

Written observations in application no. 7189/21

Carême c. France

I. Introduction

1. These third-party observations deal with all the Court's questions, primarily the obligations of Articles 2 and 8 (C). To avoid duplication, we refer to ENNHRI's observations in *Duarte*¹ [hereinafter EOD] on Article 1 and *Klimaseniorinnen*² [hereinafter EOK] on Article 34, and Articles 2 and 8 (applicability).

II. General Statistical Data

2. According to the IPCC, human-induced climate change has already caused global mean sea level to rise by 20cm since 1900 and this is expected to increase by an additional 10-25cm by 2050 under all future scenarios due to the delayed effects of accumulated emissions.³ If warming is kept to between 1.5-2°C by the end of the century (RCP2.6/SSP1-1.9), global mean sea level is expected to rise by a further 26-56cm, and if warming reaches 3-5°C (RCP8.5/SSP5-8.5), it will rise by 58-107cm.⁴ Even small changes in global sea level rise significantly increase the frequency and severity of extreme sea level events, such as storm surges, wave inundation and tidal floods, as well as saltwater contamination of soil and groundwater, and the risk of evacuation or displacement.⁵
3. However, the projections above do not account for sea level rise resulting from large-scale singular events or tipping points such as ice sheet collapse, the risk of which increases dramatically with every increase in warming above the current level of 1.2°C.⁶ If warming exceeds 1.5°C, the Greenland and the West Antarctica ice sheets are expected to begin *irreversible* collapse, which could ultimately raise global sea level by more than ten metres.⁷ While this could take hundreds of years to fully materialise, the remaining carbon budget to limit warming to 1.5°C and prevent committing to such impacts is likely to be exhausted in the next eight years under current policy trajectories.⁸ Committed ice sheet collapse “can increase short-term impacts (e.g., the rate of sea level rise).”⁹

¹ Available at: ennhri.org/wp-content/uploads/2022/12/ENNHRI-3rd-party-intervention-Duarte-v.-Portugal-others.pdf

² Available at: ennhri.org/wp-content/uploads/2022/12/ENNHRI-3rd-party-intervention-_Klimaseniorinnen-v.-Switzerland.pdf

³ IPCC, Sixth Assessment Report (AR6) Working Group I (WGI) *The Physical Science Basis*, 2021, p. 1216, 1318.

⁴ *Ibid.*, p. 1295, 1302. For definitions of RCP and SSP, see IPCC, AR6, WGI, Annex VII: Glossary p. 2243.

⁵ IPCC, AR6 WGI (2021), p. 1155; AR6 Working Group II (WGII) *Impacts, Adaptation and Vulnerability*, 2022, p. 477, 1080.

⁶ IPCC, AR6 WGII 2022, Summary for Policymakers (SPM) Figure.3(b).

⁷ Mckay et al., “Exceeding 1.5°C global warming could trigger multiple climate tipping points,” *Science* 377, no. 6611 (2022); Wunderling et al., “Interacting tipping elements increase risk of climate domino effects under global warming,” *Earth Syst. Dynam.* 12, no. 2 (2021); Boers et al., “Critical slowing down suggests that the western Greenland Ice Sheet is close to a tipping point,” *Proc. Natl. Acad. Sci.* 118, no. 21 (2021).

⁸ See UNFCCC, *Nationally determined contributions under the Paris Agreement*, FCCC/PA/CMA/2022/4 26.10.2022, para. 18; Waratah paras. 30, 762–775; Neubauer paras. 233, 234.

⁹ Mckay et al. (2022), p. 2.

4. France is one of the countries in Europe most impacted by sea level rise.¹⁰ A quarter of metropolitan coastlines in France are threatened by *marine submersion*, affecting 1.5 million residents in 864 municipalities, including the departments of Nord and Pas de Calais.¹¹ Severe flooding events along the coast of the Nord-Pas de Calais region are projected to occur 10-50 times more frequently if warming reaches 1.5-2°C by the end of the century (RCP2.6) and 200-500 more frequently if warming reaches 3-5°C (RCP8.5).¹² Under current policy trajectories, most of Grande-Synthe, as well as the nearby cities of Calais and Dunkerque, are at risk of being completely submerged by 2050.¹³ In addition, human-induced climate change has caused an increase in the magnitude and intensity of extreme precipitation and associated river floods in Europe, and this is projected to worsen if warming exceeds 1.5°C.¹⁴ Such events lead to increased risk of injury and death, vector and waterborne diseases, mental illness, disturbances to public health services and utilities, as well as damage to property and infrastructure.¹⁵ Climate-attributed heatwaves are also associated with negative health impacts and increased mortality, and are projected to increase in frequency and severity in France.¹⁶ If emissions continue at the current pace, France faces “une situation alarmante” by 2080, with extreme heat, droughts “unknown to date”, increased coastal flooding, and sea levels permanently submerging certain urban areas.¹⁷

III. Victim status (question A)

5. An individual who is *directly affected* or can show *reasonable and convincing evidence of the probability of the occurrence of a violation* is a victim for the purposes of Article 34, even if countless others are similarly affected [EOK paras. 7–10]. An “immediate and direct impact of climate change” is human exposure to heat, which has already increased mortality and morbidity rates in France.¹⁸ With respect to *slow-onset climate impacts*, the UN Human Rights Committee (CCPR) has recognised the standing of individuals facing return to or living on islands that could be submerged by the seas in 10-15 years, noting that “the risk of being affected is more than a theoretical possibility”; it is a “real

¹⁰ La Fabrique Ecologique, *L'adaptation au changement climatique sur le littoral français*, juillet 2019, p. 26.

¹¹ Ministère de la Transition écologique et de la Cohésion des territoires, *La prévention des risques littoraux et des tsunamis en France*, 16.02.2021, available here: <https://www.ecologie.gouv.fr/prevention-des-risques-littoraux-et-des-tsunamis-en-france>.

¹² European Environment Agency, *Extreme sea levels and coastal flooding*, 2021, available at: <https://www.eea.europa.eu/ims/extreme-sea-levels-and-coastal-flooding>, Figure 1.

¹³ Climate Central, *Coastal Risk Screening Tool*, 2022 <https://coastal.climatecentral.org/>. See also Notre Affaire à Tous, *Un climat d'inégalité: les impacts inégaux du dérèglement climatique en France*, Rapport 2020, p. 46.

¹⁴ IPCC, AR6 WGI (2021), p. 1559, 1566; IPCC, AR6 WGII (2022), p. 567, 573, 605; Kreienkamp et al., *Rapid attribution of heavy rainfall events leading to the severe flooding in Western Europe during July 2021* (World Weather Attribution, 2021).

¹⁵ IPCC, AR6 WGII (2022), pp. 1045, 1064, 1827.

¹⁶ IPCC, AR6 WGII (2022), pp. 1045-46, 1064, 1071-72, 1092; Romanello et al., “The 2022 report of the Lancet Countdown on health and climate change: health at the mercy of fossil fuels,” *The Lancet* 400, no. 10363 (2022); IPCC, AR6 WGI (2021), p. 1548-1557, Fig. SPM.3, Table 11.16; Vicedo-Cabrera et al., “The burden of heat-related mortality attributable to recent human-induced climate change,” *Nat. Clim. Change* 11, no. 6 (2021), Supplementary Table 4; European Commission, *Drought in Europe: GDO Analytical Report* (August 2022); Bonpote and Institut national des sciences de l'Univers, *La sécheresse, enjeu majeur du changement climatique en France?* (6.42021); Reuters, *Temperatures rise as France tackles its worst drought on record* (7.8.2022).

¹⁷ Sénat, *Rapport d'information fait au nom de la délégation sénatoriale à la prospective sur l'adaptation de la France aux dérèglements climatiques à l'horizon 2050*, n° 511, 16.5.2019, pp., 8, 45.

¹⁸ Vicedo-Cabrera et al. (2021) p. 1 and Supplementary table 4. See further in EOK para. 4.

predicament”.¹⁹ Similarly, the French Conseil d’État has characterised the risk of submersion from 2030 or 2040 as urgent in 2020, due to the inevitability of these impacts in the absence of present-time mitigation.²⁰ For the same reasons, an individual residing in an area threatened by rising seas and flooding, may be a victim for the purposes of Article 34. A foreseeable risk of sea level rise and flooding may significantly affect an individual’s protected interests under Article 8, such as mental health, quality of life and the economic value of her home, long before the risk materialises (see below). Uncertainty as to whether an individual may move is immaterial to victimhood insofar as she will be “forced by environmental conditions to abandon her home”.²¹ Victimhood is not lost either where the State adopts favorable measures falling short of acknowledging, expressly or in substance, a violation of the ECHR.²²

IV. Applicability of Article 2 and 8 (question B)

6. **Article 2** applies to the real and immediate risk of climate harm, including increased heat-related mortality [substantiated in EOK paras. 13–17]. In France, between 1991 and 2018, 35.2% of *heat-related deaths* were attributable to human-induced climate change.²³ With respect to slow-onset climate impacts, the CCPR has twice applied ICCPR Article 6 to “reasonably foreseeable threats to life” from *sea level rise*, noting that the risk of a country becoming submerged is so “extreme” that the right to life may be impaired “before the risk is realised.”²⁴
7. **Article 8** applies to the serious and foreseeable risk of climate harm, even if the impacts materialise in the longer term [see further in EOK para. 18]. *Slow onset impacts* such as sea level rise and associated risks of flooding may affect protected interests already today, such as “quality of life at home”, “maintenance of relationships with others and a settled and secure place in [a] community” and mental health.²⁵ It is recalled that the prospect of losing one’s home is “a most extreme form of interference with the right to respect for the home”.²⁶ According to the Haut Conseil pour le Climat (HCC), “[l]es inondations ont des impacts prouvés sur la santé mentale”.²⁷ In addition, these risks may diminish property value and make insurance unavailable or unaffordable from the moment future submersion is foreseeable.²⁸ Since the right to home is closely linked with the protection of property under P1-1,²⁹ and

¹⁹ *Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016, 7.1.2020 paras. 8.4, 8.5; *Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 22.9.2022 para 8.7.

²⁰ *Commune de Grande-Synthe v. France* (“*Grande-Synthe I*”), no. 427301, (Le Council d’Etat) 19.11.2020 para. 3; Conclusions, Rapporteur Public, p. 18.

²¹ *López Ostra v. Spain* (16798/90) 09.12.1994 § 42; *Yevgeniy Dmitriyev v. Russia* (17840/06) 01.12.2020.

²² *Rooman v. Belgium* [GC] (18052/11) 31.1.2019 §§ 128, 129.

²³ Vicedo-Cabrera et al., (2021), Supplementary Table 4.

²⁴ *Teitiota*, para. 9.11; *Daniel Billy* para 9.7. This finding on applicability should not be confounded with the Committee’s specific assessment of the merits. See also CCPR, *General comment no. 36*, paras. 18, 62.

²⁵ i) *Jugheli et al. v. Georgia* (38342/05) 13.7.2017 § 71, ii) *Connors v. the UK* (66746/01) 27.5.2004 § 82, iii) *Bensaid v. the UK* (44599/98) 6.2.2001 § 47.

²⁶ *Čosić v. Croatia* (28261/06) 15.1.2009 §§ 21-23

²⁷ Haute Conseil pour le Climat (HCC), *Rapport Annuel 2022*, p. 29.

²⁸ IPCC, AR6 WGII (2022), Chapter 13 Europe, p. 1833; Keys et al., *Neglected No More: Housing Markets, Mortgage Lending, And Sea Level Rise*, National Bureau Of Economic Research, 2020, nber.org/system/files/working_papers/w27930/w27930.pdf

²⁹ See e.g. *Sargsyan c. Azerbaïdjan* [GC] (40167/06) 16.6.2015 §§ 259-261.

severe environmental nuisance may “amount to a partial expropriation”,³⁰ these impacts are also relevant to Article 8. Given that only “immediate, rapid, and large-scale reductions” in GHG emissions can avoid accelerated sea-level rise and irreversible tipping points, such as ice sheet collapse, these long-term risks are also imminent.³¹ Aligned with this, the ICCPR Article 17 applies to individuals facing a “foreseeable and serious” prospect of “having to abandon their homes” due to sea level rise within 10-15 years.³²

V. Obligations under Article 2 and 8 (question C)

8. **Overview.** Article 2 obliges States to adopt an effective “legislative and administrative framework” and to implement “appropriate measures” to “protect the public”. This duty must be viewed “in light of the level of the potential risk to human lives”.³³ The extent of the positive obligations depends on the risks concerned and the possibilities of mitigating them.³⁴ Likewise, Article 8 obliges States to take “reasonable and appropriate measures” to protect the right to private and family life.³⁵ The onus lies on the State to explain how it has provided effective protection using detailed and rigorous data.³⁶ The preventive nature of these duties is underscored by the ECtHR’s reliance on the principle of precaution in e.g. *Asselbourg* and *Tătar*.³⁷ Since the only “appropriate measure” to avert dangerous climate change is to cut GHG emissions rapidly to net zero, States are under a duty to *mitigate* emissions. In addition, States may have a duty to *adapt* to unpreventable or incurred climate change, but it would be “completely inadequate” – in breach of Articles 2 and 8 – to rely on adaptation alone (see below).
9. **Margin of appreciation.** *Question 3.3.1.* States have been afforded a “certain” margin of appreciation in environmental cases.³⁸ The margin is arguably narrow in the context of climate change due to four factors: (i) climate change *is an existential threat to human civilisation*,³⁹ (ii) the risk is “*man-made*” and “*susceptible to mitigation*”,⁴⁰ (iii) the *principle of precaution* calls for precautionary measures even without full scientific certainty to prevent serious and irreversible climate change,⁴¹ and (iv) the

³⁰ *Ivan Atanasov v. Bulgaria* (12853/03) 2.12.2010 § 83.

³¹ IPCC, AR6 PPT, SPM, p. 3; IPCC, AR6 SPM, 2021, para. B.1 ff., p. 18; IPCC, 1.5°C Report, 2018, para. B.1; Decision-/CMA.3 *Glasgow Climate Pact*, 13.11.2021 para 22.

³² *Daniel Billy* para. 8.9.

³³ *Kotilainen et al. v. Finland* (62439/12) 17.9.2020 § 67 with further references. See also CCPR, *General Comment No. 36* para. 18 and the Inter-American Court on Human Rights, *Advisory Opinion (OC-23/17)* 15.11.2017 para. 149.

³⁴ *Kotilainen* § 67 with further references.

³⁵ *Hatton et al. v. the UK* [GC] (36022/97) 8.7.2003 § 98 with further references.

³⁶ *Öneriyildiz* [GC] (48939/99) 30.11.2004 § 89; *Budayeva et al. v. Russia* (15339/02 etc.) 20.3.2008 § 132; *Cordella* §§ 161, 173; *Dubetska et al. v. Ukraine* (30499/03) 12.2.2011 §§ 145, 155; *Jugheli* § 76 with further references. Similarly, *Urgenda v. the Netherlands*, ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands), 20.12.2019 para. 5.3.3.

³⁷ *Asselbourg et al. c. le Luxembourg* (dec.) (29121/95) 29.6.1999 p. 7; *Tătar c. Roumanie* (67021/01) 27.1.2009 §§ 109, 112, 120. See also ECHR, *Guide on case-law of the Convention – Environment*, 31.8.2022 p. 85.

³⁸ *López Ostra* § 51, *Flamenbaum et al. v. France* (3675/04 etc.) 13.12.2012 § 134, *Cordella* § 158, *Hatton* [GC] § 98 and *Pavlov* § 75 all describes the margin of appreciation as “certain”.

³⁹ The “preservation of human society and civilisation” is the ultimate objective of the Council of Europe (Statutes, preamble, recital 1; ECHR, preamble, recital 3). *Mutatis mutandis*, *Evans v. the UK* [GC] (6339/05) 10.4.2007 § 77.

⁴⁰ *Budayeva* §§ 135, 137. See also *Sharma et al. v. Minister for the Environment* (Federal Court of Australia) FCA 774, 8.7.2021 para. 293 (“none of this is the fault of nature itself”) and IPCC, AR6 WGI, 2021, SPM pp. 5 and 36.

⁴¹ N(37). The precautionary principle is recognised in, *inter alia*, UNFCCC Art. 3.3, Rio Declaration Princ. 15, and TFEU Art. 191(2). Domestic climate judgements have also taken it into account, see e.g. *Neubauer et al. v. Germany*, BvR 2656/18 (Federal Constitutional Court of Germany), 24.03.2021, para. 229, *Urgenda* paras. 5.3.2, 5.6.2, *Sharma* paras. 254–256.

principle of intergenerational equity requires that current generations cannot irreversibly offload a drastic obligation to cut emissions onto younger and future generations.⁴² Indeed, as noted by the Venice Commission, “the judicial branch appears to be best placed to protect the future generations” interest in a viable environment “against the decisions of present-day politicians”.⁴³ In addition, the Court’s reservation against imposing an “impossible or disproportionate burden” on Contracting States might necessitate more stringent mitigation requirements today, since depletion of the remaining carbon budget would inevitably impose an increasingly impossible or disproportionate burden to cut emissions in the future [see EOD paras. 20–22]. Postponing the burden to cut emissions would thus predetermine infringements of the rights and freedoms of children and younger generations. Hence, as pointed out by the Dutch Supreme Court and the German Constitutional Court, States should be afforded a margin of appreciation in the *choice of means* to reduce emissions, but not in *the minimum rate of emission cuts* necessary to avoid *dangerous* climate change.⁴⁴ In the event a Contracting State has cut or plans to cut less than this minimum, the Court may review whether its justification is “relevant and sufficient”, and if competing interests including the “interest in living in a safe environment” have been fairly balanced.⁴⁵

10. **Harmonious interpretation.** *Question 3.3.2.* In accordance with the concept of harmonious interpretation, the Court may rely on international norms, binding or non-binding, to interpret Articles 2 and 8.⁴⁶ The fact that the ECHR does not contain a provision on protection for the environment has no bearing on the relevancy of harmonious interpretation in a case concerning *existing* rights, such as Articles 2 and 8. *Firstly*, the Convention has previously been interpreted in harmony with international law in environmental harm cases requiring dynamic interpretation.⁴⁷ *Secondly*, the lack of *unanimity* in the Committee of Ministers (CoM) for the adoption of a protocol for the protection of the environment relies on the expectation that ECHR case-law will “continue to evolve in this area”, and contribute to “the protection of the environment through existing rights”.⁴⁸ Other consensual CoM decisions⁴⁹ may indicate a “general wish” to promote environmental protection which the Court “can take into consideration”.⁵⁰

⁴² ICJ, *Whaling in the Antarctic (Australia v. Japan)*, 6.2.2014 Rep. 226, Separate Opinion by Judge Trindade, para. 47, PA Preamble rec. 11; *Neubauer* paras. 146, 183, 192, 205; *Sharma*, para. 293; *Leghari v. Federation of Pakistan*, W.P. No. 25501/201 (Lahore High Court, Pakistan), 4.9.2015 para. 13; *Shrestha v. Office of the Prime Minister et al.*, no. 10210, no. 074-WO-0283 (Supreme Court of Nepal), 25.12.2018 p. 11; *Future Generations v. Ministry of the Environment et al.*, STC4360-2018 (Supreme Court of Colombia), 5.4.2018 p. 34.

⁴³ Venice Commission, *Opinion No. 997/2020*, 09/10/2020, para. 114. Similarly, *Neubauer*, paras. 146, 183, 192, 205-206.

⁴⁴ *Urgenda*, paras. 6.3, 8.2.7; *Neubauer* paras. 137, 154-57, 207, 229, 249. *Mutatis mutandis*, *Budayeva* §§ 134, 135; *Öneryildiz* § 107; *Greenpeace E.V et al. v. Germany* (dec.) (18215/06) 12.5.2009, p. 4.

⁴⁵ *Pavlov* §§ 75, 85-86, 90-91; *Fadeyeva v. Russia* (55723/00) 9.6.2005 § 102.

⁴⁶ *Demir and Baykara v. Turkey* [GC] (34503/97) 12.11.2008 §§ 68–86 with further references. In an environmental context, see *Tatar* § 112; *Mangouras v. Spain* [GC] (12050/04) 28.9.2010 § 86.

⁴⁷ *Taskin et al. v. Turkey* (46117/99) 10.11.2004 §§ 99, 119, *Tatar* § 118; *Grimkovskaya v. Ukraine* (38182/03) 21.7.2011 §§ 69, 72; *Di Sarno et al. c. Italie* (30765/08) 10.1.2012 § 107; *Demir and Baykara* [GC], § 83 (rely on the Aarhus Convention).

⁴⁸ CoM Doc. 8892 20.11.2000; CM/AS(2004)Rec1614-final, 23.01.2004, paras. 4, appendix I, 5; CoM Doc. 12298, 19.6.2010, para. 9; CM/AS(2022)Rec2211-final 27.9.2022 para 3. COM decisions require consensus, see Statutes of the CoE Article 20.

⁴⁹ CM/AS(2022)Rec2211-final 27.9.2022 para. 4 (calling on States to “actively consider recognizing” the right to a healthy environment in domestic law); CM/Del/Dec(2021)1416/3.1 3.11.2021 para. 3.1b), inviting the Steering Committee for Human Rights to “consider the need for ... further instrument[s], bearing in mind [PACE] Recommendation 2211 (2021).”

⁵⁰ *Demir and Baykara* [GC] § 84.

11. In this context, the Court can thus rely on the no-harm rule,⁵¹ the 1992 UN Framework Convention on Climate Change (UNFCCC), and the related 2015 Paris Agreement (PA).⁵² These international norms harmonise with judicial control for the protection of the right to life and physical integrity from climate harm. *Firstly*, the protection of life and physical integrity is embedded in the objective of the UNFCCC Article 2, further defined in Article 1 as preventing “significant deleterious effects on [...] human health and welfare”. As a related UNFCCC instrument, the PA pursues this objective.⁵³ *Secondly*, the preamble of the PA presupposes that State Parties have “respective” human rights obligations, that naturally may evolve to protect individuals against climate harm. It would defy the purpose of the UNFCCC, contrary to Article 31.1 of the Vienna Convention on the Law of Treaties (VCLT), if the preambular reference in the PA – “when taking action to address climate change” – were to be read narrowly and antithetically to exclude human rights enforcement of mitigation. It would also hinder the intended bottom-up efficiency of the PA through national and regional action, for instance by courts.⁵⁴ Assessing whether mitigation measures adequately protect basic human rights from climate harm would not sidestep the compliance committee of the PA (PAICC) either. This facilitative mechanism cannot preclude this Court from relying on the PA for the interpretation of the ECHR in accordance with Article 31.1.c of the VCLT.⁵⁵
12. Fundamentally, judicial review by the ECtHR would be justified in view of the intrinsic relationship between all human rights and climate change. 161 States including all CoE States view climate change as one of “the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights”.⁵⁶ This rationale has even led the Supreme Court of Brazil to interpret environmental law treaties, including the PA, as supranational human rights treaties.⁵⁷
13. **Common ground and evolutive interpretation.** *Question 3.3.3.* The Court relies on “scientific and societal” common ground in Europe to ensure that the Convention is interpreted in the light of present-day conditions.⁵⁸ *Firstly*, “evolving norms” of national law and jurisprudence, as well as in EU law are relevant to identify the common ground.⁵⁹ Based on ECtHR case-law, four domestic courts, amongst them the German Constitutional Court,⁶⁰ have already held that the right to life and physical integrity undoubtedly requires States to cut emissions to protect their inhabitants against dangerous climate

⁵¹ A rule of customary law, see ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgement 20.4.2010, para. 101. See also UNFCCC, preamble, rec. 8; the Stockholm Declaration prin. 21; the Rio Declaration prin 2. See also *Tătar* part II.B.

⁵² UNFCCC preamble recital 1 and Article 2; Paris Agreement Art. 2.1a).

⁵³ Paris Agreement, Article 2.1, see also preamble, recital 3.

⁵⁴ IPCC, AR6 WGIII *Mitigation of Climate Change* 4.4.2022, TS-111 lines 9 to 11, notes that systemic climate litigation “can lead to an increase in a country’s overall ambition to tackle climate change”, thereby contributing to the PA Art. 2.1a) goals.

⁵⁵ The ECHR is interpreted in harmony with the Aarhus Convention (n47), regardless of the Aarhus Compliance Committee.

⁵⁶ The UN General Assembly Resolution A/76/L.75.

⁵⁷ *PSB et al. v. Brazil*, 30.6.2022, para 17.

⁵⁸ *Rees v. the United Kingdom* [Plenary] (dec.) (9532/81) 17.10.1986 § 47; *Cossey v. the United Kingdom* [Plenary] (10843/84) 27.9.1990 § 40.

⁵⁹ *Demir and Baykara* [GC] § 68. Domestic jurisprudence, e.g., *S. V. and A. v. Denmark* [GC] (35553/12 etc.) 22.10.2018 §§ 122, 125, *Nait-Liman v. Switzerland* [GC] (51357/07) 15.3.2018 §§ 69–78. EU environmental law, e.g., *Mangouras* [GC] § 86; *Di Sarno* § 111; *Kapa et al. v. Poland* (75031/13 etc.) 12.10.2021 §§ 107-117; *Cordella* §§ 83–86, 168.

⁶⁰ The duty to protect life and health under the German Constitution from climate change was grounded in, *inter alia*, the parallel rights under ECHR and ECtHR case law, the German Constitutional Court concluding that ECHR “does not lead to a protection of greater scope than that afforded under Art. 2(2) first sentence GG” (*Neubauer* paras. 147, 148, see also para 99).

change.⁶¹ Other courts have been reluctant. Yet, since the majority of these courts cite procedural limits in national law against developing the Convention in the place of this Court,⁶² their decisions need not reflect a contrary view on substance. *Secondly*, best available science, including international scientific standards, is relevant to ascertain common ground.⁶³ Indeed, the Court has relied primarily on “objective scientific research” where widespread acknowledgement of a pollutant’s harmful effects in international treaty law was being hampered by “economic and commercial” interests.⁶⁴ This situation is analogous to international and national climate policy, which according to the IPCC is currently being undermined by “incumbent industries”, primarily “fossil fuel companies”, through “targeted lobbying and doubt-inducing media strategies”.⁶⁵

14. **Dangerous warming.** While human-induced climate change has already increased mortality and morbidity rates, 1.5°C is a critical limit beyond which the risks for the right to life and physical integrity increase dramatically. This is reflected in the PA Article 2.1a, where States Parties agreed to “pursue efforts to limit” the global temperature increase to 1.5°C, with a maximum increase to “well below 2°C”. New scientific insights in the IPCC 2018 report, confirmed by the IPCC in 2021 and 2022, have shifted the political and legal consensus towards limiting the temperature increase to 1.5°C instead of 2°C, as this would “substantially reduce” the risks for humans.⁶⁶ Hence, in the 2021 Glasgow Climate Pact, recalled in Sharm el-Sheikh, the Parties to the UNFCCC resolved “to pursue efforts to limit the temperature increase to 1.5°C”.⁶⁷ In Europe, the EU Climate Act provides that the “existential threat” of climate change must be “limited to 1.5°C”.⁶⁸ The 1.5°C target thus reflects updated scientific consensus to prevent “dangerous” climate change having “significant deleterious effects” on humankind, which is the objective of the UNFCCC and thus the PA.

⁶¹ *Urgenda; VZW Klimatzaak v. Belgium et al.*, no. 2015/4585/A (First Instance Court of Brussels), 17.6.2021 (appealed); *Klimatická žaloba ČR v. Czech Republic*, no. 14A 101/2021 (Municipal Court in Prague) 15.6.2022 (appealed).

⁶² UK courts (High Court of Justice in *Friends of the Earth v. BEIS*, 18.7.2022 EWHC 1841 §§ 164, 271 (its duty “is to keep pace with Strasbourg jurisprudence as it evolves over time”), UK Court of Appeal, CA-2021-003448, 18.3.2022 § 11 (“fundamental difficulty which the Claimants face is that there is no authority from the European Court of Human Rights on which they can rely”); Norwegian Supreme Court (*Greenpeace Nordic Ass. et al. v. Norway*, HR-2020-2472-P) para. 171, limited by the established practice it is “primarily for the ECtHR to develop the Convention”, see e.g., HR-2019-1206-A para. 104), Irish Supreme Court (*Friends of the Irish Environment v. Ireland* (Appeal No: 205/19) 31.7.2020 § 5.9, where the government argued that the “national courts should not anticipate but rather should follow the ECtHR”).

⁶³ In general, see *Brincat* § 112; *Cossey* § 40 with further references; *Fretté v. France* (36515/97) 26.2.2002 § 42; *S.H. et al. v. Austria* [GC] (57813/00) 3.11.2011 §§ 97-118. International standards, see *Oluic* §§ 29-31, 60 (“level of noise exceeded the international standards as set by the [WHO] and most European countries”); *Fägerskiöld v. Sweden* (37664/04) 26.2.2008 (“WHO’s Guidelines for Community Noise”).

⁶⁴ *Brincat* §§ 105-106.

⁶⁵ IPCC, AR6 WGIII (2022) p. 5-84 (lines 29-37) section 1.4.5 (lines (24-31); James Hansen et al, *Assessing ‘Dangerous Climate Change’: Required reduction of Carbon Emissions to Protect Young People, Future Generations and Nature*, Plos One, 2013 p. 20, noting that “[t]he judicial branch ... may be less subject to pressures from special financial interests than the executive and legislative branches, and the courts are expected to protect the rights of all people.”

⁶⁶ (i) IPCC, *Special report on Global Warming of 1.5°C*, 2018 pp. 177–181, IPCC, AR6 WGI (2021) SPM pp. 19–24; IPCC, AR6 WGII (2022) SPM para. B.3; McKay et al. (2022), (ii) Regulation (EU) 2021/1119 (European Climate Law) preamble rec. 1 and 3, (iii) *Royal Dutch Shell v. Milieudefensie* ECLI:NL:RBDHA:2021:5339 (The Hague District Court), 26.5.2021 paras. 2.3.3, 4.4.27; *Urgenda*, para. 4.3; *Friends of the Irish Environment*, para. 3.4.

⁶⁷ *Glasgow Climate Pact*, paras. 20–22; Decision -/CMA.4, *Sharm el-Sheikh Implementation Plan*, 20.12.2022, para 28.

⁶⁸ Regulation (EU) 2021/1119 (European Climate Law) preamble rec. 1 and 3.

15. **Minimum mitigation.** In relation to the *minimum rate of emissions cuts* necessary, the IPCC has identified a 25-40% minimum reduction in GHG emissions from 1990 levels by 2020 for industrialised countries to limit global warming to 2°C. The Dutch Supreme Court, implicitly confirmed by German courts, considered the State’s minimum obligation to cut emissions by 2020 to be at the lower end of this range.⁶⁹ The IPCC has further identified a 48% *global* reduction in CO₂ emissions from 2019 levels by 2030 and net zero emissions by 2050 to limit warming to 1.5°C.⁷⁰ However, as States have “common but differentiated responsibilities and respective capabilities”, developed countries must cut at a *higher rate* than this global average.⁷¹ A collaborative study suggests that, when adjusting for historic responsibility for climate change and GDP per capita, developed States should reach net zero emissions by 2030 in order to stay within their remaining part of the 1.5°C global carbon budget.⁷² In 2021, the IPCC estimated the remaining global carbon budget to limit warming to 1.5°C to be 400 GtCO₂ (67% chance) or 500 GtCO₂ (50% chance).⁷³ At the beginning of 2022, the remaining budget for 1.5°C was 320 GtCO₂ (67% chance), set to be exhausted in *eight years* under the current rate of global emissions.⁷⁴
16. **Quality of law, precaution, independent oversight.** Moreover, a goal of GHG neutrality by a specific year and intermediate reduction targets would not be sufficient in themselves because, as noted by the German Constitutional Court, “there would be nothing to specify how much GHG may be emitted in the intervening period”.⁷⁵ Since Articles 2 and 8 require States to “ensure the effective functioning of the regulatory framework adopted” for the protection of life and private life,⁷⁶ and the applicable principles to assess positive and negative obligations “are broadly similar”,⁷⁷ the Court may review whether the legislative framework is “sufficiently clear and detailed”, “accessible” by the person concerned, and “foreseeable”.⁷⁸ Similar efficiency and transparency considerations have led at least six national courts to review whether the *rate of previous or planned GHG reductions* is sufficiently *specified and realistic* in view of national carbon budgets for 2030 and 2050, keeping in mind that cumulative emissions lags inevitably deplete the remaining carbon budget.⁷⁹ Moreover, the *precautionary principle*, as noted by the Dutch Supreme Court and the German Constitutional Court, implies that States cannot prematurely rely on negative-emission technologies to remove CO₂ from the atmosphere, many of which do not yet exist

⁶⁹ *Urgenda*, para. 8.2.7; *Family Farmers v. Germany*, VG Berlin, 31.10.2019–10 K 412.18, pp. 25, 27; *Neubauer*, paras. 137, 154-170 (40% GHG reduction from 1990-2020, 55% by 2030 and net zero by 2050 did not breach the GG art. 2(2)).

⁷⁰ IPCC, AR6 WGIII (2022) SPM paras. C.2 and C.1.2.

⁷¹ UNFCCC, Art 3.1, Art 4.1; Paris Agreement, Preamble, Art 2.1, 4.1, 4.2, 4.3 and 4.4.

⁷² Rajamani et al. “National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law” in *Climate Policy*, 2021, p. 17.

⁷³ IPCC, AR6 WGI (2021) SPM p. 29.

⁷⁴ See UNFCCC, *Nationally determined contributions under the Paris Agreement*, FCCC/PA/CMA/2022/4 26.10.2022, para. 18; *Waratah* paras. 30, 762–775; *Neubauer* paras. 233, 234. N(8).

⁷⁵ *Neubauer* paras. 155, 156.

⁷⁶ *Smiljanić v. Croatia* (35983/14) 25.3.2021 § 66 with further references.

⁷⁷ *Pavlov* § 75; *Hatton* [GC] § 98.

⁷⁸ *Amann v Switzerland* (27798/95) 16.2.2000 §58; *Huvig v France* (11105/84) 24.4.1990 §26.

⁷⁹ *Neubauer* paras. 183, 214–225, 229, 232–234, 243, 255; *Klimatická* (appealed) para 328; *Friends of the Irish Environment* paras. 9.2, 9.3; *Friends of the Earth* paras. 216–221; *Commune de Grande-Synthe v. France* no. 427301, (‘Grande-Synthe II’), Le Council d’Etat 1.7.2021 paras. 3–6; *Notre Affaire à Tous* paras. 30–34.

or are still at early stages of development.⁸⁰ Reliance on these technologies “is a major risk in the ability to limit warming to 1.5°C”, and a “dangerous, high-risk approach”.⁸¹ Finally, a precondition to enable citizens to “predict and evaluate in advance the effects” of mitigation efforts and challenge actions or omissions in court could be independent expert climate councils with a mandate protected by law.⁸²

17. **Adaptation.** Adaptation measures can never adequately protect life or the quality of life over time because “[t]he potential to adapt to climate change is not limitless”, and “widespread breaching of adaptation limits is expected” if the planet warms beyond 1.5°C or even 2°C.⁸³ Similarly to heat [EOK para. 21], there are limits to sea level rise adaptation in Europe, especially under higher emission scenarios.⁸⁴ Indeed, if tipping points leading to several meters of higher seas are triggered, adaptation would in many areas be futile.⁸⁵ This explains why the Dutch Supreme Court found that the Netherlands could not demonstrate that “the potentially disastrous consequences of excessive global warming can be adequately prevented by” adaptation measures, whereas the German Constitutional Court held that it would be “completely inadequate” – and a violation of the right to life, physical integrity and property – to rely on adaptation alone.⁸⁶ *Daniel Billy et al. Australia*, where the CCPR majority found for the applicants in their principal argument on flawed adaptation, cannot be read as a dismissal of their subsidiary argument on mitigation. On the contrary, the majority stressed that “additional timely and appropriate measures” such as robust international and international efforts “were required to avert a risk” to life, requiring Australia to “prevent similar violations in the future”.⁸⁷ Since the islands at issue would be permanently submerged if warming exceeds 1.5°C, this obligation of non-repetition can only be met through rapid and sustained mitigation.
18. **Summary.** Based on the above, ENNHRI submits that Articles 2 and 8 require States to adopt and implement an ambitious, realistic and specified reduction pathway to limit global warming to 1.5°C, with interim targets in accordance with the IPCC’s reduction rates, reaching carbon neutrality as soon as possible, and no later than 2050.
19. **France.** The 2019 *Energy and Climate Law* codifies carbon neutrality by 2050 and the 2021 *Climate and Resilience Law* recalls France’s obligation to reduce emissions in accordance with updated EU targets.⁸⁸ However, according to the HCC and the National Consultative Commission on Human Rights (CNCDDH), this legislative and administrative framework is insufficient, with the HCC noting that there

⁸⁰ *Neubauer*, para. 33 and *Urgenda*, para. 7.2.5. See also, mutatis mutandis, *Sharma*, para. 256; *Waratah Coal Pty Ltd v Youth Verdict et al.* (No 6) [2022] QLC 21, 25.11.2022 §§ 912, 913.

⁸¹ IPCC, *1.5°C Report* (2018) pp. 96, 121; IPCC, AR6 WGI (2021) FAQ 5.3, DNV, *Energy Transition Outlook 2021* (ES p. 4).

⁸² *Hardy and Maile* § 220. Implicitly, *Neubauer* para. 220; *Friends of the Irish Environment* paras. 6.40–6.49 ff; *Notre Affaire à Tous*, para. 30; *Grande-Synthe II*, para. 4; *Leghari*, para. 8.iii; CNCDDH, A-2021-6, p. 29, no. 20.

⁸³ World Climate Research Programme et al. *10 New Insights in Climate Science*, 10.11.2022, pp. 13–17. See also IPCC, AR6 WGII, 2022 SPM para C.3 ff.

⁸⁴ IPCC, AR6 WGII p. 1833; Magnan, “Sea level rise risks and societal adaptation benefits in low-lying coastal areas,” *Scientific Reports* 12 (2022).

⁸⁵ IPCC, AR6 WGII (2022) SPM paras. C.2.5 and C.2.8.

⁸⁶ *Neubauer*, para. 157; *Urgenda*, para. 7.5.2.

⁸⁷ *Daniel Billy et al.* paras. 8.7 and 11.

⁸⁸ Article L.100-4 para. 1 premier alinéa du code de l’énergie tel que modifié par la loi n° 2019-1147 du 8 novembre 2019.

are “des risques majeurs de ne pas atteindre les objectifs fixés par la France pour la réduction de gaz à effet de serre”.⁸⁹ According to the EU Commission, emissions reduction “continues to be too slow in France, which puts respecting the nationally determined carbon budgets at risk”.⁹⁰ Similarly, the International Energy Agency (IEA) notes that France is not “on track” to reach its emission reduction targets.⁹¹ Domestic courts have twice found that France’s mitigation measures are insufficient.⁹²

VI. Article 46 (question 4)

20. States must abide by the final judgements of the Court under Article 46. This includes an obligation to put an end to the breach and make reparations to restore the situation existing before the breach as far as possible.⁹³ In order to help the State fulfil this obligation, the Court may indicate general measures to address the source underlying “systemic” problems likely to give rise to “numerous applications”.⁹⁴ The widespread and systemic nature of climate harm may lead to an increasing number of applications, unless States rapidly implement sufficient measures to reduce emissions. The Court would thus be justified in helping Contracting States to avoid numerous new applications by giving “some indications on how breaches of this kind are to be avoided in the future”.⁹⁵
21. When deciding which general measures to indicate, the Court may be guided by the considerations relied upon by domestic courts in similar cases, including recent cases in Germany, Ireland, France and the Netherlands. *Firstly*, these cases indicate that respondent States should legislate a *specified and realistic* plan for how they will achieve their own climate targets, without postponing the mitigation burden to future generations,⁹⁶ aligned with the quality of law requirement embedded in Article 8 [see para 16 above].⁹⁷ *Secondly*, that courts may review domestic targets that are “manifestly” or “completely inadequate”,⁹⁸ or “too little in view of what is clearly the lower limit”,⁹⁹ to limit warming to 1.5°C or well below 2°C, in light of the principles of precaution and intergenerational justice. *Lastly*, domestic courts have imposed time-limits for the follow up of such decisions.¹⁰⁰ This approach is justified with the IPCC warning that “[a]ny further delay in ... mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all.”¹⁰¹

⁸⁹ HCC, Avis portant sur le projet de loi Climat et résilience, février 2021, p. 9; HCC, *Rapport annuel 2022*, p. 5. CNCDH, *Opinion ‘Climate Emergency and Human Rights’*, 27.05.2021, p. 12 para. 20 (“[T]he normative framework does not create sufficiently binding obligations to take action in order to address the climate emergency and protect human rights.”).

⁹⁰ European Commission, *Environmental Implementation Review 2022, Country Report – France*, SWD(2022) 257 final, p. 31.

⁹¹ IEA, *France 2021 Energy Policy Review*, nov. 2021 p. 11.

⁹² *Grande-Synthe II* paras. 3–6; *Notre Affaire à Tous* paras. 30–34, Article 4.

⁹³ *Papamichalopoulos et al. v. Greece* (14556/89) 24.06.1993 § 34.

⁹⁴ *Broniowski v. Poland* [GC] (31443/96) 25.09.2005 §§ 190, 194.

⁹⁵ *Stoyanova v. Bulgaria* (56070/18) 14.06.2022 § 78.

⁹⁶ *Neubauer* paras. 183, 214–225, 229, 232–234, 243, 255; *Friends of the Irish Environment* paras. 9.2 and 9.3, *Grande-Synthe II* paras. 3–6; *Notre Affaire à Tous* paras. 30–34, Article 4. See also IPCC, AR6 WGIII (2022) SPM para. C.1.

⁹⁷ *Amann* § 58; Sulyok: *The Quality of Law Requirement as a Climate Litigation Tool*, ELTE Law Working Papers, 2022/02: https://www.ajk.elte.hu/dstore/document/3168/ELTE%20LAW%20WORKING%20PAPERS_2022_02_SulyokKatalin.pdf.

⁹⁸ *Neubauer*, para. 152, see also 137, 154–57. See also *Family Farmers* pp. 25 and 27.

⁹⁹ *Urgenda*, para. 6.3, see also 8.2.7.

¹⁰⁰ See e.g. *Cordella* § 182 (“dans les plus brefs délais”) and *Grande-Synthe II* Art. 2 (“avant le 31 mars 2022”).

¹⁰¹ IPCC, AR6 WGII (2022) SPM p. 35.