

ENNHRI Paper

Climate Change and Human Rights in the European Context

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1. Introduction

In recent years, the nexus between climate change and human rights has gained more and more attention. This is particularly evident in the increasing number of climate cases brought before domestic and international courts. The European Court of Human Rights (ECtHR) communicated its first climate case in November 2020, the so-called 'Portuguese Youth Climate Case', submitted by six Portuguese children and youth against 33 Council of Europe Member States¹. A second case concerning Switzerland was communicated in April 2021.² ENNHRI considers these cases highly relevant, as they illustrate how human rights are being invoked in relation to climate-related harms and have the potential to set precedents in a field where National Human Rights Institutions (NHRIs) and their networks are increasingly engaged.

In a statement adopted at the General Meeting of the Global Alliance of National Human Rights Institutions (GANHRI) in December 2020,³ NHRIs around the world committed to engage – collectively through GANHRI and their regional networks - in national, regional and international processes to promote human rights and enhance climate action. Several European NHRIs have also published reports on climate change and human rights, made interventions in domestic climate cases, and have worked on the topic through their monitoring, reporting and awareness-raising functions.⁴ In addition, ENNHRI has established a Core Group on Climate Crisis and Human Rights to further support exchange and cooperation among NHRIs and will continue to actively engage in processes and debates on this important topic. As human rights defenders (HRDs) themselves, the increasingly mainstreamed work of NHRIs on climate change issues is also becoming more relevant in the context of promoting and protecting HRDs work on climate change and environment related issues.⁵

¹ ECtHR Communication, *Duarte Agostinho et autres c. Portugal et 32 autres États* (in French). An unofficial English translation available at https://www.nhri.no/wp-content/uploads/2020/11/DUARTE-AGOSTINHO-and-others-vs-PORTUGAL-and-32-others-unofficial-translation-fr.en_.pdf; Global Legal Action Network, *Summary of the case and FAQ*, <https://youth4climatejustice.org/the-case/>.

² ECtHR Communication, *Verein Klimasenioren Schweiz et autres c. la Suisse* (in French).

³ GANHRI Statement adopted at the GANHRI Annual Conference on Climate Change: The role of National Human Rights Institutions held on 4 December 2020; https://ganhri.org/wp-content/uploads/2021/02/EN_AC_Statement_for_consultation.pdf.

⁴ See for example, German Institute for Human Rights, *Climate Change and Human Rights – The Contributions of National Human Rights Institutions*, 2020, https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Weitere_Publikationen/Human_Rights_in_Practice_Climate_Change_and_Human_Rights.pdf; Norwegian National Human Rights Institution, *Climate and Human Rights*, <https://www.nhri.no/2020/klima-og-menneskerettigheter/>.

⁵ ENNHRI has developed a Regional Action Plan on GANHRI Marrakesh Declaration: NHRI Action to Promote and Protect HRDs and Enable Democratic Space, Report 2019-2020, http://ennhri.org/wp-content/uploads/2021/03/RAP_HRD-Report_2019-2020_final.pdf

With this paper, ENNHRI builds on these existing commitments made by NHRIs by providing a more detailed examination of the issues surrounding climate change and human rights in the European context. **Section 2** of this paper discusses the nexus between climate change and human rights, including an overview of significant developments at the UN and European levels, global trends in climate litigation, and a summary of the climate cases currently before the ECtHR.

Section 3 considers the national climate policies and practices in selected European countries by reference to human rights standards, based on the expert assessments made by the Intergovernmental Panel on Climate Change (IPCC), the UN Environment Programme (UNEP) and the Climate Action Tracker (CAT), as well as a survey of ENNHRI member institutions, through which we received submissions from twelve members⁶ in Croatia, the Czech Republic, Finland, France, Germany, Georgia, Norway, Romania, Slovakia, Spain, Northern Ireland and Scotland.

Section 4 of the paper discusses whether the harm caused by greenhouse gas (GHG) emissions may engage States' responsibility under Articles 1, 2, 3, 8, 14 and Article 1 of Protocol 1 (P1-1) of the European Convention on Human Rights (ECHR), interpreted in light of relevant international and national law. The legal analysis in Section 4 of the paper focuses in some parts on climate-induced harm towards children, who will bear the brunt of the latent effects of historic and present GHG emissions. It also notes that other vulnerable groups, such as older people, people with disabilities and people with chronic illnesses, as well as indigenous peoples, such as the Sami population in the Arctic area, will be disproportionately affected by climate change.

⁶ Croatian Ombudswoman, <https://www.ombudsman.hr/en/>; Finish Human Rights Centre (HRC), <https://www.humanrightscentre.fi/about-us/>; Public Defender of Rights in the Czech Republic, ; Finish Human Rights Centre (HRC); <https://www.ihmisoikeuskeskus.fi/>; German Institute for Human Rights (GIHR), <https://www.institut-fuer-menschenrechte.de/>; Public Defender (Ombudsman) of Georgia, <https://www.ombudsman.ge/>; Norwegian National Human Rights Institution, <https://www.nhri.no/>; Romanian Institute for Human Rights, <http://www.irido.ro/>; Slovak National Centre for Human Rights, <http://www.snslp.sk/>; Northern Ireland Human Rights Commission (NIHRC), <https://www.nihrc.org/>; Northern Ireland Human Rights Commission (NIHRC); Scottish Human Rights Commission, <https://www.scottishhumanrights.com/>.<https://www.ochrance.cz/>; Finish Human Rights Centre (HRC); <https://www.ihmisoikeuskeskus.fi/>; German Institute for Human Rights (GIHR), <https://www.institut-fuer-menschenrechte.de/>; Public Defender (Ombudsman) of Georgia, <https://www.ombudsman.ge/>; Norwegian National Human Rights Institution, <https://www.nhri.no/>; Romanian Institute for Human Rights, <http://www.irido.ro/>; Slovak National Centre for Human Rights, <http://www.snslp.sk/>; Defensor del Pueblo de Espana, <https://www.defensordelpueblo.es/>; Northern Ireland Human Rights Commission (NIHRC), <https://www.nihrc.org/>; Northern Ireland Human Rights Commission (NIHRC); Scottish Human Rights Commission, <https://www.scottishhumanrights.com/>.

2. The Nexus between Climate Change and Human Rights

It is increasingly acknowledged that the climate crisis is among the greatest human rights challenges of our time, exacerbating inequalities, deepening precarity, and threatening lives, health and livelihoods. As scientific research clarifies the scale, scope, and severity of the harm caused by climate change, as well as the uneven distribution of those impacts around the world,⁷ expert bodies from the climate and human rights fields, as well as judicial authorities and policymakers, at national, regional, and international levels recognise the negative effects of global warming on human rights.⁸

Notably in the Paris Agreement (2015), State Parties acknowledge their obligation to respect, promote and consider their respective human rights obligations when taking climate action.⁹ In its 1.5 Degrees Report (2018), the Intergovernmental Panel on Climate Change (IPCC) emphasised the impact of climate change on a range of human rights, including the rights to life and health.

Human rights bodies at the regional and international levels increasingly address climate change. Significant at the international level is resolution 46/7 of the UN Human Rights Council adopted in March 2021, in which it recognises once again the negative human rights impacts of climate change, emphasising that environmental damage can have negative implications, both direct and indirect, for the effective enjoyment of all human rights.¹⁰ In a Joint Statement in 2019, several UN human rights treaty bodies emphasised that, in order to realise the objectives of the Paris Agreement and for States to comply with their human rights obligations, they must adopt and implement policies aimed at reducing emissions which reflect the highest possible ambition.¹¹

In the Safe Climate Report (2019), the UN Special Rapporteur on Human Rights and the Environment elaborates on the procedural and substantive human rights obligations of

⁷ The Intergovernmental Panel on Climate Change (IPCC), *Special Report on Global Warming of 1.5 Degrees*, 2018, <https://www.ipcc.ch/sr15/>.

⁸ Sébastien Duyck, Jodoin Sébastien, Alyssa Johl, *Routledge Handbook of Climate Change and Human Rights* (Routledge, 2018).

⁹ *The Paris Agreement* (as contained in the report of the Conference of the Parties on its twenty-first session), UN Doc. FCCC/CP/2015/10/Add.1, 12 December 2015, Preamble.

¹⁰ UN Human Rights Council, Resolution on the Environment and Human Rights, UN Doc. A/HRC/46/L.6/Rev.1, 17 March 2021.

¹¹ Joint Statement by CESCR, CEDAW, CMW, CRC and CRPD, *Human Rights and Climate Change*, UN Doc. HRI/2019/1, 16 September 2019, para. 11.

States with regard to climate change.¹² Other UN Special Rapporteurs,¹³ as well as the OHCHR,¹⁴ have also addressed the human rights impacts of climate change in their reports, including in relation to extreme poverty, cultural rights, the rights of persons with disabilities, women, and cross-border migrants.

Significant recent developments at the international and European levels include:

- (i) calls for the international recognition of a human right to a healthy environment, supported by an increasing number of UN Member States,¹⁵ UN bodies, and a broad alliance of civil society organisations, as well as calls¹⁶ for an additional protocol to the ECHR concerning the right to a healthy environment, and for updating the EU¹⁷ Charter with a new fundamental right to environmental protection; and
- (ii) the call for a new UN special procedure on human rights and climate change to be established by the UN Human Rights Council, supported by a growing number of UN Member States and civil society organisations.¹⁸

In recent years, climate change-related cases have been increasingly brought before national and international courts, including two cases currently before the ECtHR (summarised below). Most cases are filed by individuals, often supported by non-governmental organisations (NGOs), or by NGOs directly against governments or companies. In a growing number of cases, applicants base their claims alleging insufficiency of climate mitigation measures and commitments on international or regional climate targets.¹⁹

¹² UN Special Rapporteur for human rights and the environment, Report on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, UN Doc. A/74/161, 15 July 2019.

¹³ UN Special Rapporteur on Extreme Poverty and Human Rights, Report on Climate Change and Poverty, UN Doc. A/HRC/41/39, 17 July 2019.; UN Special Rapporteur in the Field of Cultural Rights, Report on Climate Change, Culture and Cultural Rights, UN Doc. A/75/298, 10 August 2020.

¹⁴ OHCHR, *OHCHR and Climate Change - Overview*, <https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>.

¹⁵ David Boyd, John Knox, Marc Limon, *#THE time is now - The case for universal recognition of the right to a safe, clean, healthy and sustainable environment*, Universal Rights Group, February 2021, <https://www.universal-rights.org/urg-policy-reports/the-time-is-now-the-case-for-universal-recognition-of-the-right-to-a-safe-clean-healthy-and-sustainable-environment/>.

¹⁶ The President of the Parliamentary Assembly of the Council of Europe, for instance, made a plea to upgrade current legal instruments with the ultimate aim of drafting an additional Protocol to the European Convention on Human Rights concerning the right to a healthy environment at a conference on the protection of the environment from a human rights perspective organised by the Committee of Ministers of the Council of Europe in February 2020, <https://www.coe.int/en/web/portal/-/environment-and-human-rights-towards-a-right-to-a-healthy-environment->.

¹⁷ Remo Klinger, *Time for an Update of the EU Charter of Fundamental Rights*, *Völkerrechtsblog - International Law & International Legal Thought*, 14 April 2021, <https://voelkerrechtsblog.org/time-for-an-update-of-the-eu-charter-of-fundamental-rights/>.

¹⁸ Human Rights and Climate Change Working Group, <https://climaterights.org/our-work/unfccc/creation-of-un-special-rapporteur-on-human-rights-and-climate-change/>.

¹⁹ UNEP, *Global Climate Litigation Report: 2020 Status Review*, 26 January 2021, pp. 13 et seq., 41 et seq.

These global trends are also reflected in cases directly and indirectly addressing climate change mitigation in the countries of various ENNHRI member institutions. These cases (pending as well as final) fall mainly under one of the following categories:

- The inadequacy of and/or non-compliance with national and international climate targets, in many cases invoking violations of human rights or constitutional rights (e.g. Belgium, France, Germany, Ireland, the Netherlands)²⁰
- Contested legality of specific governmental decisions, licenses and permits allowing the extraction of fossil fuels or facilitating the emission of GHG by private actors (e.g. Austria, Norway and the United Kingdom)²¹
- GHG emissions by private actors and partial responsibility for the associated adverse effects on individual rights, as well as claims for compensation (see cases in France, Germany and the Netherlands)²²
- Cases that address the issue of climate change indirectly, e.g. by dealing with adverse effects of emissions on air quality,²³ or by considering climate change or air pollution as one of multiple environmental conditions which are relevant for assessing the humanitarian situation in the country of origin of an asylum seeker relevant under Article 3 ECHR.²⁴

²⁰ *VZW Klimatzaak v. Kingdom of Belgium*, R.G. n° 15/4585/A (Court of First Instance Brussels); *Grande Synthe v. France* (2020) no. 427301 (Conseil d'État); *Notre Affaire à Tous and Others v. France* (2021) no. 1904967, 1904968, 1904972, 1904976/4-1 (Administrative Court of Paris); *Göppel et al. v. Germany*, 1 BvR 2656/18 (German Constitutional Court); *Yi Yi Prue et al. v. Germany*, 1 BvR 78/20 (German Constitutional Court); *Steinmetz et al. v. Germany*, 1 BvR 96/20 (German Constitutional Court); *Neubauer et al. v. Germany*, 1 BvR 288/20 (German Constitutional Court); *Neubauer and others v. Germany*, BVerfG, Order of the First Senate of 24 March 2021, 1 BvR 2656/18 (German Constitutional Court); *Friends of the Irish Environment v. The Government of Ireland* [2020] IESC 49 (Supreme Court of Ireland); *Urgenda v. Netherlands* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands).

²¹ *Greenpeace et al. v. Austria*, G 144-145/2020-13, V 332/2020-13 (Constitutional Court of Austria); *Nature and Youth Norway and others v. Norway*, HR-2020-2472-P (Supreme Court of Norway); *Friends of the Earth v. UK Export Finance*, 2020 (High Court of Justice); *Plan B Earth and Others v. the v. Secretary of State for Transport*, [2020] EWCA Civ 214 (Court of Appeal); *R. (on the application of Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC52 (Supreme Court).

²² *Les Amis de la Terre v. Total*, no. 19/02833 (Nanterre High Court of Justice); *Luciano Lliuya v. RWE AG*, 2 O 285/15 / 5 U 15/17 (District Court of Essen/Higher Regional Court of Hamm); *Milieudéfensie et al. v. Royal Dutch Shell plc.*, no. 90046903 (District Court of The Hague).

²³ Romanian Constitutional Court, Decision no. 105/2014, 27 February 2014.

²⁴ VGH Baden-Württemberg, 17.12.2020 - A 11 S 2042/20 (Higher Administrative Court of Baden-Wuerttemberg); Court administrative d'appel de Bordeaux - 2ème chambre, 18 décembre 2020, no. 20BX02193, no. 20BX02195.

Pending climate cases before the ECtHR²⁵

Duarte Agostinho and Others v. Portugal and Others

On 3 September 2020, six Portuguese children and young adults (aged 8 to 21) submitted an application²⁶ to the European Court of Human Rights (ECtHR) against 33 Council of Europe Member States (all of the EU 27, plus the UK, Switzerland, Norway, Russia, Turkey and Ukraine) in respect of the profound, ongoing, and worsening impact that climate change is having upon them.²⁷ The Applicants argue that the effects of climate change they are suffering, and will suffer in the future, fall within the ambit of their rights to life and to respect for private and family life (Articles 2 and 8 ECHR). They also argue that the increasing effects that they are set to suffer over the course of their lifetimes entail discrimination on the grounds of age, and therefore breach the prohibition of discrimination, Article 14 (age as “other status”). When communicating the case to the respondent States, the Court also asked whether Articles 3 and P1-1 of the ECHR has been violated.²⁸ The case has been fast-tracked by the Court.

Verein KlimaSeniorinnen Schweiz and others v. Switzerland

In the case *Verein KlimaSeniorinnen Schweiz and others v. Switzerland*, Swiss senior women, an association for climate protection, and four individuals filed an application against Switzerland on 26 November 2020.²⁹ In their application, the women submit that the increasingly intense and frequent heatwaves caused by climate change affect their right to life (Article 2 ECHR) and private and family life (Article 8 ECHR). They argue that Switzerland violates its obligations arising under Article 2 and 8 ECHR by failing to adopt the necessary measures to reduce the GHG emissions in line with the 1.5°C target, stemming, in particular, from the Paris Agreement. The applicants also claim that their rights arising under Article 6(1) and Article 13 ECHR have been violated, as national courts and authorities did not consider the merits of complaints brought before them by the applicants. The case was communicated and fast-tracked on 17 March 2021.³⁰

²⁵ On 25 March 2021 an application relating to the adverse impacts of climate change was filed with the ECtHR against Austria. The application is available at: <https://www.michaelakroemer.com/wp-content/uploads/2021/04/rechtsanwaeltin-michaela-kroemer-klimaklage-petition.pdf>. On 26 March 2021, an application relating to oil exploration licenses was filed with the ECtHR against Norway, concerning a Supreme Court judgment of 22 December 2020 (HR-2020-2472-P).

²⁶ Application available at <https://youth4climatejustice.org/wp-content/uploads/2020/12/Application-form-annex.pdf>.

²⁷ Global Legal Action Network, *Summary of the case and FAQ*, <https://youth4climatejustice.org/the-case/>.

²⁸ ECtHR Communication, *Duarte Agostinho et autres c. Portugal et 32 autres États* (in French). An unofficial English translation available at https://www.nhri.no/wp-content/uploads/2020/11/DUARTE-AGOSTINHO-and-others-vs-PORTUGAL-and-32-others-unofficial-translation-fr.en_.pdf.

²⁹ Application available at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20201126_No.-A-29922017_application-1.pdf.

³⁰ ECtHR Communication *VEREIN KLIMASENIORINNEN SCHWEIZ et autres c. la Suisse* (in French).

3. National Climate Ambition, Targets and Practices

On the basis of independent expert assessments and the submissions received by ENNHRI members, the following section provides an overview of selected European country's international and national climate commitments, whether the country has met its previous climate commitments, and whether climate change mitigation regulations are based on surveys, studies and/or public participation. The information provided should neither be considered comprehensive nor exhaustive, due to its method of collection, but offers an indicative overview of the countries covered by the NHRIs' submissions.

3.1 Climate commitments and targets

The Paris Agreement adopted in 2015 aims to stabilise the global average temperature rise at 1.5°C above pre-industrial levels, or at least keep the rise to well below 2°C. This is based on the scientific consensus that if global warming exceeds 1.5°C, the risks associated with long-lasting or irreversible changes increase significantly and the consequences for communities and ecosystems would be catastrophic.³¹ The IPCC has identified a 45% reduction in GHG emissions from 2010 levels by 2030 and net zero emissions by 2050 as necessary in order to limit warming to 1.5°C.³²

The global "carbon budget" is an estimate of the cumulative amount of carbon dioxide the world can emit to stay within the 1.5°C and 2°C Paris targets. As of 2021, to have a likely chance (66%) of limiting warming to 1.5°C, the remaining carbon budget is 195 GtCO₂, while the 2°C budget is 945 GtCO₂.³³ Annual global GHG emissions have grown by 1.4% per year on average since 2010, peaking at 52.4 GtCO₂ in 2019, indicating that the entire carbon budget will be exhausted by 2030 unless substantial emissions reductions take place.³⁴

While global GHG emissions dropped by about 7% between 2019 and 2020, due to the COVID-19 pandemic, this is expected to have a negligible long-term impact on climate change, translating to a 0.01°C reduction of global warming by 2050.³⁵ In addition, the International Energy Agency has warned that GHG emissions in 2021 are forecast to

³¹ IPCC, *Special Report on Global Warming of 1.5°C: Summary for Policymakers*, 2018, p. 11-12.

³² Ibid, p. 12.

³³ Constrain Research Programme, *Zero in Report 2: A New Generation of Climate Models, Covid-19 and the Paris Agreement*, 2021, p. 23. Note: The EU-funded Constrain Research Programme brings together world-leading scientists, including 16 IPCC Lead Authors.

³⁴ UN Environment Programme (UNEP), *Emissions Gap Report*, 2020, p. XIV.

³⁵ Ibid, p. XV; See also Corinne Le Quéré et al., "Fossil CO₂ emissions in the post-COVID-19 era", *Nature Climate Change* 11 (2021), p. 197–199.

increase by the second biggest annual rise in history due to fossil subsidies in pandemic stimulus packages.³⁶

IPCC projections indicate that the world is likely to reach the 1.5°C target between 2030 and 2052 if warming continues to increase at the current rate of 0.22°C per decade.³⁷ However, as the climate system warms each year and the models and datasets are updated accordingly, these projections may be realised earlier than previously estimated. The IPCC will publish updated projections for 2021 in their forthcoming Sixth Assessment Report (AR6).³⁸ It is also important to note that GHG emissions have delayed and cumulative effects on global warming, with impacts becoming clear decades or even centuries after they are released; they are effectively “locked in” even after mitigation measures are implemented.³⁹ This inherent time lag means that current emissions may cross irreversible thresholds long before their effects materialise.

All twelve countries covered by the NHRI submissions received in the ENNHRI survey are party to the Paris Agreement and have committed to meet the goal set out in Article 2 (1.5°/2°C limit). The respective countries have taken either legislative and/or administrative measures to implement the 1.5°/2°C target at the national level and have set respective medium and long-term GHG reduction targets (refer to Table on page 12). Denmark⁴⁰, Finland⁴¹, France⁴², Germany⁴³, Norway⁴⁴ and the United Kingdom⁴⁵ (including Scotland⁴⁶) have adopted national climate laws, whilst Northern Ireland and Spain⁴⁷ are currently developing legislative measures. The Czech Republic⁴⁸ and

³⁶ International Energy Agency, *Flagship Report: Global Energy Review 2021*.

³⁷ IPCC, *Special Report on Global Warming of 1.5°C: Summary for Policymakers*, 2018, p. 4.

³⁸ IPCC Working Group I Contribution to the Sixth Assessment Report (AR6) is expected to be approved at the fifty-fourth session of the IPCC (IPCC-54) on 26-30 July 2021.

³⁹ Kirsten Zickfeld and Tyler Herrington, “The time lag between a carbon dioxide emission and maximum warming increases with the size of the emission” *Environmental Research Letters* 10 (2015): 031001.

⁴⁰ National GHG emission reduction targets set out in Climate Act, Act No. 965 (2020). The law foresees climate sub-targets every fifth year with a 10-year perspective, LOV-2017-06-16-60.

⁴¹ National GHG emission reduction targets set out in the Climate Change Act 609/2015, currently undergoing reform to integrate 2035 goal of GHG neutrality amongst other things as well as in several climate and energy strategies, such as Energy and Climate Roadmap 2050, Integrated Energy and Climate Plan.

⁴² National GHG emission reduction targets set out in the Energy and Climate Law (2019), which amends several articles of the French Energy Code (Loi n° 2019-1147 du 8 novembre 2019 relative à l'énergie et au climat)

France is currently also discussing a new climate law (Climat et résilience).

⁴³ National GHG emission reduction targets set out in the Federal Climate Change Act (2019) (Federal Law Gazette I, p. 2513) integrating previous emission targets, climate protection plans and programmes and makes them binding.

⁴⁴ National GHG emission reduction targets set out in Climate Act (2017). The Act does not preclude joint fulfilment with the EU of climate targets set out in the Act enhanced NDC submitted to UNFCCC in 2020 (in collaboration with the EU).

⁴⁵ National GHG emission reduction targets set out in UK Climate Change Act (amended in 2019). The UK submitted its first independent NDC to UNFCCC in December 2020 following Brexit.

⁴⁶ Scotland has adopted separate climate change legislation (Scottish Climate Change Act, 2019) setting out GHG emissions targets that differ from the UK's targets.

⁴⁷ The draft Law on Climate Change and Energy Transition is currently undergoing parliamentary review. Available at: <https://www.miteco.gob.es/es/ministerio/proyecto-de-ley-de-cambio-climatico-y-transicion-energetica.aspx>.

⁴⁸ National GHG emission reduction targets set out in “Climate Protection Policy in the Czech Republic” established under Art. 3 of the National Framework of nationally determined contributions.

Slovakia⁴⁹ have not passed a specific climate law but have established a climate protection policy. Georgia⁵⁰ and Romania⁵¹ have each developed a national strategy on tackling climate change and Croatia⁵² is currently adopting a respective strategy.

3.2 Compliance with national GHG emission reduction targets, sufficiency of targets and climate measures

The UN Environment Programme (UNEP) has warned that the current Nationally Determined Contributions (NDCs), which countries around the world submitted to the United Nations Framework Convention on Climate Change (UNFCCC), remain seriously inadequate to achieve the climate goals set in the Paris Agreement and would lead to a temperature increase of at least 3°C by the end of the century.

According to the globally recognised analysis portal Climate Action Tracker (CAT), the NDCs adopted by the 27 EU countries as a whole, Germany, the United Kingdom (UK), Norway and Switzerland, are categorised as “insufficient”, which means they are in the least stringent part of a country’s “fair share” range and are not consistent with meeting the Paris Agreement’s 2°C or 1.5°C warming limits. The 2019 Civil Society Equity Review echoes these findings. It shows that the NDCs so far proposed by the world’s nations are altogether out of proportion to national capacity and responsibility, with developing countries generally proposing to do their fair shares, and developed countries, including the EU and its 27 Member States, proposing far too little.⁵³

Seven out of the twelve NHRI submissions provided information on their countries’ (non-)compliance with national climate targets. France, Germany, and the UK have not or just met their previous and current national targets; Norway has met its targets but only through buying international offsets; Denmark and Finland are currently on track to meet their climate targets. The information provided by the NHRIs, however, indicates that current emission reduction measures taken in the six countries are insufficient in order to meet future targets for 2030 and beyond (refer to the Table on page 12 and the Annex).

⁴⁹ The Slovakian climate protection policy covers a National Energy and Climate Plan up to 2030. In Georgia there is no specific law on greenhouse gas reduction and climate change, however a draft law on industrial emissions designed to introduce European standards is still pending.

⁵⁰ In 2021, Georgia adopted its Climate Change Strategy for 2030 and an respective action plan (2021 – 2023), <https://mepa.gov.ge/En/News/Details/20309>.

⁵¹ The national strategy includes a National Climate Change and Low Carbon Green Growth Strategy 2016-2020 and a National Action Plan up to 2020.

⁵² The Low Carbon Development Strategy until 2030 with a view to 2050 is currently being adopted by the Croatian Parliament.

⁵³ Civil Society Equity Review, *Can Climate Change Fuelled Loss and Damage Ever Be Fair?*, 2019, pp. 4, 14, <http://civilsocietyreview.org/report2019/>.

Table: Overview of National GHG Emission Reduction Targets and (Non-) Compliance with current and future targets

Country	National reduction targets	Compliance with previous/current targets	Compliance with future targets
Croatia	<ul style="list-style-type: none"> - 7% by 2030 (below 2005 levels) - targets for 2030 and 2050 still to be defined / redefined depending on scenarios in the proposed Low Carbon Development Strategy 2030 (refer to Annex) 	2020 target met	No projections available yet
Czech Republic	<ul style="list-style-type: none"> - 47% by 2030 (below 1990 levels) - 80% by 2050 (GHG neutrality, below 1990 levels) 	No information provided	No information provided
Denmark	<ul style="list-style-type: none"> - 70% by 2030 (below 1990 levels) - GHG neutrality by 2050 	<p>2020 target met</p> <p>The Danish Council on Climate Change (an independent body of experts) finds that the Danish targets are compliant with the Paris Agreement and EU-obligations.</p>	The Danish Council on Climate Change states that there is room for improvement if Denmark is to meet the targets set out in the new Danish Climate law, in political agreements and in EU Directives in 2030.
France	<ul style="list-style-type: none"> - at least 14% in 2020 (below 2005 levels) - by at least 	<p>Targets not met</p> <p>The High Council on Climate (Haut Conseil pour le climat) - an</p>	<p>Unlikely to be met</p> <p>The High Council on Climate finds that France will not meet GHG</p>

	<p>37% in 2030 (below 2005 levels)</p> <ul style="list-style-type: none"> - GHG neutrality by 2050 	<p>independent body of experts - finds in its 2020 annual report that France is not meeting its commitments under the Paris Agreement: GHG emissions had fallen by 0.9% between 2018 and 2019 (annual goal was 1%); GHG emissions decreased between 2015 and 2018 by 1.1% (target was 1.9%).</p>	<p>neutrality by 2050. The slow reduction of GHG emissions prevents France from reaching its current and future carbon budgets. From a prospective point of view, given the SNBC's revision of 2020, GHG neutrality will not be achieved by 2050.</p>
Finland	<ul style="list-style-type: none"> - 39% by 2030 (below 2005 levels) - GHG neutrality by 2035 - 80–95% by 2050 (below 1990 levels) 	<p>2020 target met Finland has reduced its GHG emissions by more than 21% below 1990 levels and has reached its EU climate targets for 2020 ahead of schedule.</p>	<p>Possible to be met The Ministry of Environment reported in June 2020 that in order to achieve GHG neutrality by 2035 new measures need to be adopted (new law in preparation). The Finnish Climate Change Panel (February 2021) states that in order to reach GHG neutrality by 2035, reduction of fossil and process-based emissions must be, in comparison to 1990 levels, at least 60% by 2030, 70% by 2035, 80% by 2040 and 90% aiming at 95% by 2050.</p>
Germany	<ul style="list-style-type: none"> - 40% by 2020 (below 1990 levels) - 55% by 2030 (below 1990 levels) - 85% by 2050 (GHG neutrality, below 1990 levels) 	<p>2020 target unlikely to be met The 2019 Climate Action Report (August 2020) by the Government estimated a total 32.6% GHG reduction by 2020 (target was 40%). The report emphasised that the estimated reduction in GHG emission does not</p>	<p>Unlikely to be met An assessment commissioned by the Federal Environment Agency (published in October 2020) concludes that the measures of the Government's Climate Action Programme 2030 (2019) are insufficient to reduce emission by 55% in</p>

		take into account the effects of the COVID-19 pandemic. Due to lockdown measures, GHG emissions could be significantly lower and thus Germany might meet its 40% climate target for 2020.	2030. The Programme has been heavily criticised by experts and civil society for lacking sufficient quantitative ambition to meet the Government's targets.
Norway	<ul style="list-style-type: none"> - 30% by 2020 (below 1990 levels) - 50-55% by 2030 (below 1990 levels) - 80-95% by 2050 (below 1990 levels) 	<p>2020 target met by offsets</p> <p>The Government publicly said that two thirds of the 2020 reduction target (set at 30% below 1990 levels) would be taken nationally, but by 2020, Norway had reduced national emissions by less than 2.3%. Instead, Norway bought international offsets for the entirety of the 30% 2020-target.</p>	<p>Unlikely to be met</p> <p>Norway intends to continue to drill for oil and gas to maintain its production level of oil and gas. According to CICERO, a Norwegian climate research institute, the planned extraction of known Norwegian oil and gas resources will amount to roughly 15 gigatons of CO₂, about 6.5 % of the remaining carbon budget for the whole world.</p>
Romania	<ul style="list-style-type: none"> - At least 40 % by 2030 (below 1990 levels) 	No information provided	No information provided
United Kingdom (UK)	<ul style="list-style-type: none"> - 68% by 2030 (below 1990 levels) - GHG neutrality by 2050 	<p>Targets not met</p> <p>In its 2018 and 2019 reports, the independent Climate Change Committee (CCC) (set up under UK Climate Change Act 2008) found that the UK's action to curb GHG emissions is lagging behind what is needed to meet legally-binding emissions targets.</p>	<p>Unlikely to be met</p> <p>In its 2020 progress report, the independent Climate Change Committee (CCC) acknowledged that the Government is taking a limited number of steps to support the transition to a net-zero economy, but emphasises that much remains to be done. In October 2020, the CCC</p>

			highlighted that policies were not yet in place to achieve GHG neutrality by 2050.
Scotland	<ul style="list-style-type: none"> - 56% by 2020, 75% by 2030, 90% by 2040 (all below 1990 levels) - GHG neutrality emissions by 2045 	The CCC has pointed out that Scotland is not on track to meet its targets. In its 2019 progress report, it pointed out that Scotland was at risk of missing its new interim target of a 56% reduction in emissions by 2020.	The CCC has emphasised that Scotland will need a major policy shake up to meet its targets.

3.3 Public participation in climate mitigation measures

Eight ENNHRI members included in their submissions a section on public participation in climate mitigation measures. Public participation in drafting national programmes, policies or plans is provided for in the Czech Republic, Romania and Slovakia (here referred to as consultation), and in Denmark, Norway and Scotland (in the form of hearings). Both the UK and Scottish governments have introduced Climate Change Citizen Assemblies. Finland and Germany have laid down public participation rights in their respective legislations on climate change. Information from the public as a distinct element of public participation is provided for in the Finnish and Slovakian systems.

Concerning legislative procedures, the Finnish NHRI submitted that the public is included in the drafting process of the reformed Climate Change Act through hearings and a survey. In Germany, associations and experts were able to comment on the draft legislation of the law on climate change. In France, a so-called Citizen’s Convention on Climate (Convention citoyenne pour le climat) produced a final report with 146 proposals for the reduction of GHG emissions to be transposed into domestic law.

Furthermore, independent councils or expert bodies on climate change have been established in some countries, but not in all. Such bodies support and advise the government in their decision-making (e.g. Finland, Germany). In some countries, they have a monitoring function and are therefore equipped to contribute to independent reviews of climate targets and policies (see for instance in Denmark, France and the UK).

The Norwegian NHRI has warned that the lack of an independent climate council in Norway undermines effective rights protection from drivers of climate change.

From the submissions, it can be concluded that the respective countries provide different elements of public participation in climate change mitigation matters. However, it cannot be automatically inferred that the participation is meaningful or effective. This holds true even in cases where public participation has already been implemented. For example, in the case of the UK and Scottish Climate Change Citizen Assemblies, their role and the nature of their recommendations is yet to be clarified. In Germany, the time period for stakeholders to comment on the draft climate change law was one working day, whilst in France the current draft legislation debated in the National Assembly does not take account of all proposals made by the Citizen's Convention. In general, the submissions indicate that further efforts are required to ensure effective public participation.

4. Legal Issues Arising Under the European Convention on Human Rights in Relation to Climate Change

This section deals with some of the legal issues that may arise under the ECHR in cases concerning climate change. It is recalled that ENNHRI member institutions are located in countries that are party to the ECHR, and generally have a mandate to monitor international developments pertaining to the human rights obligations of their respective countries. The section examines the issues of extra-territorial jurisdiction (ECHR Article 1), standing and the victim requirement (ECHR Article 34), the right to life and right to respect for private and family life (ECHR Articles 2 and 8 respectively), the prohibition of torture, inhuman or degrading treatment (ECHR Article 3), the right to non-discrimination (ECHR Article 14) and the protection of property (ECHR P1-1). Each article is analysed in the context of climate change based on the ECtHR's existing jurisprudence, international and national law and jurisprudence, as well as relevant evolving norms. There are other ECHR articles which may be relevant to climate cases, but it is beyond the scope of this paper to discuss them in any detail.⁵⁴

In relation to procedural issues, **Section 4.1** on ECHR Article 1 notes that the extra-territorial effects of GHG emissions could be under the jurisdiction of a Contracting State if the emissions are under its "effective control" and have "sufficiently proximate repercussions" on the enjoyment of Convention rights of persons within the territory of the legal space of the Convention. **Section 4.2** on ECHR Article 34 notes that a calibrated approach to the victim requirement may be necessary in climate cases, not to preclude individuals from effective rights protection within the timeframe remaining to avoid dangerous warming above 1.5 °C.

⁵⁴ Applicants are also invoking Articles 6 and 13 of the ECHR in pending climate cases, see Section 2.

In relation to potential violations of substantive rights, **Section 4.3** on Articles 2 and 8 argues that there is an emerging consensus in international and national law that climate change above 1.5 °C, as well as associated air pollution, poses a real and immediate threat to life and health. The assessment of whether a State has taken all necessary and sufficient measures should be made in light of the UNFCCC and the Paris Agreement, best available science, and consensus regarding the emissions reductions required to limit warming to 1.5 °C. **Section 4.4** discusses whether severe physical and mental effects of climate change, in view of the special vulnerability of children and other groups, may call for the application of Article 3 in some circumstances. **Section 4.5** on Article 14 discusses whether climate change could in certain circumstances constitute discriminatory treatment on the grounds of generation/birth-cohort. **Section 4.6** notes that the principles of effectiveness, precaution and intergenerational equity suggest that children in a position to inherit property that is foreseeably threatened by climate change, may be able to rely on P1-1 today.

4.1 Extra-Territorial Jurisdiction – ECHR Article 1

4.1.1 ECtHR Jurisprudence

The concept of jurisdiction under Article 1 of the ECHR is primarily territorial but may, in exceptional cases, encompass “acts of the States Parties performed or producing effects, outside their territories”.⁵⁵ The exceptions established to date pertain to effective control over either territory or persons. In principle, however, extra-territorial jurisdiction may also arise from transboundary harm caused by emissions, being acts of the States Parties “producing effects” abroad. The Court has noted that State responsibility may be engaged if acts have “sufficiently proximate repercussions on rights guaranteed by the Convention, even if those repercussions occur outside its jurisdiction”.⁵⁶ The “mere fact that a decision taken at national level had an impact on the situation of persons resident abroad” is, however, in itself insufficient, in particular if such effects were initiated by the individual’s “unilateral choices”.⁵⁷ Central to the assessment is whether the State “effectively exercised [...] control”, which is “determined with reference to the particular facts”.⁵⁸ A violation may be attributable to more than one State and factors that are in part outside the State’s jurisdiction.⁵⁹

⁵⁵ *M.N. et al. v. Belgium*, no. 3599/18, §§ 98, 101.

⁵⁶ *Ilascu et al. v. Moldova and Russia*, no. 48787/99, § 317.

⁵⁷ *M.N. et al. v. Belgium*, no. 3599/18, §§ 112-113.

⁵⁸ *Al-Skeini et al. v. the UK*, no. 55721/07, § 132.

⁵⁹ *Andrejeva v. Latvia*, no. 55707/00, § 56. See William Schabas, *The European Convention on Human Rights – A Commentary* (Oxford University Press, 2015) p. 93.

While Article 1 does not create universal and unlimited obligations, the Court recalled in *Loizidou* (§ 70) that the Convention creates a particular regional network of mutual, bilateral undertakings and objective obligations which benefit from ‘collective enforcement’ within the European *legal space*. The Court has thus established extra-territorial jurisdiction in situations which would otherwise create a “gap or vacuum in human rights protection” on territory normally covered by the Convention.⁶⁰

The Convention’s special character may also “imply a duty for Contracting States to act jointly and to cooperate” regarding cross-border issues.⁶¹ While Article 1 cannot be “equated with the test for establishing a State’s responsibility for an internationally wrongful act”, international law is relevant to decide whether the matters complained of are *capable* of falling within the jurisdiction of a State.⁶² Thus, the Court held in *Ilascu* that a State’s responsibility under Article 1 may be “engaged on account of its duty to refrain from wrongful conduct” (§§ 320-322).

4.1.2 International Law, Standards and Principles

It is recalled that the ECtHR takes into account “relevant rules and principles of international law applicable between the Contracting Parties” as well as “evolving norms of national and international law”.⁶³ In this respect, ENNHRI highlights the following four rules and norms:

First, the effective control over rights doctrine is an evolving norm of international law. The **UN Human Rights Committee (HRC)** has noted that Article 2 of the International Covenant on Civil and Political Rights (ICCPR) will apply extra-territorially to any person whose right to life is “affected” by the State’s activities in a “direct and reasonably foreseeable manner”.⁶⁴ Similarly, the **UN Committee on Economic, Social and Cultural Rights (CESCR)** has noted that extraterritorial obligations “arise when a State party may influence situations located outside its territory [...] by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction”.⁶⁵

With respect to transboundary pollution, the **Inter-American Court of Human Rights (IACTHR)** has held that a State will have extra-territorial jurisdiction if it has effective control over the harmful activity in question and if there is a “causal link between the act

⁶⁰ *Cyprus v. Turkey*, no. 25781/94, § 78; see also *Bankovic and Others v. Belgium and Others*, no. 52207/99 [GC], § 80.

⁶¹ *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 232; *Castaño v. Belgium*, no. 8351/17, § 81.

⁶² *Catan et al. v. Moldova and Russia*, no. 43370/04, § 115.

⁶³ *Demir and Baykara v. Turkey*, no. 34503/97, § 67.

⁶⁴ Human Rights Committee, *General Comment No. 36 on the Right to Life*, UN Doc. CCPR/C/GC/36, 2018.

⁶⁵ CESCR, *General Comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UN Doc. E/C.12/GC/24, 2017, paras. 27, 28. See also Joint Statement by CESCR, CEDAW, CMW, CRC and CRPD, *Human Rights and Climate Change*, UN Doc. HRI/2019/1, 16 September 2019, para. 10.

that originated in its territory and the infringement of the human rights of persons outside its territory".⁶⁶

Second, parties to a treaty are required to apply it "in a reasonable way and in such a manner that its purpose can be realised".⁶⁷ The **CESCR** and the **IACtHR** have thus noted that activities causing transboundary environmental harm undertaken within the jurisdiction of a State Party should not deprive another country of its ability to realise rights for persons in its jurisdiction.⁶⁸

Third, the "**no-harm rule**", recognised inter alia in the Stockholm Declaration, the Rio Declaration and the Maastricht Principles, prohibits States from knowingly conducting or permitting activities within their jurisdiction or control which cause transboundary harm to the environment in other States or to the properties or persons therein.⁶⁹ According to the **International Court of Justice (ICJ)**, a State is required to "to use all means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State".⁷⁰

The "no harm" rule is also a bedrock principle of international climate law, enshrined in the Preamble of the **UNFCCC** and related instruments, such as the **Paris Agreement**. In these agreements, the territorial approach to the specific issue of "emissions accounting" does not suggest that States are not responsible for extra-territorial GHG emissions or climate effects. On the contrary, the objective of the UNFCCC is to rapidly reduce GHG emissions to a level that will "prevent dangerous anthropogenic interference with the climate system" (art. 2). The Paris Agreement requires States to reach "global peaking" of GHG emissions "as soon as possible" and undertake "rapid reductions" to reach carbon neutrality by 2050 (art. 4.1). To this end, each country has "common but differentiated responsibilities and respective capabilities" and developed countries "should take the lead".

Fourth, as climate change is the result of cumulative, global emissions, it is recalled that a State's responsibility under international law is not diminished or reduced by the fact that other States are also responsible for the same act.⁷¹ Each State is separately responsible for the conduct attributable to it. The **Articles on State Responsibility for**

⁶⁶ IACtHR, *Advisory Opinion on the Environment and Human Rights*, OC-23/17, 2017, paras. 101-102.

⁶⁷ *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgement, ICJ Reports 1997, para. 142.

⁶⁸ CESCR, *General Comment No. 15 on the Right to Water*, UN Doc. E/C.12/2002/11, 2002, para. 31; IACtHR, *Advisory Opinion on the Environment and Human Rights*, paras. 94, 101-102; see also the UN CEDAW, *General recommendation No. 37 on the gender-related dimensions of disaster risk reduction in the context of climate change*, UN Doc. CEDAW/C/GC/37, 2018, para. 43.

⁶⁹ Stockholm Declaration (1972), prin. 21; the Maastricht Principles (2011), prin. 13 and 25; the Rio Declaration (1992), prin. 2; the United Nations Framework Convention on Climate Change (UNFCCC) (1992), preamble.

⁷⁰ *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgement, ICJ Reports 2010, para. 101.

⁷¹ Articles on State Responsibility for International Wrongful Acts (ASR), UN Doc. A/RES/56/83, 2002, art. 47; *Corfu Channel Case (UK and Northern Ireland v. Albania)*, Judgement of 9 April 1949, ICJ Reports 1949, p. 23.

International Wrongful Acts (art. 47), widely considered to reflect customary international law, articulate this rule.

4.1.3 National Jurisprudence

In a 2020 judgment concerning surveillance of non-German individuals abroad, the **German Constitutional Court** held that the State's extraterritorial jurisdiction is engaged not only where it has effective control over another territory or a foreign citizen, but also where the State has the *capacity* to interfere with the rights of any person abroad.⁷² In a 2021 case concerning inadequate GHG emissions reduction policies, the **German Constitutional Court** admitted complainants living in Bangladesh and Nepal. The Court was not conclusive on the scope of any extraterritorial obligations, but noted that a possible "connecting factor" for a positive obligation vis-à-vis individuals living abroad could be the severe climate-induced impairments of their fundamental rights partly caused by GHG emissions emanating from Germany.⁷³ In a 2020 judgment, the **Norwegian Supreme Court** held that both territorial and exported GHG emissions from oil and gas produced in Norway are encompassed by a Constitutional environmental provision, because the state can exert effective control over the emissions ("direct impact or authority"), and GHG emissions *per se* cause harm in Norway, regardless of where they are emitted.⁷⁴ Exported GHG emissions were also deemed relevant in a 2019 Australian case regarding the approval of a coal mine, by the **New South Wales Land and Environment Court**.⁷⁵

In accordance with the principles on separate state responsibility set out above, the **Dutch Supreme Court** and the **German Constitutional Court** have rejected the argument that because all States are jointly responsible for climate change, no individual State can be held responsible for their conduct.⁷⁶ Similarly, in a 2021 French case regarding missed climate targets, the **Administrative Tribunal of Paris** has held France responsible for having contributed to "une partie" of the environmental harm of climate change by overstepping its national carbon budget.⁷⁷

⁷² BVerfG, Judgement of the First Senate of 19 May 2020, BvR 2835/17 (German Constitutional Court).

⁷³ *Neubauer and others v. Germany*, BVerfG, Order of the First Senate of 24 March 2021, 1 BvR 2656/18 (German Constitutional Court), paras. 101, 175-178.

⁷⁴ *Nature and Youth Norway and others v. Norway*, HR-2020-2472-P (Supreme Court of Norway), para. 149.

⁷⁵ *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7 (NSW Land & Environment Court). See also the French Constitutional Council on the relevance of extraterritorial environmental effects, Decision no. 2019-823 QPC of 31 January 2020.

⁷⁶ *Urgenda v. Netherlands* [2019] ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands), paras. 5.7.7-5.7.8; *Neubauer and others v. Germany*, BvR 2656/18 (German Constitutional Court), paras. 202-204.

⁷⁷ *Notre Affaire à Tous and Others v. France* (2021) no. 1904967, 1904968, 1904972, 1904976/4-1 (Administrative Court of Paris), para. 34.

4.1.4 Analysis in the Context of Climate Change

Based on the information above, there is a consensus emerging from international and national law that a State's jurisdiction may be engaged in relation to territorial and extra-territorial emissions under its "effective control" that affect the human rights of individuals within its territory and abroad. As the IACtHR has noted in OC-23/17, it is "the State in whose territory or under whose jurisdiction the activities were carried out that has the effective control over them and is in a position to prevent them from causing transboundary harm that impacts the enjoyment of human rights of persons outside its territory". The same applies to harm caused by cumulative GHG emissions, for which States are separately responsible under international law.

However, as GHG emissions affect human rights across the globe, and the ECHR is a regional convention, the extra-territorial applicability might reasonably be limited to the effects within the territory of the Convention's *legal space*. Since a State Party cannot effectively safeguard its residents from climate change-related harms caused, in part, by emissions under the effective control of other Contracting States, collective enforcement might call for a "duty to act jointly and cooperate". Otherwise, there would be a vacuum in human rights protection, which the ECtHR has on other occasions sought to guard against. Territorial GHG emissions which produce effects abroad, as well as extra-territorial GHG emissions would thus be under the jurisdiction of a Contracting State if a) the emissions are under its "effective control", and b) they have "sufficiently proximate repercussions" on the enjoyment of Convention rights c) of persons within the territory of the legal space of the Convention.

4.2 Standing and the Victim Requirement – ECHR Article 34

4.2.1 ECtHR Jurisprudence

Individuals have standing as victims for the purposes of Article 34, provided they make out a *prima facie* case that they are directly or indirectly affected by an alleged violation. The Court interprets the victim-requirement dynamically and has warned that an "excessively formalistic" interpretation would make rights protection "ineffectual and illusory".⁷⁸ In general, Article 34 does not allow *actio popularis* and complaints *in abstracto*.

However, the Court has in several cases accepted complaints of a general nature from individuals residing in regions where all residents would be equally exposed to pollution, even though the risk could not be proven and specified at the individual level.⁷⁹ Similarly, case-law on secret surveillance suggests that an alleged violation may

⁷⁸ *Gorraiz Lizarraga et al. v. Spain*, no. 62543/00, § 38; *Monnat v. Switzerland*, no. 73604/01, §§ 30-33.

⁷⁹ *Cordella et al. v. Italy*, no. 54414/13 and 54264/15, § 100-107. See also, *Taşkın et al. v. Turkey*, no. 46117/99; *Hardy and Maile v. the United Kingdom*, no. 31965/07.

affect a larger group of people or an entire population without undermining the victim status of specific applicants.⁸⁰ Also, in surveillance cases, the Court has absolved applicants from demonstrating that they are directly or indirectly affected by an alleged violation where doing so would be impossible, “owing to the secrecy of the measures objected to”.⁸¹

With respect to future environmental harm, the Court initially held in *Asselbourg* that it is only in “wholly exceptional circumstances” that a risk of future violations may result in the conferral of victim status. However, subsequent case-law suggests that the threshold is lower today. For example, neither in *Taşkın* (§ 113) nor *Hardy and Maile* (§ 191) did the Court question the applicants’ victim status, even though the cases concerned hypothetical risks of environmental harm in the future.⁸²

4.2.2 International and National Jurisprudence

For the purposes of ECHR Article 34, the term “victim” is interpreted autonomously from national and international law. Nonetheless, it can be noted that the **HRC** held, in a case on the right to life in the context of climate change, that it suffices if the “alleged victim’s risk of being affected is more than a theoretical possibility”.⁸³ In contrast, strict procedural requirements under the TFEU Article 263.4 led the **Court of Justice of the European Union** to dismiss a claim over climate related human rights violations raised by individuals and an organisation.⁸⁴

A number of national courts have recognised the standing of individuals to plead human and constitutional rights violations in climate cases, including the **Constitutional Court of Germany**, and **Supreme Courts of Colombia and Nepal**.⁸⁵ The **Superior Court of Ontario** did not question that seven young individuals had standing to contest state climate policy, and even held that they had standing on behalf of their own and future generations.⁸⁶ **The Supreme Courts in Norway** and the **Netherlands** allowed organisations to plead violations of personal ECHR rights in climate cases.⁸⁷ The

⁸⁰ *Zakharov v. Russia*, no. 47143/06, § 168; *Klass et al. v. Germany*, no. 5029/71, § 37.

⁸¹ *Roman Zakharov v. Russia*, no. 47143/06, §§ 173-178; *Klass et al. v. Germany*, no. 5029/71. See also, *Big Brother Watch et al v. United Kingdom*, no. 58170/30; *Centrum for Rättvisa v. Sweden*, no. 35253/08, § 92.

⁸² *Taşkın*, § 113; *Hardy and Maile*, § 191; *Tătar v. Romania*, no. 67021/01.

⁸³ Human Rights Committee, *Views: Communication No. 2728/2016 (Teitiota v. New Zealand)*, UN Doc. CCPR/C/127/D/2728/2016, 7 January 2020, para. 8.4.

⁸⁴ *Carvalho and Others v Parliament and Council*, ECLI:EU:C:2021:252 (CJEU).

⁸⁵ *Neubauer and others v. Germany*, 1 BvR 2656/18 (German Constitutional Court), para. 96-112; *Future Generations v. Ministry of the Environment and Others*, STC4360-2018 (Supreme Court of Colombia); *Shrestha v. Office of the Prime Minister et al.*, 10210 (2018), Order no. 074-WO-0283 (Supreme Court of Nepal); *Leghari v. Federation of Pakistan* (2015) W.P. No. 25501/201 (Lahore High Court, Pakistan).

⁸⁶ *Mathur et al. v. Ontario*, 2020 ONSC 6918, paras. 249-250.

⁸⁷ *Nature and Youth Norway and others v. Norway*, HR-2020-2472-P (Supreme Court of Norway); *Urgenda v. Netherlands* (Supreme Court of the Netherlands).

Supreme Courts in France and the United States granted standing to a municipality or state, even though other entities would be similarly affected by climate change.⁸⁸

In contrast, the **Supreme Court of Switzerland** dismissed claims by individuals and an organisation under the ECHR under strict procedural requirements set out in national law.⁸⁹ The **Supreme Court of Ireland** and the **Constitutional Court of Germany** dismissed claims based on personal ECHR and constitutional rights brought by organisations, due to procedural requirements in national law.⁹⁰

4.2.3 Analysis in the Context of Climate Change

ENNHRI makes the following three observations based on the information above. First, the fact that GHG emissions in excess of the 1.5 °C target will materialise as *future* harm, is not in itself incompatible with the conferral of victim-status today. As opposed to the hypothetical risks accepted in *Taşkın* and *Hardy and Maile*, harms are already occurring at the current level of 1.2 °C of warming, and future harms are *latent* and *certain* due to the irrevocable effects of historic and current GHG emissions.

Second, the fact that climate change is a global problem affecting all persons residing in vulnerable regions, or even entire populations in States, does not in itself exclude standing (*Cordella*).

Third, there is precedent for absolving applicants from demonstrating that they are directly or indirectly affected by an alleged violation if doing so would preclude complaints owing to traits of the alleged violation itself (*Klass*). In this sense, a defining trait of climate change – the inherent time lag between GHG emissions and their warming effect on the climate – may make it difficult for individuals today to demonstrate a direct or indirect risk of future harm.

According to the IPCC, at current emissions rates the carbon budget for the 1.5 °C target will be exceeded before 2030. Should individuals be procedurally barred from bringing climate complaints before the Court today, when the adverse human rights effects of excess GHG emissions can still be prevented, they may be left without an effective remedy once the carbon budget is exceeded and dangerous climate change is already irreversibly locked in.⁹¹ This could set effective rights protection “at naught” (*Taşkın*).

⁸⁸ *Grande Synthe v. France* (2020) no. 427301 (Conseil d'État); *Massachusetts v. EPA*, 549 U.S. 497 (2007) (U.S. Supreme Court).

⁸⁹ *Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others* (2020) 1C 37/2019 (Supreme Court of Switzerland).

⁹⁰ *Friends of the Irish Environment v. The Government of Ireland & Ors* [2020] IESC 49 (Supreme Court of Ireland); *Neubauer and others v. Germany*, 1 BvR 2656/18 (German Constitutional Court), para.128, 136 et seq.

⁹¹ *Urgenda v. Netherlands*, para. 5.7.9 with respect to ECHR Article 13.

4.3 The Right to Life and Right to Respect for Private and Family Life – ECHR Articles 2 and 8

4.3.1 ECtHR Jurisprudence

While the ECHR does not protect the environment as such, the Court has applied Articles 2 and 8 to protect against risks to life and health from pollution, environmentally hazardous activities, and natural disasters. The positive obligations and principles developed under Articles 2 and 8 largely overlap in environmental matters.⁹² Article 2 applies where State authorities “knew or ought to have known” of a “real and immediate” or “serious” risk to life,⁹³ and obliges States to take “necessary and sufficient” measures to “avoid that risk”.⁹⁴ The threshold includes longer term risks.⁹⁵ The Court has considered the entire population of an area affected by environmental risks as falling within the scope of Article 2 and 8.⁹⁶ Where a problem “reaches a level of gravity such that it becomes a serious and concrete physical threat to the population”, States may be required to offer “general protection to society”.⁹⁷

To fall within Article 8, the adverse effects “must attain a certain minimum level”.⁹⁸ Concerns over long-lasting health effects of pollution causing “substantial anxiety and distress” may reach this threshold.⁹⁹ Article 8 applies to the “direct and immediate” or “serious and substantial” risks of incurred or ongoing pollution,¹⁰⁰ as well as future risks of environmental harm where there is a “sufficiently close link” with private and family life.¹⁰¹ Article 8 has been applied to hypothetical risks that “might materialise only in twenty to fifty years” and to future potential and accidental risks.¹⁰² Citing the precautionary principle, the Court in *Tătar* (§ 109) noted that States must adopt effective measures without delay to prevent serious and irreversible environmental harm in the absence of scientific certainty. A risk of sudden environmental deterioration is relevant.¹⁰³

⁹² *Budayeva and others v. Russia*, no. 15339/02, § 133.

⁹³ *Brincat and others v. Malta*, no. 60908/11, § 82 (“serious risk of an ensuing death”); *Budayeva*, § 146 (“threat to their physical integrity”).

⁹⁴ *Osman v. United Kingdom*, no. 87/1997/871/1083, § 116; *Öneryildiz v. Turkey*, no. 48939/99, § 101; *Budayeva*, § 140.

⁹⁵ *Öneryildiz*, §§ 98–101; *Budayeva*, §§ 147–158; *Kolyadenko and others v. Russia*, no. 17423/05, § 171; *Brincat*, §§ 103–117; *Tătar v. Romania*, no. 67021/01, § 107; *Taskin*, §§ 107, 113.

⁹⁶ *Cordella*, § 172; *Tătar*, §§ 122, 124.

⁹⁷ *Georgel and Georgeta Stoicesu v. Romania*, no. 9718/03, § 59; David Harris et al., *Law of the European Convention on Human Rights*, 4th ed. (Oxford University Press, 2018) p. 213.

⁹⁸ *Fadeyeva v. Russia*, no. 55723/00, § 69.

⁹⁹ *McGinley and Egan v. the UK*, no. 21825/93 and 23414/94.

¹⁰⁰ *Tătar*, § 107 («risque sérieux et substantiel pour la santé et pour le bien-être»); *Cordella*, § 169 (“risques graves pour la santé et pour l’environnement”); *Jugheli*, § 67 (“real risk” to “life and health”).

¹⁰¹ *Taşkın*, § 113; *Hardy and Maile*, § 189; *Tătar*, § 93; *Cordella*, §§ 163 and 172.

¹⁰² *Taşkın*, §§ 107, 113; *Hardy and Maile*, § 190.

¹⁰³ *Atanasov v. Bulgaria*, no. 12853/03, § 76 with further references.

Articles 2 and 8 give rise to procedural and substantive obligations. States are required under Article 2 to take “appropriate steps to safeguard the lives of those within its jurisdiction”,¹⁰⁴ and “reasonable and appropriate measures” under Article 8.¹⁰⁵ The onus lies on the State¹⁰⁶ to provide “sufficient explanation”, including “using detailed and rigorous data”,¹⁰⁷ that its measures are reasonable and appropriate, i.e. that it has provided an “effective solution” to the risk of harm and “effective protection” of the applicant.¹⁰⁸ However, the obligation is one of means rather than results and an “impossible or disproportionate burden must not be imposed on the authorities”.¹⁰⁹ The Court initially held in *Lopez Ostra* (§ 51) and recently in *Cordella* (§ 158), that States enjoy a “certain margin of appreciation” in environmental issues. *Budayeva* suggests that the margin be narrower with respect to risks “of a man-made nature”, such as climate change, as opposed to natural disasters “beyond human control”.¹¹⁰

4.3.2 International Law, Standards and Principles

The HRC has stated that “[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life”.¹¹¹ In *Teitiota*, the Committee noted that States’ positive obligations under ICCPR Article 6 extend to “reasonably foreseeable threats and life-threatening situations that can result in loss of life”, including climate change, and that States must thus take measures to protect against “pollution and climate change caused by public and private actors”.¹¹² In *Portillo Carceres*, the Committee held that pollution that has “serious” and “direct repercussions” on private and family life and home may violate ICCPR Article 17.¹¹³ **Five UN Treaty Bodies** have jointly held that climate change threatens “the right to life” and “health”, and the **UN Committee on the Rights of the Child (CRC)** also calls it “one of the biggest threats to children’s health”.¹¹⁴

¹⁰⁴ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, no. 47848/08, § 130.

¹⁰⁵ See, for example, *Lopez Ostra v. Spain*, no. 16798/90 and *Hatton et al. v. The United Kingdom*, no. 36022/97.

¹⁰⁶ *Fadeyeva v. Russia*, no. 55723/00, §§ 129-130; *Jugheli and Others v. Georgia*, no. 38342/05, § 76; *Dubetska and Others v. Ukraine*, no. 30499/03, § 155; *Cordella*, § 161. Similarly, *Urgenda*, para. 5.3.3.

¹⁰⁷ *Dubetska*, § 155; *Fadeyeva*, § 128; *Jugheli*, § 76.

¹⁰⁸ *Öneryıldız*, § 89 (“effective deterrence against threats to the right to life”); *Budayeva*, § 132 (“effective protection of citizens whose lives might be endangered by the inherent risks”); *Fadeyeva*, § 133 (“effective solution”, “effective measures”); *Dubetska*, § 155 (“effective solution”); *Brincat* § 110 (“effective protection”).

¹⁰⁹ *Stoicesu*, §§ 51, 59.

¹¹⁰ *Budayeva*, §§ 134-135, 137.

¹¹¹ Human Rights Committee, *General Comment No. 36 on Article 6 Right to Life*, para. 62.

¹¹² Human Rights Committee, *Views: Communication No. 2728/2016 (Teitiota v. New Zealand)*, UN Doc. CCPR/C/127/D/2728/2016, 7 January 2020, paras. 9.4 and 9.11.

¹¹³ Human Rights Committee, *Views: Communication 2751/2016 (Portillo Cáceres v. Paraguay)*, UN Doc. CCPR/C/126/D/2751/2016, 20 September 2019, para. 7.8.

¹¹⁴ Joint Statement by CESCR, CEDAW, CMW, CRC and CRPD, *Human Rights and Climate Change*, UN Doc. HRI/2019/1, 16 September 2019, para. 3; CRC, *General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health*, UN Doc. CRC/C/GC/15, 17 April 2013, para. 50.

The lethal risks of GHG emissions and associated air pollution are beyond doubt. For example, according to the UN, heatwaves caused 12% of all disaster deaths worldwide between 2000 and 2019, with the majority of cases occurring in Europe.¹¹⁵ The magnitude of recent heatwaves in Europe would have been “extremely unlikely” without climate change.¹¹⁶ Moreover, fine particulate air pollutants (including NO₂), which are co-emitted with GHG from the burning of fossil fuels, are responsible for approximately 8 million (1 in 5) premature deaths per year globally.¹¹⁷ **The European Court of Justice (ECJ)** has in two recent cases (C-636/18 and C-664/18) held that France and the UK failed to fulfill their obligations under EU Directive 2008/50/EC by “systematically and persistently” exceeding the annual limit for Nitrogen Dioxide (NO₂), which is aimed at “avoiding, preventing or reducing harmful effects on human health”.

4.3.3 National Jurisprudence

In December 2020, a **Coroner’s Court in the UK** found that exposure to excessive air pollution was a significant contributory factor in the death of a nine-year-old child, noting that authorities failed to reduce levels of NO₂ and particulate matter near the child’s home to within limits set by the World Health Organization and the EU.¹¹⁸

With respect to GHG emissions and climate change, the **Administrative Supreme Court of Switzerland** considered that heat waves do not pose a real and immediate risk under ECHR Articles 2 and 8 today, because global warming will not exceed 1.5 or 2°C before 2040.¹¹⁹ As observed by the **Hague Court of Appeal in the Netherlands**, however, the danger of missing the 1.5 or 2°C target is not hypothetical, it already *latently exists*.¹²⁰ **The Supreme Court of the Netherlands** concurred that since “the lives and welfare of Dutch residents could be seriously jeopardised” within a few decades, climate change clearly poses a real and immediate risk in comparison to long-term hypothetical risks considered by the ECtHR, giving rise to a positive obligation under ECHR Articles 2 and 8 to avert dangerous warming above 1.5 °C or well below 2 °C above pre-industrial levels.¹²¹ Similarly, the **German Constitutional Court** has held that the right to life and physical integrity in the German Constitution, (also referring to the ECtHR’s case law on ECHR Articles 2 and 8), give rise to positive obligations to reduce emissions to limit global warming to well below 2 °C and preferably 1.5 °C, to

¹¹⁵ UN Office for Disaster Risk Reduction and the Centre for Research on the Epidemiology of Disasters, *The human cost of disasters: an overview of the last 20 years (2000-2019)*, 2020. The report inter alia points to the 2003 European heatwave which killed over 72,000 people in 15 European countries. Most recently, two heatwaves in the summer of 2019 resulted in over 1,400 deaths in France.

¹¹⁶ Robert Vautard et al., ‘Human Contribution to the record-breaking June and July 2019 heatwaves in Western Europe’, *Environmental Research Letters*, 2020, 15 (094077).

¹¹⁷ Karn Vohra et al., ‘Global mortality from outdoor fine particle pollution generated by fossil fuel combustion’ *Environmental Research*, 2021, 195 (110754).

¹¹⁸ London Inner South Coroner’s Court, Coronial inquest into the death of Ella Roberta Adoo Kissi-Debrah on 15 February 2013, 11 December 2020.

¹¹⁹ *Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others*, para. 5.3.

¹²⁰ *Urgenda v. the Netherlands*, ECLI:NL:GHDHA:2018:2610 (Hague Court of Appeals).

¹²¹ *Urgenda v. Netherlands*, paras. 5.2.2. and 5.6.2.

protect people living today and, as an objective duty, future generations.¹²² The **Administrative Supreme Court of France** has also recognised that, even if the severe consequences of climate change will not manifest before 2030 or 2040, there is an urgent need to act without delay due to their inevitability in the absence of effective preventative measures today.¹²³

Other courts have also recognised that the risk of climate change is real and immediate. The **Supreme Court of the United States** has characterised the risk of harm from unregulated GHG emissions as “actual” and “imminent”, with a “real” risk of “catastrophic harm”.¹²⁴ The **Supreme Court of Colombia** has called climate change a “serious and imminent” risk, and a “growing threat to the possibility of existence of human beings”.¹²⁵ The **Irish Supreme Court** has noted that the consequences of failing to address climate change are “very severe with potential significant risks both to life and health”.¹²⁶ The **Supreme Court of Canada** has described climate change as an “existential threat to human life in Canada and around the world”, adding that climate change “is causing significant [...] human harm nationally and internationally”.¹²⁷

With respect to planning decisions which would not in and of themselves lead to GHG emissions, the **Supreme Court of the UK** found that ECHR Articles 2 and 8 did not apply, since any effects on the lives and family life of those affected by the climate change consequences of a planned airport expansion would result not from the policy statement under review but from a subsequent development order.¹²⁸ Similarly, while the **Supreme Court of Norway** emphasised that climate change threatens life in Norway under ECHR Article 2, there was no “real and immediate” risk associated with the specific exploration licenses for oil and gas under review; they had not led to the discovery of oil and gas and were unlikely to lead to GHG emissions in the near future.¹²⁹ The Court did not, however, address ECtHR case law on future and hypothetical environmental harm, and the precautionary procedural requirements therein.¹³⁰

In its application of Articles 2 and 8, the **Dutch Supreme Court** held that States must “do their part” to prevent dangerous climate change (paras. 5.7.7-5.7.8). The **German Constitutional Court** similarly held that Germany must reduce its share of emissions, while also enhancing international climate cooperation, build mutual trust in cooperating by adopting national measures and thus avoid incentivising other states to not cooperate.¹³¹ Both courts rejected the argument that because all States are jointly

¹²² *Neubauer and others v. Germany*, 1 BvR 2656/18 (German Constitutional Court), paras. 143-165.

¹²³ *Grande Synthe v. France*, para. 3.

¹²⁴ *Massachusetts v. EPA*, 549 US 497 (2007) p. 23 [Section IV].

¹²⁵ *Future Generations v. Ministry of the Environment and Others*, STC4360-2018 (Supreme Court of Colombia).

¹²⁶ *Friends of the Irish Environment*, para. 3.6.

¹²⁷ *Re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11, Chief Justice Wagner (Supreme Court of Canada).

¹²⁸ *R v. Heathrow Airport Ltd.* [2020] UKSC 52 (Supreme Court of the UK), para. 113.

¹²⁹ *Nature and Youth and others v. Norway*, HR-2020-2472-P, para. 167 (Norwegian Supreme Court).

¹³⁰ See for instance *Hardy and Maile*, and *Täatar*. The Norwegian Supreme Court analysed the case under ECHR Article 8 in view of ECtHR case law on incurred environmental harm.

¹³¹ *Neubauer and others v. Germany*, 1 BvR 2656/18 (German Constitutional Court), paras. 149, 202-204.

responsible for climate change, no individual State can be held responsible for their conduct.

To determine the necessary and sufficient level of emissions cuts by the end of 2020, the **Dutch Supreme Court** looked to “common ground” as established through the IPCC reports referenced in international climate agreements. The Court held that the State has deference in the choice of means to reduce emissions, but not in terms of the minimum level of emission cuts required to avoid dangerous climate change. The State failed to substantiate that it was reasonable to contribute *less* than this “absolute minimum” (25% reduction by the end of 2020).¹³² The **German Constitutional Court** similarly based its assessments of Germany’s share of the remaining carbon budget on reports from the IPCC and the German Advisory Council on the Environment (para. 216, 219 et seqq.). While the Court held that the State has deference, courts could review whether measures were obviously unsuitable or completely inadequate or falling considerably short of reaching the required protection (para. 152). Measures that were not aimed at ensuring climate neutrality in the near future would be unsuitable (para. 155). As the State had committed to pursue climate neutrality by 2050 and to reduce emissions by 55% by 2030 in line with an emission reduction path, it could not be ascertained that the State had violated its duties to protect life and physical integrity (para. 167).¹³³ However, the failure to specify reductions after 2030 was unconstitutional, as it offloaded the obligation to cut emissions at the expense of younger and future generations’ fundamental rights without providing precautionary steps to ensure a transition to climate neutrality respecting these rights (para. 183).

4.3.4 Analysis in the Context of Climate Change

Based on the information above, there is an emerging consensus in international and national law that climate change above 1.5°C, as well as associated air pollution, poses a real and immediate threat to life and health, even if the latent risks may only materialise in the longer term. In the context of climate change, it can be noted that since the immediacy requirement is set out in connection with the State’s preventive duty to “avoid” life-threatening risks from materialising, this logically refers to a point in time when the danger - emissions exceeding the 1.5°C carbon budget - can still be prevented. This would be consistent with the precautionary principle and effective interpretation of rights. It is difficult to see how the right to life can be safeguarded effectively without an atmosphere which can sustain life.¹³⁴ It is recalled that a risk of sudden deterioration, such as tipping points, is relevant to the applicability of Articles 2 and 8.

The ECtHR’s common ground doctrine suggests that the assessment of whether a State has taken all necessary and sufficient measures should be made in light of its

¹³² *Urgenda*, para. 7.5.1.

¹³³ In comparison to the Netherlands, Germany reduced its emissions by 40% by 2020 (para. 137).

¹³⁴ See, for example, IPCC, *Special Report on Global Warming of 1.5°C*, 2018, Chapter 3.

commitments under the UNFCCC and the Paris Agreement, best available science¹³⁵ and the international consensus regarding the emissions reductions required to limit warming to 1.5°C.¹³⁶ States' margin of appreciation should be confined to the choice of means in relation to this target. In addition, as pointed out by the Dutch Supreme Court and the German Constitutional Court, the precautionary principle implies that States' minimum reduction rates should not rely on negative-emission technologies to remove CO₂ from the atmosphere, many of which do not yet exist or are still at early stages of development. *Budayeva*, as well as the principle of intergenerational equity, further suggests a narrow margin of appreciation, since climate change is essentially of a "man-made nature" and a failure to stay within the 1.5°C target will dramatically limit the choice of means available to younger generations.

Thus, since failure to cut emissions sufficiently today would irreversibly offload a drastic obligation to cut emissions in the near future, avoiding an "impossible or disproportionate burden" for the Contracting States supports more stringent emission cuts today, not less. This would safeguard political leeway in an intertemporal sense, as well as protecting fundamental rights in the future against irrevocable infringements today.

4.4 The Prohibition of Torture, Inhuman or Degrading Treatment – ECHR Article 3

4.4.1 ECtHR Jurisprudence

To fall within the scope of Article 3, the treatment in question must "attain a minimum level of severity", but the prevalence of the treatment is irrelevant.¹³⁷ As with Article 8, the assessment is relative, and includes "the physical and mental effects of the treatment and, in some cases, the sex, age and health status of the victim".¹³⁸ Children and older people are generally treated by the Court as vulnerable persons.¹³⁹ Since Article 3 is interpreted dynamically, acts that have not met the threshold in the past could be classified differently in the future.¹⁴⁰ There is no absolute requirement of intent,

¹³⁵ *Brincat*, § 112; *Rees v. the United Kingdom*, no. 9532/81, § 47; *Cossey v. the United Kingdom*, no. 10843/84, § 40; *Fretté v. France*, no. 36515/97, §42; *S.H. & Ors v. Austria*, no. 57813/00, §§ 97-118; *Dubská and Krejzová v Czech Republic*, no. 28859/11 and 28473/12, §100; *Oluić v. Croatia*, no. 22330/05, §§ 29-31.

¹³⁶ *Demir and Baykara v. Turkey*, no. 34503/97 [GC], § 85; See also the interpretation of the Paris Agreement in domestic human rights cases such as *Nature and Youth Norway and others v. Norway*, paras. 56-60; *Grande Synthe v. France*, paras. 8-13; *Plan B v. the United Kingdom* [2020] EWCA Civ 214; *Urgenda*, section 5.

¹³⁷ *M.S.S. v. Belgium and Greece*, no. 30696/09 [GC], §§ 219 and 255.

¹³⁸ *Kudla v. Poland*, § 91; *Jalloh v. Germany*, no. 54810/00, § 67.

¹³⁹ *Zherdev v. Ukraine* (children); *Toteva v. Bulgaria* (42027/98) § 52 and *Tastan v. Turkey* (63748/00) (older people); *Farbtuhs v. Latvia* (4672/02) (older people suffering from several illnesses); *Florea v. Romania* (37186/03) (chronic illnesses).

¹⁴⁰ *Selmouni v. France*, no. 25803/94, § 101.

and the Court has emphasised that “[t]he source of the risk” is irrelevant for the level of protection under Article 3.¹⁴¹ Mental suffering of “sufficient severity” may fall within the scope of Article 3.¹⁴² In *Öcalan*, the Court referred to the mental strain of continuous and well-founded fear for the future, and in *M.S.S. v. Belgium and Greece*, to “feelings of fear, anguish or inferiority capable of inducing desperation”, “prolonged uncertainty” and the “total lack of any prospects of his situation improving”.¹⁴³ Negative physical effects caused by the surrounding environment may also meet the threshold.¹⁴⁴ For example, in *Florea v. Romania*, the ECtHR found that continuous exposure to passive smoking in detention violated Article 3.¹⁴⁵ While the case concerned prison conditions, the principle may otherwise apply where individuals are unable to avoid their exposure to harmful wildfire smoke or air pollution.

4.4.2 International and National Jurisprudence

The HRC has noted in *Teitiota* that the deportation of an individual to a country severely affected by climate change may give rise to inhuman or degrading treatment. The Committee held that “the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant”.¹⁴⁶ In a 2021 judgement, the **Administrative Court of Bordeaux** held that an asylum seeker faced a real risk of premature death or health impairment due to air pollution if returned to Bangladesh.¹⁴⁷ A **Higher Administrative Court** in Germany also considered “environmental conditions, such as climate” relevant to non-refoulement.¹⁴⁸

4.4.3 Analysis in the Context of Climate Change

Children are particularly vulnerable to the effects of climate change due to their early stage of physical and mental development.¹⁴⁹ For example, infants and small children are more likely to die or suffer from heatstroke because they are unable or lack agency to regulate their body temperature and control their surroundings.¹⁵⁰ Children are also more exposed to air pollution, because their lungs are developing and the breathing rate up until age 12 is still about twice as rapid as adults.¹⁵¹ Moreover, research indicates that children are especially vulnerable to the physical impacts of wildfire smoke and may

¹⁴¹ *P. and S. v. Poland*, no. 57375/08, § 160; *Tarakhel v. Switzerland*, no. 29217/12 [GC], § 104.

¹⁴² *Selçuk and Asker v. Turkey*, no. 12/1997/796/998-999.

¹⁴³ *Öcalan v. Turkey*, no. 46221/99, § 169; *M.S.S. v. Belgium and Greece*, § 263.

¹⁴⁴ *Lopez Ostra v. Spain*.

¹⁴⁵ *Florea v. Romania*, no. 37186/03.

¹⁴⁶ Human Rights Committee, *Teitiota v. New Zealand*, para. 9.11.

¹⁴⁷ Cour administrative d'appel de Bordeaux - 2ème chambre, 18 décembre 2020, no. 20BX02193, no. 20BX02195.

¹⁴⁸ VGH Baden-Württemberg, 17.12.2020 – A 11 S 2042/20, paras. 25 and 30 (Higher Administrative Court of Baden-Wuerttemberg).

¹⁴⁹ Joint Statement by CESCR, CEDAW, CMW, CRC and CRPD, *Human Rights and Climate Change*, UN Doc. HRI/2019/1, 16 September 2019, para. 3

¹⁵⁰ UNICEF, «Unless We Act Now – The impact on climate change on children», 2015, p. 40 with further references.

¹⁵¹ *Ibid.*, p. 44, with further references.

suffer significant mental health challenges in the aftermath.¹⁵² In addition, the future risks associated with climate change, including “tipping points”, may cause anxiety and fear for the future. Children who have already experienced increasingly severe extreme weather events may be particularly vulnerable. At the same time, children are in a position of dependency and cannot themselves improve the situation. In the majority of countries children are not able to vote and, due to their citizenship, have no impact on other States’ climate policies. This may give rise to severe resignation and helplessness that, seen together with the existential threat of climate change and the vulnerability of children, may call for the application of ECHR Article 3 in some circumstances.

Older people are also particularly vulnerable to the effects of climate change, with the IPCC noting that older people are generally less mobile and may live alone, placing them at greater risk from storms, floods, heat waves, and other extreme events, and are also more likely to suffer from health conditions that limit the body’s ability to respond to stressors such as heat and air pollution.¹⁵³ Reports from France after the extreme heatwave in Europe of 2003 concluded that 80% of those who died as a result of the heatwave were over 75 years old.¹⁵⁴ In addition, people with chronic diseases such as diabetes and ischemic heart disease have a higher risk of death or severe illness associated with climate-induced temperature rises.¹⁵⁵ In light of this, old age and chronic illnesses may also be considered aggravating factors under ECHR Article 3, or, in the alternative, with respect to the lower minimum threshold under ECHR Article 8.¹⁵⁶

4.5 The Right to Non-Discrimination – ECHR Article 14

4.5.1 ECtHR Jurisprudence

Article 14 is of an ancillary nature and presupposes the applicability of a substantive right under the Convention. Article 14 applies not only to direct discrimination, but also to the indirect discrimination of “a general policy or measure that has disproportionately prejudicial effects on a particular group [...] even where it is not specifically aimed at that group and there is no discriminatory intent”.¹⁵⁷ Indirect discrimination may arise from a neutral rule or a *de facto* situation.¹⁵⁸ To be discriminatory, the treatment must be based

¹⁵² Stephanie M. Holm et al., ‘Health effects of wildfire smoke in children and public health tools: a narrative review’, *Journal of Exposure Science & Environmental Epidemiology*, 2021, 31, p. 1-20; Nicolas Borchers Arriagada, et al., ‘Unprecedented smoke-related health burden associated with the 2019-20 bushfires in eastern Australia’, *The Medical Journal of Australia*, 2020, 213(6), p. 282-283; Brett M. McDermott, et al., ‘Posttraumatic stress disorder and general psychopathology in children and adolescents following a wildfire disaster’, *The Canadian Journal of Psychiatry*, 2005, 50, p. 137-43; Lisa Gibbs, et al., ‘Delayed Disaster Impacts on Academic Performance of Primary School Children’, *Child Development*, 2019, 90(4), p. 1402-1412.

¹⁵³ IPCC, AR5 Climate Change: Impacts, Adaptation, and Vulnerability, 2014, p. 718.

¹⁵⁴ *Ibid*, p. 721.

¹⁵⁵ *Ibid*, p. 717.

¹⁵⁶ *Lopez Ostra* no. 16798/90, §§ 51 and 60.

¹⁵⁷ *S.A.S v. France*, no. 43835/11, § 161.

¹⁵⁸ *Zarb Adami v. Malta*, no. 17209/02, § 76.

on a personal and innate characteristic of the person or group, such as gender, indigenous or minority status, or disability. Age is a prohibited discriminatory ground (“other status”) under Article 14.¹⁵⁹

4.5.2 International Law, Standards and Principles

International law suggests that the principle of intergenerational equity is a relevant consideration. At the outset, it is recalled that the Preamble of the **Statute of the Council of Europe** sets out the “preservation of human society and civilisation” as an ultimate objective, while the **UN Charter** promises to “save succeeding generations”. As pointed out by the **HRC**, climate change affects the ability of “present and *future* generations” to enjoy the right to life.¹⁶⁰ In a Joint Statement, five **UN Treaty Bodies** noted with “great concern” that States’ current commitments under the Paris Agreement are insufficient to limit global warming to 1.5°C above pre-industrial levels, thereby “exposing their populations and future generations to the significant threats to human rights associated with greater temperature increases”.¹⁶¹ *Intergenerational equity* is recognised in the Preamble and Principle 1 of the **Stockholm Declaration**, the Preamble of the **Paris Agreement** and the **UNFCCC** Article 3, according to which States should “protect the climate system for the benefit of present and future generations of humankind”. The **ICJ** has held that States are prohibited from causing harm to “the living space, the quality of life and the very health of human beings, *including generations unborn*”.¹⁶² The **ECJ** has drawn on the concept of intergenerational equity in the context of anti-discrimination, citing the objective of “balance between the generations”.¹⁶³ In *Commission v. Hungary* (C-286/12), the ECJ interpreted the prohibition on age discrimination as a prohibition on discrimination between birth cohorts.¹⁶⁴

4.5.3 National Jurisprudence

The **Colombian Supreme Court** has acknowledged the disparate impact of climate change on future generations, stating that “[i]n terms of intergenerational equity, the transgression is obvious” (p. 34). The **Dutch Supreme Court** has also acknowledged the disparate impact of climate change on younger generations (4.7). In a 2019 **Australian case**, the Court found that the environmental, social and economic burdens of a proposed coal mine “will cause distributive inequity, both within the current generation and between the current and future generations”.¹⁶⁵ The Court noted that “[t]he

¹⁵⁹ *Schwizgebel v. Switzerland*, no. 25762/07, § 85.

¹⁶⁰ Human Rights Committee, *General Comment No. 36*, para. 62.

¹⁶¹ Joint Statement by CESCR, CEDAW, CMW, CRC and CRPD, Human Rights and Climate Change, UN Doc. HRI/2019/1, 16 September 2019, para. 9.

¹⁶² ICJ, *Advisory opinion on the legality of the threat or use of nuclear weapons*, para. 29.

¹⁶³ *Petersen* (C-341/08) § 65 and *Georgiev* (C-240/09).

¹⁶⁴ *Commission v. Hungary* (C-286/12), Judgement, ECLI:EU:C:2012:687, paras. 50-54, 78.

¹⁶⁵ *Gloucester Resources Limited*, para. 696

principle of inter-generational equity provides that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for future generations".¹⁶⁶ The **German Constitutional Court** has noted that the rapid depletion of the finite national carbon budget violates fundamental rights, since it irreversibly offloads the obligation to cut emissions on younger and future generations, creating disproportionate risks of infringing their future freedom which the State had failed to take precautionary steps to respect (para. 182-183). The rights of the young complainants were protected against the "advance interference-like effect" of current emissions provisions by the "intertemporal guarantees of freedom" deriving from the German Constitution (para. 183). The Court further held that the right to life and integrity gave rise to an objective duty to protect future generations (para 109, 146).

4.5.4 Analysis in the Context of Climate Change

Children are disproportionately affected by the impacts of climate change on account of their special vulnerability due to age.¹⁶⁷ Furthermore, younger generations will be increasingly impacted by climate change throughout their lives, and ultimately will live longer with and suffer more under the effects of climate change. This long-term disparate impact of climate change may be seen as discrimination based on generation or birth-cohort.¹⁶⁸ Recognising birth cohort as a relevant ground for discrimination appears in line with the ECtHR's case law on age-based discrimination and the purpose of Article 14, which seeks to protect against discrimination based on personal and innate characteristics. In addition to being disproportionately affected by the effects of climate change, newer birth cohorts have fewer opportunities to tackle its root causes today, for example by influencing emissions reduction policies, while also shouldering a heavier burden to implement emission cuts in the future. This exacerbates the element of intergenerational injustice and supports an interpretation that climate change may constitute indirect discriminatory treatment on the grounds of birth-cohort.

Other vulnerable groups, such as indigenous peoples in the Arctic, are also disproportionately affected by climate change. The **Canadian Supreme Court** recently referenced the "well-established" and "especially high impacts" of climate change in the Arctic and coastal regions, "threatening the ability of Indigenous communities in Canada to sustain themselves and maintain their traditional ways of life".¹⁶⁹ Similarly, the **UN Special Rapporteur on the Rights of Indigenous Peoples** has pointed to the

¹⁶⁶ Ibid, para. 399.

¹⁶⁷ See for example, IPCC, AR5 Climate Change: Impacts, Adaptation, and Vulnerability, 2014, pp. 717-718; Lawrence R. Stanberry et al., 'Prioritizing the needs of children in a changing climate' *PLOS Medicine*, 2018, 15(7); Nick Watts et al., 'The 2020 report of The Lancet Countdown on health and climate change: responding to converging crises' *The Lancet*, 2021, 397(10269).

¹⁶⁸ Axel Gosseries, 'Environmental degradation as age discrimination', *Revista electrónica de Derecho Público* 2015 vol. N (5) p. 15 and Refia Kaya, 'Environmental vulnerability, age and the promises of anti-age discrimination law', *Review of European, comparative & international environmental law*, 2019 vol. 28 (2) p. 162-174.

¹⁶⁹ Reference re Greenhouse Gas Pollution Pricing Act, 2021 SCC 11, paras. 11 and 187.

particular vulnerability of indigenous peoples to climate change, given their dependence on traditional territories, ecosystems and natural resources.¹⁷⁰ The **UN Special Rapporteur on Human Rights and the Environment's** *Framework Principles on Human Rights and the Environment* emphasise that the obligations of States in relation to indirect discrimination apply to groups that are particularly vulnerable to environmental harm.¹⁷¹ Hence, it is possible that indirect discriminatory treatment due to excess GHG emissions may arise in relation to other particularly disadvantaged groups.¹⁷²

4.6 Protection of Property and Possessions – ECHR Protocol 1, Article 1

4.6.1 ECtHR Jurisprudence

The Court has in several cases held States responsible for not responding to a real and immediate risk of property damage.¹⁷³ Article 1 of Protocol 1 (P1-1) protects existing possessions, and non-existing possessions that the applicant has a legally founded expectation of receiving.¹⁷⁴ Claims based on intestacy alone are not protected.¹⁷⁵

4.6.2 National Jurisprudence

Several national courts have acknowledged the danger that climate change poses to property. The **German Constitutional Court** noted that “entire settlements could become uninhabitable in Germany as a result of flooding or rising sea levels”, and held that the constitutional right to property, including social ties to the local environment, thus obliges the State to cut emissions (paras. 171-172). The **Dutch Supreme Court** noted that climate change will result in sea level rises, extreme heat, drought and precipitation, and other extreme weather events, which in turn lead to “the loss of territory and habitable areas” (para. 4.2). This necessarily poses risks to properties located in such areas. The **French Conseil d’État** granted *Grande-Synthe* standing, partly because climate change posed a risk to its built-up areas (para. 3). The **High**

¹⁷⁰ Special Rapporteur on the Rights of Indigenous Peoples, *Thematic study on the impacts of climate change and climate finance on indigenous peoples' rights*, 1 November 2017, UN Doc. A/HRC/36/46.

¹⁷¹ UN Special Rapporteur on Human Rights and the Environment, *Framework Principles on Human Rights and the Environment*, UN Doc. A/HRC/37/59, 24 January 2018, Principles 3 and 14; See also, UN Special Rapporteur on Human Rights and the Environment, *Report on the Relationship Between Children's Rights and Environmental Protection*, UN Doc. A/HRC/37/58, 24 January 2018, para. 64. See also, OHCHR, *Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child*, UN Doc. A/HRC/35/134 May 2017; OHCHR, *Analytical study on gender-responsive climate action for the full and effective enjoyment of the rights of women*, UN Doc. A/HRC/41/261 May 2019; OHCHR, *Analytical study on the promotion and protection of the rights of persons with disabilities in the context of climate change*, UN Doc. A/HRC/44/3022 April 2020.

¹⁷² In *Mossville Environmental Action Now v. United States*, Inter-Am. Comm'n H.R., Report No. 43/10, (17 March 2010) (admissibility decision), para. 42, the Inter-American Commission on Human Rights noted that indirect discrimination may arise where a State has failed to take adequate measures to ensure environmental protection, with knowledge that particular vulnerable groups will bear the significantly disproportionate burden.

¹⁷³ *Kolyadenko and others v. Russia*; *Öneryildiz v. Turkey*.

¹⁷⁴ *Kopecký v. Slovakia*, no. 44912/98, § 49.

¹⁷⁵ *Wysoska v. Poland*, no. 12792/13, § 48.

Court of Lahore in Pakistan called climate change a “clarion call for the protection of fundamental rights”, including the right to property (paras. 6-7).

4.6.3 Analysis in the Context of Climate Change

The impacts of climate change, including sea-level rises and the increasing severity of extreme weather events, clearly pose a risk to property, as demonstrated by the damage already caused by wildfires.¹⁷⁶ These latent and long-term risks may be regarded as immediate, triggering States’ positive duty to reduce or prevent the risk of damage within the urgent time frame still available (see Articles 2 and 8). The risks posed by climate change, however, will disparately affect property interests of children and youth who will not necessarily own property within the remaining time frame when dangerous warming above 1.5°C can still be prevented. To the extent that a formal reading excludes children from P1-1 today, and property owners who do fall within P1-1 are unable to claim protection against potential future consequences, P1-1 would offer limited protection to foreseeable climate harms. Read in conjunction with Article 14, this potential lacuna may be discriminatory. It could also infringe upon the freedom to choose one’s residence under Protocol 4 article 2 nr. 1 (P4-2) and respect for one’s “home” under Article 8. Principles of effectiveness, precaution and intergenerational equity thus suggest that children positioned to inherit property that is foreseeably threatened by climate change, can rely on P1-1 today.

¹⁷⁶ During the 2019-20 Australian wildfires, for example, over 240,000 Km² was burnt and over 5,900 buildings were destroyed, including over 3000 homes. See *Report of the Royal Commission into National Natural Disaster Arrangements*, 28 October 2020.

5. Conclusion

In this paper, ENNHRI provides an overview of climate change and human rights in the European context, exploring recent developments in the area, country-specific information on targets, policies and practices, as well as legal issues arising under the ECHR in cases concerning climate change.

ENNHRI highlights that regional and international human rights bodies are increasingly calling on States to adopt and implement policies to reduce GHG emissions in order to comply with their human rights obligations, while climate change litigation before national and international courts is increasingly based on human rights grounds. At the same time, the current commitments of European States to reduce GHG emissions are seriously inadequate to achieve the climate goals set in the Paris Agreement. Indeed, scientific evidence indicates that the world may exhaust the entire carbon budget and reach the 1.5°C limit as early as 2030 if warming continues to increase at current rates.

The nexus between climate change and human rights raises pressing legal questions that are increasingly considered by national and international courts. In this paper, ENNHRI has addressed some of the legal issues arising under the ECHR in cases concerning climate change and has pointed to possible ways they can be resolved in light of the ECtHR's existing jurisprudence, international law, standards and principles, as well as recent developments in national jurisprudence.

6. Annex

This Annex provides more detailed information on the issues covered in the main text of the ENNHRI paper. The information was provided by ENNHRI member institutions in relation to their respective countries.

6.1 National Climate Ambitions, Targets and Practices

(Non)-Compliance with national GHG emission reduction targets, sufficiency of targets and measures

Croatia:

The Low Carbon Development Strategy until 2030 with a view to 2050 contains Croatia's national GHG emission reduction targets. The strategy is currently being adopted by the Croatian Parliament. The strategy outlines three main scenarios, which determine Croatia's future national GHG reduction targets. It has not yet been decided which scenario the Croatian Government will follow: 1) the Reference Scenario (NUR), which is a continuation of existing practices, in line with current legislation and targets by the year 2030; 2) the Gradual Transition Scenario (NU1) aiming at a GHG reduction target of 33.5 % by 2030 and 56.8 % by 2050 (below 1990 levels); 3) the Strong Transition Scenario (NU2) with a GHG reduction target of 80% by 2050 (below 1990 levels). The fourth scenario is called climate neutrality, but only serves as information regarding the EU's existing Climate Policy. The adoption of a Low Carbon Development Strategy until 2030 with a view to 2050 was already envisaged by the 2014 amendments to the Air Protection Act, but did not materialize. Instead, the obligation to adopt such a strategy was included in the Act on Climate Change and the Protection of the Ozone Layer (2019).

Finland:

The 2020 Annual Climate Report¹⁷⁷ of the Ministry of the Environment finds that Finland is very likely to meet its greenhouse gas (GHG) emission target for the period 2013–2020 and that national GHG emissions in 2020 will stay within the allocated amount. The report further highlights that the measures for achieving the national reduction target for the period 2021–2030 have been planned to ensure that the target is met. According to the Annual Climate Report (2020) by the Ministry of the Environment, these planned measures are inadequate to attain carbon neutrality by 2035. For instance, the transport sector's GHG emissions have decreased in 2020 compared to the previous year (2019),

¹⁷⁷ The report examines the meeting of national targets set for GHG emissions reductions for the periods 2013–2020 and 2021–2030 in the EU effort-sharing sector (non-emissions trading sector) and the trend in total GHG emissions with regards to the target of carbon neutrality set for 2035.

but the decrease has not been as big as had been anticipated by the Finnish Government. A sufficient decrease in GHG emissions from transport is considered crucial for the non-emissions trading sectors. In addition, GHG emissions caused by the agricultural sector have stayed about the same. GHG emissions from heating in buildings and waste management have decreased the most compared to the levels in 2005. The Finnish Climate Change Panel - an independent expert body appointed by the Government to support the planning of climate change policy and related decision-making – has pointed out that the 80% minimum GHG emissions reduction target set for 2050 is highly insufficient to reach GHG net negative emissions from 2040 onwards. For this to be achievable there would need to be a GHG reduction target of 100% by 2050 (below 1990 levels).

The current national Climate Change Act (609/2015) has been criticised by a variety of experts, actors and activists for being insufficient. Finland's long-term goal is to become a carbon-neutral society by 2035. Still, the Act imposes obligations only on the State authorities, not on private individuals or companies. The measures under the Act also do not cover GHG emissions and reduction targets in the land use sector. The Act, however, considers some procedural mechanisms relating to planning, participation, access to information and monitoring. Since 2019, the Act is undergoing reform and the Government has announced that it will be reformed in such a way that carbon neutrality will be reached by 2035. There are also plans to update the 2050-target, include national reduction targets for 2030 and 2040 as well as GHG targets for the land use sector.

France:

The High Council on Climate (Haut Conseil pour le climate) - an independent body of experts providing opinions and recommendations on measures to reduce GHG emissions in France – has found that France is not meeting its commitments under the Paris Agreement, including reaching GHG neutrality by 2050. In 2016 and 2017, France exceeded the annual GHG emission threshold set by the National-Low Carbon Strategy (SNBC, *Stratégie nationale bas carbone*¹⁷⁸), adopted in 2015. Emissions decreased between 2015 and 2018 by 1.1% (target was 1.9 %), thus France exceeded the first carbon budget set. The SNBC was then revised in 2018-2019: it now aims to achieve carbon neutrality by 2050 but has lowered the 2019 target from -2.3% to -1.5%, therefore transferring efforts from the short to the long run. The carbon budget for 2019-2023 forecasts a decrease of 1.5 % per year. GHG emissions had fallen by 0.9% in 2019. According to the annual reports of the High Council (2019 and 2020) and the judgment in the Case of the Century, France's climate action currently does not suffice to meet its

¹⁷⁸ SNBC sets the guidelines that must be implemented for a transition to a low-carbon economy. It defines the carbon budgets for the coming periods in order to achieve carbon neutrality by 2050.

national climate targets. Significant GHG reductions are also not achieved in sectors with high GHG emissions.

The sectors with the highest share of overall GHG emissions (more than 86%) are transport, agriculture, building and industry. Regarding renewable energies, the goal of a 23% share by 2020 as established by the Law on Energy and Climate (Loi n° 2019-1147 du 8 novembre 2019 relative à l'énergie et au climat) seems unlikely to be achieved. The government's promise to close all its coal-fired power plants (the last four) by the end of 2022 (announced at COP23) is unlikely to be kept, given the extension of certain coal-fired plants until 2024 and 2026, like the Cordemais coal-fired power station, in Loire-Atlantique. These plants represent a low share of GHG emissions in France (2%), but account for a significant part of electricity production (27%).

Germany:

In its 2019 projection report (May 2019) the German Government stated that it would fail to meet its national climate targets as GHG emissions would be reduced by only 33.2% in 2020 (goal 40%) and by only 41.7% in 2030 (goal 50%) (both below 1990 levels).¹⁷⁹ In its 2019 Climate Action Report (August 2020) the Government estimated a total 32.6% reduction of GHG emissions by 2020. This estimate does not take into account the effects of the COVID-19 pandemic. Due to lockdown measures, GHG emissions could be significantly lower and thus Germany might meet its 40% climate target for 2020.¹⁸⁰ Non-governmental sources estimate emissions reductions of 41 to 43% in 2020 (below 1990 levels) due to the impacts of the COVID-19 pandemic (e.g. restricted mobility and quarantine measures significantly reduced industrial production and energy demand, and put an almost complete stop to passenger flights).¹⁸¹ In view of sector targets, the transport sector is the worst performer, having the largest gap of all sectors in Germany. According to Federal Government targets, transport sector emissions need to be reduced by 42% below 1990 levels; emissions are, however, still at 1990 levels today.¹⁸²

With the Climate Action Programme 2030,¹⁸³ adopted in 2019, the Federal Government introduced new measures to meet its 2030 climate targets, including a coal phase-out and a carbon price on fuels in buildings and transport. An assessment commissioned by

¹⁷⁹ The Federal Government of Germany, *Projection Report 2019*, https://cdr.eionet.europa.eu/de/eu/mmr/art04-13-14_lcds_pams_projections/projections/envxnw7wq/Projektionsbericht-der-Bundesregierung-2019.pdf, (in German only).

¹⁸⁰ The Federal Government of Germany, *Climate Action Report 2019*, <https://www.bundesregierung.de/breg-en/news/climate-action-report-2019-1778202>.

¹⁸¹ Climate Action Tracker, Country Summary: Germany, July 2020, <https://climateactiontracker.org/countries/germany/>.

¹⁸² Federal Environment Agency/Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, Joint Press Release, 16 March 2020, <https://www.umweltbundesamt.de/en/press/pressinformation/2019-greenhouse-gas-emissions-in-germany-declined>.

¹⁸³ Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, *Climate Action Programme 2030* (2019), <https://www.bmu.de/publikation/klimaschutzprogramm-2030/>.

the Federal Environment Agency (published in October 2020) concludes that the measures of the Programme are not sufficient to reduce emission by 55% in 2030. The 2030 Programme has been heavily criticised by experts and civil society for lacking sufficient quantitative ambition to meet the Government's targets.¹⁸⁴ Criticisms included carbon pricing being set too low to reach GHG reduction targets, such as in the buildings and transport sector; the 2038 coal phase-out date being almost a decade too late to meet the objectives of the Paris Agreement, while at the same time gains from wind and solar power for renewable energy capacity have slowed down significantly in recent years.¹⁸⁵

On 24 March 2021, the German Constitutional Court ruled parts of the Federal Climate Change Act (2019) unconstitutional as the Act does not define concrete national GHG emission reduction targets beyond 2030. The Court ordered the German legislator to set clear reduction targets for the time period after 2030 by the end of 2022.¹⁸⁶ The Federal Ministry of the Environment reacted promptly and issued a proposal for a revised Climate Change Act on 5 May 2021. The proposal includes more ambitious climate targets (all below 1990 levels): a GHG reduction target of 65% (instead of 55%) by 2030; a new reduction target of 88% by 2040 and the target of GHG neutrality by 2045 (instead of 2050). The German Government aims for the adoption of the new Climate Change Act before federal elections in September 2021.

Norway¹⁸⁷:

Norway has never met any of its climate targets by reducing national emissions. Since 1990, national GHG emissions have been cut by 2.3%, while CO₂ emissions have increased by 19 percent. In April 2021, it was reported that there had been a serious miscalculation of emissions, which might even nullify the 2.3% reduction from 1990. Norway has only met its climate targets under the UNFCCC by buying international offsets. In 1989, Parliament adopted a target to stabilise national GHG emissions at 1989-levels by 2000. The adopted target was discarded by the Government in 1995. In 2008-2012, the Kyoto Protocol set out that Norway should not increase its emissions by more than 1% since 1990 levels. Instead, Norway increased emissions by 5% and bought international quotas to offset its increase. In 2008 and 2012, Parliament decided that Norway should reduce emissions by 30% by 2020 compared to 1990 levels. It was said

¹⁸⁴ See Germanwatch, Press Release, 5 March 2020, <https://germanwatch.org/de/18350> (in German only), World Wide Fund For Nature (WWF) Germany, https://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/WWF-Bewertung_und_Forderungen_zu_den_Klimaschutzprogramm-Eckpunkten.pdf (in German only), Climate Action Tracker, Country Summary: Germany, July 2020, <https://climateactiontracker.org/countries/germany/>.

¹⁸⁵ Ibid.

¹⁸⁶ German Constitutional Court (Bundesverfassungsgericht), Press Release, 29 April 2021,

<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>

¹⁸⁷ The information provided is based on information provided by Norwegian authorities, as there is no independent monitoring of climate targets in Norway, compare independent Climate Councils in for instance Denmark, France, UK and Finland.

publicly that two thirds of these cuts would be taken nationally, but by 2020, Norway had only reduced national emissions by 2.3%, which might be significantly overstated. Instead, Norway bought international offsets for the entirety of the 30% reduction / 2020-target. In 2008 and 2012, Parliament set out a distinct target to reduce national GHG emissions, not as compared to 1990 levels, but as compared to a hypothetical reference scenario set in 2007 by which GHG emissions would otherwise have increased by 15% by 2020 compared to 1990 levels. Relative to this hypothetical increase, and not 1990 levels, Parliament aimed to decrease national emissions by 5.6 – 9.5% by 2020. Due to COVID-19, Norway is unexpectedly on track to reach the lowest threshold (5.6%) of this target, unless this is nullified by the reported miscalculations.

The oil and gas sector is the largest emitting sector in Norway (14 Mt CO₂-equivalents of 50,3 Mt in 2019). From 1990 to 2019, GHG emissions from Norwegian oil and gas production (excluding combustion) increased by 71%. There is an ongoing debate as to whether offshore production should be electrified to phase out gas turbines, which would cut production emissions within the Norwegian territory. This measure would not, however, cut global emissions since the gas replaced by electricity would instead be exported for combustion. Norway intends to continue to search and drill for oil and gas to maintain its production level of oil and gas. According to CICERO, a Norwegian climate research institute, the planned extraction of known Norwegian oil and gas resources will amount to roughly 15 gigatons of CO₂, about 6.5% of the remaining carbon budget for the whole world.

Romania:

Although Romania's contribution to global emissions only accounts for 0.3% and less than 3% of total EU GHG emissions, Romania reduced its GHG emissions by about 50% during the first commitment period (2008-2012) under Annex 1 to the Kyoto Protocol. Romania's significant reduction in GHG emissions is a result of the decline in economic growth since 1989. Total GHG emissions excluding emissions and removals from the land use, land-use change and forestry sector (LULUCF sector) decreased by 54.4% between 1990 and 2016. With regard to sector targets, Romania has achieved its renewable energy and energy efficiency targets for 2020 under the EU Climate and Energy package.¹⁸⁸ Although the transport sector currently accounts for only 12% of total GHG emissions, its share of total national GHG emissions has been growing rapidly (by 36% compared to 1990 levels). This upward trend in the sector is likely to continue, especially in view of road transport. Therefore, the transport sector is one that deserves attention. The European Commission's assessment of Romania's draft National Energy and Climate Plan 2021-2030 found that Romania could meet its GHG emissions

¹⁸⁸ Report of the UNFCCC Subsidiary Body for Implementation (50th session), June 2019, https://unfccc.int/sites/default/files/resource/sbi2019_9a2_advance.pdf#page=28, page 28

reduction target for 2030 (2% below 2005 levels) for sectors not covered by the EU Emissions Trading System (non-ETS), if it implements policies and measures in line with the projections provided, notably in the transport and agriculture sectors.¹⁸⁹

Slovak Republic:

Due to the specific situation in the Slovak Republic and its industrial transformation in the 1990s, which has led to a significant decrease in GHG emissions (by 30% in 2005), the Slovak Republic set itself a stricter national GHG emissions reduction target in 2020 of 13% compared to 2005 levels. Reductions in GHG emissions have gone well beyond this target, decreasing by 41% compared to 1990 levels, driven mainly by GHG emissions reductions in the energy and transport sector. The Slovak Republic has also met its commitments under the Kyoto Protocol and is currently reaching its national climate target set for 2030. Although, the Slovak Republic has achieved significant reductions in GHG emissions, especially in the 1990s due to its industrial transformation, reductions have stalled in recent years. In line with the objectives of the Paris Agreement, the Slovak Republic has committed itself to achieving climate neutrality by 2050. According to the Government's Low Carbon Development Strategy¹⁹⁰, national projections and expert analyses, it is estimated that the Slovak Republic could reduce GHG emissions by 2050 (compared to 1990) by a maximum of 80% (without reductions in GHG emissions through the LULUCF sector - land use, land-use change and forestry) if all additional modelled measures are implemented. If maximum possible reductions in GHG emissions through the LULUCF sector are taken into account, a maximum of 90% GHG emission reductions (compared to 1990 levels) could be envisaged, which would still not be sufficient to meet the objective of achieving climate neutrality by 2050.

The Government's report on the fulfilment of accepted international commitments of the Slovak Republic in the field of climate change policy for 2017-2018¹⁹¹ finds that without additional measures in place – beyond those covered by the Low Carbon Development Strategy - national GHG emissions in 2050 could still be at a level comparable to 2015. In 2021, the Ministry of the Environment will update the Low Carbon Development Strategy and will begin to draft a national climate regulation (law).

¹⁸⁹ European Commission, summary of the assessment of Romania's draft National Energy and Climate Plan 2021-2030, https://ec.europa.eu/energy/sites/default/files/documents/necp_factsheet_ro_final.pdf

¹⁹⁰ The Slovak Government's Low Carbon Strategy is based on the World Bank's energy and macroeconomic modelling, as summarised in the Government's Low-Carbon Growth Study (energy sectors such as households, industry, energy and fuel combustion services).

¹⁹¹ The report is the seventh report submitted in accordance with the fulfillment of the tasks set out by Resolution of the Government of the Slovak Republic No. 151 of 5 April 2017.

United Kingdom / Scotland:

In 2018 the Climate Change Committee (CCC) – an independent expert body set up under the UK Climate Change Act (2008)¹⁹² - said the UK was not on track to meet its climate targets. In 2019 the CCC urged that progress towards reaching the targets must be made with far greater urgency. According to the CCC, many current government measures are insufficiently ambitious; others are proceeding too slowly, even for the current 80% reduction target (GHG neutrality) by 2050 (below 1990 levels). In its 2019 progress report on the UK, the CCC found that UK action to curb GHG emissions is lagging behind what is needed to meet legally-binding emissions targets. Since June 2018, the Government has delivered only 1 of 25 critical policies needed to get emissions reductions back on track.¹⁹³ In its 2020 progress report, the CCC found that although a limited number of steps had been taken to support the transition to a net-zero economy and to improve the UK's resilience to the impacts of climate change, much remained to be done. In October 2020, the CCC welcomed the UK Government's commitment to net zero but noted the policies were not yet in place to achieve this. The Council encouraged the Government to produce plans for a comprehensive Net Zero Strategy as well as new proposals for hydrogen, industry and biomass before the next Conference of Parties (COP26) in Glasgow in 2021. The CCC emphasised that these plans and proposal must deliver alongside ambitious policies required from the Energy White Paper, the Heat and Buildings Strategy, the Transport Decarbonisation Plan and the Environment and Agriculture Bills.¹⁹⁴ The UK Government is still approving new coal mines and is allowing the burning of peat lands (as a significant carbon store), which has attracted criticism from the CCC.¹⁹⁵ Stop Climate Chaos Scotland, Scotland's largest civil society coalition, has called upon the UK to increase its climate ambition ahead of the COP26 in 2021.¹⁹⁶

Scotland has adopted separate climate change legislation (Scottish Climate Change Act, 2019) setting out GHG emissions targets that differ from the UK's GHG reduction targets. In its 2020 progress report for Scotland, the Climate Change Committee (CCC) noted that Scotland's GHG emissions fell by 31% between 2008 and 2018. This was primarily due to reduced emissions in the power sector, where Scottish renewable electricity generation has tripled and fossil-fuelled generation has fallen by more than

¹⁹² It advises the UK government and the devolved governments in Scotland and Wales on emissions targets and reports to the UK Parliament on progress made in reducing greenhouse gas emissions and preparing for and adapting to the impacts of climate change. The advice provided by the CCC takes account of the work of the IPCC and others. <https://www.theccc.org.uk/>.

¹⁹³ <https://www.theccc.org.uk/publication/reducing-uk-emissions-2019-progress-report-to-parliament/>.

¹⁹⁴ <https://www.theccc.org.uk/2020/10/16/ccc-welcomes-government-commitment-to-publish-net-zero-strategy/>.

¹⁹⁵ <https://www.bbc.co.uk/news/science-environment-55871503>; <https://www.independent.co.uk/climate-change/news/ban-peat-land-grouse-moor-bog-burn-fire-b1794947.html>.

¹⁹⁶ <https://www.stopclimatechaos.scot/stop-climate-chaos-scotlands-response-to-the-uk-governments-climate-commitment-ahead-of-cop26-in-glasgow/>.

70% in the last decade. However, GHG emissions increased by 2% in 2018, compared to a reduction of 3% in 2017.¹⁹⁷ The CCC said that Scotland would need a major policy shake up to meet its targets.¹⁹⁸ The CCC has pointed out the failure to make required progress and has encouraged more progress. Civil society groups focused on environmental matters have been far more critical of the inadequacies of the policies put in place. They have criticised the CCC for not promoting more ambitious targets and faster action. For example, the CCC was reported to have ruled out an earlier target of net zero by 2042 although this was possible, on the basis that it would require people to make too many changes, such as reducing meat consumption and air travel.¹⁹⁹

6.2 Public Participation in climate mitigation measures

Croatia:

Public participation in climate mitigation is ensured during public consultations regarding policy proposals. There is a delay in the adoption of policies, which is justified as being a consequence of the harmonisation of the strategic and planning documents required for the implementation of the European Green Deal.

Czech Republic:

Policy documents are usually drafted with public participation, as was the case for the National Programme on Reduction of Emissions which derives from open public consultations. The same applies also to the current National Environmental Policy and the draft of the National Environmental Policy 2030 which concerns the time-period up until 2050. Drawing on the current legislative negotiations of a new Construction Code, it was submitted that there is a clear tendency to rather restrict the public participation rights in environmental matters, even though these rights are legally entrenched.

Denmark:

The Parliamentary Committee on Climate, Energy and Utilities held a public hearing in 2020 on climate change. All draft policies etc. are published and sent to relevant stakeholders and discussed in public hearings before they are presented before Parliament, including policies on climate change.

Finland:

The Government has appointed an independent expert body, the Finnish Climate Change Panel, to support the planning of climate change policy and the related

¹⁹⁷ <https://www.theccc.org.uk/publication/reducing-emissions-in-scotland-2020-progress-report-to-parliament/>.

¹⁹⁸ <https://www.independent.co.uk/climate-change/news/scotland-climate-change-emissions-net-zero-b1790830.html>.

¹⁹⁹ <https://www.independent.co.uk/climate-change/news/net-zero-emissions-2050-uk-b1784666.html>.

decision-making, i.e. by collecting research data. The planning and reporting system of the Climate Change Act, the parliamentary discussion and reading secures the opportunity for citizens to influence and participate. The current Climate Change Act recognises public participation rights. The proposal for the reformed Act will be submitted to the Parliament in the summer 2021. The preparation has included open hearings and surveys in multiple languages (including different Sámi languages) on what the new Act should look like. To draft the updated Medium-term Climate Change Policy Plan in 2021, the Ministry of the Environment has opened an online survey for people to share views on how emissions can be reduced effectively and fairly. The current plan also mentions the knowledge base and educational needs for furthering climate change policy.

France:

The French High Council on Climate (Haut Conseil pour le climat) is an independent body of experts whose mission it is to provide opinions and make recommendations regarding the implementation of measures to reduce the emissions of GHG in France. The Council also monitors France's progress in reducing GHG emissions and meeting carbon budgets in line with its emissions reduction trajectory and international commitments. The Citizen's Convention on Climate ("Convention citoyenne pour le climat"), which brought together 150 people, worked for nine months and produced a final report containing 146 proposals for the fight against climate change, in particular for the reduction of GHG emissions²⁰⁰. President Macron had originally declared that the legislative proposals would be transmitted "without filter" to the Parliament. However, the draft bill which will be examined by the Senate in June 2021 does not include all the proposals produced by the Convention.

Germany:

The Federal Climate Change Act establishes a Council of Experts on Climate Change which provides assessments of emissions data, examines assumptions on GHG reduction and is to be consulted before governmental decisions on climate measures. In the legislative process, one federal state and other stakeholders unsuccessfully demanded a monitoring role. The Act stipulates the obligation to involve business associations, civil society organisations and scientific advisory bodies in every climate action programme through a public consultation procedure. Draft amendments providing for further-reaching public participation were not adopted. It was also criticised that federal states, associations and experts had only one working day to comment on the draft legislation. With regard to the two main policy instruments, i.e. the long-term Climate Action Plan 2050, and the update of the Climate Action

²⁰⁰ <https://propositions.conventioncitoyennepourleclimat.fr/pdf/ccr-rapport-final.pdf>.

Programme 2030, the Federal government qualified the public participation as being broad in its report on the implementation of the Aarhus Convention (Article 7).

Norway:

Norway lacks an independent climate council to monitor the sufficiency of climate targets and whether the State is on track to meet its targets. The Norwegian National Human Rights Institution (NIM) has warned that the lack of independent monitoring increases the risk of violating human rights obligations with respect to mitigation, and has recommended that Parliament consider setting up an independent climate council. The Norwegian Climate Act is not justiciable before the courts. The Norwegian Supreme Court also held in HR-2020-2472-P that plaintiffs cannot challenge the inadequacy of climate policies through concrete lawsuits concerning administrative decisions. Norwegian climate policy is subject to public hearings.

Romania:

In the GHG emissions legislation concerning the trading scheme for GHG emission certificates, relevant information and reports held by the competent authority for environmental protection are made available to the public (Article 23). The National Action Plan to implement the national strategy on climate change and economic growth based on low-carbon economy for the period 2016 – 2020 enshrines a basic framework that includes the rules of participation, consultation of key stakeholders during the drafting process, and communication. According to the framework, this allows for benefitting from stakeholders' expertise, and promotes its transparency and implementation.

United Kingdom / Scotland:

The independent Climate Change Committee (CCC) was set up under the UK Climate Change Act (2008). It advises the UK government and the devolved governments in Scotland and Wales on emissions targets and reports to the UK Parliament on progress made in reducing GHG emissions and preparing for and adapting to the impacts of climate change.

In December 2020 a draft Climate Change Plan (CCP) update was published by the Scottish Government. The draft is currently going through a consultation process, with interrogation through a Parliamentary committee which will hold evidence sessions, including hearing from experts, academics and civil society, before producing a report. Very recently, both the UK and Scottish Governments introduced a Citizens Assembly (CA) element to their climate change policy setting. The UK CA was held in 2020 and has produced its report, which is in no way binding on the UK Government. It is not clear to what extent the UK Government or Parliament will implement any of its recommendations. The Scottish Climate Change Citizens Assembly began online in late

2020 and is still underway. It is also worth noting that the UK has been found to be non-compliant with the Aarhus Convention in relation to access to justice.

Slovakia:

The development of the Low-Carbon Development Strategy of the Slovak Republic (until 2030 with vision for 2050) on mitigation measures included expert analyses and public consultation of 130 stakeholders (including municipalities, public expert institutions, professional organisations, non-governmental organizations), of which 37 submitted their input. The evaluation of the responses was published in a study. The Strategy was drafted in a closed expert group of ministries and the World Bank. However, a strategic environmental assessment process was run in line with the Aarhus Convention and national law. In January 2021, the “Report on the Preparation of Legislative Measures for Climate Change Mitigation and its Impacts in the Slovak Republic”, prepared by the Ministry of Environment after discussing the petition of the “Climate Needs You” initiative, was approved. The aim of the report is to provide the public with information concerning climate change and its adverse effects on the Slovak Republic, as well as information on future legislative and other measures.

6.3 National Jurisprudence related to climate change mitigation²⁰¹

Croatia:

The Croatian Ombudswoman undertakes procedures on her own initiative, such as those related to the catastrophic floods in the Vukovar-Srijem County in 2014, the fires that affected the City of Split in 2017 and those that occurred at the Prudinec landfill in Zagreb’s Jakuševac neighborhood in 2019. In line with the Ombudsman Act vesting the Ombudsperson to report on cases of more serious or extensive violations of citizens’ constitutional or statutory rights, the Office of Ombudswoman presented its findings on the mentioned cases in its **Special Report on the Right to a Healthy Life and Climate Change in the Republic of Croatia in the Period 2013-2020 in the Context of the Global Climate Movement and the COVID-19 Pandemic**. The report was submitted to the Croatian Parliament in February 2021. It demonstrates the mutual interdependence of human rights, especially the right to a healthy life and the right to health – as enshrined in Croatia’s Constitution - with environmental protection and climate change. It provides an analysis and an evaluation of the level of protection of the right to a healthy life with the aim to improve its implementation.

Czech Republic:

²⁰¹ The following summaries of national case-law were in parts provided by ENNHRI members, and build in other parts on summaries presented on <http://climatecasechart.com/>.

For the Czech Republic, the Public Defender of Rights reports cases with a focus on air pollution. In particular, case-law is highlighted which concerns claims brought against the Ministry of the Environment based on the omission to implement effective programmes to improve the air quality and health issues stemming from air pollution. As a result, the programmes were at least partially cancelled. The Public Defender of Rights also instigated its own investigations in situations of air pollution. For example, in 2019, the Public Defender of Rights investigated a case of a power plant which had obtained an exception regarding the pollution limits of quicksilver and nitrogen oxide. The Public Defender expressed its concerns regarding the national climatic and energetic policy, especially the privatisation of coal power plants and warned against the negative global climatic development.

France:

The French **Grande-Synthe**²⁰² case is the first action concerning climate change filed against the State before the Council of State (Conseil d'Etat), the French supreme administrative court. The case was brought by the municipality and previous mayor of Grande-Synthe, a coastal city in northern France affected by sea-level rise, against the central government. It was based on the governmental climate inaction and non-compliance with its climate commitments under the objectives of the Paris Agreement. The applicants called for the adoption of measures aiming to reduce GHG emissions and to adapt to climate change. On 19 November 2020, the Council of State held that France exceeded its carbon budgets and ordered the government, before its final ruling, to justify within three months that its refusal to take additional measures is compatible with the Paris Agreement and that it meets its objectives for reducing CO2 emissions by 2030.

The **Case of the Century (L’Affaire du siècle)**²⁰³, filed 2019 by four NGOs, concerns the state’s liability for climate inaction, in particular its failure to comply with its international obligations under the Paris Agreement. The applicants seek compensation for damages caused by the lack of compliance and urge the government to reduce GHG emissions, and remedy deficiencies concerning energy consumption and renewable energy. On 3 February 2021, the Paris administrative court decided in favour of the applicants, condemned the state for climate inaction, and awarded the symbolic sum of one euro for moral damage. The court issued a further two-months investigation to rule on the issue of state action in order to repair the damage or prevent its aggravation.

The **Total case**²⁰⁴ constitutes the first climate action brought against a private company and which was filed by 14 French local authorities and four NGOs. They claimed that the

²⁰² *Grande Synthe v. France* (2020) no. 427301 (Conseil d’État).

²⁰³ *Notre Affaire à Tous and Others v. France* (2021), no. 1904967, 1904968, 1904972, 1904976/4-1 (Administrative Court of Paris).

²⁰⁴ *Les Amis de la Terre v. Total*, no. 19/02833 (Nanterre High Court of Justice).

French oil company Total is responsible for around 1% of the world's GHG emissions. They contested the absence of a reference to climate change in Total's first vigilance plan, and subsequently the deficiency of the second vigilance plan being inconsistent with the 1.5°C objective. According to the claimants, this is contrary to Total's obligation to prevent environmental violations resulting from its activities under the French Law on the Duty of Vigilance, and the obligation of environmental vigilance derived from the French Environmental Charter, which is part of the French Constitution. The claimants are requesting the Nanterre Court to order Total to recognize the risks generated by its activities and to align itself on a trajectory compatible with the 1.5°C objective. The case is still pending.

Germany:

The administrative law case **German Federation for Environment and Conservation (B.U.N.D.) e.V. v. Minister for Economic Affairs and Labour on behalf of Federal Republic of Germany**²⁰⁵ (filed and settled in 2006) concerns the access to information under the Environmental Information Act regarding German export credit activities in the field of energy production. The case indicates that information on granting export credits in the field of energy production abroad that are likely to have an environmental impact and to contribute to climate change might, at least partially, fall under the Environmental Information Act which implements the Aarhus Convention.

Another administrative law case, **Family Farmers and Greenpeace Germany v. Germany**²⁰⁶, (filed in 2018) concerns the violation of fundamental rights through insufficient action of Germany to meet the 2020 greenhouse gas (GHG) emissions reduction target. The case was dismissed as inadmissible in 2019 due to the lack of legal standing. The plaintiffs claimed a violation of the right to life and physical integrity (Article 2(2) of the Basic Law), occupational freedom (Article 12), and right to property (Article 14). In addition, they claimed that there is a state's duty to protect against climate change deriving from Article 20a of the Basic Law (protection of the natural foundations of life and animals), a provision that traditionally is interpreted as state objective and accordingly not conferring a subjective right on individuals.

In a case concerning the extradition of an asylum seeker, the Higher Administrative Court of Baden-Wuerttemberg²⁰⁷ considers the environmental conditions, such as climate relevant to the overall humanitarian condition in the country of origin of an asylum seeker from Afghanistan, relevant to Article 3 ECHR.

²⁰⁵ *German Federation for Environment and Conservation (B.U.N.D.) e.V. v. Minister for Economic Affairs and Labour on behalf of Federal Republic of Germany*, VG 10 A 215.04 (Administrative Court of Berlin).

²⁰⁶ *Family Farmers and Greenpeace Germany v. Germany*, 00271/17/R /SP (Administrative Court of Berlin).

²⁰⁷ VGH Baden-Württemberg, A 11 S 2042/20 (Higher Administrative Court of Baden-Wuerttemberg).

The civil case **Luciano Lliuya v. RWE AG**²⁰⁸ (filed 2015, pending second instance) concerns the claim of a Peruvian farmer and mountain guide, who is suing RWE AG, one of the biggest energy producers in Germany and one of Europe's biggest GHG emitters, for compensation relating to the adverse effects of climate change on his home proportional to RWE's share of global emissions. In the first instance, the claim was dismissed as partially inadmissible since the statement of the claim was not sufficiently specific. Moreover, the court found the case to be without merits based on the lack of causation of the concrete impairment by the defendant.

In the four constitutional complaint cases **Friends of the Earth Germany, Association of Solar Supporters, et al. v. Germany**,²⁰⁹ **Yi Yi Prue et al. v. Germany**,²¹⁰ **Steinmetz et al. v. Germany**²¹¹ and **Neubauer et al. v. Germany**²¹² the complainants primarily argued that Germany's GHG emission reduction goals as defined by the Federal Climate Change Act are insufficient in view of the target of 1.5 °C, or at least of well below 2 °C global warming set out in the Paris Agreement. The mostly young complainants from Germany, and in one case, from Bangladesh and Nepal, claimed that the government violates the constitutional duty to protect against climate change related risks. They also relied, in particular, on the right to life and physical integrity (Article 2(2) of the Basic Law), the right to property (Article 14(1)) and on a right to a dignified future deriving from Article 1(1) (human dignity) in conjunction with Article 20a (protection of the natural foundations of life and animals). Moreover, they also invoked fundamental rights concerning the time period after 2030. All of the complaints were filed without exhaustion of legal remedies. The complainants argued legal remedies before the administrative courts were neither available in those specific cases, nor required, since the questions concerned are of specific constitutional nature.

The Constitutional Court held in the Order of 24 March 2021²¹³ that the complaints were partially successful. The Court found that the Federal Climate Change Act (2019) being based on the 1.5°C/well below 2°C target does not lead to a violation of the duty to protect against climate change related risks considering the legislator's margin of appreciation. With regard to the complainants based in Germany, the Court held, however, that there is a violation of their fundamental rights as these rights include an intertemporal guarantee of freedom. According to the Court, the provisions of the Federal Climate Change Act have an "advance interference-like effect" on fundamental rights by shifting substantial emission reduction burdens to the time period after 2030,

²⁰⁸ *Luciano Lliuya v. RWE AG*, 2 O 285/15 / 5 U 15/17 (District Court of Essen/Higher Regional Court of Hamm).

²⁰⁹ *Göppel et al. v. Germany*, 1 BvR 2656/18 (German Constitutional Court).

²¹⁰ *Yi Yi Prue et al. v. Germany*, 1 BvR 78/20 (German Constitutional Court).

²¹¹ *Steinmetz et al. v. Germany*, 1 BvR 96/20 (German Constitutional Court).

²¹² *Neubauer et al. v. Germany*, 1 BvR 288/20 (German Constitutional Court).

²¹³ *Neubauer and others v. Germany*, BVerfG, [Order of the First Senate of 24 March 2021, 1 BvR 2656/18 \(German Constitutional Court\)](#).

potentially linked to unacceptable impairment of future freedom. Due to this risk, the principle of proportionality requires that the legislator takes precautionary steps to ensure the initiation of the transition to climate neutrality in good time. The Federal Climate Change Act does not satisfy these requirements as it does not define concrete emission amounts and reduction measures beyond 2030. The Court ordered the legislator to set clear reduction targets for the time period after 2030 by the end of 2022.

Norway:

On 22 December 2020, the Norwegian Supreme Court²¹⁴ ruled against the complainants in a case regarding whether the Norwegian government has violated the Norwegian constitution, and Article 2 and 8 ECHR by issuing ten permissions to search for oil and gas in the Arctic Sea. The Court held that Section 112 of the Norwegian Constitution, on the right to a healthy environment, is justiciable in the courts and encompasses exported emissions from Norwegian oil and gas, since Norwegian authorities can take measures against such emissions, and climate emissions as such cause damage on Norwegian territory regardless of where the combustion takes place. However, in the Court's view the high threshold to invalidate a parliamentary decision was not met in the case.

Romania:

In the case-law of the Romanian Constitutional Court, the Court has assessed the link between protecting the environment and guaranteeing the right to health and has ruled on the obligation of public authorities to preserve the environment and the citizens' right to health. According to the Court, the Romanian State has to acknowledge right to a healthy, well preserved and balanced environment and thus must take the necessary measures inter alia to avoid deterioration of the life quality, e.g. pollution.²¹⁵

United Kingdom:

Four cases concerning the State's GHG emissions and its commitment to the Paris targets have been raised, two of which are still pending and two of which²¹⁶ were decided against the Complainants:

In **Plan B Earth v Secretary of State**²¹⁷ permission was sought for judicial review of the Business Secretary's decision not to amend the UK's long-term target for the reduction

²¹⁴ *Nature and Youth Norway and others v. Norway*, HR-2020-2472-P (Supreme Court of Norway).

²¹⁵ Romanian Constitutional Court, no. 105/2014, 27 February 2014.

²¹⁶ *Plan B Earth v. Secretary of State for Business, Energy and Industrial Strategy*, [2018] EWHC 1892 (High Court of Justice Administrative Court); *Plan B Earth and Others v. the v. Secretary of State for Transport*, [2020] EWCA Civ 214 (Court of Appeal); *R. (on the application of Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC52 (Supreme Court).

²¹⁷ *Plan B Earth v Secretary of State for Business, Energy and Industrial Strategy* [2018] EWHC 1892 (Admin).

of GHG emissions in light of the 2015 Paris Agreement. Claimants had not shown that the secretary of state's refusal to amend the target was an unlawful exercise of his statutory discretion under the Climate Change Act 2008, and it was not arguable that his decision had interfered with claimants' human rights or breached the public sector equality duty.

R. (on the application of Friends of the Earth Ltd) v Heathrow Airport Ltd²¹⁸ the UK Supreme Court overturned a Court of Appeal decision that government policy favouring the development of a third runway at Heathrow Airport was unlawful because the Secretary of State for Transport had failed to adequately consider the Paris Agreement. Supreme Court found that the secretary of state had taken the Paris Agreement into account and lawfully exercised his discretion as to how much weight to give to it.

In **Friends of the Earth v. UK Export Finance**²¹⁹ the Claimants challenge the Government's decision to provide around \$1 billion of UK taxpayer support for a liquefied natural gas development in Mozambique. They claim that the decision is inconsistent with the State's obligations under the Paris Agreement and unreasonable on the ground of major impacts on climate change, biodiversity and human rights. In April 2021, the UK's High Court gave permission to proceed with the case against the UK Government.²²⁰

In **Plan B Earth & Others v Secretary of State**²²¹ three young adults challenge the Government's climate change plan, claiming it is inadequate to meet the UK's responsibility under the Paris Agreement and that the Government is in breach of their rights to life, family life and freedom from discrimination under the ECHR. Legal proceedings were served on the Government on 1 May 2021.

²¹⁸ *R. (on the application of Friends of the Earth Ltd) v Heathrow Airport Ltd* [2020] UKSC52.

²¹⁹ *Friends of the Earth v. UK Export Finance*, 2020 (High Court of Justice).

²²⁰ Friends of the Earth, 22 April 2021, <https://friendsoftheearth.uk/climate/friends-earth-given-permission-take-uk-government-court-over-mozambique-gas-mega-project>

²²¹ See <https://planb.earth/plan-b-v-government-bailouts-for-polluters/>
<https://www.theguardian.com/environment/2021/apr/30/uk-students-sue-government-human-rights-climate-crisis>.