

EDITORIAL  
COURTS AND CLIMATE CHANGE: ROLE, LIMITS  
AND POTENTIAL

SÍOFRA O'LEARY<sup>1</sup>

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**Abstract**

Over the last decade, courts at national, European and international level have been seized by individuals, associations and States challenging State action and inaction in response to the effects of climate change. This contribution first places this expanding field of litigation against the background of ever greater scientific clarity in relation to the effects of climate change and ever stronger political opposition to legal instruments designed to combat its effects. Its principal focus is on climate change mitigation cases and reliance in such cases on human rights. Examining in detail the 2024 rulings of the European Court of Human Rights in relation to climate change, the contribution explores the role of courts in this complex field, but also the limits thereto, emphasizing the complementary mission of judges and the central need for democratic decision-makers to discharge their positive obligation of due diligence.

**Keywords**

Climate change; role of courts at national, European and international level; human rights; European Court of Human Rights; specificities of climate change litigation and the European Convention on Human Rights.

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<sup>1</sup> Hauser/Remarque Fellow, New York University. Former president of the European Court of Human Rights.

## LOS TRIBUNALES Y EL CAMBIO CLIMÁTICO: FUNCIÓN, LÍMITES Y POTENCIAL

### **Resumen**

Durante la última década, los tribunales nacionales, europeos e internacionales han recibido demandas de particulares, asociaciones y Estados que cuestionan la acción y la omisión de los Estados en respuesta a los efectos del cambio climático. Esta contribución sitúa en primer lugar este campo creciente de litigios en el contexto de una claridad científica cada vez mayor en relación con los efectos del cambio climático y una oposición política cada vez más fuerte a los instrumentos jurídicos diseñados para combatir sus efectos. Se centra principalmente en los casos de mitigación del cambio climático y en la utilización de los derechos humanos en dichos casos. Tras examinar en detalle las sentencias de 2024 del Tribunal Europeo de Derechos Humanos en relación con el cambio climático, la contribución explora el papel de los tribunales en este complejo ámbito, pero también sus límites, haciendo hincapié en la misión complementaria de los jueces y en la necesidad fundamental de que los responsables democráticos de la toma de decisiones cumplan con su obligación positiva de diligencia debida.

### **Palabras clave**

Cambio climático; papel de los tribunales nacionales, europeos e internacionales; derechos humanos; Tribunal Europeo de Derechos Humanos; particularidades de los litigios relacionados con el cambio climático y el Convenio Europeo de Derechos Humanos.

## LES TRIBUNAUX ET LE CHANGEMENT CLIMATIQUE : RÔLE, LIMITES ET POTENTIEL

### **Résumé**

Au cours de la dernière décennie, les tribunaux nationaux, européens et internationaux ont été saisis par des particuliers, des associations et des États contestant l'action ou l'inaction des États face aux effets du changement climatique. Cette contribution replace tout d'abord ce contentieux en pleine expansion dans le contexte d'une clarté scientifique toujours plus grande en ce qui concerne les effets du changement climatique et d'une opposition politique toujours plus forte aux instruments juridiques destinés à lutter contre ces effets. Elle se concentre principalement sur les affaires relatives à l'atténuation du changement climatique et sur le recours aux droits de l'homme dans ce type d'affaires. En examinant en détail les arrêts rendus en 2024 par la Cour européenne des droits de l'homme en matière de changement climatique,

cette contribution explore la mission des tribunaux dans ce domaine complexe, mais aussi ses limites, en soulignant le rôle complémentaire des juges et la nécessité fondamentale pour les décideurs démocratiques de s'acquitter de leur obligation positive de diligence requise.

### **Mots clés**

Changement climatique; rôle des tribunaux nationaux, européens et internationaux; droits de l'homme; Cour européenne des droits de l'homme; spécificités du contentieux relatif au changement climatique et la Convention européenne des droits de l'homme.

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### I. INTRODUCTION

It is a pleasure to have been asked by the Editorial Board of the *Revista de Derecho Comunitario Europeo* to contribute a Guest Editorial. The pleasure is all the greater given that, as some readers may know, I have longstanding links with Spain, where I have family members and dearest friends. Spain is a country from where my children partly derive their cherished roots and where I took my first steps in professional life. In recent years, many of my more difficult cases or extra-judicial speeches have been mulled over and mentally scripted on long walks along the northern coast of Galicia or the beaches of the Costa de la Luz. Although both spots are far from my native island, both share the beauty of the Atlantic Ocean so engrained in the Irish psyche and both have, with time, become an integral part of my life.

Passing from the personal to the professional, based on my recent tenure at the European Court of Human Rights, the choice of possible subjects, all highly topical, was wide indeed: interstate cases in response to ongoing military conflict on European soil, case-law on immigration and asylum, now the subject of ministerial reflections which have provoked considerable concern due to their potential impact on judicial authority and independence, the impact of social media on freedom of expression and how one approaches privacy in the digital age, or the role of the two European courts in stemming rule of law backsliding and democratic erosion. These are all issues which have characterized the output of the Strasbourg court over the last decade.

In the end, I opted for a subject which concerns lawmakers at national and European level, which is proving to be the source of extensive and complex

litigation and which will impact policy-making, our lives and those of our children for many years to come. That subject is climate change and the focus of the editorial is on the role of courts and the limits to that role in its regard.

As some readers will know, in April 2024 the ECtHR handed down three rulings in climate change cases<sup>2</sup>. The Strasbourg litigants sought to challenge the failure of national decision-makers to adopt measures to mitigate the effects of climate change. But the Strasbourg rulings were not alone. Three advisory opinions on climate change followed in quick succession from the International Tribunal on the Law of the Sea (ITLOS)<sup>3</sup>, the InterAmerican Court of Human Rights (IACtHR)<sup>4</sup> and the International Court of Justice (ICJ)<sup>5</sup>. Preceding this European and international judicial output were some groundbreaking climate change rulings handed down by courts in EU Member States. Indeed, it was national judges and not the ECtHR who first relied on the Convention as part of their legal response in climate change cases.

Not everyone welcomes the involvement of courts in fields such as climate change. Those who do often lament that judges do not go further in their response to what the ICJ has described as “an urgent and existential threat”<sup>6</sup>. However, critics of climate change litigation, and even proponents of a greater role for the ECtHR and other courts in this field, often either misunderstand or misrepresent the role played by judges to date and/or fail to engage with the very clear limits to that judicial role as flagged by the courts concerned. The purpose of the editorial is thus to guide readers through what the ECtHR did and, equally importantly, what it did not do in its first climate change cases.

## II. CLIMATE CHANGE IN CONTEXT

It would be impossible to explore climate change litigation without providing a contextual snapshot.

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<sup>2</sup> *Verein Klima Seniorinnen Schweiz and Others v. Switzerland* [GC], n° 53600/20, judgment of 9 April 2024; *Carême v. France* [GC] (dec.), n° 7189/21, 9 April 2024 and *Duarte Agostinho and Others v. Portugal and 32 Others* [GC] (dec.), n° 39371/20, 9 April 2024.

<sup>3</sup> ITLOS, advisory opinion following the request by the Commission of small island States on climate change and international law, 21 May 2024.

<sup>4</sup> IACtHR, advisory opinion OC-32/25 on the climate emergency and human rights, 29 May 2025.

<sup>5</sup> ICJ, advisory opinion following a request on the obligations of States in respect of climate change, 23 July 2025.

<sup>6</sup> *Ibid.*, at § 73.

The first point of relevance is scientific. Anthropogenic global warming is affecting every climate system component and is disrupting the integrity of all ecosystems worldwide<sup>7</sup>. The Intergovernmental Panel on Climate Change (IPCC) has established that, to limit warming to 1.5 °C above pre-industrial levels with no or limited overshoot, global greenhouse gas emissions (GHG) need to peak no later than 2025. Until 2030, GHG emissions would need to decline by more than 40% as compared to the 2019 level<sup>8</sup>. In 2025, the World Meteorological Organisation reported that there is a 70% chance that the 5-year average warming for 2025-2029 will be more than 1.5 °C<sup>9</sup>. This is climate science. Unloved by many, disputed by some — including at the last UN General Assembly — but nevertheless tried and tested fact. Climate scientists are clear that the devastation wrought by nature in recent years in different parts of the world, including, tragically, in the region of Valencia, is the tangible consequence of shifting and turbo-charged climate phenomena and a failure by States to adapt to such phenomena and mitigate their effects<sup>10</sup>.

The second contextual element is political. In January 2025, the US withdrew, for the second time, via an executive order, from the Paris Agreement. It thereby rejoined the company of Iran, Libya and Yemen, which have never ratified that agreement. In February 2025 and January 2026, respectively, the US also withdrew from the IPCC and the United Nations Framework Convention on Climate Change (UNFCCC). In February 2026, the US administration repealed the endangerment finding, namely the 2009 determination of the US Environmental Protection Agency that GHG emissions threaten public health and welfare. The EU, previously a climate change legislative pioneer, is regarded by many as backtracking on its previous role, having also missed the opportunity over the last two decades to manufacture within Europe that which a successful green deal requires<sup>11</sup>.

In short, national and international courts are faced with novel climate change litigation at a time when the relevant science is ever clearer, but the political context in which they work is ever more fraught. History has taught us, however, and judges and lawyers know from experience, that when the gap

<sup>7</sup> See Edenhofer and Kilimann (2023: 338).

<sup>8</sup> IPCC, “Summary for Policymakers” in *Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*.

<sup>9</sup> See <https://is.gd/s7UH96>.

<sup>10</sup> See, for example, Amiri, Gumiere, Gharabaghi and Bonakdari (2025).

<sup>11</sup> See <https://is.gd/CE4DQT> (for an overview of the EU’s new legislative trajectory) and Tooze (2025).

grows between what legal norms provide and what politics will permit, increased litigation often results.

### III. NATIONAL COURTS AND CLIMATE CHANGE CASES PRIOR TO THE ECTHR RULINGS

It's important to stress that climate change litigation can involve a broad range of parties (individuals, non-governmental organisations (NGOs), governments and corporations), a broad range of legal principles (tort, constitutional, administrative, environmental, corporations, securities and financial or environmental claims) and a wide range of impugned acts, policies and practices<sup>12</sup>. Not all climate change cases engage human rights. A rapid increase in climate change litigation and what is referred to as the “human rights turn” in this field is of relatively recent vintage<sup>13</sup>. Between 2019 and 2024, several apex courts in EU Member States were confronted with novel climate change suits, most of which were systemic mitigation or framework climate change cases in which applicants challenged the lack of State measures to mitigate the effects of climate change or the inadequacy of whatever measures had been taken. In these cases, the focus was on national tort law (the Netherlands)<sup>14</sup>, national constitutional law (Germany and France)<sup>15</sup>, the ECHR (the Netherlands and the United Kingdom)<sup>16</sup>, EU law (Belgium and Spain)<sup>17</sup>, national adminis-

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<sup>12</sup> Past and pending climate change litigation, organized per State, is accessible on the database curated by the Sabin Center at Columbia law school: <https://is.gd/SKSaPh>. See also Batros and Khan (2022).

<sup>13</sup> See Peel and Osofsky (2018).

<sup>14</sup> See *Urgenda Foundation v. State of the Netherlands*, NL:HR:2019:2007.

<sup>15</sup> See *Neubauer and Others v. Federal Republic of Germany*, Order of the First Senate of 24 March 2021, in which a group of German youth filed a legal challenge to Germany's Federal Climate Protection Act, arguing that the target of reducing GHGs by 55% until 2030 from 1990 levels was insufficient, thereby violating their human rights as protected by the Basic Law. See also the French Conseil Constitutionnel decision n° 2022-843 DC, 12 August 2022.

<sup>16</sup> See *Urgenda*, cited above, and compare with *Plan B Earth v. Prime Minister* (2021) EWHC 3469, in which an environmental charity sought unsuccessfully to challenge the lawfulness of the policies of the UK Government relating to climate change, arguing breaches of the Climate Change Act 2008 and the Human Rights Act 1998.

<sup>17</sup> See *Friends of the Irish Environment (FIE) v. the Government of Ireland et al.* (2020) IESC 49, in which the applicant association challenged the overall ambition of the Irish government's response to climate change in the shape of the 2017 National Miti-

trative law (France)<sup>18</sup>, the obligations on Government flowing from national statutory requirements (Ireland) or a combination of the above.

It is worth reflecting on the key components in these different national rulings and how those cases were litigated before turning to the European and international rulings which are the main focus of the editorial. Firstly, noteworthy in cases in which complaints were found to be admissible and climate change questions justiciable was acceptance of the climate science presented as evidence of causation and in favour of standing. The reports of the IPCC emerged as central and authoritative<sup>19</sup>. A second point relates to the centrality of States' domestic and international commitments pursuant to agreements like the UNFCCC and the Paris Agreement<sup>20</sup>. A recurring pattern in these cases was for applicants to ask the courts to take the goals of the international climate legal regime and States' international and national commitments into account when assessing the climate action or inaction of their governments<sup>21</sup>. The extent to which national courts were willing to engage in systemic integration or interpretation of this nature greatly influenced the success or failure of certain claims<sup>22</sup>.

Thirdly, the ECHR took on a lead or supportive role in some, but not all of this litigation, most notably in the ground-breaking Dutch *Urgenda* decision. In ordering the Dutch State to adopt more stringent GHG reduction measures in line with its international legal commitments, the Dutch court did not directly find a violation of the applicants' human rights. However, it used the ECHR as an interpretative tool in analyzing the question whether the Dutch government had breached its duty of care under national law<sup>23</sup>. In

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gation Plan, arguing that the plan was *ultra vires* the Irish Climate Act of 2015. They also argued, with reference to the Constitution and the ECHR, that rights to life, bodily integrity, privacy and family life as well as a constitutional right to a healthy environment consistent with human dignity were infringed.

<sup>18</sup> See, variously, the decisions of the Conseil d'État in the cases relating to the *Commune de Grand-Synthe I, II and III* in 2020, 2021 and 2023. See also its decision in *Amnesty International* in 2023, as well as the decisions of the administrative courts in the "*Affaire du siècle*", judgment of the Tribunal Administratif of Paris, 3 February 2021.

<sup>19</sup> Compare *Urgenda* or *Neubauer*, cited above, with the absence of references to the IPCC in rulings such as *Plan B Earth* and *FIE*, also cited above.

<sup>20</sup> See Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

<sup>21</sup> See also Rodríguez-Garavito (2022: 15).

<sup>22</sup> Compare *Urgenda* with *Plan B Earth*.

<sup>23</sup> *Urgenda*, cited above, § 4.52. See also the Belgian Court of Appeal in *VZW Klimaatzaak v. the Kingdom of Belgium and Others*, in which an association and 58,000

contrast, some other national courts remained silent when confronted with arguments based on the Convention (France) or responded with scepticism to arguments relating to the role which the ECHR could play in climate change mitigation cases (Ireland)<sup>24</sup>. Such courts preferred to locate their judicial responses within national administrative and statutory law. Fourthly, in several of these cases questions arose regarding the protection of present and future generations from climate change risks which will, in the main, materialise in the future. The German FCC, in a case called *Neubauer*, refused to find the Federal Climate Protection Act to be unconstitutional, but it did find that it was impermissible for that legislation to shift the burden of societal transformation onto future generations in a disproportionate manner<sup>25</sup>. It was not alone. The French Constitutional Council emphasised that “choices made to meet our current needs should not compromise the ability of future generations to meet their own”<sup>26</sup>. Several national courts also emphasised the fact that future generations have no voice of their own in shaping the current

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individuals brought an action against the Federal government, the Walloon Region, the Flemish Region and the Brussels-Capital Region, alleging that they had failed to meet the relevant GHG emissions reduction targets and asking the court to order the necessary measures to be undertaken in that respect. The Belgian court issued an injunction to prevent future harm because of the persisting failure of the Belgian climate policy and the certainty of the harm to come if climate change is not contained; because of the need to protect individual rights effectively; because of the gravity and the urgency of the threat of climate change for humankind; and because of the need to make sure that each state carries out its share of the efforts to contain climate change within (relatively) safe limits (see further Slautsky, 2024: 512). That case is now pending before the Belgian Court of Cassation.

<sup>24</sup> In *FIE*, cited above, the Irish Supreme Court dismissed the constitutional and ECHR claims on the grounds that the applicant NGO, which did not itself enjoy the right to life or bodily integrity, did not have standing to maintain these arguments. In an *obiter dictum*, the then Chief Justice expressed reservations about the existence of a right to a healthy environment in the Irish Constitution, cautioning against the judicial creation of rights not explicitly rooted in the text of the Constitution. He was also lukewarm, to put it mildly, as regards the Dutch reliance, in *Urgenda*, on the ECHR. The sufficiency of the Irish Government’s action plan is now being challenged in *Community Law and Mediation Centre and Others v. Ireland*, pending. This mirrors repeat systemic climate change litigation in France and Germany, where successful applicants have returned to court claiming that continued Government ambition and/or implementation gaps violate the provisions of domestic, sometimes EU and sometimes ECHR law.

<sup>25</sup> See Article 20a of the German Basic Law as interpreted in *Neubauer*, cited above, § 193.

<sup>26</sup> For an overview of French climate change litigation see Bétaille (2022).

political agenda<sup>27</sup>. These national judicial decisions were groundbreaking as legislative provisions *presently* in force were identified as the source of impermissible State interference with the enjoyment of fundamental rights, which interference was primarily located *in the future*. In the words of the German court, “fundamental rights are *intemporal* guarantees of freedom”<sup>28</sup>.

A fifth feature of the national court decisions which preceded the ECtHR rulings relates to standing and/or causation, with the approach to standing varying from national openness to cases brought by individual applicants (Germany) to systems which comfortably accommodate complaints by climate associations (Netherlands, Belgium and France). As regards the establishment of causation, science was front and centre. Finally, the separation of powers was discussed directly or indirectly in all cases, with recognition in all that the legislature and the executive, given their direct and democratic legitimation, must enjoy considerable leeway in deciding how to tackle climate change. However, there was also considerable disagreement amongst the national courts surveyed regarding the impact of these considerations on the role of the judiciary in this complex field. For example, the Belgian Court of Appeal held that courts do not infringe the principle of the separation of powers in climate change cases when exercising judicial review, provided that judges do not take the place of the authorities in choosing the *means* to remedy any breaches found<sup>29</sup>. In contrast, the High Court of England Wales dismissed a claim on grounds that it was not equipped to deal with climate change and risked venturing beyond its sphere of competence in breach of the separation of powers<sup>30</sup>. In *Greenpeace v. Spain I*, Spain’s presumed compliance with EU law standards was central to the rejection by the Tribunal Supremo in 2023 of a complaint about delay in relation to the national climate plan, but so too was its concern that engagement with climate change mitigation claims would lead the court to overstep its judicial role<sup>31</sup>. Many of the courts with a more cautious stance did not showcase the climate science or the work of the IPCC and they generally approached the international legal climate regime as contextually relevant but not binding.

As we see from this brief introduction, by the third decade of the 21<sup>st</sup> century, climate change litigation had become a disruptive reality for national

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<sup>27</sup> See *Neubauer*, cited above, § 205 and *Klimatzaak*, cited above, § 155.

<sup>28</sup> *Neubauer*, cited above, and Hong (2023).

<sup>29</sup> See *Klimaatzaak*, cited above.

<sup>30</sup> See *Plan B Earth*, cited above, §§ 48-54.

<sup>31</sup> *Greenpeace v. Spain I*, decision of the Tribunal Supremo of 20 June 2023, STS 3556/2023, ES:TS:2023:3556. A further case relating to the approved plan is pending before the Tribunal Supremo (*Greenpeace v. Spain II*).

courts and established constitutional orders, challenging existing mechanisms of and approaches to judicial review<sup>32</sup>.

#### IV. BRIEF REMINDER OF SOME KEY CHARACTERISTICS OF THE ECHR

The Convention system allows applicants — mainly individuals and groups of individuals — to introduce legal complaints against the 46 High Contracting Parties in relation to acts or omissions which allegedly interfere with their human rights and which fall within the jurisdiction of those States. Applicants must have exhausted effective domestic remedies before national courts for their cases to be admissible and they must demonstrate “victim status”. The latter, as we shall see, is a notion which the Court has interpreted flexibly to capture a wide variety of different scenarios and to ensure the practical and effective protection of Convention rights.

Several other features of the Convention are also relevant to understanding the Court’s climate change rulings. Firstly, it is well-established case-law, developed with reference to the Convention’s purpose as guaranteeing a system for the effective protection of human rights, that the Court must have regard to the changing conditions in Contracting States and respond to any evolving convergence as to the standards to be achieved<sup>33</sup>. Just like the Convention founding fathers did not envisage the development of digital and biotechnologies, nor did they foresee a world in which warfare could be carried out by drones or Alpine glaciers would be in accelerated decline due to global warming, with the consequent impact on the lives of inhabitants in surrounding areas. Secondly, since *Airey v. Ireland*, decided almost half a century ago, the Strasbourg Court recognises that “fulfilment of a duty under the Convention on occasion necessitates some *positive action* on the part of the State [which] cannot simply remain passive [...]”<sup>34</sup>. The ECHR can thus be relied on to challenge not just negative interferences by States with fundamental rights and freedoms but also to challenge the *failure* by States to comply with their positive obligations under the Convention to safeguard those same rights and freedoms.

<sup>32</sup> See, variously, Accetto (2023); Winter (2024); Bönemann and Tigre (2024).

<sup>33</sup> See *Tyrer v. the United Kingdom*, 25 April 1978, § 31, Series A n° 26; *Stafford v. the United Kingdom* [GC], n° 46295/99, § 68, ECHR 2002-IV; *Scoppola v. Italy* (no. 2) [GC], n° 10249/03, § 104, 17 September 2009, and *Bayatyan v. Armenia* [GC], n° 23459/03, § 102, ECHR 2011. See further Bjorge (2017).

<sup>34</sup> *Airey v. Ireland*, n° 6289/73, 9 October 1979.

Thirdly, no Article of the ECHR is specifically designed to provide general protection of the environment and there is no Convention right to a healthy environment. Only such environmental harm which adversely affects one of the rights safeguarded by the Convention, and not simply the general quality of the environment, can raise a Convention issue<sup>35</sup>. That said, while the cases under comment were the first climate change cases to reach the Court, the latter had at its disposal extensive case-law in the environmental field, developed in particular with reference to the rights guaranteed by Articles 2, 6 and 8<sup>36</sup>. For well on four decades, the Strasbourg Court has assessed whether a respondent State has approached the impugned problem with due diligence, given the nature and seriousness of the threats to human rights at issue, and given consideration to all the competing interests<sup>37</sup>. The

<sup>35</sup> *Klima*, cited above, § 446.

<sup>36</sup> Examples include nuisance caused by a waste-treatment plant close to housing (*López Ostra v. Spain*, 9 December 1994, Series A no. 303-C), failure to protect the applicants and residents of a Russian town from mudslides which devastated the town (*Budayeva and Others v. Russia*, n° 15339/02 and 4 others, ECHR 2008 [extracts]), procedural failures in terms of disaster prevention, including the provision of immediate relief and emergency measures (*M. Özel and Others v. Turkey*, n° 14350/05 and 2 others, 17 November 2015), the proportionality of a demolition order vis-à-vis the general interest in the preservation of forests and the environment (*Kaminskas v. Lithuania*, n° 44817/18, §§ 64-65, 4 August 2020), air pollution by a steelworks, to the detriment of the surrounding population's health (*Cordella and Others v. Italy*, n° 54414/13 and 54264/15, §§ 157-160, 24 January 2019), health and environmental risks resulting from water pollution (*Hudorovič and Others v. Slovenia*, n° 24816/14 and 25140/14, §§ 112-115, 10 March 2020), hazards and disasters from inadequate household refuse management (*Öneryıldız v. Turkey* [GC], n° 48939/99, 30 November 2004; *Di Sarno and Others v. Italy*, n° 30765/08, 10 January 2012), releasing water in a period of heavy rainfall (*Kohyadenko and Others v. Russia*, n° 17423/05, 28 February 2012, § 164), atmospheric tests of nuclear weapons (*L.C.B. v. United Kingdom*, n° 23413/94, 9 June 1998), toxic factory emissions (*Guerra and Others v. Italy* [GC], n° 14967/89, 19 February 1998), exposure to toxic substances such as asbestos (*Brincat and Others v. Malta*, n° 60908/11, 27 July 2014), pollution and odours caused by air and road traffic (*Hatton and Others v. United Kingdom* [GC], n° 36022/97, 8 July 2003; *Kapa and Others v. Poland*, n° 75031/13, 14 October 2021) as well as industrial pollution and contamination of soil (*Tătar v. Romania*, n° 67021/01, 27 January 2009; *Kotov and Others v. Russia*, n° 6142/18, 11 October 2022).

<sup>37</sup> See *Fadeyeva v. Russia*, n° 55723/00, 9 June 2005, at § 128 and, more recently, *Cannavacciuolo and others v. Italy*, n° 51567/14, 39742/14 and 74208/14, 30 January 2025.

responsibility of State authorities in the environmental field has been to intervene at the appropriate time in order to ensure that provisions enacted with the purpose of protecting the environment are effective<sup>38</sup>.

## V. KEY TAKEAWAYS FROM THE STRASBOURG COURT'S CLIMATE TRILOGY

The essence of the complaints lodged in the three Strasbourg cases decided in 2024 was that State authorities had failed to respond adequately to combat the effects of climate change. The applicants — senior Swiss citizens and an environmental association, a former French mayor and a group of Portuguese children — framed their complaints with reference to Articles 2, 8 and 6 of the Convention, which relate to the right to life, to privacy and to access to court in that order.

As many readers will know, the Court found in the Swiss case that Article 6 ECHR had been violated because of an absence of access to court for the Swiss association. As regards Article 8, it held that the Swiss authorities had failed to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework tackling climate change<sup>39</sup>. The claims of the Portuguese applicants failed due to an absence of exhaustion of domestic remedies (in Portugal) and the refusal of the Strasbourg Court to accept the extra-territorial jurisdiction of 32 other States for the harms allegedly caused by climate change<sup>40</sup>. The French former mayor's case failed because of a lack of victim status. He no longer resided in the region under threat of flooding and, as an aside, the Court pointed out that that region had been partially successful in its case before the French Council of State.

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<sup>38</sup> See, for example, *Hamer v. Belgium*, no. 21861/03, § 79, ECHR 2007-V.

<sup>39</sup> *Klima*, cited above, §§ 558-574. The Court noted a failure to quantify, through a carbon budget or otherwise, national GHG emissions limitations. Switzerland had previously failed to meet its past GHG emission reduction targets, but this was taken as an additional, and not decisive, argument in the Court's reasoning. The Court considered that a mere commitment to adopt concrete measures in good time, as envisaged by the Swiss Climate Act, did not satisfy the State's positive obligations under Article 8 ECHR (*Klima*, cited above, § 567).

<sup>40</sup> This restrictive position on extra-territorial jurisdiction contrasts with that of the UN Committee on the Rights of the Child (*Saachi et al. v. Argentina* (dec.), 22 September 2021, CRC/C/88/D/104/2019) and the IACtHR advisory opinion on the right to a healthy environment and climate change.

## 1. THE IMPORTANCE OF DEMOCRACY AND THE SEPARATION OF POWERS

In an article published in the press just after the three rulings were handed down, a former member of the United Kingdom Supreme Court, long known to be a staunch critic of the ECtHR, wrote that the rulings constituted “the boldest intrusion to date into the domain of democratic politics [...] [and] a direct challenge to the right of democratic electorates to have their say on one of the major issues of our time”<sup>41</sup>.

But if the commentators who acclaimed the Court’s rulings were guilty of a degree of hyperbole, so too were their critics. Let’s unpick what the Strasbourg Court actually said and did, focussing on six takeaways from the three rulings and what the Strasbourg climate trilogy tell us about the role of courts in climate change litigation and the limits to that role.

As explained by the Court in its unusually extensive preliminary observations in *Klima*, responding to the adverse effects of climate change primarily requires legislative action, which necessarily depends on democratic decision-making. The Court stressed that if national or European law impose on States a positive obligation to act in mitigation of the effects of climate change, this obligation falls primarily on the shoulders of the political branches of government. Far from ignoring the centrality of democratic decision-makers, the separation of powers and the limits to judicial intervention in a field as complex and polycentric as climate change, the Strasbourg Court spoke directly to those issues throughout the rulings<sup>42</sup>. The central position of national and EU democratic decision-makers tempers the nature and extent of any judicial involvement. However, as the Court explained, it does not exclude a judicial role entirely<sup>43</sup>. This was in keeping with the Court’s insistence that the protection afforded by the Convention must be practical and effective. Reflecting the preceding climate decisions of national judges in European apex courts, the ECtHR was extremely attentive to questions relating to the

<sup>41</sup> See Lord Sumption, “ECHR’s climate change ruling is its boldest intrusion yet”, *The Times*, 14 April 2024. For a taste of his opposition to and a response to his criticism of the ECtHR, see, for example Letsas (2013).

<sup>42</sup> See *Klima*, cited above, §§ 411-422, 449-450, 484, 616, 631-633.

<sup>43</sup> *Klima*, cited above, § 412: “Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law. The remit of domestic courts and th[is] Court is therefore complementary to those democratic processes. The task of the judiciary is to ensure the necessary oversight of compliance with legal requirements [...]”.

separation of powers and, as we shall see later, the violation of Article 8 and the right to private life was accompanied by extensive engagement with the margin of appreciation which States must enjoy when deciding on operational measures and mitigation policies.

## 2. THE CENTRALITY OF CLIMATE SCIENCE

The second takeaway relates to climate science. One paragraph alone of the Swiss judgment demonstrates the general importance of these rulings, whatever the legal future brings. In paragraph 436 of *Klima* the Court made clear that it proceeded on the basis that “there are sufficiently reliable indications that anthropogenic climate change exists [and that it] poses a serious current and future threat to the enjoyment of human rights guaranteed under the Convention”.

The rulings thus showcase the existing science and, as other national courts had done previously, confer on it the imprimatur of judicially recognised fact<sup>44</sup>. While most commentators point out that in climate change litigation nowadays, the scientific evidence is rarely in dispute<sup>45</sup>, the fact remains that the science is hotly contested in some political spheres<sup>46</sup>. Look no further than the arguments of some intervening States before the ICJ or how Bill Gates’ pronouncements prior to COP 30 were construed. He emphasised the need to address poverty and disease and focus on innovation to ensure that the tools necessary to combat global warming are available but was immediately read in some quarters as contesting climate science<sup>47</sup>.

Surveying national, European and international court rulings in relation to climate change, one sees that the work of the IPCC is central to all of them<sup>48</sup>. In the current climate (no pun intended) of contestation and political

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<sup>44</sup> The *Klima* judgment also contains an extensive overview of the scientific findings by the IPCC (§§ 107-120).

<sup>45</sup> See, for example, the Dutch Court of Appeal in *Shell v. Milieudefensie*, judgment of 11 November 2024, NL:RBDHA:2021:5339, § 3.1 which, although overturning a ruling against Shell at first instance, upheld the science and principles relied on in *Klima*.

<sup>46</sup> See Huber, Greussing and Eberl (2022).

<sup>47</sup> See <https://is.gd/yqlhfq>.

<sup>48</sup> See the IACtHR advisory opinion, cited above, at § 33: “The Court notes that the climate emergency is based on a robust and extensive body of technical and scientific knowledge, the systematization of which has been led by specialized international institutions. To establish the relevant facts supporting its legal analysis in the context of its interpretative entrusted mandate, the Court will primarily rely on the reports prepared by the Intergovernmental Panel on Climate Change (hereinafter IPCC), due

polarisation in relation to climate change, public affirmation of tested scientific consensus is to be welcomed. Indeed, at a time when we lament the demise of the post-war international rules-based order and a loss of public faith or interest in epistemic facts, we should rejoice that, as evidenced not just by work on climate change but also the response to Covid and multiple other health and public order questions, global scientific enlightenment remains alive and kicking.

### 3. THE RELEVANCE OF THE INTERNATIONAL CLIMATE LEGAL REGIME

The Strasbourg Court emphasised that it can deal with human rights issues arising as a result of climate change *only* within the limits of the exercise of its competence under Articles 19 and 32 of the Convention<sup>49</sup>. It only has authority to ensure that the Convention is complied with. Its jurisdiction does not therefore extend to supervision of compliance with other international treaties or obligations<sup>50</sup>. This did not render international treaties, such as the 2015 Paris Agreement or the UNFCCC, irrelevant<sup>51</sup>. The Court regarded such instruments as representing both international consensus in the climate change field and reflecting the requirements and commitments which Convention States had undertaken to respect<sup>52</sup>. This general approach to interpretation is in line with the principle of systemic integration in the Vienna Convention<sup>53</sup> and was also central to the reasoning of the ITLOS<sup>54</sup>, the IACtHR<sup>55</sup> and the

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to their representative character and methodologically rigor, which are widely recognized by the States”; the ITLOS advisory opinion, cited above, particularly §§ 47-66, and the advisory opinion of the ICJ, cited above, at §§ 60-110.

<sup>49</sup> *Klima*, cited above, §§ 410-457. Article 32 ECHR provides that “The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the Protocols thereto...”.

<sup>50</sup> *Klima*, cited above, § 454. See also, on the right to strike, *Humpert v. Germany* [GC], n° 59433/18, 59477/18, 59481/18 and 59494/18, § 127, 14 December 2023.

<sup>51</sup> The Paris Agreement, adopted by 196 States at that time, aims to redress the threat posed by climate change by, notably, “holding the increase in the global average temperature to well below 2 °C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5 °C above pre-industrial levels” (see Article 2(1)(a)).

<sup>52</sup> *Klima*, cited above, § 456.

<sup>53</sup> Article 31 § 3(c) of the Vienna Convention.

<sup>54</sup> See <https://is.gd/cOXSJJE>.

<sup>55</sup> IACtHR advisory opinion, cited above, §§ 35-36 and 38: “The Court notes that, even though the request does not seek an interpretation of these instruments [such as the UNFCCC], it may — given the nature of the subject matter — refer to them and

ICJ<sup>56</sup>. However, as indicated previously, it was offset in the Strasbourg trilogy by recognition of the limits to the Convention's role and that of judges generally. International treaties, and EU law, formed part of the "common ground" which the ECtHR looked at when assessing State compliance with their Convention obligations but that did not make the ECtHR an international climate enforcer<sup>57</sup>. Climate protection, to the extent that it was provided, was by ricochet, via the human rights obligations flowing from the Convention as interpreted by the Court.

#### 4. CONSIDERATION OF FUTURE GENERATIONS

One of the most important developments in these rulings is the Court's acknowledgement in the climate change context of the relevance of intergenerational burden-sharing, mirroring the prior recognition at national level. In *Klima*, the Court expressly stated that future generations are likely to bear an increasingly severe burden of the consequences of present failures and omissions to combat climate change. It also recognised that they are at a representational disadvantage in the relevant current decision-making processes:

[T]he intergenerational perspective underscores the risk inherent in the relevant political decision-making processes, namely that short-term interests and concerns may come to prevail over, and at the expense of, pressing needs for sustainable policy-making, rendering that risk particularly serious and adding justification for the possibility of judicial review<sup>58</sup>.

However, it is important to stress that burden sharing formed part of the Court's reasoning in relation to its approach to standing (see below) and to the nature and scope of the positive obligations identified (see also below). Intergenerational burden sharing or equity did not constitute a self-standing

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other relevant instruments within the framework of its advisory function [...] as supplementary sources for interpretation of the content of the provisions of the American Convention and the Protocol of San Salvador to which the request relates, in light of the climate emergency".

<sup>56</sup> ICJ advisory opinion, cited above, § 214: "Relevant international rules and standards are another reference point for assessing necessary measures. In the context of climate change, such international rules and standards are found in various climate-related treaties and instruments. The UNFCCC and the Paris Agreement stand out in this regard as primary treaties addressing climate change".

<sup>57</sup> See Garavito, cited above, at pp. 25-26.

<sup>58</sup> *Klima*, cited above, § 420.

reason for the creation of new Convention rights for persons not before the Court or not even alive<sup>59</sup>.

## 5. CAUSATION AND STANDING REQUIREMENTS

In the Swiss judgment, the Court noted that, while an important source of inspiration and guidance, its existing environmental case-law was not directly transposable, as there are some critical differences between climate change and classic environmental cases<sup>60</sup>. The main difference is the absence of a linear and clearly ascertainable nexus between a (specific) source of harm, the nature of the harmful activity and those individuals affected by that harm. In climate change cases the relevant nexus is much more complex and the effects of any harm more diffuse<sup>61</sup>. The existing environmental case-law principles therefore required tailoring in order to respond to the varied and new Convention issues which may arise in relation to human rights and climate change<sup>62</sup>.

It is important to stress that in certain types of cases, the Court's analysis of questions relating to causation, standing and the applicability of Convention articles — which depends on whether threshold severity criteria have been met — can sometimes be fused or feature at both the admissibility and the merits stages<sup>63</sup>. This can make the methodology followed in certain rulings

<sup>59</sup> See, for a comparative analysis of if, and how, intergenerational burden-sharing has featured in national judicial reasoning, (Djemni-Wagner and Vanneau, 2023).

<sup>60</sup> See further ECHR Case-law Guide on Environment: <https://is.gd/t04XgT>, and, for instance, Morrow (2019: 41).

<sup>61</sup> *Klima*, cited above, § 424.

<sup>62</sup> The principal differences between environmental and climate change cases were listed as follows (§§ 416-421): i) Greenhouse gas (GHG) emissions arise from a multitude of sources and the harm is created by aggregate levels of such emissions; ii) CO<sub>2</sub>, as the primary GHG, is not per se toxic or harmful and its harmful consequences for humans results from a complex chain of events; iii) That chain of events is also more unpredictable in terms of time and place than in the case of other emissions of specific toxic pollutants; iv) The major sources of GHG emissions are in fields of basic activities in human societies. The mitigation of emissions therefore requires comprehensive regulatory policies in various sectors of activity and as long as such adequate mitigation measures are not put in place, adaptation itself cannot suffice to combat climate change; v) Climate change is a polycentric issue such that those subject to the jurisdiction of Convention States are both culprits and victims and vi) A State's capacity for mitigation and adaptation depends on many factors such as the structure of the economy, geographical and demographic conditions and other societal circumstances.

<sup>63</sup> The Court in *Klima* noted that issues of causation in climate change cases have a bearing on the assessment of victim status as well as the substantive aspects of the

difficult to unpick. However, it reflects the realities and range of the cases and legal questions which regularly confront the Strasbourg court.

One of the great challenges facing litigants in the early phases of climate change litigation was the establishment of causation<sup>64</sup>. The Court in *Klima* addressed four dimensions of causation relevant under the Convention: the link between greenhouse gas emissions and the various phenomena of climate change, which is a matter of scientific knowledge and assessment; the definitional scope of ECHR rights (i.e. what is the link, if any, between the adverse effects (actual and potential) of climate change and the enjoyment of human rights); the fact that the risk alleged must sufficiently closely affect those concerned and reach a certain level of severity, and the attribution of responsibility to a given State, since multiple actors contribute to the aggregate amounts and effects of GHG emissions<sup>65</sup>.

As regards State responsibility, it rejected the “drop in the ocean” argument put forward by some respondent States, namely the insufficient

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State’s obligations and responsibility under the Convention (*Klima*, cited above, in particular, §§ 424-426 and 431-440). See also, in the field of climate change, *Greenpeace Nordic and Others v. Norway*, n° 34068/21, 28 October 2025, §§ 290 and 292 and, in relation to alleged Russian electoral interference, which was not limited to the applicants or even to the respondent State, the analysis in *Bradshaw and Others v. the United Kingdom*, n°15653/22, 22 July 2025, §§ 141-148.

<sup>64</sup> For an overview of the distinct phases see Setzer, Narulla, Higham and Bradeen (2022). The authors identify three successive waves of climate change cases: The first wave of climate litigation took place between the mid-1980s and the mid-2000s. As noted above, this involved a relatively small number of cases filed against governments, primarily in the United States and Australia. These early challenges largely consisted of administrative challenges to the process by which individual policy decisions had been taken and the fact that, for the most part, greenhouse gas emissions and their implications for climate change had not been considered. A second and more varied wave followed the entry into force of the Kyoto Protocol in 2005, consisting not only of administrative law challenges to policies and projects but also a surge in litigation raising questions about the implementation of climate change legislation. During this period civil society groups began to try to fill the gaps where they considered legislation to be lacking. This was also the start of the first climate change cases against corporate actors filed in the United States. The third wave is linked to the 2015 Paris Agreement and saw a further surge in strategic climate change litigation, with litigants continuing to adopt new strategies and legal arguments being used to compensate for inaction by both governments and companies. One of the key distinguishing features of this wave of litigation is the use of human rights and constitutional law arguments.

<sup>65</sup> See *Klima*, § 424, cited above, *et seq.* For an unpacking and critique of the Court’s approach to these different dimensions of causation see Stoyanova (2024).

capacity of individual States to affect a global phenomenon. The relevant Convention test in relation to positive obligations does not require it to be shown that “but for” the action or omissions of the respondent authorities the harm alleged would not have occurred. What is important, and sufficient to engage the responsibility of the State under the Convention, is that reasonable measures which the domestic authorities failed to take *could* have had a real prospect of altering the outcome or mitigating the harm<sup>66</sup>. Once again, in this respect *Klima* mirrors both the preceding work of national courts and the subsequent international advisory opinions.

Of course, another recurring obstacle for applicants in contentious proceedings is whether or not they comply with national, European or international standing requirements. The other international courts, which issued advisory opinions in non-contentious proceedings, did not have to tackle standing; the ECtHR did. In order to seek Convention protection before the Strasbourg Court, an individual needs to show that he or she is *affected* by the actions or omissions of one or more of the Contracting Parties to the Convention. The Convention does not recognise *actio popularis* and there is thus no possibility to institute Convention proceedings to ensure protection of a general cause or to seek abstract review of domestic law and practice<sup>67</sup>. However, the *actio popularis* restriction does not exclude actions of a collective nature, in which an individual or a group of individuals affected may seek protection of the interests which unite them and certain other individuals or groups that share the same protected characteristics or interests<sup>68</sup>. In addition, victim status within the meaning of the Convention has always been amenable to an evolutive interpretation, can be direct,

<sup>66</sup> See, for instance, *O’Keeffe v. Ireland* [GC], no. 35810/09, § 149, ECHR 2014 (extracts). The Court in *Klima* noted (§ 332) that the prevention principle and the precautionary principle were important sources in determining the scope of the obligation to protect through harmonious interpretation of the Convention, the precautionary principle being derived from Article 3 § 3 of the UNFCCC.

<sup>67</sup> See the discussion in *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015.

<sup>68</sup> See the discussion in the Brussels Court of Appeal judgment in *Klimaatzaak*, cited above, § 119. See also, for examples from ECtHR case-law: *Vallianatos and Others v. Greece* [GC], n° 29381/09 and 32684/09, § 47, ECHR 2013 (extracts) (recognition of same-sex partnerships), *Aksu v. Turkey* [GC], n° 4149/04 and 41029/04, ECHR 2012 (protection of targeted ethnic groups such as Roma), *Hardy and Maile*, cited above (protection of inhabitants of a town concerned with the construction and operation of liquefied natural gas terminals in a local harbour) or *Di Sarno and Others v. Italy*, n° 30765/08, 10 January 2012 (issues relation to waste management and disposal in a local community).

indirect or potential and is not applied by the Court in a rigid, mechanical and inflexible way<sup>69</sup>.

In *Klima* one of the main obstacles for the individual applicants related to the question of victim status. As explained by the Court:

If the circle of “victims” within the overall population of persons under the jurisdiction of the Contracting Parties actually or potentially adversely affected is drawn in a wide-ranging and generous manner, this would risk disrupting national constitutional principles and the separation of powers by opening broad access to the judicial branch as a means of prompting changes in general policies regarding climate change. If, on the other hand, this circle is drawn too tightly and restrictively, there is a risk that even obvious deficiencies or dysfunctions in government action or democratic processes could lead to the Convention rights of individuals and groups of individuals being affected without them having any judicial recourse before the Court<sup>70</sup>.

In relation to individuals, the Court established a particularly high threshold for victim status, tailored to the climate change context and incorporating elements of severity, comparative intensity, specificity, and temporal immediacy. The Court was clearly wary of the prospect of floodgates and mindful of the *actio popularis* exclusion and its existing environmental case-law<sup>71</sup>. The individual applicants in the *Klima* and *Carême* cases were found not to have fulfilled the victim status requirements. In the Swiss case the degree of intensity of the risk posed by warmer Swiss Summers was not proven to meet the relevant threshold<sup>72</sup>. In the French case, the former Mayor no longer resided in the affected region, nor indeed in France. Furthermore, his rights and interests had been defended by his municipality’s partially successful judicial review at national level<sup>73</sup>.

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<sup>69</sup> See further the extensive review of ECtHR case-law on victim status in *Klima*; the assessment in *Mansur Yalçın and Others v. Turkey*, n° 21163/11, § 40, 16 September 2014 and, in the environmental field, *Gorraiz Lizarraga and Others v. Spain*, n° 62543/00, § 38, ECHR 2004-III.

<sup>70</sup> *Klima*, cited above, § 484.

<sup>71</sup> *Ibid.*, § 487. The two-tier test requires individual applicants to demonstrate that they fulfil distinguishing criteria, namely: (a) high intensity of exposure to the adverse effects of climate change, and (b) a pressing need to ensure the applicant’s individual protection. See further, Letwin (2025).

<sup>72</sup> *Klima*, §§ 527-535.

<sup>73</sup> *Carême*, cited above, § 84: “Holding otherwise, and given the fact that almost anyone could have a legitimate reason to feel some form of anxiety linked to the risks of the

The individual victim status test established in *Klima* is now being applied by some national courts. For example, the Swedish Supreme Court deemed a class action introduced by 600 young people as inadmissible, finding that it was broadly framed, citing long term risks without demonstrating concrete impacts on the individual applicants<sup>74</sup>. *Klima* standing requirements are also being applied by the ECtHR itself, with several individual applications having been rejected as inadmissible for lack of individual victim status or because of the absence of extra-territorial jurisdiction in relation to complaints brought by individuals against States other than their States of residence<sup>75</sup>.

However, as regards standing, the *Klima* case presented the Court with an additional question: Could the applicant association enjoy either victim status or standing to represent the interests of others? The Swiss courts had not examined this issue, focusing only on the individual applicants and rejecting their complaints as *actio popularis*<sup>76</sup>. Previously, in environmental

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adverse effects of climate change in the future, would make it difficult to delineate the *actio popularis* protection — not permitted in the Convention system — from situations where there is a pressing need to ensure an applicant's individual protection from the harm which the effects of climate change may have on the enjoyment of their human rights”.

<sup>74</sup> See *Anton Foley and others v. Sweden* (the *Aurora* case), 19 February 2025, explained in <https://is.gd/UUcAs5>.

<sup>75</sup> The Court, sitting in Committee formations, has since declared Article 2 complaints inadmissible, as being either incompatible *ratione personae* (see *De Conto v. Italy* and 32 Others (dec.), n° 14620/21, § 16, 7 May 2025 [Committee], and *Uricchio v. Italy* and 31 Others (dec.), n° 14615/21, § 16, 7 May 2025) or incompatible *ratione materiae* (see *Engels and Others v. Germany* (dec.), n° 46906/22, § 11, 1 July 2025 [Committee]). See also *Soubeste and Others v. Austria and 11 Others*, n° 31925/22, 31932/22 31938/22, 26 November 2024 (albeit no reasoning is provided). Note that the *Engels* case concerns the German legislation in respect of climate-change mitigation, as amended in 2021 following the FCC's decision in *Neubauer*. The Committee held that the applicants had not demonstrated that they were subjected to a high intensity of exposure to the adverse effects of climate change affecting them personally, nor that there had been a pressing need to ensure their individual protection from the harm which the effects of climate change may have on the enjoyment of their human rights. In *Greenpeace Nordic*, cited above, individual victim status was not established (§§ 302-305), even for indigenous applicants.

<sup>76</sup> *Klima*, cited above, § 60: “The FSC considered that, in terms of section 25a of the APA, the applicants' legal action was of an *actio popularis* nature and aimed at achieving something which should more appropriately be achieved not by legal action but by political means”. It should also be noted that the FSC considered that “the

cases, the Court had consistently emphasised that “in modern-day societies, when citizens are confronted with particularly complex [...] decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively”<sup>77</sup>.

One of the main innovations in the *Klima* judgment — but which nevertheless finds support in the existing case-law and the European consensus —<sup>78</sup> is to grant standing, provided certain conditions are met, to collective entities to defend the rights and interests of affected members or individuals<sup>79</sup>. Associations cannot rely on health considerations or nuisances and problems associated with climate change which can only be encountered by natural persons<sup>80</sup>. The standing conditions for associations do not, however, include a requirement that members who also lodge complaints must all qualify individually for victim status under the stricter test just outlined. This was perhaps the thorniest issue in *Klima* — the need to square the prohibition of *actio popularis* with the grant of standing to an association but not to four individual members of that association on the basis of the evidence the latter had presented to the Court. However, cases stemming from a systemic problem — such as climate change, which poses a universal if differential risk to all human beings — are not necessarily *actio popularis*, as long as they concern affected persons; what commentators have characterised as second degree victim status<sup>81</sup>. In cases since *Klima*, the Court has both accepted and

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limit of ‘well below 2 °C’ in terms of the Paris Agreement was not expected to be exceeded in the near future” (*Klima*, cited above, § 58).

<sup>77</sup> *Gorraiz Lizarraga and Others*, cited above, § 38.

<sup>78</sup> See the references to the Aarhus Convention (Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters, Aarhus, United Nations, Treaty Series, vol. 2161, p. 447), the relevant provisions of EU law and the comparative survey in §§ 232-272 of the *Klima* judgment.

<sup>79</sup> *Klima*, §§ 482-503. The association must be: (a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated statutory purpose to defend human rights of its members or other affected individuals within the jurisdiction concerned regarding issues of climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of individuals concerned regarding specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.

<sup>80</sup> See *Klima*, cited above, § 473. This reflects the position of the Irish Supreme Court in *FIE*, cited above.

<sup>81</sup> Good distillations of the *Klima* judgment on victim status and standing are provided by V. Sefklow-Werner, “Consistent inconsistencies in the ECtHR’s approach to victim

rejected the standing of an environmental association, applying the criteria laid down by the Grand Chamber<sup>82</sup>. It has also restricted the recognition of standing for associations as being justified by the “specific considerations relating to climate change”<sup>83</sup>.

For the critics who don't want to see climate change mitigation cases in whatever form before courts, the innovation on standing has been one of their principal lines of attack. However, the Swiss, French and Portuguese cases demonstrate well the causality and temporality obstacles which human rights/ climate mitigation cases come up against. We are all affected, albeit differently, and the effects of the interferences and omissions being challenged in this type of case will mainly manifest themselves in the future. Furthermore, the dominant paradigm in human rights cases is and has been a “liability model of responsibility” which is “backward-looking... [and] focuses on determining responsibility for individualised rights violations”<sup>84</sup>. That model will of course endure in the vast majority of cases. However, in *Klima*, reflecting the approach of several national courts and the specificities of climate change, the ECtHR was forward-looking, seeking to respect the central purpose and the object and mechanics of the Convention, while also articulating a limited but differentiated approach to standing in order to

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status and locus standi” (2025) 16 *European Journal of Risk Regulation* 814-823, at 821, who explains that when granting the association standing the Court was nevertheless delimiting a group of people whose rights are defended. She refers to a “second-degree victim status” which is narrower than the general public but broader than the high threshold of victim status applied to individuals in climate change cases, and explains this in terms of a functional approach to the interpretation of Article 34 ECHR. See, in the same vein, Letwin, cited above, 10 and Pedersen (2025: 137). For Letsas (2024a and 2024b), the intergenerational aspect comes to the fore in relation to standing as it helps to distinguish between individuals who, at the moment, are not affected by climate change at the very high threshold of severity required but who will certainly be so affected in the future if no state action to combat climate change is taken.

<sup>82</sup> In *Greenpeace Nordic*, cited above, §§ 308-312, the Court was satisfied that the applicants organisations are a collective means of defending the rights and interests of individuals against the threats of climate change in the respondent State. Taking an overall view, it granted *locus standi* to the applicant organisations before the Court in the interests of the proper administration of justice. In contrast, see *Fliegenschnee and Others v. Austria* (dec.), n° 40054/23, 18 November 2025, where the Court left open the question of the applicant association's *locus standi* due to a lack of detailed information on its membership and statutes.

<sup>83</sup> *Cannavaciolo and Others v. Italy*, n° 51567/14 and 3 others, 30 January 2025, § 220.

<sup>84</sup> See Garavito, cited above, p. 36.

respond to the difficulties associated with the causality and temporality of climate change and the complexity of climate change litigation<sup>85</sup>. The standing of associations was accepted, against the background of the particularities of climate change litigation and in the interests of the proper administration of justice. A possible avenue has thus been provided to channel individual complaints and the collective and future-facing dimensions of climate change as a human rights challenge have been accommodated<sup>86</sup>. In relation to the standing of associations, the Strasbourg court engaged in evolution rather than revolution. It remains to be seen what effects this aspect of the Swiss judgment will have beyond Convention law. Strict EU standing conditions in direct actions are outlined in detail in the judgment and EU law commentators since the *Klima* ruling have mused about if and how the CJEU will deal with this development at Convention level in climate change cases which come before it<sup>87</sup>.

## 6. THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CLIMATE CHANGE

### 6.1. Access to justice

At the heart of the three climate change rulings is the importance of access to independent and impartial national courts and effective national remedies within the Convention system<sup>88</sup>. As the Court stated in *Klima*:

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<sup>85</sup> *Ibid.*, at pp. 36-37. Furthermore, aware that some States, like Germany, facilitate individual standing while restricting the standing of associations, the Court added at § 503 of *Klima* that: “In the event of existing limitations regarding the standing before the domestic courts of associations meeting the above Convention requirements, the Court may also, in the interests of the proper administration of justice, take into account whether, and to what extent, its individual members or other affected individuals may have enjoyed access to a court in the same or related domestic proceedings”.

<sup>86</sup> See also Sefklow-Werner, at 821 and 822 for her rejection of the criticism of the sole dissenting judge in *Klima*.

<sup>87</sup> See, for example, Eeckhout (2024). Until now, the CJEU has maintained its restrictive approach to standing for individuals to bring annulment actions, including in relation to climate change (see Case C-565/19 P *Carvalho and Others v. Parliament and Council*, EU:C:2021:252).

<sup>88</sup> See previously *Gorraiz Lizarraga and Others*, cited above; *Collectif national d'information et d'opposition à l'usine Melox – Collectif Stop Melox et Mox v. France* (dec.), n° 75218/01, 28 March 2006; *Association Burestop 55 and Others v. France*, n° 56176/18 and 5 others, 1 July 2021.

Where future harms are not merely speculative but real and highly probable (or virtually certain) in the absence of adequate corrective action, the fact that the harm is not strictly imminent should not, on its own, lead to the conclusion that the outcome of the proceedings would not be decisive for its alleviation or reduction. Such an approach would unduly limit access to a court for many of the most serious risks associated with climate change<sup>89</sup>.

In the *Klima* case<sup>90</sup>, the Court found a violation of Article 6 since there was no avenue under Swiss law through which the climate change complaints of the applicant association could be brought before a court<sup>91</sup>. Having considered that “there was still some time to prevent global warming from reaching the critical limit”, the Swiss courts had not engaged seriously, or at all, with the action brought by the applicant association<sup>92</sup>. Via its insistence on the exhaustion of domestic remedies in the case of the Portuguese children, and its assessment of the Article 6 complaint in the Swiss case, the Court emphasised “the key role which domestic courts have played and will play in climate-change litigation, a fact reflected in the case-law adopted to date in certain Council of Europe member States, highlighting the importance of access to justice in this field”<sup>93</sup>.

## 6.2. Right to respect for private life

The content and scope of States’ positive obligations under the Convention in the context of climate change have now been defined in the *Klima* judgment, in which the Court preferred to examine the applicant association’s complaint with reference to Article 8 rather than Article 2<sup>94</sup>. Firstly, Article 8 contains a positive obligation on States to protect individuals from the adverse effects of climate change on their life, health, well-being and quality of life<sup>95</sup>. Secondly, States have a duty to adopt, and to effectively apply in practice, regulations and measures designed to provide effective protection of human life, well-being and

<sup>89</sup> *Klima*, § 614.

<sup>90</sup> *Klima*, §§ 608-625.

<sup>91</sup> Note, however, that the admissibility of the Article 6 § 1 was limited, with the Court emphasising that Article 6 does not go so far as to guarantee a remedy allowing a Contracting State’s laws as such to be challenged, nor does it cover *actio popularis* complaints.

<sup>92</sup> *Klima*, §§ 635-636.

<sup>93</sup> *Ibid.*, § 639.

<sup>94</sup> *Klima*, §§ 544-554. On Articles 2 and 8 see §§ 312-318.

<sup>95</sup> See *Klima*, §§ 519, 524-525.

health<sup>96</sup>. The Court emphasised that positive obligations relating to the setting-up of a regulatory framework must be geared to the specific features of the subject matter and the risks involved<sup>97</sup>. As per §§ 545 and 548:

[...] effective respect for the rights protected by Article 8 of the Convention requires that each Contracting State undertake measures for the substantial and progressive reduction of their respective GHG emission levels, with a view to reaching net neutrality within, in principle, the next three decades [...] the State's primary duty is to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change<sup>98</sup>.

This finding was ground-breaking because this was the first climate change case dealt with by the Convention court. But the essence of the Court's ruling is not unprecedented. The Court's Article 8 environmental case-law had required proactive risk management and due diligence by States for many years<sup>99</sup>. No new Convention right was identified. Instead, old rights were tailored and applied to a new context.

The positive obligations identified also have to be read with reference to the margin of appreciation from which all States benefit. The latter defines the room for manoeuvre States enjoy when designating and implementing their laws and policies affecting the Convention rights of individuals and tempers the nature and extent of the obligations imposed<sup>100</sup>. The Court identified a differentiated margin in the field of climate change. The State's commitment to the need to combat climate change and the setting of the requisite aims and objectives calls for a *reduced* margin. This is because of the nature and gravity of the threat and the general consensus as to the stakes involved in ensuring the overarching goal of effective climate protection. As to the crucial choice of means, the margin has to remain *wide*<sup>101</sup>. This margin covers operational choices and the adoption of

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<sup>96</sup> See *Klima*, cited above, §§ 544-545 and, in the classic environmental context, *Cuenca Zarzoso v. Spain*, no. 23383/12, § 51, 16 January 2018.

<sup>97</sup> According to the Court in *Klima*, § 538, Article 8 imposes a positive obligation on the State "to put in place the relevant legislative and administrative framework designed to provide effective protection of human health and life" and to that framework effectively in practice and in a "timely" manner.

<sup>98</sup> *Ibid.*, §§ 545 and 548. Paragraph 550 of *Klima* provides greater detail regarding mitigation obligations. Not all celebrated the Court's approach — see, for example, Hilson and Geden (2024) or Humphreys (2024).

<sup>99</sup> See, for example, *Öneriyildiz v. Türkiye*, n° 48939/99, 30 November 2024.

<sup>100</sup> See further, for instance, Arai-Takahashi (2013); Gerards (2023).

<sup>101</sup> *Klima*, cited above §§ 541-543.

policies in order to meet internationally agreed targets and commitments to combat climate change and its adverse effects, in the light of the State's priorities and resources. This is pure Convention orthodoxy given the difficult economic, political and societal questions and choices entailed in decisions relating to how to combat climate change and mitigate its effects. As the Court made very clear, such choices fall to democratically elected decision-makers and not courts.

In a recent case against Norway, although finding no violation of Article 8 in relation to a challenge to the granting of licences for petroleum exploration, the Court reiterated that "climate protection should carry considerable weight in the balancing of any competing considerations", pointing to the IPCC's finding of "a rapidly closing window of opportunity to secure a liveable and sustainable future for all"<sup>102</sup>. The finding of no violation in the Norwegian case was arrived at via what is called process-based review — which focuses on whether national authorities, including national courts, have taken their Convention obligations seriously. However, the ruling is a conditional one, premised on the fact that at a later stage in the national decision-making process there would be "a comprehensive assessment of the effects of the anticipated petroleum production on climate change, comprising, among other things, the assessment of combustion emissions, and that informed public consultation will take place before the decision is taken"<sup>103</sup>.

Ultimately the Article 8 obligation imposed on States consists of an obligation of regulatory due diligence<sup>104</sup>, with the States left a wide margin to determine the means necessary in their jurisdiction to fulfil Convention requirements. The essence of the *Klima* ruling finds strong echoes in the subsequent advisory opinions, all of which reference the obligation of due diligence incumbent on States<sup>105</sup>.

## VI. JUDICIAL RESISTANCE AND EMBRACE

In the days following the April 2024 rulings, the law blogs hummed, in the main positively, in their regard. Newspaper columns were also filled with opinion pieces, whose stance for or against usually reflected the political

<sup>102</sup> See *Greenpeace Nordic*, cited above, § 316.

<sup>103</sup> *Ibid.*, at § 335.

<sup>104</sup> Due diligence is explicitly used in §§ 538 (e) and 550 (d) of *Klima*.

<sup>105</sup> ITLOS, cited above, inter alia §§ 241 and 257 (with reference to Article 194 §§ 1 and 2 of UNCLOS); IACtHR, cited above, §§ 231-232, and the ICJ, cited above, §§ 136 and 280-300. The word diligence is mentioned 84 times in the ICJ opinion.

moorings of the paper or publisher printing them. Lord Sumption, in the critical piece in *The Times* referenced previously, stated that:

Climate change is a classic polycentric issue. There is an urgent need for measures to address it. But governments have to take a far wider range of factors into account. They have to consider the impact on whole populations which have built their lives on past assumptions about the availability of energy. People need to heat their homes, get to work, run businesses and so on. Many live on very tight budgets. There is a trade-off between these competing policy imperatives. Difficult compromises may be required<sup>106</sup>.

Yet the learned judge seemed to be unaware that he had touched on key points which had guided and been highlighted by the Court itself in the Swiss judgment<sup>107</sup>. The Court's three rulings do not downplay the complexity of the task facing executives and legislatures, which is where primary responsibility for climate action remains located.

As could have been predicted, the rulings have also since felt the warmth of judicial embrace and the chill of resistance. At international level, of the sixty European, InterAmerican and international judges which have ruled on systemic mitigation questions, fifty-nine have rowed in the same direction on core legal issues. At national level, the spirit if not the words of *Klima* now feature in cases on planning and licensing. For example, recent decisions of the Northern Ireland Court of Appeal and the Scottish Court of Session, in relation to the granting of marine licences or approval of oil and gas projects, reflect new and heightened climate change awareness, each one packaged in the language and style of the respective courts<sup>108</sup>. Applicants fail and succeed in these cases but the essence of the Strasbourg rulings are well represented and respected. In 2024, the UK Supreme Court

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<sup>106</sup> Lord Sumption, *The Times*, cited above.

<sup>107</sup> The relevant paragraphs are clearly identifiable (see, for example, §§ 419-422, 449-450, 538-539 and 543 of *Klima*). See further Blattner (2024) and Heri (2025: 311) on what she considered the quite cautious and conservative nature of the path taken by the ECtHR.

<sup>108</sup> See the Northern Ireland Court of Appeal in *No Cavern Gas Limited and the Friends of the Earth* [2024] NICA 50, at § 71 and *In the Matter of Noeleen McAleenon* [2025] NICA 44. See also the Court of Session in *Greenpeace Limited v. Advocate General for Scotland* [2025] CSOH 10, at §§ 110-114. See also, on the need for national authorities to take climate change considerations into account, *Coolglass Windfarm Ltd.* [2026] IESC 5 or the District Court of North Holland in *Bonaire v. the Netherlands* NL:RBDHA:2026:6483.

ruled on a challenge to the authorisation of a petroleum extraction project at an onshore site. In *Finch* it held by a majority that the planning authority's decision to grant planning permission had been unlawful because the EIA for the project had failed to assess the effect on the climate of the combustion of the oil to be produced<sup>109</sup>.

One of the values of judicial rulings on climate change could be described as context and framework creating, with national, and now international, courts calling on the authorities to take climate protection into consideration in their manner of decision-making and in the weighing of competing interests<sup>110</sup>. Courts thus act as governance catalysts in climate cases but courts do not and cannot provide the final solution<sup>111</sup>.

Some national courts can be located in a more reluctant zone. The Swedish Supreme Court, relying on the separation of powers, limited the type of climate change cases which they are willing to hear without openly contesting the ruling in *Klima*<sup>112</sup>. Similarly, the Finnish Supreme Administrative Court accepted that an appellant association had the right to bring the

<sup>109</sup> *R (Finch) v Surrey County Council* [2024] UKSC 20, which considered development consent for the extraction of oil and consideration of downstream GHG emissions in an environmental impact assessment. The majority recognised that the process of Environmental Impact Assessment (EIA) takes place in a political context and that the information generated by an EIA will be considered within a political decision-making arena, such that economic, social and other policy factors will outweigh environmental factors in many instances. However, it considered that this fact does not avoid or reduce the need for comprehensive and high-quality information about the likely significant environmental effects of a project. Furthermore, it pointed to the “key democratic function of the EIA process” which is to allow public participation and debate. For the minority, consideration of downstream GHG emissions is a big picture issue which is a matter of policy for central government.

<sup>110</sup> See Case E-18/24, *Föreningen Greenpeace Norden and Natu rog Ungdom v. Norway*, judgment of 21 May 2025. In its judgment in relation to a Norwegian challenge to the validity of approvals for three oil and gas fields in the North Sea, the EFTA court held that environmental impact assessments must set out, among other things, any indirect effects of projects such as secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary effects, not limited to those close in time or space to the installation or scheme, or to the relevant authority's geographical jurisdiction.

<sup>111</sup> See Lozada and Çali (2025: 22).

<sup>112</sup> In the *Aurora* case, cited above, the Swedish court found that the only type of claim that could be heard is one that seeks a declaration of a violation of article 8, without requiring or implying legislative change (*Aurora*, § 79). Even in such cases, the Swedish court stressed, along the lines of the ECtHR, that determining climate policy remains the responsibility of the parliament and government (*Aurora*, § 80). The

Government's opinion on the need for further measures under the Finnish Climate Act to it for assessment. This was in line with the ECtHR's effective access to justice reasoning in *Klima*. However, the threshold for that court to find that the Government had acted unlawfully in violation of human rights by failing to take adequate measures had to be high, in accordance with the separation of powers, and the Finnish court considered that that threshold was not reached in the case before it<sup>113</sup>. Since the primary responsibility for guaranteeing Convention obligations lies with national authorities and national courts, a paradoxical consequence of national courts deciding to limit excessively the admissibility of cases at national level would be to undermine the very subsidiarity which *Klima*, *Carême* and *Duarte* sought to emphasise in the relevant parts on exhaustion and access to justice.

There is of course also an open resistance movement<sup>114</sup>. Its form, what it responds to and the imprecision with which it characterises the jurisprudential object of its criticism, namely the Strasbourg rulings, are fascinating<sup>115</sup>. As readers will know, the UK has struggled for some time with its membership of European organisations. The Brexit dust hadn't settled before calls for Convention reform or exit began. The most recent catalyst for opposition to the ECHR has been immigration and asylum malfunction – about which governments in Europe have very legitimate concerns – but which malfunction they attribute only to the ECtHR<sup>116</sup>. The climate change rulings have provided

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dissenting Swedish judge considered that no systemic mitigation claims should be deemed admissible under Swedish law. See Nordlander (2025: 566-571).

<sup>113</sup> *Finnish Association for Nature Conservation and Others v. Ministry of the Environment*, FI:KHO:2025:2. According to the Finnish Supreme Court, which recognized the primary responsibility to act of the executive and the legislature: “The role of the court is to ensure, on appeal, that government decisions are in accordance with the law and do not obstruct the exercise of human and fundamental rights. In this situation, the role of the Court is to ensure that the government decision, if clearly inadequate, does not lead to a situation that is contrary to binding international and national obligations”.

<sup>114</sup> See, for example, the submissions of 18 September 2024 of the Swiss Government to the Committee of Ministers of the Council of Europe, the body responsible for the execution of the *Klima* judgment (<https://is.gd/9r3f0R>).

<sup>115</sup> See, for example, Lord Sales, dissenting, in *Finch*, cited above (a case which did not concern the ECHR) and *R (Friends of the Earth Ltd, Kevin Jordan and Doug Pauley) v. Secretary of State for Environment, Road & Rural Affairs* [2024] EWHC 2707 (Admin), 25 October 2024, para. 98.

<sup>116</sup> See, for example, the open letter published in May 2025 by 9 Heads of State and Government, which has been followed by a declaration by twenty-seven High Contracting Parties to the Convention in December 2025.

perfect grist for the ECHR resistance mill. However, more often than not I have the impression that the critics content themselves with reading Lord Sumption in *The Times*, or proceed on the basis that the Swiss parliamentary reaction to the *Klima* case is representative of the general view. Few if any seem to acknowledge the extensive case-law and established judicial method which preceded the climate change rulings and few seem to recognise the breadth and depth of the legal obligations outlined subsequently by the ICJ in its unanimous advisory opinion.

## VII. CONCLUSIONS

In extracting and structuring the key takeaways from the three ECtHR rulings on climate change, the aim has been to demystify and clarify what the ECtHR did, emphasising the Convention orthodoxy of most of the key components in those rulings in relation to exhaustion, subsidiarity, the margin of appreciation, the due diligence core of the positive obligations imposed on States, or the continued prohibition of *actio popularis*<sup>117</sup>. Where innovation in accordance with the living instrument doctrine must be conceded it is in relation to the possible standing of associations and recognition of the relevance of an intergenerational dimension in the field of climate change.

This contribution has also sought to place the ECtHR rulings in the context of ongoing climate change litigation at national and international level and has framed it with reference to political opposition to climate science and the engagement of courts in this field. At a time when international law and the custodians of factual authority are under pressure, if not siege, the ECHR rulings reflect the commitments which States assumed at national and international level and showcase the evolving climate change science. As other courts have done previously and subsequently, the Court judgments confer on that science the imprimatur of judicially recognised fact.

Running through the Court's three rulings is an attempt to strike a fair and appropriate balance between judicial protection of human rights seriously affected by the effects of or failure to tackle climate change and the central importance of effective democratic policy-making exercised in accordance with the margin of appreciation necessary for State actors in such a complex field. It remains to be seen how the Strasbourg court will further develop its case-law on climate change. However, as one commentator has emphasised, if read in full and with care, the three rulings, and follow up case-law, demon-

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<sup>117</sup> See also Theil (2024).

strate that the Court has sought to navigate a careful path between the Scylla and Charybdis of those who consider that the ECtHR should go very much further in the climate change field and those who exclude for it any role at all<sup>118</sup>.

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<sup>118</sup> See Letwin, cited above, 29-30.

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