevant state the opportunity to remediate the alleged human rights concerns.[46] That is because the ECtHR as an international court, in contrast to a domestic court, does not have the capacity to adjudicate cases in a manner that would require its judges to make factual determinations or to calculate remedies, tasks which are best suited for domestic courts.[47]

The obligation to exhaust domestic remedies must only be complied with in instances where **remedies** are **available, adequate, effective, and sufficiently certain** both in theory and practice.[48] Domestic avenues for redress must be capable of directly remedying the alleged rights violations and offer reasonable prospects of success.[49]

Once domestic remedies are exhausted, Article 35(1) of the Convention (as amended by Article 4 of Protocol 15) obliges applicants to lodge their complaint(s) with the ECtHR within four months of the final decision in domestic proceedings.[50] Any complaints lodged after this time limit cannot be considered by the Court.

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[41] See for example *KlimaSeniorinnen* (previously cited), ¶¶ 446, 515.

[42] See more in ECtHR, Practical Guide on the Admissibility Criteria, 31 August 2023, https://www.echr.coe.int/documents/d/echr/Admissibility_guide_ENG.

[43] These must be strictly complied with and failure to comply can be fatal to an application.

[44] *Duarte Agostinho* (previously cited), ¶ 215 (citing ECtHR, *Communauté genevoise d'action syndicale (CGAS) v. Switzerland [GC]*, Application 21881/20, 27 November 2023), ¶¶ 138 – 146; *Gherghina v. Romania (dec.) [GC]*, Application 42219/07, 9 July 2015, ¶¶ 83-89; and *Vučković and Others v. Serbia (preliminary objection) [GC]*, Application 17153/11 and 29 others, 25 March 2014, ¶¶ 69 – 77).

[45] *Duarte Agostinho* (previously cited), ¶ 215.

[46] *Duarte Agostinho* (previously cited), ¶ 215.

[47] *Duarte Agostinho* (previously cited), ¶¶ 215 (citing ECtHR *Demopoulos and Others v. Turkey* [and 7 others] (dec.) [GC], Application nos. 46113/99, 2010, 69, where the Court in addition quoted the comprehensive statement of principles set out in §§ 66 to 69 of the Akdivar and Others judgment), ¶ 228.

[48] *Duarte Agostinho* (previously cited), ¶ 215 (citing See also ECtHR, *Akdivar and Others v. Turkey,* Reports [of Judgments and Decisions] 1996-IV, 16 September 1996, ¶ 66).

[49] *Duarte Agostinho* (previously cited), ¶ 74 (citing ECtHR, *Balogh v. Hungary*, Application 47940/99, 20 July 2004, ¶ 30 and *Sejdovic v. Italy* Grand Chamber, Application 56581/00, 2006, ¶ 46).

[50] More on Rule 47 and ECHR, Article 35(1) is available at ECtHR, *The Admissibility of an application*, Human Rights Education for Legal Professionals, 2015, https://www.echr.coe.int/documents/d/echr/COURtalks_Inad_Talk_ENG.

In *Duarte Agostinho*, the applicants listed Portugal and 32 other CoE members as respondent states. The applicants submitted that Portugal was experiencing a wide range of climate change impacts including increases in temperature which caused heatwaves and was a driver of wildfires. Applicants argued that all respondent states bore responsibility for these climate harms including by permitting the release of GHG emissions within their respective national territory and offshore areas within their jurisdiction, exporting fossil fuels extracted on their territory, extracting fossil fuels overseas or by financing such extraction.[51]

↑ *Young climate activists and applicants in the case of Duarte Agostinho and Others v. Portugal and 32 Others (from left to right: André Oliveira, Sofia Oliveira, Catarina Mota, Cláudia Agostinho and Martim Agostinho), September 2023 © GLAN*

The applicants submitted that they were not obliged to exhaust domestic remedies because there were no effective remedies available in the respondent States or their case presented special circumstances absolving them of this procedural requirement. The applicants explained that the applicable laws were "not capable of or did not offer reasonable prospects of providing effective redress in respect of the applicants' complaints". [52] The limitations of remedies available domestically were compounded by the existence of broad constitutional provisions (illustrated by Article 66 of the Portuguese Constitution) that did not provide sufficient certainty in practice and the absence of relevant case-law.[53] The applicants also submitted that exhausting domestic remedies in all respondent states was logistically and financially difficult and would impose an unreasonable burden on the applicants who are children and young people and would be inconsistent with the urgency and gravity of the climate crisis.[54]

[51] *Duarte Agostinho* (previously cited), ¶¶ 12 – 14.
[52] To read the full submissions of the Applicants, see *Duarte Agostinho* (previously cited), ¶¶ 128 – 134.
[53] *Duarte Agostinho* (previously cited), ¶ 131.
[54] *Duarte Agostinho* (previously cited), ¶ 132.

The applicants submitted that the **legal issues** presented by climate change were **novel and inherently supranational**, a reality which the applicants submitted was at odds with the principle of subsidiarity and the nature of the ECtHR's supervisory jurisdiction.[55]

In line with these legal submissions, Amnesty International and members of the ETO Consortium (the intervening organisations) provided the Court with an analysis of the unique risks of harm faced by children and youth and states' obligations under international law in the context of the climate crisis. The intervening organisations submitted that residents of a state party whose rights are negatively affected by climate change are impacted by GHG emissions produced within the state where they live as well as from the territories of other state parties to the Convention. As a result, the organisations argued that jurisdiction within the context for Article 1 of the ECHR must be interpreted in a manner that responds to the urgency and cross-border nature of the climate crisis and its impacts on Convention rights.

Amnesty International and members of the ETO Consortium submitted that the emission of GHG places affected persons within the "jurisdiction" of the emitter, for two reasons. First, climate change raises **unique issues of transboundary harm and common concern** which the ECtHR had not grappled with. The rights of the claimants were under the control of each of the state parties to the Convention, to the extent that they permit GHG emissions or conduct that exacerbates emissions in other States that foreseeably causes human rights harms, domestically and across borders, on a continuous and long-term basis. Limiting the Court's jurisdiction to states where applicants reside would amount to a denial of effective remedy. Second, the ECtHR has recognized that Convention rights should be interpreted in light of, and in harmony with other international law standards and obligations,[56] and as the intervening organisations explained, UN, African and Inter-American human rights systems tend to apply human rights instruments to all situations in which states are in a position to protect or harm the rights of people outside their borders or to regulate the conduct of non-state actor whose activities can harm the rights of people outside their home state.

The Court disagreed and found that the complaint was **inadmissible** because the applicants were from, and currently resided in, one member state of the CoE. As a result, the Court only had to determine if the applicants had exhausted domestic remedies in Portugal and found that the applicants had not pursued any domestic legal avenues on the alleged violations they raised in the ECtHR.[57]

The Court stated that Article 66 of the Constitution of Portugal which recognizes the right to a "healthy and ecologically balanced environment" was directly applicable and enforceable before domestic courts, including through civil litigation.[58] The Court also noted that the Portuguese legal system provides the possibility of instituting ***actio popularis*** (proceedings by parties who do not have a direct interest in the case) to petition courts to order public authorities to take action aimed at protecting the environment and quality of life, among others.[59] The Court also highlighted that the Climate Law in Portugal recognizes the climate crisis as an emergency situation and guarantees everyone the right to "climate balance" which in the Court's perspective, entails a "right of defence against the impact of climate change…the ability to demand that public and private entities comply with the duties and obligations to which they are bound in climate matters".[60] The Court reaffirmed the principle of subsidiarity and explained that it could not agree with the applicants' submissions.[61]

Furthermore, the Court reiterated that the **Convention's reach can only be transboundary in two exceptional circumstances**: (i) where there is "effective control" by the state over an area (*spatial*

[55] *Duarte Agostinho* (previously cited), ¶ 133.
[56] The ETO and Amnesty International's submission is available here: EUR0140922021ENGLISH.pdf (amnesty.org).
[57] *Duarte Agostinho* (previously cited), ¶ 227.
[58] *Duarte Agostinho* (previously cited), ¶¶ 40, 52, 218 – 219.
[59] *Duarte Agostinho* (previously cited), ¶ 219.
[60] *Duarte Agostinho* (previously cited), ¶¶ 220 – 221. To read the ECtHR's additional findings on remedies available in Portugal, see *Duarte Agostinho* (previously cited), ¶¶ 221 – 225.
[61] *Duarte Agostinho* (previously cited), ¶ 228.

concept of jurisdiction*)*, and (ii) when there is "state agent authority and control" over individuals (*personal concept* of jurisdiction).[62] The Court found that neither of these criteria had been met,[63] warning that:"accepting the applicants' arguments would entail an unlimited expansion of States' extraterritorial jurisdiction under the Convention and responsibilities under the Convention towards people practically anywhere in the world. This would turn the Convention into a **global climate-change treaty**. An extension of its scope in the manner requested by the applicants finds no support in the Convention." [64]

The Court explained that states have ultimate control over public and private activities based on their territories that produce GHG emissions.[65] The Court explained that while climate change is a global phenomenon, it does not justify "creating by way of judicial interpretation a novel ground for extraterritorial jurisdiction or as justification for expanding on the existing one."[66] It nonetheless recognized that each State bears its share of responsibility for the global challenges posed by climate change and has a role to play in finding appropriate solutions.[67] The Court concluded that: "extending the Contracting Parties' extraterritorial jurisdiction on the basis of the proposed criterion of "control over the applicants' Convention interests" in the field of climate change – be it within or outside the Convention's legal space – would lead to an untenable level of uncertainty for the States. Action taken in relation to some of the basic human activities mentioned above, or any omission in managing the activity's potential harmful effects on climate change, could lead to the establishment of a State's extraterritorial jurisdiction over the interests of persons outside its territory and without any particular link with the State concerned." [68]

The ECtHR's decision on the transboundary nature of states' human rights obligations with regards to climate change is **inconsistent with the approach of several other international and regional courts**, quasi-judicial bodies, and treaty bodies. For example, in 2019 five UN human rights treaty bodies issued a joint statement on human rights and climate change stressing that: "State parties have obligations, including **extra-territorial obligations**, to respect, protect and fulfil all human rights of all people. Failure to take measures to prevent foreseeable human rights harm caused by climate change or to regulate activities contributing to such harm, could constitute a violation of States' human rights obligations."[69]

More recently, on 21 May 2024, the International Tribunal for The Law of The Sea (ITLOS) issued its first advisory opinion on the obligations of the state relating to climate change. The ITLOS stated that under Article 194(2) of the UN Convention on the Law of the Sea (UNCLOS) state parties are mandated to take all measures necessary to ensure activities under their jurisdiction or control do not cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights.[70] The ITLOS explained that the obligation under 194(2) of UNCLOS applies to a transboundary setting and bears close resemblance to the harm prevention principle.[71]

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[62] *Duarte Agostinho* (previously cited), ¶ 170 (Citing ECtHR *Georgia v. Russia (II)*, Grand Chamber Judgment, Application no. 38263/08, 21 January 2021), 115).
[63] *Duarte Agostinho* (previously cited), ¶ 181 – 182.
[64] *Duarte Agostinho* (previously cited), ¶ 208 (emphasis added).
[65] *Duarte Agostinho* (previously cited), ¶ 192.
[66] *Duarte Agostinho* (previously cited), ¶¶ 194 – 195.
[67] *Duarte Agostinho* (previously cited), ¶ 193.
[68] *Duarte Agostinho* (previously cited), ¶ 208.
[69] 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, CRC Committee, and the Committee on the Rights of Persons with Disabilities, *Joint Statement on "Human Rights and Climate Change"*, 16 September 2019, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E (emphasis added).
[70] International Tribunal for the Law of the Sea (ITLOS), Advisory Opinion on the Request submitted by the Commission of Small Island States on Climate Change and International Law, Case No. 31, 21 May 2024, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf, ¶¶ 253, 254 – 258.
[71] ITLOS Advisory Opinion (previously cited), ¶¶ 254 – 258.

1.4 VICTIM STATUS / STANDING

The ability to claim victim status or standing (*locus standi*) before the ECtHR is governed by Article 34 of the Convention, which provides that the Court "may receive applications from **any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation** by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto."

↑ *Judges of the European Court of Human Rights opening a hearing in the case of Duarte Agostinho and Others v. Portugal and 32 Others, 27 September 2023, Strasbourg (France) © AFP via Getty Images*

VICTIM STATUS / STANDING UNDER ARTICLE 2 AND ARTICLE 8

Victim status of individual applicants

Article 34 requires individual applicants (direct victims) to show that the actions or omissions of the responding state had a **direct impact** or created a **real risk** for the applicant.[72] In the context of climate change, Article 34 requires applicants to demonstrate that they are both ***personally*** **and** ***directly*** affected by the action or alleged failures by the respondent states to combat climate change.[73]

In *KlimaSeniorinnen*, the ECtHR recognized that in the context of the climate crisis "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."[74] On this basis, a wide range of people could claim victim status under the Convention as a result of states' climate inaction. For the ECtHR, such a high number of potentially affected persons would risk disrupting national constitutional principles and

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[72] *KlimaSeniorinnen* (previously cited), ¶¶ 465 (citing ECtHR, *Lambert and Others v. France [GC]*, Application 46043/14, ¶ 89), 483.
[73] *Duarte Agostinho* (previously cited), ¶ 487.
[74] *KlimaSeniorinnen* (previously cited), ¶ 483.

the separation of powers because Courts could be flooded by persons seeking decisions ordering swift changes to democratically agreed climate actions and policies.[75]

Therefore, when deciding on victim status, the ECtHR will consider whether any applicant is particularly at risk of experiencing the adverse consequences of climate change and the severity of such risk, taking into account the **individual need for protection** of each applicant.[76] The Court emphasized that the threshold to meet the victim status requirements under Article 34 in cases raising rights violations related to climate change is very high and must be carefully assessed.[77] The Court explained that in climate cases, it will balance its mandate to effectively protect Convention rights and the fact that the Court proscribes *actio popularis* applications (collective legal action, that is, a complaint lodged by many people claiming to act in the public interest).[78]

In *KlimaSeniorinnen*, the Court assessed applicants' victim status in light of the rights violations pleaded in the complaint: Article 2 (right to life) and Article 8 (right to privacy and family life) on the one hand, and Article 6 (right of access to Court) on the other hand (analysed below).

With regards to Article 2, the Court held that: "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. (…) [T]he "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." [79]

With regards to Article 8, the Court held that: "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**."[80]

The applicants provided the Court with evidence from domestic and international expert bodies demonstrating how the growing frequency and intensity of climate-induced heatwaves increased the mortality and morbidity of older women in Switzerland.[81] While recognizing the IPCC's finding that **older people** are among the **most vulnerable to climate change's physical and mental health impacts**, the Court found that the four individual applicants (applicants No. 2 – 5) did **not** meet the victim-status criteria under Article 34 of the Convention and declared their complaints inadmissible.[82] The Court explained that **vulnerability to the effects of climate change *alone* is not in itself sufficient** to grant the applicants victim status.[83] While accepting that heatwaves affected the applicants' quality of life, the Court found that the supporting materials they submitted did not suggest 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".[84] This finding therefore leaves the door open to the Court granting victim status to other applicants, within the meaning of Article 34, if they provide adequate supporting documentation demonstrating individual risk of harm.

The Court further stated that it only exceptionally admits victim status relating to future risks and found that the individual applicants failed to demonstrate the existence of such exceptional circumstances in this case. Specifically, it found that the fifth individual applicant had merely submitted a general declaration that did not indicate any morbidity, or other serious effects created by heatwaves on her health. The Court noted that while she provided a medical certificate attesting that

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[75] *KlimaSeniorinnen* (previously cited), ¶ 484.
[76] *KlimaSeniorinnen* (previously cited), ¶ 484 – 486.
[77] *KlimaSeniorinnen* (previously cited), ¶ 488.
[78] *KlimaSeniorinnen* (previously cited), ¶¶ 483 – 485, 488.
[79] *KlimaSeniorinnen* (previously cited), ¶ 513 (emphasis added).
[80] *KlimaSeniorinnen* (previously cited), ¶ 519 – 520.
[81] *KlimaSeniorinnen* (previously cited), ¶¶ 65 – 74, 529.
[82] *KlimaSeniorinnen* (previously cited), ¶¶ 527 – 535.
[83] *KlimaSeniorinnen* (previously cited), ¶ 532 – 533.
[84] *KlimaSeniorinnen* (previously cited), ¶ 533 (emphasis added).

she suffered from asthma, the applicant disclosed that she had never seen a doctor in relation to the heatwaves at issue and therefore found that she had not shown any causal relationship between her asthma and the substance of the complaint before the court.

In *Carême v. France*, the Court reiterated the same criteria regarding victim status under Articles 2, 8 and 34 of the Convention. Specifically, the Court found that the applicant had no 'relevant' links to Grande-Synthe given that, he no longer lived in France and accordingly was unable to claim victim status for the purpose of Article 34 for reasons linked to climate change threatening this municipality.[85] The fact that he had filed the application when he was still a citizen or resident of the municipality was irrelevant for this determination. The Court found that the climate-induced risk he raised in his complaint was hypothetical.86 The Court declared his application inadmissible, explaining that "almost anyone could have a legitimate reason to feel some form of anxiety linked to the risks of the adverse effects of climate change in the future", therefore holding otherwise "would make it difficult to delineate the *actio popularis* protection – not permitted in the Convention system – from situations where there is a pressing need to ensure an applicant's individual protection from the harm which the effects of climate change may have on the enjoyment of their human rights."[87]

Locus standi (representation) by associations and collective group action

In *KlimaSeniorinnen,* the ECtHR explained that while also governed by Article 34 of the Convention, the issue of standing (*locus standi*) is distinct from the victim status requirement (of *individual* applicants), and concerns the introduction of direct victims' complaints by representatives acting on behalf of persons whose Convention right are alleged to be violated.[88] In its case law, the ECtHR has recognized that legal actions by associations and other collective bodies is in some instances the only way to effectively defend human rights.[89] The Court emphasized that this is particularly true in the context of climate change – a global and complex challenge with multiple causes, whose negative impacts affects and concerns all humankind.[90] This is further justified by the **intergenerational burden-sharing impact of the climate crisis**, where "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."[91] The Court confirmed that the critical role that associations and other groups play in defending the rights has also been recognized in international instruments such as the Aarhus Convention.[92]

The Court detailed several considerations that must guide its determination of whether an applicant association can have *locus standi* and lodge an application under Article 34 on account of a state's failure to take adequate measures to tackle climate change.[93] These include legal registration in the jurisdiction concerned, the ability to demonstrate that the applicant association acts in defence of the human rights of its members or other affected persons in the jurisdiction concerned, and that the association is qualified to act on behalf of its members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change.[94]

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[85] *Carême* (previously cited), ¶ 83.
[86] *Carême* (previously cited), ¶ 80.
[87] *Carême* (previously cited), ¶ 84.
[88] *KlimaSeniorinnen* (previously cited), ¶¶ 464, 477 (citing ECtHR, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania [GC]*, Application 47848/08, 2014, ¶¶ 102-03; *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, Application 2959/11, 24 March 2015, ¶¶ 42-46).
[89] *KlimaSeniorinnen* (previously cited), ¶ 489 (citing ECtHR, *Gorraiz Lizarraga and Others v. Spain*, Application 62543/00, 2004, ¶ 46).
[90] *KlimaSeniorinnen* (previously cited), ¶ 489.
[91] *KlimaSeniorinnen* (previously cited), ¶ 490 – 491.
[92] The Aarhus 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. To read more on the Aarhus Convention and its implementation in the European Union, see *KlimaSeniorinnen* (previously cited), ¶¶ 141, 490 – 492.
[93] For more details on the key principles guiding the Court's decision on the standing of an applicant association under Article 34 of the ECHR, see *KlimaSeniorinnen* (previously cited), ¶¶ 495 – 501.
[94] *KlimaSeniorinnen* (previously cited), ¶ 502.

The Court noted that *Verein KlimaSeniorinnen Schweiz* is a nonprofit association established under Swiss law to promote and implement effective climate protection on behalf of its members (older women residing in Switzerland) and in the general public and future generations' interest. It further noted that *Verein KlimaSeniorinnen Schweiz* is committed to undertaking actions aimed at reducing GHG emissions in Switzerland and addressing their effects on global warming. On this basis, the Court found that **Verein KlimaSeniorinnen Schweiz** is an organization that defends the rights and interests of individuals against the threats of climate change in Switzerland and therefore had **standing before the ECtHR**,[95] and that Article 8 was applicable to its complaint.

VICTIM STATUS / STANDING UNDER ARTICLE 6(1)

In *KlimaSeniorinnen*, the applicants complained that they had not had access to effective judicial remedies in Switzerland contrary to Article 6(1) of the Convention which provides that "everyone is entitled to a fair...hearing...by [a]...tribunal...".[96] Applicants had initiated domestic legal action alleging that Switzerland's failure to mitigate climate change violated their constitutional right to life, pointing to the specific health risks from excessive GHG emissions that older women face.[97]

Before the ECtHR, applicants contended that Swiss courts declared their proceedings inadmissible arbitrarily, without assessing the merits of their claims.[98] They argued that national court's interpretation of standing requirements would place "acts and failure by the State in fighting climate change (…) entirely outside the scope of human rights law," and was inconsistent with the State's commitment under the Aarhus Convention.[99] In turn, Switzerland argued that applicants' domestic litigation amounted to an *actio popularis*, arguing that they "had not established the existence of a sufficient link between the alleged omissions and rights invoked."[100]

The ECtHR restated the general rule – applicable to *both* individual applicants and associations – that in order to claim victim status or standing for purposes of Article 6(1) of the Convention and raise procedural rights violations: (i) a **"civil" right** must be at stake,[101] (ii) over which exists a **genuine and serious "dispute"**; [102] and (iii) the outcome of the proceedings must be "**directly decisive** for the applicant's rights".[103] It then explained how it would interpret these requirements in the context of climate litigation. First, the Court emphasized that the right of access to a court cannot be relied on to compel any legislative branch to enact new laws, making clear that "Article 6 does not guarantee a right of access to a court with power to invalidate or override laws enacted by Parliament."[104] Second, the Court held that, provided that they are recognized under the domestic laws at issue, **participation and access to information** in matters concerning the environment constitute actionable "civil" rights under Article 6(1). Finally, **in the context of climate litigation**, the bearing of the proceedings on the applicant's rights realization may include **future harm**, provided such risks are "not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action."[105] The Court highlighted that this is particularly salient for legal actions brought by associations, "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."[106]

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[95] *KlimaSeniorinnen* (previously cited), ¶ 523.
[96] *KlimaSeniorinnen* (previously cited), ¶ 575 – 576.
[97] *KlimaSeniorinnen* (previously cited), ¶¶ 577 – 578.
[98] *KlimaSeniorinnen* (previously cited), ¶¶ 579.
[99] *KlimaSeniorinnen* (previously cited), ¶ 581.
[100] *KlimaSeniorinnen* (previously cited), ¶¶ 583 – 584.
[101] *KlimaSeniorinnen* (previously cited), ¶¶ 597 – 602.
[102] *KlimaSeniorinnen* (previously cited), ¶¶ 595, 603.
[103] *KlimaSeniorinnen* (previously cited), ¶¶ 605 – 607.
[104] *KlimaSeniorinnen* (previously cited), ¶ 609.
[105] *KlimaSeniorinnen* (previously cited), ¶ 614.
[106] *KlimaSeniorinnen* (previously cited), ¶ 614.

The Court determined that of the five applicants in the case (four older women and Verein KlimaSeniorinnen Schweiz*),* **Verein KlimaSeniorinnen Schweiz** was the **only applicant to have standing under Article 6(1)** of the Convention and held that the effective implementation of mitigation measures under Swiss law is a matter that falls within the scope of the right of access to court. It noted that applicants challenged Switzerland's inaction under Article 10 of the Swiss Constitution – encompassing both the right to life and physical integrity – which are both "civil" rights for the purpose of this test, and that all applicants' claims raised a genuine and serious dispute. However, the Court held that the proceedings would only be "directly decisive" for the applicant association, which 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."[107]

In contrast to their findings with regards to the association Verein KlimaSeniorinnen Schweiz, with regards to applicants No. 2 – 5 (the four older women), the Court found that for similar reasons as those articulated under Article 8, "the requested action by the authorities – namely, effectively implementing mitigation measures under the existing national law – **alone** would [**not**] have created sufficiently imminent and certain effects on their individual rights in the context of climate change."[108] The Court held that the dispute had "a mere tenuous connection with, or remote consequences for, their rights relied upon under national law," and could not have been decisive for their specific rights.[109]

↑ *"Walk For Your Future" climate march, Brussels (Belgium), October 2022 © Romy Arroyo Fernandez / NurPhoto*

[107] *KlimaSeniorinnen* (previously cited), ¶ 621.
[108] *KlimaSeniorinnen* (previously cited), ¶ 624 (emphasis added).
[109] *KlimaSeniorinnen* (previously cited), ¶ 624.

2. SUBSTANTIVE FINDINGS

2.1 CLIMATE JUSTICE AND JUDICIAL REVIEWS

In *KlimaSeniorinnen*, the ECtHR noted that judicial intervention cannot encroach upon climate action which must be determined, and democratically agreed upon, by other branches of government.[110] It stressed that the scope of its judicial review (under Article 19) is limited to the Convention.[111] Nonetheless, it pointed out the particularly damaging effects of climate inaction, which "entails an aggravation of the risks of [climate change's adverse consequences], and the ensuing threats arising therefrom, for the enjoyment of human rights – threats already recognised by governments worldwide."[112]

Drawing from climate treaties including the UNFCCC and the subsequent Paris Agreement, the Court underscored that **states collectively agreed to protect the climate system for both present and future generations.**[113] The Court positioned itself as a necessary mediator of the interests of current and future generations given the tendency of political decision making to prioritize short term imperatives at the expense of future generations, who do not have an opportunity to participate in present political processes likely to affect their lives and livelihoods.[114]

In a first of its kind ruling, the Court outlined respondent states' obligations to protect Convention rights in the context of climate change. The applicants – four older women with health conditions and an association representing their collective interest – had alleged that Switzerland's measures to reduce GHG emissions fell short of the country's international climate commitments, violating their right to life under Article 2 and their right to respect for private and family life under Article 8. While it dismissed the four individual applicants' action for lack of victim status, the Court ruled in favour of the applicant association, holding that **Article 8** of the Convention **encompasses a right to effective protection by State authorities from the serious adverse effects of the climate crisis on lives, health, well-being and quality of life.**[115] The Court outlined the scope of states' political discretion and the types of mitigation measures they are required to adopt and effectively implement to meet their duties under Article 8.

While the Court examined the applicant's association from the lens of Article 8, it suggested that climate inaction (particularly, inadequate mitigation) could also threaten the right to life guaranteed under Article 2,[116] and create risks especially acute for groups such as older people, and in particular older women found by the IPCC to be among the most vulnerable to the harmful effects of climate change on both physical and mental health.[117] The Court clarified that its substantive case law analysis draws from principles developed under Article 2 and 8 of the Convention, "which, when seen together, provide a useful basis for defining the overall approach to be applied in the climate-change context under both provisions".[118]

2.2 ACCESS TO COURT AND EFFECTIVE REMEDIES

In *KlimaSeniorinnen*, the Court made it clear that the right of access to a court must be "practical and effective," and includes both the right to initiate proceedings, along with the right for disputes to be

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[110] See for example *KlimaSeniorinnen* (previously cited), ¶ 412.
[111] *KlimaSeniorinnen* (previously cited), ¶ 412.
[112] *KlimaSeniorinnen* (previously cited), ¶ 413.
[113] *KlimaSeniorinnen* (previously cited), ¶ 420 (citing UNFCCC, Article 3).
[114] *KlimaSeniorinnen* (previously cited), ¶ 420.
[115] *KlimaSeniorinnen* (previously cited), ¶ 519, 544.
[116] *KlimaSeniorinnen* (previously cited), ¶ 536.
[117] *KlimaSeniorinnen* (previously cited), ¶ 530.
[118] *KlimaSeniorinnen* (previously cited), ¶ 537.

adjudicated.[119] It also stated that the separation of powers between legislative and judicial branches may provide a legitimate basis to limit the right of access to court.[120]

Applying those principles to the legal action brought by the applicant association, the Court rejected Switzerland's argument that the proceedings it initiated amounted to a collective action, holding that this kind of strategic litigation "cannot automatically be seen as an *actio popularis* or as involving a political issue which the courts should not engage with."[121]

The Court noted that the applicant association's legal action was rejected by Swiss courts at two levels of jurisdiction, without any assessment of the merits of their complaint.[122] Furthermore, the Court dismissed Swiss courts' finding that the temperature limit set in the Paris Agreement was not expected to be exceeded in the near future.[123] Importantly, the Court held that Swiss courts' assessment was "not based on sufficient examination of the scientific evidence concerning climate change," noting that: "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." [124]

The Court found that domestic courts did not engage seriously or at all with the action brought by the applicant association, therefore restricting its right of access to court under Article 6(1) of the Convention.[125]

2.3 STATES' POSITIVE OBLIGATIONS TO MITIGATE THE CLIMATE CRISIS

> **States' 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.**
> ECtHR, in *KlimaSeniorinnen*, ¶ 545

At the outset, the Court acknowledged the "scientific evidence regarding the urgency of combatting 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."[126] The Court noted that "**climate protection should carry considerable weight**"[127] in any balancing exercise of other competing considerations as part of its judicial review.

The Court emphasized several factors justifying its approach, including "the global nature of the effects of GHG emissions; States' "generally inadequate track record" in climate action, as evidenced by the IPCC's finding of "a rapidly closing window of opportunity to secure a liveable and sustainable future for all" and the "gravity of the risks arising from non-compliance" with global climate

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[119] *KlimaSeniorinnen* (previously cited), ¶ 629.
[120] *KlimaSeniorinnen* (previously cited), ¶ 631.
[121] *KlimaSeniorinnen* (previously cited), ¶ 634.
[122] *KlimaSeniorinnen* (previously cited), ¶ 28 – 31, 34 – 42, 52 – 63, 630.
[123] *KlimaSeniorinnen* (previously cited), ¶¶ 56 – 59, 635 (emphasis added).
[124] *KlimaSeniorinnen* (previously cited), ¶ 635.
[125] *KlimaSeniorinnen* (previously cited), ¶ 636.
[126] *KlimaSeniorinnen* (previously cited), ¶ 542, 436.
[127] *KlimaSeniorinnen* (previously cited), ¶ 542 (emphasis added).

commitments.[128] The Court explained that in order to meet its obligations under Article 8, a 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."[129]

It established that *at a minimum*, states must put in place a domestic framework to both mitigate and adapt to the climate crisis.[130] It recognized that states have more discretion regarding the specific means of implementation they elect, "in light of priorities and resources" available.[131]

With regard to mitigation, the Court highlighted that in line with their international commitments under both the UNFCCC and Paris Agreement and the scientific evidence provided by the IPCC, states need to put in place "the necessary regulations and measures aimed at preventing an increase in GHG concentrations".[132] Notably, it stressed that: "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."[133]

The Court further detailed the criteria it weighed to determine whether a state remained within its margin of appreciation regarding its duty to mitigate, including states' need to:[134]

- ✓ Adopt general measures specifying a target timeline for achieving carbon neutrality and the overall remaining carbon budget for the same time frame;
- ✓ Set out intermediate GHG emissions reduction targets and pathways (by sector or other relevant methodologies) capable of meeting national goals within relevant time frames;
- ✓ Provide evidence showing whether they have duly complied, or are in the process of complying, with such mitigation targets;
- ✓ Keep the relevant GHG reduction targets updated with due diligence;
- ✓ Timely devise and implement such mitigation measures.

The Court emphasised that to meet its duties to protect under Article 8, mitigation measures must be supplemented by **adaptation measures**.[135] However, a state's failure to adopt and carry out climate mitigation policies alone can amount to a violation of Article 8.[136]

The Court also outlined procedural safeguards that states must guarantee in order to meet their duty to protect under Article 8, including but not limited to **access to information** underpinning climate policies and action, and procedures facilitating public participation, especially accounting for the views of people most affected or at risk of harm from such policies.[137]

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[128] *KlimaSeniorinnen* (previously cited), ¶ 542.
[129] *KlimaSeniorinnen* (previously cited), ¶ 545 (emphasis added).
[130] *KlimaSeniorinnen* (previously cited), ¶ 546.
[131] *KlimaSeniorinnen* (previously cited), ¶ 544.
[132] *KlimaSeniorinnen* (previously cited), ¶ 546.
[133] *KlimaSeniorinnen* (previously cited), ¶ 549 (emphasis added).
[134] *KlimaSeniorinnen* (previously cited), ¶ 550.
[135] *KlimaSeniorinnen* (previously cited), ¶ 552.
[136] *KlimaSeniorinnen* (previously cited), ¶ 555.
[137] *KlimaSeniorinnen* (previously cited), ¶ 554.

2.4 TEST TO ASSESS STATES' CLIMATE ACTION

↑ *Student climate strike, 15 March 2019, London (UK) © Amnesty International (Photo: Richard Burton)*

To assess whether a state is meeting its obligations under the Convention, the ECtHR deems it **sufficient** for applicants to demonstrate that "reasonable measures which the domestic authorities failed to take could have had a **real prospect of altering the outcome or mitigating the harm**."[138]

In *KlimaSeniorinnen*, the Court found some critical **gaps in Swiss authorities' domestic normative framework.**[139] The Court first noted that the 2011 CO2 Act, a legislation that entered into force in 2013, imposed emissions reduction requirements less stringent than the scientific evidence available at the time. Indeed, the CO2 Act only required Switzerland to reduce its overall GHG emissions by 20% (compared to 1990 levels) by 2020, while contemporaneous scientific evidence then urged industrialized countries to reduce their emission by 25 to 40%.[140] Furthermore, the Court pointed out that while available science had established that for UNFCCC commitments to be met, states GHG emissions would need to decline continuously until the end of the 21st century, the pathway set by the CO2 Act did not map out additional mitigation efforts past 2020.[141] Worse, the Court noted, Switzerland recognized that it had not managed to deliver on these targets, which fell far below their global commitments at the time.[142]

In this context, the Court underlined the IPCC's warning that "the choices and actions implemented in this decade would have impacts now and for thousands of years".[143] The Court acknowledged Switzerland's successive attempts to course-correct, starting with a revision of the CO2 Act that was

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[138] *KlimaSeniorinnen* (previously cited), ¶ 444 (emphasis added).
[139] *KlimaSeniorinnen* (previously cited), ¶ 573.
[140] *KlimaSeniorinnen* (previously cited), ¶ 558.
[141] *KlimaSeniorinnen* (previously cited), ¶ 558.
[142] *KlimaSeniorinnen* (previously cited), ¶ 559.
[143] *KlimaSeniorinnen* (previously cited), ¶¶ 118 – 119, 563.

rejected via referendum in 2017,[144] the submission of NDCs in 2021 outlining how Switzerland planned to comply with targets of the Paris Agreement,[145] and the adoption of the Climate Act in September 2022. The Climate Act, which has not yet come into force, sets a net-zero target for Switzerland to reach by 2050, [146] an unambitious timeline for a historical emitter.[147] The Court specifically noted that the Climate Act, which has not yet entered into force, merely sets general objectives and targets, and requires the Federal Council to adopt more concrete measures then proposed to parliament "in good time."[148]

The Court found such **commitments insufficient**, holding that: "The Court has difficulty accepting that the mere legislative commitment to adopt (…) concrete measures "in good time" (…) satisfies the State's duty to provide, and effectively apply in practice, effective protection of individuals within its jurisdiction from the adverse effects of climate change on their life and health." [149]

In addition, the Court pointed out that Switzerland's current climate strategy **lacked** a **specified carbon budget**, despite the IPCC stressing their importance to achieving net-zero, thus rejecting Switzerland's argument that instead, states could merely rely on their NDCs under the Paris Agreement.[150]

Pointing to the **CBDR-RC principle**, the Court further rejected Switzerland's (a high income, historical emitter) argument that it would be impossible for Swiss authorities to determine a national carbon budget.[151] As a result, the Court held that: "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."[152]

2.5 THE RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT: A CRITICAL GAP

In its 9 April decisions, the Court interpreted states' duties to protect from climate harm in light of existing Convention rights, including the human rights to life, access to a court and respect for private and family life. While the Court explicitly acknowledged the relevance of the increasing international recognition of the right to a clean, healthy and sustainable environment, it made clear that: "It is (…) not for the Court to determine whether the general trends regarding the recognition of such a right give rise to a specific legal obligation (…). Such a development forms part of the international-law context in which the Court assesses Convention issues before it (…), notably as regards the recognition by the Contracting Parties of a close link between the protection of the environment and human rights."[153]

This exclusion reinforces the **importance for the Council of Europe** to urgently move from a political to a **formal legal recognition of the right to a healthy environment**.[154]

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[144] *KlimaSeniorinnen* (previously cited), ¶¶ 560 – 561.
[145] *KlimaSeniorinnen* (previously cited), ¶ 563.
[146] *KlimaSeniorinnen* (previously cited), ¶ 564.
[147] The UN Secretary General (UNSG) Climate Action Acceleration Agenda has called for high income historical emitters to adopt 2040 net zero targets. See UNSG, *Climate Action Acceleration Agenda, Roadmap for a Liveable Planet*, 2023, https://www.un.org/sites/un2.un.org/files/un_sgs_acceleration_agenda.pdf, p. 1.
[148] *KlimaSeniorinnen* (previously cited), ¶ 565.
[149] *KlimaSeniorinnen* (previously cited), ¶ 567
[150] *KlimaSeniorinnen* (previously cited), ¶ 571.
[151] *KlimaSeniorinnen* (previously cited), ¶ 572.
[152] *KlimaSeniorinnen* (previously cited), ¶ 572.
[153] *KlimaSeniorinnen* (previously cited), ¶ 448.
[154] Ann Harrison et al., *Time's up: The Council of Europe Must Put The Right to a Healthy Environment in Law*, 6 May 2024, https://healthyenvironmenteurope.com/times-up-the-council-of-europe-must-put-the-right-to-a-healthy-environment-in-law/

A resolution of the European Parliamentary Assembly recently reiterated its calls for the urgent adoption of a legally binding framework recognizing the right to a healthy environment, through an additional Protocol to the European Convention or an autonomous Convention, stressing that the European regional human rights ecosystem is lagging behind its international counterparts.[159] A coalition of civil society organizations, of which Amnesty International is part, is also campaigning for an **additional Protocol to the European Convention** as the best means of ensuring that explicit recognition occurs in a timely manner.[160] During the fourth Summit of Heads of State and Government of the CoE held in May 2023 in Reykjavik, leaders of all member states committed to "strengthening 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".[161] In the Reykjavik Declaration adopted at the end of the Summit, states formally agreed to establish a new **intergovernmental committee** in charge of enhancing and fostering cooperation among CoE states on the protection of the environment and human rights.[162] Amnesty International and its partners have since been calling for the prompt establishment of the "Reykjavík Committee" with the inclusion of independent experts.[163]

RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT

Years of sustained international advocacy by civil society organizations including Amnesty International,[155] Indigenous Peoples and frontline communities led to the adoption of resolutions from the UN Human Rights Council in 2021,[156] and the UN General Assembly in 2022,[157] recognizing the human right to a clean, healthy and sustainable environment. Over 80% of UN member states now legally recognize this right through constitutions, legislation and regional treaties.[158]

The three decisions analysed in this briefing illustrate how this legal gap is undermining the ability of the ECtHR to engage fully with the multi-dimensional aspects and range of human rights impacts of the climate crisis, together with the necessity for European human rights norms to catch up with the pace of legal challenges posed by the climate crisis and responses by other human rights courts and bodies.

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155 Amnesty International, "Campaign for the right to a healthy environment, including Amnesty International, wins prestigious human rights prize", 20 July 2023, https://www.amnesty.org/en/latest/news/2023/07/campaign-for-the-right-to-a-healthy-environment-including-amnesty-international-wins-prestigious-human-rights-prize/

156 UN Human Rights Council, *Resolution on the right to a clean, healthy and sustainable environment*, 5 October 2021, UN Doc. A/HRC/48/L.23/Rev.1.

157 UN General Assembly, "Resolution on the right to a clean, healthy and sustainable environment", 26 July 2022, UN Doc. A/76/L.75.

158 David R. Boyd, *The Right to a Healthy Environment, A User's Guide*, 2024, https://www.ohchr.org/en/press-releases/2024/04/un-expert-publishes-user-guide-right-healthy-and-sustainable-environment, p. 14.

159 EU Parliamentary Assembly – Committee on Social Affairs, Health and Sustainable Development, *Mainstreaming the human right to a safe, clean, healthy and sustainable environment with the Reykjavik process*, 28 March 2024, https://rm.coe.int/mainstreaming-the-human-right-to-a-safe-clean-healthy-and-sustainable-/1680af0866, p. 3, ¶ 2.

160 Harrison, *Time's up* (previously cited).

161 Council of Europe (CoE), *United around our values: Reykjavík Declaration*, May 2023, https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html, Appendix V, p. 21.

162 Reykjavík Declaration (previously cited), Appendix V, p. 21.

163 Amnesty International, "Amnesty International calls on the Council of Europe to further the recognition of the right to a clean, healthy and sustainable environment at the 133rd session of the Committee of Ministers", 27 March 2024, https://www.amnesty.eu/news/amnesty-internationals-calls-on-the-council-of-europe-to-further-the-recognition-of-the-right-to-a-clean-healthy-and-sustainable-at-the-133rd-session-of-the-committee-of-ministers/

3. IMPLEMENTATION OF ECTHR DECISIONS

↑ *Exterior of European Court of Human Rights, Strasbourg (France)© Getty Images (Photo: Mustafa Yalcin/Anadolu Agency)*

3.1 EXECUTION OF ECTHR DECISIONS

In strategic litigation, receiving a decision recognizing that rights were violated and mandating the respondent to take remedial measures is an important step to achieve justice and accountability including with respect to guarantees of non-repetition. It is by no means the end of the strategic litigation process but the beginning of a phase when the responsible respondent is expected to take steps to comply with the ruling. This phase is essential to foster the realization and enjoyment of human rights and the confidence that judicial decisions can result in concrete social change.

CoE members states have the **legal obligation to remedy the violations found by the ECtHR** in a final judgment and pay damages and other sums awarded by way of just satisfaction.[164] However, ECtHR judgments are declaratory, and it is primarily up to the respondent state to choose which measures to adopt domestically in order to discharge its obligation to execute under Article 46 of the Convention.[165] In some exceptional circumstances, the Court can indicate in its decision the type of measures a state may take to end the violation found.[166]

States' remedial measures may relate to the applicant (individual measures) or be of a general nature.[167] Individual measures must ensure that they put an end to the violation in question and

[164] *KlimaSeniorinnen* (previously cited), ¶ 655. See also ECHR, Article 41.
[165] *KlimaSeniorinnen* (previously cited), ¶ 656.
[166] *KlimaSeniorinnen* (previously cited), ¶ 656.
[167] CoE, Department for the Execution of Judgments of the European Court of Human Rights, "The supervision process", https://www.coe.int/en/web/execution/the-supervision-process#{%2214997657%22:[0],%2214997692%22:[0],%2259551776%22:[0]} (accessed on 19 August 2024).

remedy its negative consequences.[168] General measures aim to prevent rights violations similar to those found by the Court (through, for example, changes of legislation or case law).[169] The Committee of Ministers (CoM),[170] who receives the judgment from the Court once final, has the mandate to supervise the adoption of the necessary execution measures.[171]

Once an ECtHR judgment becomes final (i.e. no longer subject to appeal), the respondent state must share with the CoM an "**action plan**" to execute the ruling. Once all the measures set out in such plan have been taken, the respondent state submits an "**action report**" to the CoM.[172] While the CoM supervises the judgement's implementation, the applicants, NGOs and national institutions advancing the promotion and protection of human rights can submit written communications to inform the CoM of any problems encountered in obtaining redress.

Once the "action report" has been filed, the CoM examines it and if approved, the CoM closes the case by issuing a final resolution. If the responding state refuses to comply with a final judgment of the ECtHR, the CoM can serve a formal notice on the responding state and refer the question of whether the respondent failed to fulfil its remedial duties to the Court. If the ECtHR finds a compliance violation, it will refer the case back to the CoM to determine next steps to address the respondent's failure to comply. If the Court finds no compliance violation, the CoM can then close its examination of the case.[173]

As the ECtHR found the *Duarte Agostinho* and *Carême* cases inadmissible – and inadmissibility decisions from the Grand Chamber cannot be appealed – this briefing's discussion regarding implementation of the 9 April cases only focuses on *KlimaSeniorinnen* to the extent the complaint of the applicant association was declared admissible. As the applicant association did not submit any claim for damages, the Court did not order the respondent to pay any compensatory damages.[174] However, the Court did order Switzerland to pay EUR 80 000 to the applicants for costs and expenses incurred in filing the case.[175] Because of the complexity and the nature of climate action and policies designed at the domestic level, the **Court** was **unwilling to formulate detailed or prescriptive measures that Switzerland should implement** in order to effectively address the rights violations identified.[176] Given the States' discretion and available resources, the Court found that Switzerland, assisted by the CoM, was better placed to determine the means of implementation to remedy the rights violation at issue.[177] Swiss authorities now have a duty to share their action plan with the CoM by **9 October 2024**.[178]

As the first substantive ECtHR climate ruling, the *KlimaSeniorinnen* decision provides novel and stringent guidance on states' duties to protect human rights in the context of the climate crisis under the European Convention. The Court's assessment of Switzerland's climate mitigation policies sets a **useful precedent for interpreting global climate commitments** – including the Paris Agreement – **informed by scientific evidence** from authorities such as the IPCC, and the obligation of states to protect human rights now and for generations to come. *KlimaSeniorinnen* could inform how **member states of the CoE**, who are all Parties to the Convention, will think of and **assess their** respective **climate action**. Among them are some of the world's worst **historical GHG emitters** such as the United

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[168] CoE, Supervision process (previously cited).
[169] CoE, Supervision process (previously cited).
[170] The Committee of Ministers of the Council of Europe is made up of representatives of the governments of the 46 member states. They are assisted in their mandate by the Department for the Execution of Judgments of the Court (Directorate General of Human Rights and Rule of Law).
[171] ECHR, Articles 46(1)-(2). See also Committee of Ministers (CoM) of the CoE, Rules for the supervision of the execution of judgments and of the terms of friendly settlements, 10 May 2006 (amended in 2017), https://rm.coe.int/16806eebf0.
[172] Most cases follow the standard procedure. An enhanced procedure is used for cases requiring urgent individual measures or revealing important structural problems (in particular pilot-judgments) and for inter-state cases.
[173] ECHR, Article 46(4). See also CoM, Rules for the supervision of the execution of judgments (previously cited).
[174] *KlimaSeniorinnen* (previously cited), ¶ 647.
[175] *KlimaSeniorinnen* (previously cited), ¶ 650.
[176] *KlimaSeniorinnen* (previously cited), ¶ 657.
[177] *KlimaSeniorinnen* (previously cited), ¶ 657.
[178] ECtHR, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, Case Description, Status of Execution, https://hudoc.exec.coe.int/eng#{%22execidentifier%22:[%22004-65565%22]} (accessed on 19 August 2024).

Kingdom, France, Germany and Italy. G20 members, including five CoE member states and the EU, are responsible for 76% of current global annual GHG emissions, [179] with some having a heightened responsibility because of the emissions they have historically produced. Most historical emitters are also among the states with the highest income and with greater capacity to act in order to decarbonize their economies on a faster timeline. In line with the **CBDR-RC principle**, those states must provide **financial and other resources** to help lower income countries that are most climate vulnerable to mitigate their own GHG emissions, to adapt to climate change, and to cope with loss and damages.[180] By mandating that Switzerland undertake more robust mitigation – as failing to do so violates Convention rights – the *KlimaSeniorinnen* decision sets an **important benchmark for climate action**.

This decision has the potential to increase the pressure on CoE members to step up their climate action and protect Convention rights. In the years to come, the ECtHR will continue building on this jurisprudence starting with the nine other climate cases currently pending before the Court and others future cases to be filed before the Court.

3.2 POLITICAL OBSTACLES

The implementation of the *KlimaSeniorinnen* ruling currently depends on Swiss authorities' **political will**. Disappointingly, a zero-sum approach to the decision has emerged with members of the executive and legislative branches submitting that the ECtHR decision contravenes Switzerland's political discretion and democratic processes. On 22 May 2024, the Legal Affairs Committee of the Council of States – the Upper Chamber of Switzerland's parliament – tabled a motion ("*déclaration*") 'not to follow up further' on the *KlimaSeniorinnen* decision.[181] On 5 June 2024, the Council of States voted in favour of the motion. On 11 June 2024, the Legal Affairs Committee of the National Council - the lower chamber of Switzerland's parliament – adopted a similar motion to disregard the same ruling, condemning ECtHR's "**judicial activism**" and asserting that Switzerland had taken sufficient steps to tackle climate change.[182] The National Council's motion specifically urges Switzerland's Federal Council to share with the CoM an action plan merely explaining that in March 2024, the Swiss parliament amended the CO2 Act to implement Switzerland's commitments under the Paris Agreement, and that there no longer are gaps in Switzerland's climate regulations.[183] The contentious motions do not bind the federal government of Switzerland, which has announced that it will communicate Swiss authorities' next steps after the 2024 summer recess (the substance of this next steps are not yet public at the time of publication of this briefing). Several additional parliamentary motions, both supportive and critical of the ECtHR, are pending before both houses.

States cannot simply pick and choose which binding judgments of the ECtHR they will comply with given the clear obligations set out in Article 46 of the ECHR. Sadly, the Swiss parliament's approach is not the first time that the Court's judgments have been rejected due to lack of political will by a respondent state. In so doing, politicians not only undermine their own country's binding legal obligations but also confidence in the Convention system itself and the rule of law when they continue to be under threat. The climate crisis is one of the most pressing issues of our time and the *KlimaSeniorinnen* case sets a much-needed precedent in relation to states' duty to protect human rights in a context that is worsening rapidly. States' duty to mitigate and adapt to the climate crisis cannot be met by simply choosing to adopt *any* climate policies. As the Court explained, such measures need to be **effective, appropriate and timely**.

[179] UNEP, Emissions Gap Report 2023, https://www.unep.org/interactives/emissions-gap-report/2023/#section_0

[180] Amnesty International, *Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis* (Index POL 30/3476/2021), 7 June 2021, pp. 9 – 10.

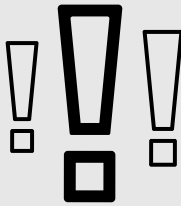
[181] Swiss Parliament, "Déclaration du Conseil des Etats, Arrêt de la CEDH « Verein KlimaSeniorinnen Schweiz et autres c. Suisse »" ["Public statement of the Council of States, ECtHR decision "*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*"], 22 May 2024, https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaeft?AffairId=20240053

[182] Swiss Parliament, "Déclaration du Conseil national, Arrêt de la CEDH « Verein KlimaSeniorinnen Schweiz et autres c. Suisse»" ["Public statement of the National Council, ECtHR decision *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*"], 12 June 2024, https://www.parlament.ch/fr/ratsbetrieb/amtliches-bulletin/amtliches-bulletin-die-verhandlungen?SubjectId=64937

[183] Swiss Parliament, Public statement of the National Council (previously cited).

These motions from both houses of the Swiss parliament, while formally non-binding, send a dangerous signal to Swiss duty bearers and other CoE states that climate action can be undertaken "à la carte". This posture risks severely undermining access to justice, accountability, and the enjoyment of human rights across Europe and beyond. In the current global context where human rights are threatened by the triple planetary crises of climate change, biodiversity loss and pollution, states must take concrete and effective action to guarantee rights realization, and particularly protect groups most vulnerable to climate change, including children, youth and older women.

RECOMMENDATIONS



Amnesty International urges Switzerland's:

- Parliament to correct the damaging narrative conveyed by the adoption of the contentious motions described above and avoid any additional weakening of the ECtHR and its decisions.

- Federal government to comply with its international human rights obligations, global climate commitments and with the implementation process as set out by the Committee of Ministers and Article 46 of the Convention.

4. CONCLUSION

Amnesty International like many other organizations, defenders, communities and other climate actors, has expressed alarm at the rate at which states' efforts to tackle the climate crisis remain far below what is required to avoid its most devastating impacts for humanity and ecosystems. In a world where state action is lagging behind, rights affirming legal precedents create important incentives for states to accelerate the action required to mitigate and adapt to climate change. Through the *KlimaSeniorinnen* decision, the ECtHR affirmed that **political inertia and climate pledges** that are **inconsistent with the latest available science** could **amount to human rights violations with tangible legal implications**. Judicial review can therefore operate as an enforcement tool, to safeguard human rights threated by climate inaction.

In the *Duarte Agostinho* and *Carême* cases, the ECtHR set stringent **procedural requirements** for climate cases to be heard before the regional court. Future litigants will have to grapple with these procedural hurdles to ensure that the Court considers the merits of their case. However, this should not deter or discourage affected groups from resorting to strategic litigation to seek redress from climate harm. In fact, at a time when duty bearers are not taking climate action ambitious enough to meet the 1.5°C imperative, strategic litigation remains a critical tool to challenge systematically this status quo.

The three climate rulings analysed in this briefing add to an **increasing body of international jurisprudence** clarifying the scope and dimensions of states obligations to respect, protect and fulfil human rights eroded by the climate crisis. They could inform the determinations of other international judicial forums such as the Inter-American Court of Human Rights and the International Court of Justice, as these are both expected to issue advisory opinions on the issue of state obligations regarding climate change in the course of 2024 or later.

Amnesty International remains resolute in support for the development and implementation of human rights for all including in the context of climate injustice. Committing to such a goal means that the organisation will, among other actions, continue to use strategic litigation in support of, and in partnerships with climate activists, defenders and impact litigators to push duty bearers to take immediate, concrete and rights-affirming climate action.

Understanding the *Duarte Agostinho*, *Carême* and the *KlimaSeniorinnen* decisions of the ECtHR would not be complete without emphasizing the **critical role played by each applicant** whose lived experience shaped these innovative proceedings. The efforts of both younger and older persons to defend their rights and those of future of generations are **commendable and inspiring**. Strategic litigation is not an easy task – it can be complex, lengthy, resource intensive, and the applicants' tenacity remind all of us of the potential of legal actions to demand a world where climate justice prevails. The cumulative impact of such proceedings will significantly advance climate justice and hopefully better protect the rights of billions from the adverse impacts of climate change, starting with the most marginalized.

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

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