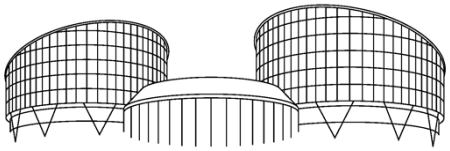

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF DUARTE AGOSTINHO AND OTHERS AGAINST PORTUGAL AND 32 OTHERS

(Application no. 39371/20)

DECISION

STRASBOURG

9 April 2024

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

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

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having regard to the above application lodged on 7 September 2020,

Having deliberated in private on 28 September 2023 and on 11 January 2024, decides as follows:

PROCEDURE

1. The case originated in an application (no. 39371/20) lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by six Portuguese nationals (for the list of applicants, see paragraph 11 below), on 7 September 2020, against the Portuguese Republic and the following 32 other States: the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Swiss Confederation, the Republic of Cyprus, the Czech Republic, the Federal Republic of Germany, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Estonia, the Republic of Finland, the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic , the Republic of Croatia, Hungary, Ireland, the Italian Republic, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Latvia, the Republic of Malta, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Sweden, the Republic of Türkiye and Ukraine.

2. The respondent Governments ("the Governments") were represented by their Agents, whose names are listed in the Annex.

3. The applicants alleged, in particular, that there had been a breach of Articles 2, 3, 8 and 14 of the Convention owing to the existing, and serious future, impacts of climate change imputable to the respondent States, and specifically those in relation to heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). On 13 November 2020 the Governments were given notice of the application. Judge Eicke was appointed common-interest judge on 24 May 2022 (Rule 30). On 28 June 2022 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24. The President of the Court decided that in the interests of the proper administration of justice, the case should be assigned to the same composition of the Grand Chamber as that in the cases of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20) and *Carême v. France* (application no. 7189/21) (Rules 24, 42 § 2 and 71), which were relinquished by Chambers of the Third and Fifth Sections, respectively.

6. The applicants and the respondent Governments (see paragraphs 72-74 below), each filed memorials on the admissibility and merits of the case. In addition, having been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3), third-party comments were received from the Council of Europe Commissioner for Human Rights, the European Commission, the United Nations Special Rapporteurs on human rights and the environment, and on toxics and human rights, the European Network of National Human Rights Institutions ("ENNHRI"), Save the Children International, Climate Action Network Europe ("CAN-E"), the Extraterritorial Obligations Consortium and partners, Center for International Environmental Law, Greenpeace International and the Union of Concerned Scientists, the International Network for Economic, Social and Cultural Rights (ESCR-Net), ALL-YOUTH research project and Tampere University Public Law Research Group, Professor Christel Cournil and Notre Affaire à Tous ("NAAT"), and Our Children's Trust ("OCT"), Oxfam International and its affiliates (Oxfam), the Centre for Climate Repair at the University of Cambridge and the Centre for Child Law at the University of Pretoria.

7. On 11 January 2023 the Grand Chamber decided that in the interest of the proper administration of justice, after the completion of the written stage of the proceedings in the above-mentioned cases, the oral stage would be staggered so that a hearing in the *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* and *Carême v. France* cases would be held on 29 March

2023, and a hearing in the present case would be held before the same composition of the Grand Chamber at a later stage.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 27 September 2023.

9. A list of those who appeared before the Court is provided in the Annex. The Court heard addresses by Mr S. Swaroop KC, Ms I. Niedlispacher and Mr R. Matos, who made joint submissions for the respondent Governments, and Mr V. de Graaf, Mr Matos and Mr H.A. Açikgül, who made State-specific submissions for the Governments of the Netherlands, Portugal and Türkiye, respectively, as well as addresses by Ms A. Macdonald KC and Ms A. Sander, representing the applicants. The Court also heard addresses by the Council of Europe Commissioner for Human Rights, Ms D. Mijatović, (Rule 44 § 2), and by the third-party interveners who had been granted leave to take part in the oral hearing before the Court (Rule 44 § 3), Mr D.Calleja Crespo, for the European Commission, and Ms A. Matheson Mestad, for ENNHRI.

10. The answers to the questions put by the Court were provided by Mr Swaroop KC, Ms Niedlispacher and Mr Matos on behalf of the Governments and by Ms Macdonald KC for the applicants. In addition, the President exceptionally granted leave to the respondent Governments to answer some of the questions in writing. Their answers were provided to the applicants, who were given the opportunity to comment on them.

THE FACTS

11. The applicants, listed below, are all Portuguese nationals living in Portugal:

1. The first applicant, Ms Cláudia Duarte Agostinho, was born in 1999;
2. The second applicant, Mr Martim Duarte Agostinho, was born in 2003;
3. The third applicant, Ms Mariana Duarte Agostinho, was born in 2012;
4. The fourth applicant, Ms Catarina Dos Santos Mota, was born in 2000;
5. The fifth applicant, Ms Sofia Isabel Dos Santos Oliveira, was born in 2005;
6. The sixth applicant, Mr André Dos Santos Oliveira, was born in 2008.

The first, third and fourth applicants live in Merinhas (Pombal municipality) and the second applicant in Leiria, both of which are in Leiria District. The fifth and sixth applicants live in Sobreda, a civil parish within the municipality of Almada, which is part of the metropolitan area of Lisbon.

I. FACTS SUBMITTED BY THE APPLICANTS

A. Facts submitted in the application form

12. The applicants relied on the relevant international documents[1], general reports and expert findings[2] concerning the harm caused by climate change to human health. This related, in particular, to the fact that Portugal was already experiencing a range of climate-change impacts, including increases in mean temperatures and extreme heat. That caused heatwaves which, in turn, were a major driver of wildfires.

13. In the applicants' view, all the respondent States bore responsibility for this. In particular, States contributed to climate change by, *inter alia*, permitting:

(a) the release of emissions within the national territory, and offshore areas "over which they had jurisdiction";

(b) the export of fossil fuels extracted on their territory;

(c) the import of goods, the production of which involved the release of emissions into the atmosphere; and

(d) entities within their jurisdiction to contribute to the release of emissions overseas, namely, through the extraction of fossil fuels overseas or by financing such extraction.

14. The applicants submitted that they were currently exposed to a risk of harm from climate change and that the risk was set to increase significantly over the course of their lifetimes and would also affect any children they might have. The applicants alleged that they had already experienced reduced energy levels, difficulty sleeping and a curtailment on their ability to spend time or exercise outdoors during recent heatwaves. The regions where they lived faced an increase in extreme fire risk. The 2017 wildfires had come very close to the homes of applicants nos. 1-4, and the garden of the house of applicants nos. 1-3 had been covered in ash. The wildfires also made applicants nos. 5-6 anxious and upset. Similarly, applicants nos. 1-4 were horrified to know that people were being killed close to their home by these fires. The second applicant had been unable to attend school for several days because of the amount of smoke in the air. The applicants also experienced anxiety about the effects which climate change might have on them and their families, and the families they hoped to have in future.

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[1] United Nations Framework Convention on Climate Change, A/RES/48/189, 1992 (consolidated text); Paris Agreement, 12 December 2015, United Nations, Treaty Series, vol. 3156.

[2] The 2018 Special report "1.5°C global warming" of the Intergovernmental Panel on Climate Change; Climate Analytics, "Climate Impacts in Portugal", last updated 31 July 2020; UN Environment Programme, "Emissions Gap Report 2019" and Report "Lessons from a decade of emissions gap assessments", 2019; OECD, IEA *World Energy Balances* 2019.

15. In support of their application, the applicants submitted written personal statements which may be summarised as follows.

1. Applicants nos. 1-3

16. In a written statement accompanying the application form, signed by applicants nos. 1-3, they explained that they had decided to lodge an application with the Court following the forest fires which had struck Portugal in the summer of 2017. They made the same statements as in the application form (see paragraph 14 above) and added that none of them or their friends or family had been injured in the forest fires, and nor had their family suffered any damage from the fires. However, over sixty people had been killed by these fires and many others had been injured. All of the fatalities had occurred in or near a place less than an hour's drive away from their home. The applicants had experienced moments of horror during these fires, especially knowing that people were being killed in the most awful way so close to their home. Then again, in October 2017, fires had broken out throughout the northern half of Portugal and some had been very close to their home. Around forty-five people had been killed across the country as a result of these fires.

17. As regards the reason why they decided to lodge an application with the Court, the applicants submitted the following:

> "The fires made us realise that climate change is not just a threat to the planet's future or to the polar ice caps. It is a threat to us that is here, right now, on our doorstep. Around that time, we became anxious to do something. We know that without immediate action by governments to reduce global greenhouse gas emissions, the threat from climate change is only going to get worse. We may have escaped harm in 2017 but our chances of doing so again will only decrease over time if we continue on the path that we are on. Once again, Portugal experienced widespread forest fires this (2020) summer as a result of a combination of high temperatures and high winds. Fortunately, these fires were not as bad as the fires in 2017 but they are reminder of the risk we face. That's why we decided to take this case.
>
> Climate change causes us to fear what the future holds for us and the families we hope to have. While we may at some point wish to spend some time abroad, Portugal is our home, it is the country in which we are likely to spend most of the rest of our lives and have our own families. And yet we have learned from the Climate Analytics expert report that Portugal is a climate change hotspot. It makes us sad and scared to think that, if governments continue on their current path, we will experience much more extreme heatwaves than the ones which have gripped our country in recent years and that events like the fires which broke out around us in 2017 will occur again and again, getting worse into the future. Even Mariana, who is only eight years old, appreciates that the natural environment which surrounds her is under threat. As a lover of the natural environment this causes her significant anxiety."

18. The applicants further argued that there were lots of ways in which the impacts associated with climate change, in particular from high temperatures and drought, affected, or would affect in the future, their lives. The extreme heat was difficult to endure, it required them to spend more time

indoors, they suffered from reduced energy levels and they had difficulty sleeping, which affected their productivity. Severe droughts could interfere with their ability to grow crops and use their well. Applicants nos. 1 and 2 suffered from allergies (a sun allergy, hay fever and sinusitis, respectively) which made them worry because climate change would worsen certain allergies.

19. Finally, the applicants specified that "[t]his statement [had] been prepared with the input of our parents (Teresa and Sérgio) and they [had confirmed] that the contents of the statements relating to Mariana and Martim [were] true".

2. Applicant no. 4

20. In a written declaration, the fourth applicant explained that she was a friend and neighbour of the Duarte Agostinho family. She further specified why she had decided to lodge an application with the Court:

> "I decided to join Claudia, Martim and Mariana Duarte Agostinho in bringing this case when I heard about it. I too experienced the horror of the forest fires which broke out across Portugal in 2017, although fortunately I was not injured [and] nor were any of my family members, and nor was any of my family's property damaged. I have been concerned about climate change for some time. As a result, I have made some changes to how I live. For example, I consume far less meat than I used to as I know the production of meat contributes to climate change."

21. The fourth applicant further submitted that she could not exercise outdoors during extreme heatwaves and there had even been occasions during the summer of 2020 when she had avoided spending time outdoors altogether. Her sleep was affected and therefore she did not function properly during the day. She was becoming increasingly worried about how climate change would affect her and her generation's future since, as things stood, climate change posed a clear risk to life, health and quality of life. As a child, the applicant had suffered from bad asthma (which was now less of a problem) and she currently suffered occasionally from bronchitis. Any significant deterioration in air quality could cause her to suffer from bad asthma again and would worsen the symptoms of her bronchitis.

3. Applicants nos. 5-6

22. As regards the reason why they decided to lodge the present application with the Court, the applicants explained as follows:

> "We decided, along with our parents, to get involved in bringing this case not long after major forest fires spread across Portugal in 2017, first in June and then again in October, killing over 100 people. Fortunately, none of our friends or family members were killed or injured but the scenes of destruction across our country made us realise how real the threat of climate change is. We were disturbed to see the images of the fires on the news, with people crying for help as a result of the destruction. It made us both very anxious and upset."

23. The applicants further stressed that they were worried about climate change, particularly after they had seen the summary of the Climate Analytics report. They had difficulty sleeping, lacked energy and could not go outside on hot days. The scenes of death and destruction linked to forest fires caused them fear and anxiety. Both applicants suffered from allergies which would be affected by high temperatures. They were also worried about whether they would be able to spend time outdoors in future. Their home was close to the sea and close enough for them to experience the effects of winter storms.

24. The applicants specified that their parents had been present when they provided the information for their statement and had confirmed its veracity.

B. Facts submitted to the Grand Chamber

25. In their memorial of 5 December 2022, the applicants reiterated the arguments made in the application form and further relied on the more recent reports of the Intergovernmental Panel on Climate Change ("IPCC")[3], and some other scientific reports[4], showing that the level of global warming to date was unsafe and that "rapid and deep" emissions reductions by 2030 were needed in order to achieve the agreed 1.5ºC temperature increase limit. The respondent States had been aware of the dangers of climate change since the adoption in 1992 of the UN Framework Convention on Climate Change ("UNFCCC") and the adoption of the Paris Agreement.[5] Action was required by each respondent State across the four areas identified in paragraph 13 above. The applicants argued that Portugal was one of the European countries that would be most affected by the adverse impact of climate change and that it faced "hard limits" to its ability to adapt to the impact of global warming[6].

26. The applicants submitted a list of specific impacts on and risks to them linked to climate change. This list was mostly based on the general climate-change situation in Portugal[7] and included the following:

(a) Heat-related impacts – the applicants reiterated that during periods of extreme heat, they had to curtail their usual youthful activities of playing and

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

[4] Citing, *inter alia*, UN Environment Programme, "Emissions Gap Report 2022"; Climate Action Tracker, CAT rating methodology: Modelled domestic pathways; Expert Report of William Hare et al, "Achieving the 1.5°C Limit of the Paris Agreement: An Assessment of the Adequacy of the Mitigation Measures and Targets of the Respondent States in Duarte Agostinho v Portugal and 32 other States" (Climate Analytics, 7 January 2022).

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

[6] Citing, *inter alia*, IPCC, "Climate Change 2022: Impacts, Adaptation and Vulnerability", Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change ("AR6 WGII").

[7] Citing, *inter alia*, Government of Portugal, Directorate-General of Health, Division of Environmental and Occupational Health, "Contingency Plan for Adverse Extreme Temperatures Heat Module" (May 2015).

exercising outdoors, and otherwise enjoying the outdoors. Extremely hot nights also made it difficult for them to sleep, making them more tired and less productive in the days that followed. Applicants nos. 2, 4 and 6 suffered from respiratory conditions, and an increase in the mean temperature would lead to increases of 2.7% in general mortality and 1.7% in respiratory morbidity.

(b) Wildfires and smoke – applicants nos. 1-3 had described the "horror" of these fires, with the first applicant now suffering from anxiety as each summer approached. During the forest fires, their garden had been covered with ash. The second applicant had been unable to attend school, and smoke had filled the sky (containing chemicals harmful to human health). The applicants were concerned that wildfires at least as bad as those in 2017 would occur in the future. Where the applicants resided, the number of days of extreme wildfire risks was projected to significantly increase between the years 2000 and 2100.

(c) Air pollution and allergens – climate change would expose people in Portugal to high levels of pollution, and would potentially increase the levels of aeroallergens exacerbating respiratory diseases such as asthma. Applicants nos. 2 and 4-6 suffered from health conditions caused by pollution and allergens. Applicant no. 2 submitted a medical certificate according to which he had been diagnosed with rhinitis and asthma. Applicant no. 6 provided a handwritten medical certificate according to which he suffered from bronchial asthma aggravated by climate-change related temperature changes, namely extreme heat.

(d) Mental-health impact – the lead author of a study surveying the mental-health impact on young people in Portugal linked to climate change[8], had produced an expert report concerning the applicants in the present case. In her opinion, applicants nos. 2 and 5-6 suffered from an "Adverse Childhood Experience" linked to prolonged climate anxiety. The applicants also experienced a form of mental suffering called "moral injury" caused by their awareness of the failure by those in authority to protect them.

27. In their further submissions of 29 March 2023, the applicants argued that there were in fact only few factual disputes between them and the respondent States. In their view, the following was undisputed: (i) the global causes and impacts of climate change; (ii) the climate-change impacts in Portugal and the limits of Portugal's adaptive capacity; (iii) the imperative to keep global warming to 1.5°C; (iv) the inadequacy of the current pathway; (v) the need for rapid global emissions reductions outlined as necessary by the IPCC; (vi) the need for steep declines in fossil fuel production; and (vii) the contribution to climate change of embedded and overseas emissions of entities domiciled within the respondent States.

[8] Caroline Hickman et al, "Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey" (2021) 5 Lancet Planetary Health.

28. The applicants argued that the risk level of heatwaves in their districts was comparable to the overall high and increasing risk of heatwaves in Portugal as a whole. All the applicants lived in areas which had experienced record temperatures of over 40°C in recent years. Applicants nos. 1-4 lived in areas classified as being at "moderate" risk and all the applicants lived in or near coastal areas with higher humidity where heat stress could occur at lower temperatures. The district where applicants nos. 1-4 lived was one of the three districts in Portugal most affected by wildfires in 2022.

29. It could not be accepted as a "common issue" the fact that the applicants needed to stay indoors during heatwaves. Heatwaves would substantially increase as a result of climate change and the issue needed to be tackled by the respondent States (see paragraph 35 below).

30. The applicants clarified that their reference to the 2017 wildfires should be understood as an example of the increasingly frequent and severe impacts of climate change that had affected and would continue to affect Portugal. However, the applicants had never claimed that the reference to the 2017 wildfires was their only complaint in respect of the impact of climate change upon them.

II. FACTS SUBMITTED BY THE RESPONDENT GOVERNMENTS

31. In their joint submissions to the Grand Chamber (see paragraph 72-73 below), the respondent Governments challenged the probative value of the expert reports relied upon by the applicants concerning climate change and its effects on the applicants. The Governments stressed that these reports had not been peer-reviewed and some of them were based on contested assumptions which did not represent the best available evidence.

32. The Governments further explained that the factual information as regards the case had been collected and examined by the Portuguese Government. The other respondent Governments had not had access to detailed information regarding the applicants' situation and the factual context of the case.

33. The respondent Governments noted the following facts of the case:

(a) Two major fires occurred in Portugal in 2017, the first in June and the second in October.

(b) The houses where applicants nos. 1-4 lived were located in the Meirinhas municipality of Pombal, in the centre of Portugal, which was the region in which the second major fire occurred, in October 2017.

(c) The above-mentioned applicants' houses were located approximately an hour's journey from the location of the first fire in the summer of 2017.

(d) Ash might have fallen in the garden of the house where the first three applicants lived.

(e) The second applicant would have been unable to attend school on the afternoon of 16 October 2017, as it had been closed at the time owing to the smoke caused by the second major fire.

(f) Applicants nos. 5-6 lived in Sobreda, in the region of Lisbon, close to the sea.

(g) Sobreda was located around 200 kilometres from the region where the fires occurred.

34. The respondent Governments contested all the other facts of a personal nature alleged by the applicants. As regards the applicants' personal statements, the Governments noted as follows.

35. All the applicants had conceded that neither they nor their relatives had sustained any harm, whether physical or material. The difficulties alleged to have been experienced by the applicants in sleeping and spending time outdoors when it was too hot was a common issue and did not raise concerns specific to the applicants. The fears for the future the applicants claimed they were facing had not been substantiated.

36. Regarding the alleged damage suffered by applicants nos. 1-3, they had not indicated when or where such damage had occurred, nor had they specified what the damage consisted of. The applicants had not established any causal link between the alleged damage and the events in question. The names of the applicants had not been included on the list of victims who had suffered physical injury, non-material or material damage as a result of the two major fires in 2017, and who had accordingly been awarded compensation at the domestic level.

37. While applicants nos. 2 and 6 had provided some medical evidence in support of their complaints, the Governments noted that applicant no. 2's medical certificate dated from November 2018 and did not provide any information about the level or intensity of his conditions (rhinitis and asthma) or any medical treatment provided then or since, and did not provide any information about the cause of the conditions. Applicant no. 6's medical certificate was an undated handwritten note, which declared that the applicant suffered from bronchial asthma "aggravated" by extreme heat. No information had been given about the level or intensity of the condition, or any medical treatment provided.

38. The respondent Governments argued that there had been a significant shift and expansion of the applicants' arguments as regards the actual subject matter of the case. In particular, it appeared that the applicants no longer sought to relate the damage or inconvenience they claimed to have suffered to the fires of 2017, but also (or especially) to greenhouse gas ("GHG") emissions emitted by the various respondent Governments.

39. In this connection, the Governments noted the following:

(a) The applicants had claimed that the region in which they resided was especially affected by heatwaves and fires. However, the applicants' places of residence, which were located near the coastline, had been identified in the

"National Risk Assessment" (provided by the Portuguese Government) - which divided Portugal into four levels of risk (very high, high, mild, low) – as geographical areas where the risk level regarding heatwaves or episodes of extreme heat was considered to be "mild" or "low". The risk level in the regions where the applicants lived was no higher than in the rest of the territory of Portugal. In any event, in the period 2018-22, Portugal had avoided the most severe consequences from wildfires, having reduced by half their number.

(b) The applicants were now claiming that their mental health was being severely impaired by the effects of climate change and/or had been severely impaired by the fires of 2017. Previously the applicants had relied on their asserted fears concerning the possible future consequences of climate change, in particular, fears that the respiratory diseases and allergies from which they claimed to suffer would worsen.

(c) As regards the alleged mental-health impact, and in so far as the applicants relied on the expert report (see paragraph 26 (d) above), the Governments questioned whether the document in question could be considered an "expert report". They noted that the document itself acknowledged that climate anxiety was not yet a diagnosable mental illness. There was no evidence that any of the applicants had had any treatment, whether for anxiety and depression generally or for climate anxiety. The "expert report" had apparently been prepared without any direct examination of the applicants by the expert. The applicants had apparently only been interviewed online and in conditions that were not clear.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK OF PORTUGAL

A. Relevant domestic law

1. The Constitution

40. The relevant provisions of the Constitution of Portugal provide as follows:

Article 9
Fundamental tasks of the State

"The fundamental tasks of the State are:

...

(e) To ... defend nature and the environment, preserve natural resources ..."

Article 16
Scope and interpretation of fundamental rights

"1. The fundamental rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules

2. The constitutional and legal precepts concerning fundamental rights must be interpreted and completed in harmony with the Universal Declaration of Human Rights."

Article 17
Regime governing rights, freedoms and guarantees

"The regime governing rights, freedoms and guarantees applies to those set out in Title II and to fundamental rights of an analogous nature."

Article 18
Legal force

"1. The constitutional precepts with regard to rights, freedoms and guarantees are directly applicable and are binding on public and private entities.

..."

Article 52
Right to petition and right of *actio popularis*

"1. Every citizen has the right to, individually or collectively, submit petitions, representations, claims or complaints in defence of their rights, the Constitution, the laws or the general interest to the entities that exercise sovereignty, the self-government organs of the autonomous regions, or any authority, as well as the right to be informed of the result of the consideration thereof within a reasonable time limit.

2. The law shall lay down the conditions under which collective petitions that are submitted to the Assembly of the Republic and the Legislative Assemblies of the autonomous regions are examined in plenary sitting.

3. Everyone is granted the right of *actio popularis*, including the right to apply for the applicable compensation for an aggrieved party or parties, in the cases and under the terms provided for by law, either personally or, via associations that purport to defend the interests in question. The said right may particularly be exercised in order to:

(a) Promote the prevention, cessation or judicial prosecution of offences against public health, consumer rights, the quality of life or the preservation of the environment ..."

Article 66
Environment and quality of life

"1. Everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it.

2. In order to ensure the right to the environment within an overall framework of sustainable development, the State, acting via appropriate bodies and with the involvement and participation of citizens, is charged with:

(a) Preventing and controlling pollution and its effects ..."

2. Law no. 83/95 of 31 August 1995

41. The relevant provisions of Law no. 83/95 on the right to procedural participation and *actio popularis* provide as follows:

Section 1
Scope of the present Law

"1. The present Law defines the situations and conditions under which the right to popular participation in administrative proceedings and the right of *actio popularis* aiming to prevent, cease, or institute judicial proceedings in respect of the infringements provided in Article 52 § 2 of the Constitution are conferred and may be exercised.

2. ... [T]he interests protected by the present Law shall be public health, the environment, quality of life ..."

Section 2
Right to procedural participation and *actio popularis*

"1. Any citizen in full enjoyment of his or her civil and political rights and associations and foundations defending the interests referred to in the previous section have the right to procedural participation and the right to *actio popularis*, irrespective of whether or not they have a direct interest in the claim."

3. Civil Code

42. Article 70 of the Civil Code (Protection of personality) provides as follows:

"1. The law protects individuals against any unlawful offence or threat of offence against their physical or moral person.

2. Regardless of any civil liability which may arise, the person threatened or offended may request measures that are appropriate to the circumstances of the case in order to avoid the realisation of the threat or to mitigate the effects of an offence already committed."

4. Code of Civil Procedure

43. The relevant provisions of the Code of Civil Procedure read as follows:

Article 16
Incapacity

"1. Minors and accompanied adults subject to representation may only stand in court through their legal representatives, except regarding acts that they may personally and freely exercise."

Title 1
Protection of personality
Article 878
Requirements [for special procedures in respect of the protection of the personality]

"An application may be submitted for the adoption of measures that are concretely appropriate to avoid the [occurrence] of any direct and unlawful threat to the physical or moral personality of an individual, or to mitigate or cease the effects of an offence that has already been committed."

5. Law no. 19/2014 of 14 April 2014

44. The relevant parts of Law no. 19/2014 – the Environmental Policy Framework Act – provide as follows:

Section 1
Scope

"The present law defines the framework of the environmental policy, in compliance with Articles 9 and 66 of the Constitution."

Section 5
Right to the environment

"1. Everyone has the right to the environment and quality of life under the Constitution and international treaties.

2. The right to the environment consists of the right to protection against any harm to the constitutionally and internationally protected sphere of each citizen, and of the power to request public and private entities to comply with all the duties and obligations in environmental matters to which they are bound by law."

Section 7
Procedural rights in environmental matters

"1. Everyone has the right to full and effective protection of their rights and interests in environmental matters.

2. In particular, the above-mentioned procedural rights mainly include, *inter alia*, the following:

(a) The right of action in order to defend legally protected individual rights and interests, as well the exercise of the right to a public action and an *actio popularis*;

(b) The right to promote the prevention, cessation and compensation for breaches of environmental assets and values as quickly as possible;

(c) The right to demand the immediate cessation of any activity causing threat or damage to the environment, as well as restoration of the status quo ante and payment of the corresponding compensation, in compliance with the law."

6. Law no. 67/2007 of 31 December 2007

45. The relevant parts of Law no. 67/2007 on the legal framework concerning the non-contractual civil liability of the State and other public entities provide as follows:

Section 3
Obligation to compensate

"...

3. The liability provided for in this Law includes material and non-material damage as well as damage already caused and future damage, under the general terms of law."

Section 7
Exclusive liability of the State and other public entities

"1. The State and other public entities shall be exclusively liable for damage resulting from [unlawful] actions or omissions, committed with minor fault, by officials, employees or agents, in the exercise of their administrative functions and because of such exercise.

...

3. The State and other public entities shall also be liable where the damage did not result from the concrete behaviour of an official, civil servant or defined agent, or where it is not possible to prove individual responsibility for the action or omission but the damage can be attributed to the [improper] functioning of the service.

4. [Improper] functioning of the service exists when, taking into account the circumstances and the average standards of result, the service could reasonably be required to act in such a way as to avoid the damage caused."

7. The Code of Administrative Courts Procedure

46. The relevant provisions of the Code of Administrative Courts Procedure read as follows:

Article 9
Legal standing

"...

2. Regardless of their personal interest in the proceedings, any person, as well as associations and foundations defending the interests in question ... have legal standing to initiate and intervene, according to the legal provisions, in main and interim proceedings aimed at defending constitutionally protected values and assets, such as public health, the environment ... quality of life ..."

Article 109
Requirements [regarding summons for the protection of rights, freedoms and guarantees]

"1. A summons for the protection of rights, freedoms and guarantees may be requested when the prompt delivery of a decision on the merits that requires the Administration to adopt a positive or negative conduct proves to be indispensable to ensure the timely exercise of a right, freedom and guarantee, since it is not possible or sufficient, in the circumstances of the case, to [order] an interim measure.

..."

Article 112
Interim measures

"1. Any person who has legal standing to initiate proceedings in the administrative courts may request the adoption of any interim, anticipatory or conservatory measure deemed appropriate to ensure the usefulness of the judgment to be delivered in such proceedings.

..."

Article 131
Provisional order of the measure

"1. When the existence of a situation of special urgency, likely to give rise to a situation of *fait accompli* during the proceedings, is recognised, the judge, in the preliminary order, may, at the request of the applicant or of his or her own motion, provisionally order the requested measure or the one deemed most appropriate, without further consideration, within forty-eight hours ..."

8. Law no. 35/98 of 18 July 1998

47. The relevant parts of Law no. 35/98 on the legal status of environmental non-governmental organisations ("ENGOs") provide as follows:

Section 9
Administrative remedies and procedures

"1. ENGOs have the legal right to promote before the competent entities the administrative remedies for the defence of the environment, as well as to initiate an administrative procedure ..."

Section 10
Legal standing

"NGOs, regardless of whether they have a personal interest in the proceedings, have the right to:

(a) File a legal action aiming to prevent, amend, suspend and cease actions or omissions of public and private entities that cause or may cause damage to the environment;

(b) In compliance with the law, bring a legal action in order to enforce civil liability regarding the actions or omissions referred to in subsection (a);

(c) Lodge an appeal against administrative actions and regulations that constitute a breach of the legal provisions that protect the environment;

..."

9. Decree-Law no. 147/2008 of 20 July 2008

48. The relevant provisions of the Decree-Law no. 147/2008 read as follows:

Section 1
Object

"The present Decree-Law establishes the legal framework for liability for environmental damage and transposes into the national legal system Directive 2004/35/EC of the European Parliament and of the Council of 2l April 2004 ..."

Section 2
Scope of application

"1. The present Decree-Law applies to environmental damage, as well as to imminent threats of such damage, caused as a result of the performance of any activity carried out within the scope of an economic activity, irrespective of its public or private, profit making or non-profit-making nature ..."

10. Law no. 98/2021 of 31 December 2021

49. The relevant parts of the Climate Act (Law no. 98/2021) provide as follows:

Section 2
Climate emergency

"1. A state of climate emergency is recognised.

..."

Section 5
Right to climate balance

"1. Everyone has the right to climate balance, under constitutional and internationally established terms.

2. The right to climate balance consists of the right to protection against the impacts of climate change as well as the ability to demand that public and private entities comply with the duties and obligations to which they are bound in climate matters."

Section 9
Citizen participation

"1. Citizens have the right to participate in the process of drafting and reviewing climate policy instruments.

..."

11. Law no. 34/2004 of 29 July 2004

50. The relevant provisions of Law no. 34/2004 on legal aid read as follows:

Section 8
Insufficient economic means

"1. A person is in a situation of insufficient economic means if she or he lacks the financial resources to meet promptly the costs of proceedings before a court ..."

Section 16
Forms [of legal aid]

"1. Legal aid can take the following forms:

(a) Exemption from court fees and other procedural costs;

(b) Appointment of a legal representative and payment of his or her fees;

(c) Payment of the fees of an officially appointed lawyer;

(d) Payment in instalments of the court fees and other procedural costs;

(e) Appointment of a legal representative and payment in instalments of his or her fees;

(f) Payment in instalments of the fees of an officially appointed lawyer;

..."

12. Law no. 108/2017 of 23 November 2017

51. The relevant parts of Law no. 108/2017 concerning support measures for the victims of the 2017 forest fires provide as follows:

Section 1
Object and scope

"1. The present Law establishes support measures for the victims of the forest fires that occurred between 17 June and 24 June 2017 ... and urgent measures to reinforce the prevention and combat of forest fires.

2. The measures established by the present Law cover support for fire victims in terms of health, housing, access to exceptional social and welfare benefits, protection and safety, restoring the productive potential and rapid mechanisms for identifying losses and compensating the victims of fires by ensuring adequate coordination between the entities and institutions involved.

..."

Section 2
The concept of victim

"For the purposes of the present Law, victims of fires are natural persons directly or indirectly affected in their health, physical and mental, income or assets, according to the survey and approval of the relevant services, without prejudice to the support foreseen for legal persons."

Section 15
Right to compensation

"1. Victims who ... have sustained mental or physical harm to their health, or another pecuniary or non-pecuniary damage, for which the State is responsible as a result of the fires referred to in section 1(1), are entitled to compensation from the State."

Section 16
Claim

"1. Payment of compensation by the State requires the submission of a claim ... by the persons referred to in subsections 1 and 2 of the previous section."

Section 18
Deadlines

"1. Compensation claims ... must be submitted within six months after the entry into force of the present Law ...

2. The previous subsection shall not apply in cases where the victim is a minor on the date of entry into force of the present Law, in which case the compensation claim may be submitted within six months after reaching majority or emancipation, without prejudice to the provisions of the following subsection.

3. In cases where the victim is a minor on the date of entry into force of the present Law, the Public Prosecutor's Office shall ensure the minor's defence, upon the duly substantiated request of any interested party."

B. Relevant domestic practice

52. The Government of Portugal provided the following case-law as regards the application of Article 66 of the Constitution (see paragraph 40 above):

(a) Supreme Court of Justice:

– Judgment of 19 April 2012 (no. 3920/07.8TBVIS.C1.S1) which found that noise pollution caused by music nuisance at night-time constituted a breach of the right to a healthy and ecologically balanced environment;

– Judgment of 30 May 2013 (no. 2209/08.0TBTVD.L1.S1) which found that the right to a healthy and ecologically balanced environment should prevail over the right to engage in an economic activity (in the case at issue, wind-energy generation using wind turbines);

– Judgment of 3 December 2015 (no. 1491/06.1TBLSB.P2.S1) which assessed the competing interests between the right to quality of life, to rest and to a healthy and balanced environment and the social and economic interests related to road planning;

– Judgment of 3 May 2018 (no. 2115/04.7TBOVR.P3.S1) which found that the appellants' right to rest should prevail over the right of the defendant to engage in an energy-distribution activity.

(b) Supreme Administrative Court:

– Judgment of 24 September 2003 (proceedings no. 0130/02) in which Article 66 was directly applied in a case concerning an act of a regulatory nature in the framework of hunting legislation;

– Judgment of 10 March 2010 (no. 046262) in which Article 66 of the Constitution was directly applied in a case concerning an administrative act adopted in the context of road planning.

II. RELEVANT INTERNATIONAL MATERIALS

53. The relevant international materials are set out in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, §§ 133-231, 9 April 2024.

54. The selection of materials below concerns jurisdiction and, to the extent relevant and necessary, the exhaustion of domestic remedies.

A. United Nations

55. The relevant part of the Human Rights Committee's General Comment on the right to life[9] reads as follows:

> "22. States parties must take appropriate measures to protect individuals against deprivation of life by other States, international organizations and foreign corporations operating within their territory or in other areas subject to their jurisdiction. They must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities undertaken by corporate entities based in their territory or subject to their jurisdiction, are consistent with article 6, taking due account of related international standards of corporate responsibility and of the right of victims to obtain an effective remedy."

56. In General Comment No. 24 (State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities)[10], the Committee on Economic, Social and Cultural Rights held the following:

> "26. ... States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant. ...
>
> 28. Extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory. ..."

[9] General Comment No. 36 on Article 6 (Right to life), 3 September 2019, UN Doc. CCPR/C/GC/36.

[10] Committee on Economic, Social and Cultural Rights, General Comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, UN Doc. E/C.12/GC/24.

57. In General Comment No. 26 on children's rights and the environment, with a special focus on climate change[11], the Committee on the Rights of the Child ("CRC") noted, *inter alia*, as follows:

> "84. Mechanisms should be available for claims of imminent or foreseeable harms and past or current violations of children's rights. States should ensure that these mechanisms are readily available to all children under their jurisdiction, without discrimination, including children outside their territory affected by transboundary harm resulting from States' acts or omissions occurring within their territories."

58. In the *Sacchi and Others* decision[12], the CRC dealt[13] with a complaint lodged by sixteen children of various nationalities against Argentina (the same complaint was also lodged against Brazil, France, Germany and Türkiye). They claimed to be victims of climate change, and that the respondent States were responsible for (a) failing to prevent foreseeable human rights violations caused by climate change by reducing their emissions at the "highest possible ambition" level, and (b) delaying the steep cuts in carbon emissions needed to protect the lives and welfare of children at home and abroad. While the Committee established the jurisdiction of the respondent States, it declared the case inadmissible for non-exhaustion of domestic remedies.

59. The relevant parts of the decision concerning jurisdiction read as follows:

> "10.4 The Committee notes the relevant jurisprudence of the Human Rights Committee and the European Court of Human Rights referring to extraterritorial jurisdiction. Nevertheless, that jurisprudence was developed and applied to factual situations that are very different to the facts and circumstance of this case. The authors' communication raises novel jurisdictional issues of transboundary harm related to climate change.
>
> 10.5 The Committee also notes Advisory Opinion OC-23/17 of the Inter-American Court of Human Rights on the environment and human rights, which is of particular relevance to the issue of jurisdiction in the present case as it clarified the scope of extraterritorial jurisdiction in relation to environmental protection. ...
>
> 10.7 [T]he Committee finds that the appropriate test for jurisdiction in the present case is that adopted by the Inter-American Court of Human Rights in its Advisory Opinion on the Environment and Human Rights [cited above]. This implies that when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question. The Committee further considers that while the required elements to establish the responsibility of the State are rather a matter of merits, the alleged harm suffered by the

[11] General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, 23 August 2023, UN Doc. RC/C/GC/26.
[12] *Sacchi and Others v. Argentina*, 22 September 2021, UN Doc. CRC/C/88/D/104/2019.
[13] Under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 19 December 2011, UN Doc. A/RES/66/138.

victims needs to have been reasonably foreseeable to the State party at the time of its acts or omissions even for the purpose of establishing jurisdiction."

60. As regards exhaustion of domestic remedies, the CRC reasoned as follows:

"10.18 In the present case, the Committee notes that the authors have not attempted to initiate any domestic proceeding in the State party. The Committee also notes the authors' argument that they would face unique obstacles in exhausting domestic remedies as it would be unduly burdensome for them, unreasonably prolonged and unlikely to bring effective relief. It further notes their argument that domestic courts would most likely dismiss their claims, which implicate the State's obligation to engage in international cooperation, because of the non-justiciability of foreign policy and foreign sovereign immunity. Nevertheless, the Committee considers that the State party's alleged failure to engage in international cooperation is raised in connection with the specific form of remedy that the authors are seeking, and that they have not sufficiently established that such a remedy is necessary to bring effective relief. Furthermore, the Committee notes the State party's argument that legal avenues were available to the authors in the form of an environmental writ of *amparo* under article 43 of the Constitution as well as in the form of a writ of redress for a collective environmental damage under the General Environment Act. It also notes the State party's argument that the authors could have approached the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents in filing such environmental actions under the General Environment Act, and that legal aid would be available for such litigation. The Committee notes the authors' arguments that the defence of *arraigo* under article 348 of the Code of Civil Procedure would bar the authors domiciled abroad from pursuing any kind of litigation in the State party. Nevertheless, it notes that the State party has refuted that claim, and that the authors have not provided any examples of non-domiciled plaintiffs being barred from accessing the specific remedies referred to by the State party in filing proceedings similar to the remedies sought by the authors in their specific case. The Committee also notes the authors' argument that the Office of the Chief Public Defender and the Office of the Ombudsperson for the Rights of Children and Adolescents are discretionary remedies and therefore unlikely to be effective. Nevertheless, it notes that the authors did not make any attempt to engage these entities in filing a suit on their behalf, and it considers that the fact that the remedy may be discretionary in itself does not exempt the authors from attempting to engage these entities in pursuing a suit, especially in the absence of any information that would demonstrate that this remedy has no prospect of success and in light of existing suits filed on the issue of environmental degradation in the State party. In the absence of any further reasons from the authors as to why they did not attempt to pursue these remedies, other than generally expressing doubts about the prospects of success of any remedy, the Committee considers that the authors have failed to exhaust all domestic remedies that were reasonably effective and available to them to challenge the alleged violation of their rights under the Convention.

...

10.20 The Committee notes the authors' argument that pursuing remedies in the State party would be unreasonably prolonged. It also notes that, while the authors cite some examples of environmental cases in which the State party's courts took several years to reach a decision, they do not provide any further specific information on the length of such proceedings in the State party. It also notes that the State party likewise provides examples of cases of environmental litigation in the State party which were resolved

within a reasonable time frame. The Committee concludes that, in the absence of any specific information from the authors that would justify that domestic remedies would be ineffective or unavailable, and in the absence of any attempt by them to initiate domestic proceedings in the State party, the authors have failed to exhaust domestic remedies."

B. Council of Europe

61. In *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*[14], concerning Article 11 of the European Social Charter (The right to protection of health), the European Committee of Social Rights held as follows:

"203. In order to fulfil their obligations, national authorities must therefore:

– develop and regularly update sufficiently comprehensive environmental legislation and regulations ...

– take specific steps, such as modifying equipment, introducing threshold values for emissions and measuring air quality, to prevent air pollution at local level and to help to reduce it on a global scale ...

– ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery ...

– inform and educate the public, including pupils and students at school, about both general and local environmental problems ...

– assess health risks through epidemiological monitoring of the groups concerned."

C. Regional human rights systems

62. In General Comment No. 3 (Right to life)[15], the African Commission on Human and Peoples' Rights noted the following:

"(14) A State shall respect the right to life of individuals outside its territory. A State also has certain obligations to protect the right to life of such individuals. The nature of these obligations depends for instance on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim's rights), or exercises effective control over the territory on which the victim's rights are affected, or whether the State engages in conduct which could reasonably be foreseen to result in an unlawful deprivation of life. In any event, customary international law prohibits, without territorial limitation, arbitrary deprivation of life."

63. In its Advisory Opinion OC-23/17[16], the Inter-American Court of Human Rights dealt with a request for an advisory opinion on how the

[14] *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, No. 30/2005, 6 December 2006.

[15] General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), 12 December 2015.

[16] Inter-American Court of Human Rights, *State Obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity:*

American Convention on Human Rights should be interpreted as regards a situation where a major infrastructure project might affect the environment of the whole region. The relevant parts of the Opinion read as follows:

> "2. The concept of jurisdiction under Article 1(1) of the American Convention encompasses any situation in which a State exercises authority or effective control over an individual, either within or outside its territory ...
>
> 3. To determine the circumstances that reveal a State's exercise of jurisdiction, the specific factual and legal circumstances of each particular case must be examined, and it is not sufficient that a person be located in a specific geographical area, such as the area of application of an environmental protection treaty, in accordance with paragraphs 83 to 94 of this Opinion.
>
> 4. For the purposes of Article 1(1) of the American Convention, it is understood that individuals whose rights under the Convention have been violated owing to transboundary harm are subject to the jurisdiction of the State of origin of the harm, because that State exercises effective control over the activities carried out in its territory or under its jurisdiction, in accordance with paragraphs 95 to 103 of this Opinion.
>
> 5. To respect and to ensure the rights to life and to personal integrity of the persons subject to their jurisdiction, States have the obligation to prevent significant environmental damage within or outside their territory and, to this end, must regulate, supervise and monitor activities within their jurisdiction that could produce significant environmental damage; conduct environmental impact assessments when there is a risk of significant environmental damage; prepare a contingency plan to establish safety measures and procedures to minimize the possibility of major environmental accidents, and mitigate any significant environmental damage that may have occurred, in accordance with paragraphs 127 and 174 of this Opinion.
>
> 6. States must act in accordance with the precautionary principle to protect the rights to life and to personal integrity in cases where there are plausible indications that an activity could result in serious or irreversible environmental damage, even in the absence of scientific certainty, in accordance with paragraph 180 of this Opinion."

III. OVERVIEW OF DOMESTIC CASE-LAW CONCERNING CLIMATE CHANGE

64. The relevant extracts from a selection of cases on climate change brought before national courts in Council of Europe member States are set out in *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 232-272. The only case in which an issue of extraterritoriality arose was *Neubauer and Others v. Federal Republic of Germany*[17], in which the German Federal Constitutional Court examined four constitutional complaints directed against certain provisions of the Federal Climate Change

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Interpretation and scope of Articles 4(1) and 5(1) in relation to Articles 1(1) and 2, Advisory Opinion OC-23/17 of 15 November 2017 on The Environment and Human Rights.

[17] Order of the First Senate of 24 March 2021, 1 BvR 2656/18 DE:BVerfG:2021:rs20210324.1bvr265618.

Act of 12 December 2019 (*Bundes-Klimaschutzgesetz*) and against the State's failure to take further measures to reduce GHG emissions.

65. In *Neubauer and Others*, several of the appellants were from Bangladesh and Nepal. The Federal Constitutional Court found no violation of a duty of protection arising from fundamental rights under the Basic Law as regards them. In this connection, it reasoned, in particular, as follows:

> "174. Although it does appear conceivable in principle, there is no need to decide at this point whether duties of protection arising from fundamental rights also place the German State under an obligation *vis-à-vis* the complainants living in Bangladesh and in Nepal to take action against impairments caused by global climate change. In their own countries, the complainants are particularly exposed to the consequences of global warming caused by global greenhouse gas emissions. Since greenhouse gas emissions have a global impact, further global warming can only be prevented if all States take climate action. This means that greenhouse gas emissions must be reduced to climate-neutral levels in Germany also. Greenhouse gas emissions in Germany currently account for just under 2% of annual global levels ... It is for the German legislator to limit these emissions.
>
> 175. While Article 1 § 3 of the Basic Law makes fundamental rights binding on the German State, it does not explicitly restrict this binding effect to German territory. Rather, the binding effect of the Basic Law's fundamental rights on German State authority is comprehensive ... Yet despite this comprehensive binding effect of fundamental rights on German State authority, the Federal Constitutional Court has also held that the specific protections afforded by fundamental rights and their scope abroad may vary depending on the circumstances under which they are applied. Thus, it may be necessary to distinguish between the different dimensions of fundamental rights - for example as defensive rights against State interference, as positive obligations of the State, as decisions on values enshrined in the Constitution, or as the basis for duties of protection ... The circumstances under which fundamental rights may be invoked as the basis for establishing duties of protection *vis-à-vis* people living abroad have yet to be fully clarified. One possible factor capable of establishing a constitutional duty of protection here would be that the severe impairments already or potentially faced by the complainants due to climate change are caused to some – albeit small – extent by greenhouse gas emissions emanating from Germany ...
>
> 176. A duty of protection *vis-à-vis* the complainants living in Bangladesh and in Nepal would not in any case have the same content as that *vis-à-vis* people in Germany. In general, the content of fundamental rights protection *vis-à-vis* people living abroad may differ from the content of fundamental rights protection *vis-à-vis* people living in Germany. Under certain circumstances, modification and differentiation are required ... This would be the case here if duties of protection arising from fundamental rights took effect to the benefit of people living in Bangladesh and in Nepal.
>
> ...
>
> 178. It is true that by reducing the greenhouse gas emissions produced in Germany, the German State could protect people living abroad against the consequences of climate change just as it could protect those living in Germany. The fact that the German State cannot prevent climate change on its own but can do so only in the context of international involvement would not, in principle, rule out a duty of protection arising from fundamental rights here ... However, with regard to people living abroad, the German State would not have the same options at its disposal for taking any additional protective action. Given the limits of German sovereignty under international law, it is

practically impossible for the German State to afford protection to people living abroad by implementing adaptation measures there ...

179. This does not exclude Germany from assuming responsibility, either politically or under international law, for ensuring that positive steps are taken to protect people in poorer and harder-hit countries ...

180. Even if the German State were obliged under Article 2 § 2, first sentence, and Article 14 § 1 of the Basic Law to afford protection to the complainants in Bangladesh and Nepal by taking action to limit the rise in temperature, such a duty of protection would not be violated by the challenged provisions. In particular, Germany has ratified the Paris Agreement and the federal legislator – as declared in § 1, third sentence, KSG [Federal Climate Change Act] – has based the Federal Climate Change Act upon the obligation to observe the Agreement and upon the commitment made by the Federal Republic of Germany to pursue the long-term goal of greenhouse gas neutrality by 2050. § 3 (1), second sentence, and § 4 (1), third sentence, of the KSG in conjunction with Annex 2 specify concrete reduction targets for the period up to 2030. Numerous other laws set out measures for limiting climate change.

181. ... [T]he Federal Republic of Germany – and the German legislator in particular – would have fulfilled this duty of protection through their international commitment to preventing climate change and through specific measures aimed at implementing the internationally agreed climate action ...”

COMPLAINT

66. The applicants complained that the existing, and serious future, impacts of climate change imputable to the respondent States, and specifically those in relation to heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their home, were in breach of their rights under Articles 2, 3, 8 and 14 of the Convention.

THE LAW

67. The relevant part of Article 2 of the Convention provides as follows:

“1. Everyone’s right to life shall be protected by law ...”

68. Article 3 of the Convention provides as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

69. The relevant part of Article 8 of the Convention reads as follows:

“1. Everyone has the right to respect for his private and family life, his home ...”

70. Article 14 of the Convention provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

I. THE PARTIES' SUBMISSIONS

71. The summary below of the parties' and the third-party interveners' submissions sets out the arguments made in their written and oral pleadings, in so far as relevant for the admissibility of the case, notably in relation to the questions of jurisdiction, exhaustion of domestic remedies and victim status.

A. The respondent Governments

72. In the first round of written exchanges before the Grand Chamber, all the respondent Governments – with the exception of the Governments of the Netherlands (which submitted separate observations), the Russian Federation and Ukraine (which did not submit any observations; see paragraphs 139-146 below) – filed joint observations.[18] In addition, they submitted State-specific observations, notably to clarify the issues of available domestic remedies and the measures taken to tackle climate change in their legal systems.

73. In the second round of written exchanges, all the respondent Governments – with the exception of the three mentioned above, and France – filed joint observations. Switzerland merely reiterated their earlier arguments. Some of the respondent Governments (Austria, Bulgaria, Cyprus, the Czech Republic, Finland, Ireland, Latvia, Norway, Poland, Portugal, Romania, Sweden, Türkiye and the United Kingdom) also submitted short State-specific observations, mainly on the two topics noted above, namely the exhaustion of domestic remedies and the merits.

74. At the hearing, most of the respondent Governments addressed the Court through the following joint submissions: counsel for the Government of the United Kingdom provided introductory remarks and addressed the question of jurisdiction, the Agent of the Government of Belgium addressed the question of exhaustion of domestic remedies, and the Agent of the Government of Portugal addressed the question of victim status. State-specific submissions were made by the representatives of the Governments of the Netherlands, Portugal and Türkiye.

75. In addition, after the hearing, in accordance with the President's direction, all the respondent Governments, save for the Governments of the Netherlands, Russia and Ukraine, subscribed to a joint reply to the Court's questions provided by the Government of Belgium. The Government of the Netherlands provided State-specific replies to the Court's questions, and the

[18] In the first round, the Government of Croatia submitted essentially the same observations as the other Governments in the joint observations, but in a somewhat different format. Similarly, the Government of Hungary agreed with the joint submissions but took a different view on some of the critical issues, which are set out separately in paragraphs 93-95 below. In the second round both the Governments of Croatia and Hungary submitted the same joint observations as the other Governments.

Government of Portugal separately provided references to the relevant domestic case-law (see paragraph 52 above).

1. Joint submissions

(a) General remarks

76. The Governments contended that the applicants had sought to bypass the essential conditions for the admissibility of applications before the Court laid down in the Convention. In particular, they sought to persuade the Court to depart radically from its case-law on jurisdiction and they had failed to invoke, let alone exhaust, domestic remedies in any of the respondent States. As a result, none of the factual material submitted by the applicants, either in the original application or in their observations, had ever been assessed or tested before a domestic court. The applicants were also asking the Court to engage in a radical and far-reaching expansion of its case-law on the applicability and scope of the obligations under Articles 2, 3, 8 and 14 of the Convention. The applicants' approach not only went far beyond the intended role of the Court under the Convention system but was also inconsistent with the internationally agreed framework for combating climate change. Their case bore the hallmarks of an *actio popularis*. Thus, while the respondent Governments recognised the severity of the threat facing the global community as a result of climate change and the imperative need for urgent action to address that threat, the present application should be dismissed.

(b) Jurisdiction

77. The Governments submitted that the applicants were not within the jurisdiction of the respondent States, except for Portugal as the territorial State since all of them were Portuguese nationals and had their place of residence in Portugal.

78. The case did not come within any of the established exceptions to the territoriality principle. In particular, no respondent Government (other than Portugal) exercised effective control over any areas in Portugal or any control over any of the applicants. The concept of "collective control" did not suffice to establish jurisdiction (citing *Hussein v. Albania and Others* (dec.), no. 23276/04, 14 March 2006), nor were there any "specific circumstances of a procedural nature" which would justify the exercise of jurisdiction. In reality, the applicants were asking the Court to recognise a cause-and-effect notion of jurisdiction, which had long been rejected in the Court's case-law (citing *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, § 75, ECHR 2001-XII) and had to date never been applied. There was a consensus among the respondent States that the concept of "jurisdiction" in Article 1 did not permit the extension of jurisdiction to any extraterritorial dimension of climate change.

79. In sum, on the facts of the case, the applicants could not rely on any of the established exceptions to territorial jurisdiction owing to the following facts: (a) the applicants were not nationals of the non-territorial States and, in any event, nationality (including EU citizenship) could not be the relevant criterion to establish jurisdiction; (b) the applicants were not resident in the non-territorial States; (c) the non-territorial States did not exercise control over the territory in which the applicants resided; and (d) the non-territorial States did not exercise power or control or authority over the person of the applicants or over their property.

80. The Governments further submitted that the key consideration under Article 1 of the Convention was whether the persons concerned were within the jurisdiction of the respondent States. The Court's case-law did not support the interpretation of this provision based on considerations of whether the facts were within the jurisdiction of the States or whether the State had control over the "rights" or "interests" in question. The applicants' interpretation of jurisdiction was inconsistent with the Court's recent case-law in *M.N. and Others v. Belgium* ((dec.) [GC], no. 3599/18, 5 May 2020). In the Governments' view, the Court should not seek to develop the concept of jurisdiction without State consent and in an inconsistent, unpredictable and unprincipled manner as this would be incompatible with the principle of legal certainty.

81. In this context, the Governments also rejected the applicants' assertion that some "connecting factors" between the State and the individuals could give rise to jurisdiction. In any event, the applicants had failed to identify any specific connecting factors and their arguments found no support in the Court's case-law. On the contrary, the factors relied upon by the applicants were based substantially on a cause-and-effect notion of jurisdiction, which had never been accepted in the Court's case-law. The applicants' arguments had no basis in international law and they ignored the fact that the causes of climate change were global. Thus, no individual respondent State "controlled" the applicants' alleged Convention interests, or "caused" the alleged effects on the applicants or had it within its "capacity" to protect the applicants' alleged interests.

82. As regards the special features and factors of climate change relied upon by the applicants in paragraph 126 below, the Governments noted the following:

(a) The Court had never recognised a concept of control over an applicant's "Convention interests" (whatever precisely the meaning of this phrase might be) as a basis for jurisdiction. The assertion that climate change was the responsibility of all States could not be the basis for a finding of jurisdiction under the Convention. Responsibility was not a condition of jurisdiction. Jurisdiction was a condition of responsibility under the Convention. In any event, the respondent Governments did not, in any

manner, exercise extraterritorial "control" over the applicants' alleged "Convention interests".

(b) In view of the global causes of climate change, the causal link between any activities of the respondent Governments and the alleged effects on the applicants had not been established in this case and such an approach would not be supported by the Court's case-law. The decision of the CRC in *Sacchi and Others* had had a fundamentally different legal basis and did not have jurisprudential relevance for the Court. In any event, that case had been rejected for non-exhaustion of domestic remedies.

(c) Foreseeability or knowledge was not a basis for finding jurisdiction under Article 1 according to the Court's case-law. The respondent Governments could not be taken to have "known" or have "foreseen" that their respective GHG emissions might impact on the applicants' asserted rights, given that in any event the position of the respondent Governments was that they were not in breach of any obligations that could arise under the Convention in this respect.

(d) There was no support in the Court's case-law for the conclusion that the duration of acts or their consequences was a relevant factor going to jurisdiction. The gravity of the impact of climate change could not be the basis for a finding of jurisdiction.

(e) It was not relevant to jurisdiction that certain effects might relate to activities within the territory or under the control of a State (citing *M.N. and Others v. Belgium*, cited above).

(f) A State's capacity to act was not a relevant factor for establishing jurisdiction (citing *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 199, 14 September 2022). In any event, the respondent Governments were cumulatively responsible for less than 15% of global GHG emissions. Climate change had global causes and impacts and was best addressed through the international legal framework established by the UNFCCC and the Paris Agreement, as well as through legislation and policy-making. In any event, the applicants were within the jurisdiction of their territorial State, Portugal.

(g) The international-law material relied upon by the applicants related to the substantive obligations concerning climate change. However, jurisdiction was a necessary condition of responsibility which could not be determined on the basis of substantive obligations. In any event, the scope of various other international instruments was different and could not be applied by the Court.

83. It was neither necessary, nor desirable for the Court to develop its case-law on jurisdiction to take account of the specific characteristics of climate change, for the following reasons:

(a) Expansion of the Court's jurisdiction was not an appropriate means to deal with the complex policy decisions concerning climate change. These were issues in relation to which there was no common international consensus

and the Governments had already engaged in negotiations in appropriate multilateral fora.

(b) he Court should not seek to develop the concept of jurisdiction under Article 1 in an inconsistent, unpredictable and unprincipled manner, as this would be contrary to the principle of legal certainty.

(c) The Court had never extended the "living instrument" principle of interpretation to Article 1, and nor should it.

(d) It was an erroneous approach by the applicants to seek for the Court to establish jurisdiction so that it could affirm responsibility of the respondent States under the Convention. Such an understanding would lead to an approach where, in any case before it, the Court would have to determine jurisdiction so that the State could not escape responsibility. Similarly, there was no support in the Court's case-law to suggest that an "obligation to act", on which the applicants had relied, could demonstrate extraterritorial jurisdiction. Jurisdiction could not be established with regard to negative or positive obligations under the Convention.

(e) Under the Court's usual approach, jurisdiction could always be established in respect of the territorial State. There would therefore be no legal vacuum of human rights protection within the Convention system.

(f) The establishment of jurisdiction of all respondent Governments would still not ensure the practical and effective protection of the applicants' rights as, based on the applicants' own figures, there would still not be jurisdiction with respect to over 85% of global GHG emissions.

(g) The "specific characteristics of climate change" as a complex global phenomenon could not lead to an extraordinary expansion of the "scope and reach" of the Convention system allowing for a situation that any person anywhere in the world could be under the simultaneous jurisdiction of the Contracting Parties to the Convention. If the Court accepted the applicants' arguments, it would be difficult to limit jurisdiction to the Convention's legal space and thus there would be a global expansion of the Convention's reach.

(h) The applicants were seeking to assert jurisdiction with respect to an unprecedented range of obligations, which would have dramatic, economy-wide consequences across each of the respondent States.

(i) Jurisdiction could also not be established on the basis of the case-law relating to the procedural obligation under Article 2. In the present context, that would constitute an expansion of the Court's case-law beyond that narrow context and, in any event, would not be relevant for establishing jurisdiction with respect to the substantive issues under the Convention (citing *Hanan v. Germany* [GC], no. 4871/16, § 143, 16 February 2021).

(c) Exhaustion of domestic remedies

84. Relying, in particular, on the general principles outlined in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, 25 March 2014) and *Gherghina v. Romania* ((dec.) [GC],

no. 42219/07, 9 July 2015), the respondent Governments argued that those principles should stand in the present case and cases like it. There was no reason to waive the requirement of exhaustion of domestic remedies simply on the grounds that a particular claim was novel. Climate-change-related cases could not be excluded from the application of the principle of subsidiarity, which was the founding principle of the Convention system and which the applicants had misconstrued in their submissions to the Court. The Governments observed that the rule of exhaustion of domestic remedies was based on three principles: the Convention mechanism was subsidiary to the national systems safeguarding human rights, States were exempted from answering before an international body for their acts until they had had a chance to put matters right at the national level, and the Court was not a court of first instance and it should benefit from the views of the national courts before it ruled on the matter before it.

85. No arguments had been put forward by the applicants, nor any evidence produced, showing that the national courts would take an excessively long time to rule on climate-change cases, nor had they substantiated their assertion that the legal costs involved in exhausting domestic remedies would place a disproportionate burden on them. In reality, the applicants would have been capable of bearing the costs of such proceedings as they were being supported by an international non-governmental association, which was providing them with legal assistance in this matter. In any event, in most respondent States, legal aid could be provided to those who could not afford the costs, for instance, by exempting them from paying the legal costs involved in domestic proceedings. As regards the applicants' reliance on their young age and vulnerability, the Governments considered that children and young people were not considered vulnerable *per se* for the purposes of being exempt from an obligation to exhaust domestic remedies. The respondent States' respective domestic legal systems provided for mechanisms to address legal obstacles that might be faced by children and young people.

86. In so far as the applicants had submitted that an effective domestic remedy would be required to assess the specific parameters of climate change as determined by them (see paragraph 129 below), the Governments noted that this was based on the premise that the applicants' approach to the substantive obligations under the Convention was correct, which could not be taken as established. In any event, even if those parameters were relevant, the applicants should have attempted to test them by raising the issue before the national courts, which they had failed to do. The applicants could not require that the effectiveness of a remedy depended on them having a chance of succeeding before the national courts.

87. The present issues were novel, and the domestic case-law was still developing. It was therefore immaterial that there was no settled domestic case-law on the matter. It was critically important to test the available

domestic remedies and mere doubts as to the prospect of success were not a valid reason for a failure to exhaust domestic remedies. This was particularly true in relation to the remedy guaranteed under Article 52 of the Portuguese Constitution. If the Court allowed the applicants to circumvent the domestic courts, it was likely that others would follow suit, opening the way to countless climate-change cases before the Court.

88. As regards the exhaustion of remedies by persons outside the jurisdiction of the respondent State, the Governments noted that it was the Court's established case-law that applicants living outside the jurisdiction of a contracting State were not exempt from exhausting domestic remedies within that State, practical inconveniences or understandable personal reluctance notwithstanding (citing *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, § 98, ECHR 2010).

(d) Victim status

89. The respondent Governments pointed out that victim status constituted an essential admissibility condition and thus the absence of victim status precluded any assessment on the merits of a complaint. The applicants had not demonstrated a sufficiently direct causal link between the actions or omissions of the respondent States regarding climate change and the harm or damage they alleged. They merely pointed in general to the respondent States' GHG emissions. However, the individual contributions of the respondent States to global GHG emissions was a fraction of the global total level of emissions. The applicants had not directly suffered the effects of any measure (or any action or inaction) by any of the respondent States, and they had not shown that a violation by the respondent States affecting them personally would occur. It had not been proven that the applicants suffered more than the general population by virtue of their age. They therefore did not form a group subject to a potential risk from a common source that specifically pertained to them.

90. The Governments also challenged the probative value of the evidence provided by the applicants as regards the physical and mental-health impacts they were allegedly suffering. The applicants had not been evaluated by an independent entity or expert, qualified to carry out medico-legal examinations. Therefore, neither the harm (whether physical or psychological), nor the causal link between the alleged harm and the alleged interferences that the applicants sought to impute to the respondent States had been demonstrated. In reality, the application was an *actio popularis* and was therefore inadmissible under Article 34 of the Convention.

2. Relevant State-specific submissions

(a) The Government of Bulgaria

91. In addition to the respondent Governments' joint submissions to the Grand Chamber, the Government of Bulgaria challenged, in particular, the "expert report" provided by the applicants concerning their mental suffering linked to climate change. The Government argued that the author of the report had no qualifications in medicine or psychiatry. The existence of climate anxiety as a psychological condition was still subject to debate within the professional community. The report did not contain any biographical data, medical or psychiatric history of any of the applicants and the interviews with the applicants had been performed "remotely", which in itself excluded the requisite direct interaction and undermined the reliability of the information gathered as well as the conclusions made.

92. The applicants had not been interviewed separately but in groups, namely applicants nos. 1-3 together and applicants nos. 5-6 also together. It was not clear whether their parents, legal representatives or other adults had been present, which undermined the reliability of the data collected. The "remote" interviews had apparently been conducted in English and it was not clear whether the applicants were sufficiently proficient in that language. Both the statements of all the applicants and the conclusions made with regard to each of them seemed almost identical, which would be practically impossible had the applicants been interviewed separately and without preliminary preparation.

(b) The Government of Croatia

93. Relying essentially on the same arguments as the other Governments in their joint submissions (see paragraphs 77-89 above), the Government of Croatia added that the Paris Agreement, in so far as the applicants decisively relied on it, provided nothing on the issue of jurisdiction and could not sensibly be read as expanding the ordinary territorial notion of jurisdiction under Article 1 of the Convention. The Government also pointed to the Court's case-law according to which a multi-State application was inadmissible where the applicants failed to address and specify each respondent State's role and responsibilities (citing *Hussein*, cited above). The Government challenged the reliability of the evidence provided by the applicants concerning the effects of climate change on their physical and mental health.

(c) The Government of France

94. Relying essentially on the same arguments made by the Governments in their joint submissions, the Government of France considered it crucial that the Court should bear in mind the principle of legal certainty and consistency of its case-law when determining jurisdiction. In the Government's view,

there was no basis in the Court's case-law to establish jurisdiction in the present case.

(d) The Government of Hungary

95. While agreeing with the joint submissions of the other respondent Governments, the Government of Hungary submitted that, to be admissible, the present application would require the Court to extend its jurisdiction beyond the scope of the engagements of the High Contracting parties undertaken in the Convention. The question was not whether climate change affected the exercise and enjoyment of the right and freedoms set out in the Convention, and to what extent, but whether the Court had jurisdiction to examine compliance with moral duties (expectations) or obligations undertaken in other international instruments. The answer to this question was in the negative from the perspective of Articles 19 and 32 of the Convention. The Court should therefore make it clear that this type of climate-change litigation was absolutely inconsistent with the object and purpose of the Convention mechanism and with the judicial powers conferred upon the Court.

96. The present application required the Court to interpret two international treaties, namely the Paris Agreement and the Aarhus Convention[19], which went beyond the scope of its jurisdiction under Articles 19 and 32. The Paris Agreement and the international climate-change framework were not based on the existence of a judicial enforcement mechanism, which the Court would become by accepting the applicants' complaint for examination. It would be contrary to the principles of the international rule of law for the Court to extend its jurisdiction beyond its intended scope (that is, protecting individuals from violations of their individual rights) on the sole ground that global issues affected all individuals as members of humanity (affected as a whole). The Court should adopt a strict interpretation of the rules governing its jurisdiction.

97. In sum, in the absence of any provision of international law to the contrary, the Court had no jurisdiction to review the implementation of undertakings under international treaties other than the Convention. Overstretching the scope of the Court's jurisdiction for the purposes of making a political statement about the importance of climate-change issues would have serious repercussions on the protection of human rights in terms of both the Court's workload and its authority. Therefore, the Court should find that the application fell outside its jurisdiction under Article 32 without

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

examining the particular aspects of admissibility *ratione personae* and *ratione materiae*.

98. In any event, for the reasons set out in the joint observations of the respondent Governments, the Government of Hungary considered that the applicants were not within the jurisdiction of the States Parties to the Convention (other than their country of residence) within the meaning of Article 1 of the Convention. Climate change was beyond the sovereign powers of the respondent States and beyond the scope of the Convention. The Court should bear in mind that the present case was fundamentally different from any of the environmental protection cases that it had previously examined. While those cases concerned the right to a healthy local environment, the present case concerned a claim for the recognition of the right to a healthy global environment which was beyond the control of national States.

99. As regards the applicants' victim status, the respondent Government argued that the present application was an *actio popularis* aimed at putting the issue of climate change at the top of the political agenda of the Council of Europe, and pressuring States to take more ambitious measures to prevent climate change.

(e) The Government of Latvia

100. The Government of Latvia emphasised the importance of the principle of subsidiarity in this context and the necessity for the Court to remain within the scope of its jurisdiction under the Convention. While endorsing the arguments made in the Governments' joint submissions, the Government of Latvia stressed that there was no link between the applicants and Latvia for the purposes of Article 1 of the Convention. That link could not be created by the mere existence of measures taken at the domestic level to address climate change. There were also no grounds to extend the Court's case-law concerning the notion of jurisdiction under Article 1 of the Convention.

(f) The Government of the Netherlands

101. The Government of the Netherlands noted that there were significant difficulties with the establishment of facts in the present case. With respect to the broader facts asserted by the applicants in respect of climate change in general, the Government of the Netherlands acknowledged that climate change was happening and endorsed the need to combat climate change by taking measures to reduce emissions, as well as the need to prevent or limit the adverse effects of climate change by taking adaptation measures. The Netherlands had therefore taken action at international, European, regional, and national levels to effectively tackle climate change.

102. On the other hand, as regards the negative consequences of climate change the applicants alleged to be suffering, these related to facts in or near their place of residence in Portugal. The Government of the Netherlands were therefore not in a position to establish the veracity of the facts as alleged by the applicants because they had occurred wholly outside the national territory. The establishment of the facts was especially complicated because no domestic courts had ruled upon them or, for that matter, the legal issues as put forward in the application. It was for the applicants to present evidence in order to allow the Court to establish the facts beyond reasonable doubt.

103. As regards jurisdiction, referring, *inter alia*, to the Court's case-law (*Banković and Others* and *M.N. and Others v. Belgium*, both cited above, and *Georgia v. Russia (II)* [GC], no. 38263/08, 21 January 2021), the Government of the Netherlands noted that the States' jurisdiction was primarily territorial and that there were only narrow exceptions allowing States' extraterritorial jurisdiction to be established. A key factor in this latter aspect was control exercised by the State over individuals, and the Convention was not concerned with any potential impact on the rights or individual interests of applicants.

104. In the present case, the applicants could not rely on any territorial basis of jurisdiction as regards the Netherlands. The case also did not come within any of the established exceptions to the territoriality principle since the Netherlands had not exercised effective control over any areas in Portugal or any control over any of the applicants. Nor were there any specific circumstances of a procedural nature establishing the jurisdiction of the Netherlands.

105. As regards the special features and factors of climate change relied upon by the applicants in paragraph 126 below, the Government of the Netherlands were of the view that the applicants in effect sought to rely on a cause-and-effect concept of jurisdiction. They were seeking a significant development of the Court's case-law with respect to jurisdiction, which the Court should not accept as that would result in the application of Article 1 in an inconsistent, unpredictable and unprincipled manner. In this context, the Government of the Netherlands noted, in particular, the following:

(a) The applicants were misconstruing the Court's case-law when they submitted that it supported the view that the criterion for jurisdiction was a significant degree of control over Convention-protected interests. This clearly did not follow from the Court's case-law as the Government of the Netherlands had explained in paragraph 103 above. Jurisdiction could not be established on the basis of the alleged responsibility, be it negative or positive, of States.

(b) The Court's case-law did not support the cause-and-effect notion of jurisdiction as applied by the CRC in *Sacchi and Others* (cited above). That case had no jurisprudential value for the Court, and not all the States,

including the Netherlands, had accepted the supervisory competence of the CRC in the context of individual cases.

(c) Foreseeability or knowledge was not a basis for finding jurisdiction under Article 1 according to the Court's case-law.

(d) The duration of acts or their consequences was not a relevant factor for establishing jurisdiction either.

(e) It was not relevant to jurisdiction that impugned effects were related to activities within the territory or under the control of a State (citing *M.N. and Others v. Belgium*, cited above).

(f) A State's capacity to act was not a relevant factor for finding jurisdiction, as had been established in *H.F. and Others v. France* (cited above).

(g) The international-law material cited by the applicants did not support a finding of jurisdiction. Substantive obligations did not determine the question of jurisdiction; rather, jurisdiction was a necessary condition of responsibility under the Convention. Jurisdiction was also distinct from and logically prior to any question of a State's substantive obligations. The latter could not affect the determination of the former.

106. The Government of the Netherlands did not consider that the Court's case-law on jurisdiction should be developed to take account of climate change. Adopting the approach advocated by the applicants would significantly increase the geographical reach of the Convention in cases going far beyond climate change alone, and it would be difficult to justify applying such an approach to the context of climate change only. Besides, as was illustrated by the judgment of the Supreme Court of the Netherlands in *Urgenda*[20], practical and effective judicial protection against the consequences of climate change was already possible under the Convention, without such a development. In any event, any extension of the Court's case-law on jurisdiction in relation to climate change would raise many complex and outstanding questions going to the very essence of the functioning of the Convention system.

107. In this context, it was also not possible to consider that dividing and tailoring Convention rights could lead to the establishment of jurisdiction. According to the Court's case-law, such dividing and tailoring was only possible where the individual concerned was within the State's jurisdiction on the grounds of the authority and control exercised by State agents (citing *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07, § 137, ECHR 2011, and *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 571, 30 November 2022). In this context, the concept of the Convention's "legal space" could not help to limit the reach of the scope of extension of the State's extraterritorial jurisdiction. Similarly,

[20] The State of the Netherlands v. Stichting Urgenda, 20 December 2019, NL: HR: 2019: 2007.

the "special features" test had been established in the context of the procedural obligation under Article 2 and could not be applied to the climate-change context (citing, *inter alia*, *Hanan*, cited above, §§ 132-45).

108. As regards exhaustion of domestic remedies, the Government of the Netherlands pointed out that the applicants had not sought to use any remedies, which ran counter to the principle of subsidiarity. Relying on the case-law in *Demopoulos and Others* (cited above), they noted that applicants living outside the jurisdiction of a Contracting State were not exempt from exhausting domestic remedies within that State. By arguing that the Court should give judgment in their case so that States' domestic courts could subsequently use the Court's judgment as guidance at national level, the applicants were seeking to turn the principle of subsidiarity on its head. Their arguments defied the very rationale of the rule of exhaustion under Article 35 § 1 of the Convention and the principle of subsidiarity.

109. With respect to the applicants' victim status, the Government of the Netherlands were of the view that the matter was linked to the merits of the complaint. Because the applicants had not had recourse to available and effective domestic remedies, the Government of the Netherlands were unable to establish or verify the facts as alleged by the applicants. The burden of proving the harm they had suffered was therefore squarely on them.

(g) The Government of Portugal

110. While accepting that the applicants were under its territorial jurisdiction, the Government of Portugal stressed that jurisdiction should be separated from the question of whether the State was effectively responsible for the acts or omissions at the origin of the applicants' complaints. The applicants had not demonstrated a sufficiently direct causal link between the actions or omissions of the respondent Government regarding climate change and the harm or damage they alleged; they merely pointed in general to the respondent States' GHG emissions. However, according to the figures submitted by the applicants, Portugal was responsible for 0.14% of global GHG emissions in 2018. It was not possible to hold Portugal individually responsible since the alleged adverse effects of climate change were the result of a global phenomenon for which neither Portugal, nor the other respondent States, could individually or collectively be held responsible.

111. The Government of Portugal argued that there were effective and available remedies in the domestic system which the applicants could have used but had failed to do so. These remedies could be separated into the non-judicial remedies available to the victims of the 2017 wildfires, and judicial remedies.

112. As regards the former, following the wildfires in question, under Law no. 108/2017 compensatory – non-judicial, free and swift – remedies had been created and made available to provide prompt compensation to relatives of deceased persons, individuals who had suffered personal and

psychological damage, and those who had sustained material damage. Subsequently, an Independent Commission had been created under the coordination and supervision of the Ombudsman to evaluate and assess compensation claims. The categories of claimants had also been widened to include those whose physical or mental health, revenues or assets had been directly or indirectly affected, according to the survey and confirmation by the relevant services. The Independent Commission had assessed material and non-material damage and provided not only for monetary compensation but also for relief and immediate measures such as medical care and follow-up (clinical monitoring), psychological support, temporary accommodation, housing reconstruction works and social support. Under those remedies, 728 compensation claims had been lodged, of which 505 had been accepted (a total amount of 35,482,075 euros (EUR) had been paid out). However, the applicants were not listed as having requested compensation under this remedy.

113. With respect to the judicial remedies, the Government of Portugal pointed out that environmental litigation was now a reality of the domestic judicial system. The administrative courts had dealt with a number of cases regarding environmental issues and ecological damage, such as urban planning, the impact of infrastructure on the environment, pollution, and the protection of water sources, rivers, the sea and coastal areas. Article 66 of the Constitution, which guaranteed the right to a healthy environment, was directly applicable in the context of such litigation. Moreover, in Portugal it was possible to challenge the compatibility of primary legislation with the Constitution.

114. More specifically, the Government of Portugal pointed to the following judicial remedies:

(a) Article 66 § 1 of the Constitution provided that "everyone has the right to a healthy and ecologically balanced human living environment and the duty to defend it". As a fundamental right, this provision was directly applicable, that is to say, directly enforceable by the domestic courts, as prescribed by Article 18 of the Constitution. The right in question was perceived as a general personality right, thus having active protection in the domestic legal system (see paragraphs 40 and 52 above).

(b) Article 52 of the Constitution provided that individuals (as well as associations) could initiate an *actio popularis* through which they could request the adoption by public authorities of certain conduct, or to implement legal and/or administrative measures regarding, *inter alia*, the protection of the environment. According to Law no. 83/95 (see paragraph 41 above) the right of *actio popularis* could be exercised for the protection of, *inter alia*, public health, the environment and quality of life (section 1(1)). An *actio popularis* could be instituted by individuals or associations (or the Public Prosecutor's Office) who aimed to obtain the protection of these general and diffuse interests (sections 2(1) and 16).

(c) Article 70 § 1 of the Civil Code (see paragraph 42 above) provided individual protection against any unlawful offence or threat of harm to the physical or moral personality of an individual. Paragraph 2 of the same provision provided for an action to prevent the occurrence of a threat or to reduce the effects of harm that had already occurred. Special proceedings for the protection of personality were provided for in Article 878 of the Code of Civil Procedure (see paragraph 43 above).

(d) Section 7(1) of the Environmental Policy Framework Act (see paragraph 44 above) guaranteed to everyone the right to full and effective protection of their rights and interests in environmental matters.

(e) Law no. 67/2007 (see paragraph 45 above) – regulating the relationship between citizens and the State – provided for a non-contractual civil liability action against the State by which compensation could be obtained for the harm or damage caused by unlawful action or inaction by the State. This concerned the irregular functioning of services and encompassed damage to property and non-pecuniary damage, as well as damage which had already occurred and future damage. This legal action had been found to be an effective remedy (in respect of the length of legal proceedings) by the Court (citing *Valada Matos das Neves v. Portugal*, no. 73798/13, 29 October 2015).

(f) The Code of Administrative Courts Procedure (see paragraph 46 above) provided for a remedy to compel the administration to adopt positive or negative measures regarding the environment and quality of life, providing also for interim measures and the possibility of lodging an action for urgent relief.

(g) Law no. 35/98 (see paragraph 47 above) – concerning ENGOs – recognised their standing to seek judicial prevention, suspension or cessation of acts or inaction that might result in degradation of the environment, and the enforcement of civil liability arising from those acts or omissions.

(h) An environmental liability regime had been created by Decree-Law no. 147/2008 (see paragraph 48 above), which applied to environmental damage to protected species and natural habitats, water, and soil and imminent threats of such damage arising from any activity carried out within the particular economic sectors.

(i) The Climate Act (Law no. 98/2021) (see paragraph 49 above) recognised climate change as an emergency situation. It identified harmful actions and omissions that accelerated or contributed to climate change as a source of liability, providing therefore for the creation of an administrative offence regarding such practices.

115. The applicants had provided no evidence as regards any obstacles for them to use the above-mentioned remedies. If they had had issues covering the costs of judicial proceedings, they could have applied for legal aid pursuant to Law no. 34/2004 (see paragraph 50 above). They could have been

exempted from the payment of legal costs in domestic proceedings and could have been provided legal counsel at the expense of the State. The domestic legal system also provided for solutions to the obstacles that young people might face when accessing justice. If they were minors, children and young people could be legally represented by the person or persons who exercised parental responsibility over them (Article 16 of the Code of Civil Procedure).

116. The above considerations showed that the applicants had had at their disposal several accessible and effective domestic remedies which, however, they had failed to exhaust, contrary to the requirement of Article 35 § 1 of the Convention.

(h) The Government of Switzerland

117. The Government of Switzerland submitted that the applicants were essentially asking the Court to become a supreme court for the environment, which it could not be, given that the Court's role was to interpret the rights and freedoms enshrined in the Convention. They were also of the view that a judicialisation of the process of climate change was not appropriate and raised issues from the perspective of the separation of powers and the principle of subsidiarity.

(i) The Government of Türkiye

118. The Government of Türkiye stressed that, in so far as the applicants sought to establish the jurisdiction or responsibility of Türkiye for non-compliance with the 1.5°C limit under the Paris Agreement, Türkiye had not been a party to that Agreement either at the time of the 2017 fires in Portugal or at the time when the applicants had lodged their application with the Court. Türkiye could not therefore be held to have had any responsibilities under that Agreement at the material time. Moreover, Türkiye was not a party to the Aarhus Convention, and nor was it bound by any of the instruments of European Union law. Türkiye's historical contribution to GHG emissions was negligible. It could not be held that Türkiye had material capacity to act in the manner put forward by the applicant's as regards its possible extraterritorial jurisdiction.

119. In the present case the applicants had referred to the serious consequences and catastrophic harm caused by climate change instead of proving their individual victim status as required by the Court's case-law. Their complaint was of an *actio popularis* nature.

B. The applicants

1. General remarks

120. The applicants submitted that the Convention was able to address the profound challenges which the existential threat of climate change posed to

the protection of the most fundamental human rights, with the present case properly falling within the scope of the Convention rights. They simply sought to apply well-established principles under the Convention to the exceptional circumstances of climate change. This was necessary to provide effective protection of their Convention rights in the face of the threats posed by climate change. This was particularly true having regard to the fact that Portugal (where the applicants lived) was one of the European countries most affected by climate change.

2. Jurisdiction

121. It was without doubt that the territorial jurisdiction of Portugal had been established. As regards the other respondent States, the applicants agreed that the facts of the present case did not fall within any of the established categories of extraterritorial jurisdiction. It was therefore necessary to look at the underlying principles of jurisdiction, as developed, in particular, in cases such as *Banković and Others*, *Al-Skeini and Others* and *H.F. and Others v. France* (all cited above). In the present case, extraterritorial jurisdiction was established on the grounds that, in the exceptional circumstances of the application, the respondent States' emissions and/or failures to regulate/limit their emissions produced effects outside their territories bringing the applicants within their jurisdiction.

122. The applicants argued that extraterritorial jurisdiction could be established in exceptional circumstances where there was such a sufficient factual and/or legal connection. It was thus well-established that acts of the States performed, or producing effects, outside their territories could constitute an exercise of jurisdiction (citing, *inter alia*, *M.N. and Others v. Belgium*, cited above, § 113). While, thus far, the exceptional circumstances had not included transboundary environmental damage or climate change, the exceptions were not exhaustive and were capable of evolving (citing *Georgia v. Russia (II)*, cited above, § 114).

123. The material question was whether there was a sufficient connection between the State and the individual to give rise to jurisdiction. Such an assessment rested on a range of factors – which should be taken cumulatively – in relation to the particular facts of a given case. In the present case, the disputed issues of jurisdiction could be examined at the merits stage of the Court's assessment. It was important to bear in mind that the applicants had only asserted jurisdiction with respect to a very limited range of positive obligations to take measures within the States' power to regulate and/or limit their emissions.

124. As regards the factors to establish the States' jurisdiction, the applicants argued, first, that special features regarding climate change militated in favour of finding jurisdiction, which could be established by limiting it to the Convention's legal space. The arguments in favour of establishing jurisdiction included, in particular, the following: (a) climate

change had a multilateral dimension, and it was the responsibility of all States to take action to limit global warming; (b) the gravity of the impact of climate change was already significant and would be catastrophic if global warming surpassed 1.5ºC; (c) the applicants had no alternative means of holding the respondent States to account or preventing the impact of climate change on their Convention rights; and (d) the States needed to undertake deep and rapid emissions reductions by 2030 if there was to be a hope of keeping global warming to 1.5°C and averting the most severe impacts on the applicants' Convention rights.

125. Secondly, the fact that the applicants would be permitted to lodge an application against Portugal was in itself insufficient and could only be of limited relevance. In particular, the process of waiting for appropriate applicants from each State to bring comparably ambitious applications to test the limits of their territorial State's obligations with respect to climate change was fundamentally at odds with the speed at which emissions should be reduced and the scope of States' obligations should be clarified. Moreover, it was necessary to avoid a vacuum of protection in the Convention legal space, and thus limiting jurisdiction only to Portugal would be inadequate given (a) the relative level of Portugal's GHG emissions, and (b) the differential severity of the impact of climate change, adaptive capacity and vulnerability across Europe.

126. Thirdly, there was a sufficient connection between the respondent States and the applicants to give rise to jurisdiction. However, this was not simply about a cause-and-effect notion of jurisdiction. It was based on the special features of climate change and the factors of foreseeability, knowledge, duration and capacity. The "special features" test applied with respect to both the substantive and procedural obligations. The Court had recently recognised the general relevance of the "special features" test in *H.F. and Others v. France* (cited above). In the present case, the considerations relating to the "special features" test were based on the following elements:

(a) The respondent States exercised control over the applicants' Convention interests, which should be the relevant criterion to be taken into account.

(b) There was a causal link between the respondent States' activities and the effects on the applicants given that the States' emissions and failures to regulate/limit their emissions materially contributed to the risk of global warming (relying, *inter alia*, on the decision of the CRC in *Sacchi and Others*). Moreover, the corresponding impact on the applicants' rights and the multilateral dimension of climate change meant that both the territorial State and the extraterritorial States stood in the same causal relationship with the applicants' rights in terms of the risk of harm caused by their omissions when it came to their emissions levels and mitigation measures.

(c) The effects on the applicants' rights had been foreseeable and/or within the knowledge or contemplation of the respondent States.

(d) The effects on the applicants were long-lasting.

(e) The effects were produced by activities within the territories and/or under the control of the respondent States.

(f) The protection of the applicants' interests required all the respondent States to take measures within their power to regulate/limit their emissions.

(g) A finding of jurisdiction was supported by and harmonious with the relevant rules of international law and approaches of other international human rights bodies.

127. At the hearing, the applicants summarised the relevant factors giving rise to extraterritorial jurisdiction as including the following: (a) the multilateral dimension of climate change – relating to the respondent States' material contribution to climate change and the consequent risk of harm to them; (b) control – exercised over their GHG emissions and the applicants' interests protected under the Convention; (c) causation – the respondent States' GHG emissions materially contributed to the worsening of climate change, and the effects of their emissions stood in an equal causal relationship with the impact on the applicants' rights; (d) knowledge and foreseeability – the effects of climate change on the applicants' rights had been foreseeable to the respondent States for many decades now; (e) capacity – Portugal did not have the capacity, acting alone, to protect the applicants' Convention rights; (f) the importance of effective human rights protection, and the need to avoid a vacuum within the Convention legal space; and (g) consistency – in developments in international law concerning climate change and human rights.

3. Exhaustion of domestic remedies

128. The applicants submitted that they were not required to have exhausted domestic remedies as there were no effective remedies available in the respondent States or there were special circumstances absolving them of the exhaustion requirement. They based their arguments on the following points.

129. First, the Court should have regard to the specific nature of their complaints, namely, that the respondent States had breached their rights under Articles 2, 3, 8 and 14 of the Convention by failing to regulate and limit their emissions in a manner that was consistent with achieving the 1.5°C target. Remedies would therefore only be effective and capable of providing redress where there were reasonable prospects that: (a) the domestic court would assess whether the respondent State's' emission reduction targets and measures were sufficient such that, if all States took equally ambitious measures, the result would be consistent with achieving the 1.5°C target, and, (b) if that was not the case, the domestic court would compel the respondent

States to make the necessary emissions reductions consistent with achieving that target.

130. Secondly, in the respondent States that had case-law in human rights-based or comparable climate claims, the remedies available were not capable of or did not offer reasonable prospects of providing effective redress in respect of the applicants' complaints. In particular, the applicants submitted the following:

(a) In the United Kingdom, Switzerland and before the Court of Justice of the European Union (CJEU), they would be unable to access remedies in domestic courts owing to a lack of standing in human rights-based climate cases. In other jurisdictions, the burden of proof was on the respondent State to demonstrate the applicants' standing to bring a similar claim in the domestic courts notwithstanding their residence.

(b) The applicants would not have reasonable prospects of success in the respondent States where the domestic courts had assessed the merits of human rights-based climate cases but had found that States did not have duties under the Convention in relation to climate change or had not breached such duties (citing the examples of Austria, Ireland, Norway).

(c) In the respondent States that had formally successful climate cases, the available remedies would not be capable of providing redress in the applicants' case as the domestic findings had been limited and insufficient to address the specific complaints made by the applicants (citing the examples of Belgium, the Czech Republic, France, Germany, Ireland, the Netherlands). In reality, the available remedies were a prescription for warming catastrophically above 1.5°C.

In sum, the case-law in each of the respondent States that had entertained climate cases indicated that either (i) domestic courts would refuse to assess the key issues in the present case at all on the grounds of a lack of standing, (ii) the applicants would have little prospect of success, or (iii) the available remedies would be insufficient to redress the applicants' complaints.

131. Thirdly, in the respondent States where there was no case-law concerning human rights-based climate cases or equivalent claims (including Portugal), any remedies would not be sufficiently certain to be effective and accessible. The existence of broad constitutional provisions that could afford an effective remedy in theory did not provide sufficient certainty in practice to alter this analysis. In particular, in Portugal, there was no case-law concerning climate change and the case-law which the Portuguese Government had provided as regards the application of Article 66 of the Constitution was remote in subject matter from the issues arising in the present case. Moreover, the Constitution provided for only broad and general provisions in this context. While the applicants accepted that they would have been required to test the extent of otherwise uncertain protections in certain cases, this requirement would be inappropriate here given that: (i) new specific remedies had not been introduced; (ii) emissions reductions measures

needed to be taken urgently so it would undermine the effective protection of the applicants' rights if they were required to test the extent of protection available in each respondent State; and (iii) if tested, there was no basis to assume effective remedies would be available given the novel nature of climate litigation and the ineffectiveness of domestic remedies in all the other States thus far. The applicants considered that their position on the matter of the exhaustion of domestic remedies in this context was fully in line with the Court's case-law under Article 35 § 1 of the Convention, in particular as regards the fact that exhaustion had to be examined in the circumstances of each particular case.

132. Fourthly, it would impose an unreasonable burden upon the applicants as children and young people to require them to exhaust domestic remedies in all the respondent States, given the logistical and financial difficulties, the urgency of the matter and the gravity of the situation.

133. Fifthly, compatibility of the respondent States' climate-change measures with the Convention was a novel and supranational issue which required the Court to provide guidance to the Contracting States in respect of their obligations in relation to climate change, consistent with the principle of subsidiarity and the nature of the Court's supervisory jurisdiction. The effect of providing guidance blunted the force of any "flood" of cases argument.

134. Lastly, and in the alternative, the applicants submitted that the above-noted reasons constituted "special circumstances" absolving them from the rule of exhaustion of domestic remedies.

4. Victim status

135. The applicants argued that they were actual victims who had been directly affected by the respondent States' violations. Anthropogenic climate change had already exposed and would continue to expose them to intensifying harms. They were also potential victims who had produced reasonable and convincing evidence of the likelihood that violations affecting them personally would occur. As global warming increased, the harm to the applicants would inevitably worsen (*a fortiori* if it exceeded 1.5˚C). They faced risks of additional harms (referring to the circumstances set out in paragraph 26 above). They belonged to a specific segment of the population that was particularly affected by climate change.

136. The issue of victim status could be joined to the merits and there was a link of "directness" between their victim status and the applicability of the Convention provisions. In so far as an issue of causation arose, the applicants had established a sufficient causal link between climate change and the actual and future impact on their rights for the purposes of victim status and applicability, which should be viewed in the light of the fact that the present case was about the States' positive obligations under the Convention.

C. The third-party interveners

1. The Council of Europe Commissioner for Human Rights

137. The Commissioner argued that it was clear that the environment and human rights were interdependent; living in an environment that was unhealthy or otherwise negatively affected by human intervention, including by climate change, might result in violations of human rights. Environmental degradation, and climate change in particular, might affect the right to life, the right to private and family life, freedom from inhuman or degrading treatment, and the prohibition of discrimination. Climate change also had a pronounced impact on a variety of social, economic and cultural rights. Environmental harm affected children to a disproportionate extent, and the international community had long acknowledged this. Climate change would confine many children to a life of hardship. Young people often had limited possibilities to change the course of events concerning climate change owing to their limited opportunities to participate in political decision-making processes. More and more of them experienced existential fears and climate anxiety.

138. Climate change, a particularly severe cause – and outcome – of environmental degradation attributable to human activity, had garnered the attention of human rights bodies owing to its severe cross-boundary effects on peoples' ability to lead safe, healthy and dignified lives. It was crucial that young people affected by climate change were heard and had access to justice. In a few member States, climate litigation had led courts to recognise that climate change resulted in human rights violations. While this was positive, victims of human rights violations caused by climate change faced many barriers to accessing justice at home effectively. This was because courts and other remedies at the domestic level often tended to act in isolation, focusing on the national context. They assessed the impact of national climate-action instruments and policies on their own populations, often disregarding their effect on people living elsewhere. Domestic courts also often held States accountable to only the absolute minimum of their climate-change commitments. Climate change was a transnational problem that required coherent, transnational solutions.

139. The transboundary nature of climate-related human rights violations made it difficult to trace them to particular individual entities or States. The Commissioner had cautioned before against disregarding the consequences of the pollution produced in Europe for the human rights of people living elsewhere. The same applied with regard to the Court's area of jurisdiction. Given the global, cross-border nature of climate change, States Parties could not allow GHG emissions to continue without regard for the consequences that this had for the rights of inhabitants of other member States. This sentiment, and particularly the need to include exports of fossil fuels in States' contributions to emissions, had been echoed by environmental human

rights defenders in discussions with the Commissioner. There were precedents for holding States responsible for their emission levels in an international, cross-border context, especially when combined with breaches of international treaties[21].

140. Owing mainly to the transboundary nature of the violations, victims of climate change did not always have domestic remedies available, or remedies which were effective and adequate. If individuals turned to the Court, it was precisely because they were unable to obtain justice at home. Indeed, access to justice remained a central concern because without appropriate redress, there would be a large gap in human rights protection in present-day Europe. Climate change did not fit traditional rules of international law, based on territorial sovereignty and national jurisdiction. It was a cross-border problem that required cross-border solutions. This applied to the human rights repercussions of the damaging effects of climate change as well.

141. In recent times, there were clear signs that efforts to protect the human right to a clean, healthy, and sustainable environment should be stepped up in a manner that was practical and effective. This related, in particular, to the adoption of the UN General Assembly Resolution on the human right to a clean, healthy and sustainable environment of 28 July 2022 (UN Doc. A/RES/76/300) and Recommendation of the Council of Europe's Committee of Ministers CM/Rec(2022)20 on human rights and the protection of the environment of 27 September 2022.

2. European Commission

142. The European Commission, on behalf of the European Union, elaborated on the principles that govern the implementation, at European Union level, of its obligations under the Paris Agreement. EU climate policy and the current legislative framework, as well as the development of the EU acquis, were in compliance with the EU's obligations under the Paris Agreement and even went beyond those obligations, while fully respecting the precautionary principle and the principle of intergenerational equity. The level of protection of human rights in the environmental domain in the European Union was equivalent to that of the Convention.

3. United Nations Special Rapporteurs on human rights and the environment, and on toxics and human rights

143. The interveners submitted that the climate emergency was causing various adverse impacts on the effective enjoyment of human rights. Children were particularly vulnerable to the adverse effects of climate change.

[21] Citing European Committee of Social Rights, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, decision of 6 December 2006, para 203; Conclusions XV-2 (2001), Italy, Article 11 § 3.

Transboundary environmental harm could give rise to extraterritorial human rights obligations on the part of the State which had control over the source of the harm. Such an approach flowed from the practices of the Inter-American Court of Human Rights[22] and various UN bodies[23]. This was particularly important in order to secure accountability in climate-change cases involving individual and collective State responsibilities.

4. European Network of National Human Rights Institutions (ENNHRI)

144. The intervener submitted, in particular, that jurisdiction under Article 1, for the purposes of Articles 2 and 8 of the Convention, encompassed climate harm on the territory of a Contracting State. It was of no consequence that the climate harm was also caused by emissions from other States and entities since violations of the Convention could be attributable to more than one State, as well as factors that were partially outside the State's jurisdiction. Under international law, each State could be held responsible for the conduct attributable to it. There was emerging case-law at the international and national levels showing that States could be held accountable for the harm to which their emissions or policies contributed. A State's jurisdiction encompassed all emissions under its effective control. At the very least, this should include territorial harm caused by the combustion of emissions from fossil fuels extracted from its territory. This followed from the specific features of fossil-fuel extraction. To include under Article 1 the exported combustion emissions would be consistent with the UN climate regime, with which the Convention had to be read in harmony.

145. Special features of climate change could justify extending a divided and tailored jurisdiction under Article 1 beyond the territorial principle. Where cases were brought by applicants residing within Contracting States, extraterritoriality could be established. The issue would arise as regards the State's active contribution to reasonably foreseeable harm affecting persons outside its borders. Under these principles, extraterritoriality would not render the Convention limitless and universal, but limited to its *espace juridique*, potentially tailored to specific obligations such as those of a procedural nature to assess the effects of emissions under the State's effective control. That would prevent Contracting States from escaping accountability for human rights violations within the territory already covered by the Convention. It would also create unity and a common understanding of human rights in the field of climate change between Contracting States. Relying on the no-harm principle, extraterritorial jurisdiction would be

[22] Citing Inter-American Court of Human Rights, Advisory Opinion OC-23/17, cited above.
[23] Citing Human Rights Committee, General comment No. 36, Article 6: right to life, CCPR/C/GC/36, distr. 3 September 2019; OHCHR, *Five UN human rights treaty bodies issue a joint statement on human rights and climate change*, Joint Statement on 'Human Rights and Climate Change' (16 September 2019).

limited to the inherent transboundary features of GHG emissions and other pollutants. In short, a Contracting State would have jurisdiction in so far as it allowed significant transboundary GHG emissions that might have affected the rights of persons within the territory of other Contracting States.

146. As regards victim status, children and young persons might be physically affected by heatwaves and wildfires, but mental harm, such as climate anxiety, might suffice to show that they had been directly affected for the purposes of Article 34. In any event, according to the Court's case-law, victim status and the applicability of Article 8 did not require medical evidence of damage to health from pollution. Children and young people had less possibility than adults to make a strong case for their interests, and before the final relevant carbon budget was exhausted, children and young people were particularly reliant on the enforcement of their rights in courts. The certainty of latent future climate harm and the possible prevention of potentially irreversible warming favoured a non-formalistic interpretation of Article 34 in order to ensure the effectiveness of rights. Children might also be potential victims based on convincing evidence of future environmental harm.

5. Save the Children International

147. The intervener submitted that children were the most vulnerable group in any crisis, including climate change. Given the gravity of the impact of climate change on children, and the significance of their rights engaged, the Court should not apply an excessively exacting standard to issues such as admissibility or burden and standard of proof. The best interests of children and their substantive and procedural rights should be pre-eminent in decision-making policy. A failure to ensure this would be in violation of international law, including the Convention. The need to safeguard children's rights was immediate and extensive, given the systemic nature of the threat posed by climate change and its wide-ranging negative impacts on the most vulnerable.

6. Climate Action Network Europe ("CAN-E")

148. The intervener argued, in particular, that jurisdiction for the transboundary effects of emissions from the territory of a State was to be distinguished from jurisdiction for emissions from external territories that were attributable to a State of origin, such as from fossil fuels imported from another State. The Court should consider a further category of territorial jurisdiction. This would be based on a "qualified *de facto* regime causing transboundary injury". That notion referred to *de facto* interferences that originated in, and could be controlled by, the responsible State which created serious, lasting and foreseeable transboundary effects, and where the State on whose territory the effects were felt could not shield itself. Such a concept of jurisdiction could be recognised as a component of the legal space (*espace*

juridique) of the Convention and its European public order. Alternatively, Article 1 of the Convention could be read to require jurisdiction only in the event of positive obligations (excluding negative obligations).

149. It was overdue to apply fundamental rights in situations where emissions were caused abroad. In reality there was no doubt that emissions had a significant causal effect on individual rights holders, no matter if they lived within or outside the responsible State. Attribution to a State arose from the fact that most of the emitting activities were subject to permission regimes of States. From this perspective, jurisdiction under Article 1 could be established either under the "qualified *de facto* regime causing transboundary injury", or, alternatively, in relation to the emissions of the State in question.

150. National remedies challenging the ensemble of climate-change measures were scarcely available. An appropriate route to challenging the ensemble would be to aim at ambitious overall GHG emission reduction targets to be established by States. Where such targets were contained in a legislative act, some States such as, *inter alia*, Portugal provided direct access to court review. However, access to a court was subject to strict standing requirements and in most cases it existed only after the exhaustion of some other remedies. The remedies available in the national legal orders were not effective. It was common practice of the respective Governments to dispute the admissibility of actions in national climate litigation.

7. *The Extraterritorial Obligations Consortium; Amnesty International; The Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales*); The Center for Transnational Environmental Accountability ("CTEA"); Economic and Social Rights Centre (Hakijamii); FIAN International; Great Lakes Initiative for Human Rights and Development ("GLIHD"); Professors Mark Gibney, Sigrun Skogly, Wouter Vandenhole and Jingjing Zhang, and Doctors Gamze Erdem Türkelli, Nicolás Carillo-Santarelli, Jernej Letnar Černič, Tom Mulisa, Nicholas Orago and Sara Seck; and the University of Antwerp Law and Development Research Group*

151. The interveners submitted that it was clear that residents of a Contracting Party were under the jurisdiction of that State for the purposes of Article 1 of the Convention. There were two considerations in favour of a conclusion that GHG emissions from other Contracting Parties placed those persons (residents of a Contracting Party) under their jurisdiction.

152. First, climate change gave rise to unique issues of transboundary harm and common concern. It represented a situation where the rights of the claimants were under the control of each of the Contracting Parties to the extent that the latter permitted GHG emissions or conduct that exacerbated emissions in other States that foreseeably caused human rights harms, domestically and across borders on a continuous and long-term basis. If the applicants were to be considered to only be within the jurisdiction of the State

where they resided, this would create a vacuum of human rights protection. Second, the extraterritorial application of the Convention was supported by a harmonious interpretation of the Convention with developments at the international level.

8. Center for International Environmental Law, Greenpeace International and the Union of Concerned Scientists

153. The interveners pointed to the importance of State commitments made under the UNFCCC and the Paris Agreement and the necessity for States to observe the 1.5ºC warming limit in order to comply with their Convention obligations.

9. International Network for Economic, Social and Cultural Rights ("ESCR-Net")

154. The intervener elaborated on the impact of the climate-change crisis on rights pertaining to a healthy environment and related economic, social and cultural rights, as well as the right to life. They explained that climate change disproportionately affected marginalised individuals and communities. States had a duty to establish a legal framework to prevent human rights harms arising from environmental damage and climate change.

10. ALL-YOUTH research project and Tampere University Public Law Research Group

155. The intervener submitted that there was an international consensus as to the existence of adverse effects of climate change on human rights, which the Court should take into account in its examination of the present case. Climate change most gravely affected people in developing countries and children, and it would affect future generations. In this context, children and young people were in a situation of vulnerability. Climate change fell within the scope of extraterritorial responsibility. The central issue in that respect should be the deterrence of the circumvention of rights. Responsibility could be engaged if a State knowingly caused cross-border harm or failed to control private entities conducting extraterritorial actions. The threshold of responsibility in the environmental context should be lower. The Court should apply the "distinction" technique and apply its existing extraterritorial case-law in the new context of climate change.

11. Professor Christel Cournil and Notre Affaire à Tous ("NAAT")

156. The interveners elaborated on the principle of the harmonious interpretation of the Convention in accordance with other sources of international law, which should guide the Court when developing principles on State obligations under the Convention concerning climate change. The

margin of appreciation of the States was narrow in this context. The Court should assess whether the respondent States had diligently taken the necessary territorial and extraterritorial measures to protect the applicants' Articles 2 and 8 rights under the Convention.

12. Our Children's Trust ("OCT"), Oxfam International and its affiliates (Oxfam), Centre for Climate Repair at the University of Cambridge and Centre for Child Law at the University of Pretoria

157. The interveners submitted that the Court should base its decisions on the most up-to-date and best available scientific evidence, which meant evidence that: maximised the quality, objectivity, and integrity of information, including statistical information; used multiple peer-reviewed and publicly available data; and clearly documented and communicated risks and uncertainties in the scientific basis for its conclusions. The interveners submitted an overview of the best available scientific evidence within the field of climate science. They indicated, in particular, that growing scientific consensus showed that children were more susceptible than the average adult to negative physical and mental-health outcomes resulting from climate-change induced effects such as poor air quality and heatwaves.

II. THE COURT'S ASSESSMENT

A. Preliminary issues

1. The application against Ukraine

158. On 18 November 2022 the applicants informed the Court that they wished to withdraw their application in so far as it concerned Ukraine citing "the exceptional circumstances relating to the ongoing war". The applicants' letter was forwarded to the Ukrainian Government which replied that they left it to the Court's discretion to draw the necessary inferences from the applicants' request to withdraw the application against Ukraine.

159. The procedural situation whereby an applicant does not intend to pursue his or her application against the respondent State normally entails the striking-out of the case from the list of cases in accordance with Article 37 § 1 (a) of the Convention (see, for instance, *Sandu and Others v. the Republic of Moldova and Russia*, nos. 21034/05 and 7 others, §§ 53-57, 17 July 2018), the relevant parts of which provide as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application;
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

160. Having regard to the reasons invoked by the applicants in the present case, and considering that all the issues of general importance raised by the present application will be sufficiently elucidated in the examination of the application in regard to the remaining thirty-two respondent States, the Court finds that the application, in so far as it concerns Ukraine, must be struck out of the list of cases in accordance with Article 37 § 1 (a) of the Convention.

2. The application against the Russian Federation

161. The Russian Federation ceased to be a member of the Council of Europe on 16 March 2022[24], and it also ceased to be a Party to the Convention on 16 September 2022[25]. After relinquishment of the case to the Grand Chamber, the respondent Government did not submit any observations on the case. This, therefore, leads to the issue of the Court's jurisdiction to deal with the present application against Russia, and of the consequences of the Government's failure to participate in the proceedings.

162. As regards the former issue, the Court has held that under Article 58 of the Convention it remained competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022 (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, §§ 71-72, 17 January 2023). However, if the application concerns an issue of a continuous nature, the Court has found that a "continuing situation" that spans across the termination date falls within its temporal jurisdiction only for the part occurring before that date (see *Pivkina and Others v. Russia* (dec.), nos. 2134/23 and 6 others, § 61, 6 June 2023).

163. Accordingly, in the present case, in so far as the facts giving rise to the violations of the Convention alleged by the applicants took place before 16 September 2022, the Court has jurisdiction to deal with them. However, any complaint as regards the situation in relation to the Russian Federation after that date is incompatible *ratione temporis* with Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

164. With respect to the failure of the Government to participate in the Grand Chamber proceedings, their failure to submit observations could be taken as a manifestation of their intention to abstain from further participation in the examination of the present application. In this context, the Court has held that the cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Court. This duty continues for as long as the Court remains competent to deal with applications

[24] Committee of Ministers, Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe, 16 March 2022.

[25] Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, 22 March 2022.

arising out of acts or omissions capable of constituting a violation of the Convention (see *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, §§ 21 and 27, 28 April 2023; see also *Svetova and Others v. Russia*, no. 54714/17, §§ 29-31, 24 January 2023). Since the Court retains jurisdiction to deal with the application, as explained in paragraph 163 above, the respondent Government's failure to engage with the proceedings cannot be an obstacle for its examination (Rule 44C § 2 of the Rules of Court).

B. Introductory remarks regarding the legal issues before the Court

165. The Court would begin by referring to its general considerations on the issue of climate change and the Convention set out in *Verein KlimaSeniorinnen Schweiz and Others* (cited above, §§ 410-422), most notably in relation to the fact that while its case-law to date can offer guidance up to a point as regards climate-change complaints, there are important differences between the legal questions raised by climate change and those addressed until now in environmental cases, which therefore require the Court's specific assessment.

166. The present case was brought by a group of young persons who complained about the existing, and serious future, impacts of climate change imputable to their home country Portugal and thirty-two other States. The applicants alleged that for the purposes of their complaint concerning climate change they were under the jurisdiction of all of those States within the meaning of Article 1 of the Convention. Before lodging their application with the Court, the applicants did not bring their situation to the attention of any of the authorities in any of the respondent States; nor did they attempt to use any legal remedies in any of those States. Instead, the applicants lodged their application directly with the Court, elaborating on the alleged failures and deficiencies in climate protection by the respondent States and the adverse effects on people caused by those shortcomings. They requested the Court to rule, at first instance, on all these matters.

167. The Court will first address the questions relating to jurisdiction. Its assessment will be limited to the jurisdiction of States in relation to the adverse effects arising from climate change and will not deal with possible issues of extraterritorial jurisdiction, such as those which might arise, for instance, in the context of more localised transboundary environmental harm. The Court will further, as appropriate, deal with the exhaustion of domestic remedies. On the basis of its conclusions on jurisdiction and exhaustion of domestic remedies, it will then consider whether it is necessary to decide on the issue of victim status, having regard to the general principles set out in relation to the latter in *Verein KlimaSeniorinnen Schweiz and Others* (cited above, §§ 487-488).

C. Jurisdiction

1. General principles

168. The general principles of the Court's case-law on jurisdiction have been summarised in the following manner (see *M.N. and Others v. Belgium*, cited above, §§ 96-109):

> "96. The Court reiterates that Article 1 of the Convention limits its scope to 'persons' within the 'jurisdiction' of the States Parties to the Convention.
>
> 97. The exercise of jurisdiction by a respondent State is a condition *sine qua non* in order for that State to be held responsible for acts or omissions attributable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (see *Al-Skeini and Others* [*v. the United Kingdom* [GC], no. 55721/07], § 130[, ECHR 2011], and *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], no. 36925/07, § 178, 29 January 2019). The question of whether that State is effectively liable for the acts or omissions at the origin of the applicants' complaints under the Convention is a separate issue which belongs to the merits phase of the case (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, §§ 61 and 64, Series A no. 310, and *Güzelyurtlu and Others*, cited above, § 197).
>
> 98. As to the meaning to be given to the concept of 'jurisdiction' for the purposes of Article 1 of the Convention, the Court has emphasised that, from the standpoint of public international law, a State's jurisdictional competence is primarily territorial (see *Güzelyurtlu and Others*, cited above, § 178; see also *Banković and Others* [*v. Belgium and Others* (dec.) [GC], no. 52207/99], §§ 59-61[, ECHR 2001-XII]). It is presumed to be exercised normally throughout the territory of the State concerned (see *Assanidze v. Georgia* [GC], no. 71503/01, § 139, ECHR 2004-II).
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> 99. In line with Article 31 § 1 of the Vienna Convention on the Law of Treaties of 1969, the Court has interpreted the words "within their jurisdiction" by ascertaining the ordinary meaning to be given to the phrase in its context and in the light of the object and purpose of the Convention. However, while international law does not exclude a State's extraterritorial exercise of its jurisdiction, the suggested bases of such jurisdiction (including nationality and flag) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States (see *Banković and Others*, cited above, §§ 56 and 59).
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> 100. This territorial notion of the States Parties' jurisdiction is supported by the *travaux préparatoires* of the Convention (ibid., §§ 19-21 and 63). The text prepared by the Committee on Legal and Administrative Questions of the Consultative Assembly of the Council of Europe initially provided, in what became Article 1 of the Convention, that the 'member States shall undertake to ensure to all persons residing within their territories the rights ...'. However, the reference to 'all persons residing within their territories' was replaced with a reference to persons 'within their jurisdiction', since the concept of residence was considered too restrictive and open to different interpretations depending on the national legislation concerned.
>
> 101. The Court has recognised that, as an exception to the principle of territoriality, acts of the States Parties performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 of the Convention. This is well-established case-law (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 314, ECHR 2004-VII; *Medvedyev and*

Others v. France [GC], no. 3394/03, § 64, ECHR 2010; *Al-Skeini and Others*, cited above, § 131; and *Güzelyurtlu and Others*, cited above, § 178).

102. In each case, it was with reference to the specific facts that the Court assessed whether there existed exceptional circumstances justifying a finding by it that the State concerned was exercising jurisdiction extraterritorially (see *Banković and Others*, cited above, § 61; *Al-Skeini and Others*, cited above, § 132; *Hirsi Jamaa and Others* [*v. Italy* [GC], no. 27765/09], § 172[, ECHR 2012]; and *Catan and Others v. the Republic of Moldova and Russia* [GC], nos. 43370/04 and 2 others, § 103, ECHR 2012 (extracts)).

103. An exception to the principle that jurisdiction under Article 1 is limited to a State Party's own territory occurs where that State exerts effective control over an area outside its national territory. The obligation to secure the rights and freedoms set out in the Convention in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (for a summary of the case-law on these situations, see *Al-Skeini and Others*, cited above, §§ 138-40 and 142; for more recent applications of this case-law, see *Catan and Others*, cited above, §§ 121-22; *Chiragov and Others v. Armenia* [GC], no. 13216/05, § 186, ECHR 2015; *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, §§ 110-11, 23 February 2016; and *Sandu and Others v. the Republic of Moldova and Russia*, nos. 21034/05 and 7 others, §§ 36-38, 17 July 2018).

104. Thus, the Commission and subsequently the Court concluded that a State was exercising its jurisdiction extraterritorially when, in an area outside its national territory, it exercised public powers such as authority and responsibility in respect of the maintenance of security (see *X and Y v. Switzerland*, [nos. 7289/75 and 7349/76, Commission decision of 14 July 1977, Decisions and Reports 9]; *Drozd and Janousek v. France and Spain*, 26 June 1992, §§ 91-98, Series A no. 240; *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, nos. 48205/99 and 2 others, § 20, 14 May 2002; *Al-Skeini and Others*, cited above, §§ 143-50; and *Al-Jedda v. the United Kingdom* [GC], no. 27021/08, §§ 75-96, ECHR 2011).

105. Further, the use of force by a State's agents operating outside its territory may, in certain circumstances, bring persons who thereby find themselves under the control of the State's authorities into the State's Article 1 jurisdiction (for a summary of the case-law in respect of these situations, see *Al-Skeini and Others*, cited above, § 136). The same conclusion has been reached where an individual is taken into the custody of State agents abroad (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005-IV). Equally, extraterritorial jurisdiction has been recognised as a result of situations in which the officials of a State operating outside its territory, through control over buildings, aircraft or ships in which individuals were held, exercised power and physical control over those persons (see *Issa and Others v. Turkey*, no. 31821/96, §§ 72-82, 16 November 2004; *Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), no. 61498/08, §§ 86-89, 30 June 2009; *Medvedyev and Others*, cited above, §§ 62-67; *Hirsi Jamaa and Others*, cited above, §§ 76-82; and *Hassan v. the United Kingdom* [GC], no. 29750/09, §§ 75-80, ECHR 2014).

106. As the Court reiterated in its judgment in *Al-Skeini and Others* (cited above, § 134), a State Party's jurisdiction may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property (see *X v. Germany*, [no. 1611/62, Commission decision of 25 September 1965, Yearbook 8]; *X v. the United Kingdom*, no. 7547/76, Commission decision of 15 December 1977, DR 12, p. 73; and *S. v. Germany*, no. 10686/83, Commission decision of 5 October 1984, DR 40, p. 191),

or where they exercise physical power and control over certain persons (see *M. v. Denmark*, [no. 17392/90, Commission decision of 14 October 1992, DR 73, p. 193]).

107. Lastly, specific circumstances of a procedural nature have been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory. Thus, with regard to civil proceedings for damages brought by the applicants before the Italian courts under national law in respect of the deaths of their relatives as a result of air strikes carried out by the NATO alliance against the Federal Republic of Yugoslavia, the Court held, in spite of the extraterritorial nature of the events at the origin of the action, that those proceedings fell within the jurisdiction of Italy, which was accordingly required to secure, in those proceedings, respect for the rights protected by Article 6 of the Convention (see *Markovic and Others v. Italy* (dec.), no. 1398/03, 12 June 2003, and *Markovic and Others* [GC], cited above, §§ 49-55). More recently, with regard to deaths which occurred outside the territory of the respondent State, the Court found that the fact that the State in question had begun a criminal investigation into those events established a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives, entailing an obligation on the State to meet the procedural requirements of Article 2 (see *Güzelyurtlu and Others*, cited above, § 188).

108. In contrast, in ... *Abdul Wahab Khan* [*v. the United Kingdom* (dec.), no. 11987/11, 28 January 2014], the Court dismissed the argument based on the proceedings brought by the applicant, a Pakistani national resident in Pakistan, before the SIAC to challenge the decision to withdraw his leave to remain in the United Kingdom. The Court held that, in the absence of other criteria of attachment, the fact that the applicant had brought those proceedings was not sufficient to establish the United Kingdom's jurisdiction with regard to the risk, alleged by the applicant, that he would be subjected in Pakistan to treatment contrary to Article 3 of the Convention (see *Abdul Wahab Khan*, cited above, § 28).

109. By way of comparison, the Court emphasises that the above-cited cases are to be distinguished from those in which the facts contained an international element but which did not involve extraterritoriality for the purposes of Article 1 of the Convention. This was the situation with regard to cases under Article 8 concerning decisions taken with regard to individuals, irrespective of whether they were nationals, who were outside the territory of the respondent State but in which the question of that State's jurisdiction had not arisen, given that a jurisdictional link resulted from a pre-existing family or private life that that State had a duty to protect (see *Nessa and Others v. Finland* (dec.), no. 31862/02, 6 May 2003; *Orlandi and Others v. Italy*, no. 26431/12, 14 December 2017; and *Schembri v. Malta* (dec.), no. 66297/13, 19 September 2017)."

169. In *M.N. and Others v. Belgium* (cited above, §§ 112-113) – which concerned the processing of the applicants' visa applications by the Belgian authorities abroad – the Court also made it clear that "[t]he mere fact that decisions taken at national level had an impact on the situation of persons resident abroad is also not such as to establish the jurisdiction of the State concerned over those persons outside its territory". In order to determine whether the Convention applies, the Court must examine whether "exceptional circumstances" existed which could lead to a conclusion that the State concerned was exercising extraterritorial jurisdiction in respect of the applicants. This is primarily a question of fact, which requires the Court to explore the nature of the link between the applicants and the respondent State

and to ascertain whether the latter effectively exercised authority or control over them. In *M.N. and Others v. Belgium* the Court found that by submitting the visa applications to the Belgian authorities abroad, the applicants could not create a jurisdictional link with Belgium.

170. The relevant general principles on extraterritorial jurisdiction were also recently clarified by the Grand Chamber in several inter-State cases. In *Georgia v. Russia (II)* (cited above, §§ 113-114) the Court explained that the case-law on the concept of extraterritorial jurisdiction had evolved since the case-law in *Banković and Others* (cited above) in that the Court had indicated, *inter alia*, that the rights under the Convention could be "divided and tailored" (see also *Al-Skeini and Others*, cited above, § 137). In addition, the Court has established a number of criteria for the exercise of extraterritorial jurisdiction by a State, which must remain exceptional. The two main criteria established by the Court in this regard are that of "effective control" by the State over an area (spatial concept of jurisdiction) and that of "State agent authority and control" over individuals (personal concept of jurisdiction) (see *Georgia v. Russia (II)*, cited above, § 115).

171. In *Ukraine and the Netherlands v. Russia* (cited above, §§ 547-550, 555, 559-560 and 565-575) the Court further elaborated on the issue of extraterritorial jurisdiction in the following manner:

> "547. The Convention organs have developed a framework for the interpretation and application of Article 1 of the Convention. The relevant principles have evolved with a view to the effective protection of human rights in a largely regional context. Their origins pre-date the ARSIWA [International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts 2001], which were only adopted in 2001 and took into account the prior case-law of the Convention organs when formulating the relevant rules under international law.
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> 548. The Court's case-law demonstrates that the assessment of whether a respondent State had Article 1 jurisdiction in respect of complaints about events outside that State's formal territorial borders may involve consideration of *ratione loci* or *ratione personae* jurisdiction, or both. Where the principal argument is that the respondent State exercised effective control over an area, the question that arises is, essentially, whether that area can be considered to fall within the *ratione loci* jurisdiction of the respondent State, with all the attendant rights and responsibilities that entails, notwithstanding the fact that it falls outside its territorial boundaries. Where the argument is rather that the victims fell under State agent authority and control in territory which the State did not control, the principal question will be whether the respondent State exercised *ratione personae* jurisdiction.
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> 549. Even in cases where it is established that the alleged violations occurred in an area under the respondent State's effective control (and thus within its *ratione loci* jurisdiction), the latter will only be responsible for breaches of the Convention if it also has *ratione personae* jurisdiction. This means that the impugned acts or omissions must have been committed by State authorities or be otherwise attributable to the respondent State.
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> 550. The Court has consistently explained that issues of attribution and the responsibility of the respondent State under the Convention for the acts complained of fall to be examined at the merits phase of the proceedings (see, recently, *Ukraine*

*v. Russia (*re *Crimea)* [(dec.) [GC], nos. 20958/14 and 38334/18], § 266 [, 16 December 2020], and the references cited therein). It is, however, important to clarify that this concerns the evidential question whether the act or omission complained of was in fact attributable to a State agent as alleged. It does not preclude an assessment, at the admissibility stage, of whether particular individuals or entities could be considered State agents such that any actions shown at the later merits stage to have been taken by them would be capable of giving rise to the responsibility of the State (see, for example, the approach taken in the Commission's decision of 26 May 1975 in *Cyprus v. Turkey*, nos. 6780/74 and 6950/75, DR 2, p. 125 at p. 137, and its subsequent report [*Cyprus v. Turkey*, nos. 6780/74 and 6950/75, Commission report of 10 July 1976, Vol. I, unreported, p. 32, § 84]).

...

(iii) Exception to territoriality: outside a State's sovereign borders

555. As regards extraterritorial jurisdiction, it is well-established case-law that acts of the States Parties performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 of the Convention.

...

(β) The criteria for establishing jurisdiction

559. Where an allegation of extraterritorial jurisdiction is made, the Court will assess whether there are exceptional circumstances justifying a finding by it that the State concerned was exercising jurisdiction extraterritorially by reference to the specific facts of the case (see *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, §§ 101-02, 5 May 2020). The two main criteria are effective control by the State over an area (spatial concept of jurisdiction, or jurisdiction *ratione loci*) and State agent authority and control over individuals (personal concept of jurisdiction, or jurisdiction *ratione personae*) (see *Georgia v. Russia (II)*, cited above, § 115). A further criterion which may be relevant in cases concerning the procedural obligation under Article 2 is the notion of a jurisdictional link between the respondent State and the victim's relatives in the circumstances of the case. These criteria will be considered in turn below.

– Effective control over an area

560. The first situation in which extraterritorial jurisdiction may, exceptionally, arise is where a Contracting State exercises effective control of an area outside its national territory, usually as a consequence of lawful or unlawful military action ...

– State agent authority and control

565. The second situation in which extraterritorial jurisdiction may exceptionally arise is where there is State agent authority or control over the victim (see *Georgia v. Russia (II)*, cited above, §§ 117-24).

566. A State Party's jurisdiction may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property, or where they exercise physical power and control over certain persons (see *Al-Skeini and Others*, cited above, § 134, and *M.N. and Others v. Belgium*, cited above, §§ 106 and 117-19).

567. The Court has also explained that a State may exercise extraterritorial jurisdiction where, with the consent or at the invitation of the government of the State concerned, it exercises via its agents or others under their command and direct supervision public powers normally to be exercised by that government (see *Al-Skeini*

and Others, cited above, §§ 135 and 144-47, and *Jaloud v. the Netherlands* [GC], no. 47708/08, §§ 139, 149 and 152, ECHR 2014).

568. Finally, the Court's case-law establishes that in certain circumstances, the use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities within that State's Article 1 jurisdiction (see *Al-Skeini and Others*, cited above, § 136; *Georgia v. Russia (II)*, cited above, § 117; and *Carter* [*v. Russia*, no. 20914/07], §§ 126-30, 150 and 158-61[, 21 September 2021]). The exact content of this exception has been the subject of much analysis and discussion in the Court's case-law (see, most recently, *Georgia v. Russia (II)*, cited above, §§ 117-24 and 130-36, and *Carter*, cited above, §§ 126-30). It would appear that it encompasses two distinct, albeit potentially overlapping, scenarios.

569. First, it covers the exercise by State agents of physical power and control over the victim or the property in question (see *Al-Skeini and Others*, cited above, § 136). This clearly includes cases in which the individual is in custody (see *Öcalan v. Turkey* [GC], no. 46221/99, § 91, ECHR 2005 IV). It may also include cases in which freedom of movement or action is subject to a lesser form of restraint (see, for example, *Medvedyev and Others v. France* [GC], no. 3394/03, § 67, ECHR 2010).

570. Second, it covers isolated and specific acts of violence involving an element of proximity (see *Georgia v. Russia (II)*, cited above, §§ 130-32, and *Carter*, cited above, §§ 129-30). Thus, jurisdiction has been found in respect of the beating or shooting by State agents of individuals outside that State's territory (see, for example, *Isaak v. Turkey* (dec.), no. 44587/98, 28 September 2006, and *Andreou v. Turkey* [(dec.), no. 45653/99, 3 June 2008]) and the extrajudicial targeted killing of an individual by State agents in the territory of another Contracting State, outside the context of military operations (see *Carter*, cited above, §§ 129-30). The Court has explained that accountability in these situations stems from the fact that Article 1 of the Convention cannot be interpreted so as to allow a State Party to perpetrate violations of the Convention on the territory of another State which it could not perpetrate on its own territory. In *Carter*, it added that targeted violations of the human rights of an individual by one Contracting State in the territory of another Contracting State undermined the effectiveness of the Convention both as a guardian of human rights and as a guarantor of peace, stability and the rule of law in Europe (cited above, § 128).

571. In all cases of State agent authority and control, any jurisdiction established is a personal one over the victim. The extent of the State's obligations under Article 1 of the Convention is to secure to that individual the Convention rights and freedoms that are relevant to his or her situation. In this sense, therefore, the Convention rights can be divided and tailored (see *Al-Skeini and Others*, cited above, § 137, and *Carter*, cited above, § 126); the rejection of that proposition in *Banković and Others* (cited above, § 75) is, therefore, no longer an accurate statement of the Court's approach under Article 1 of the Convention.

572. Unlike jurisdiction based on effective control over an area, the Court has on numerous occasions found personal jurisdiction under Article 1 of the Convention to exist outside the Convention legal space (see, among other examples, *Öcalan*, *Medvedyev and Others*, *Al-Skeini and Others* and *Jaloud*, all cited above).

– 'Jurisdictional link' as regards the procedural obligation under Article 2

573. The Court has recently clarified how the issue of jurisdiction is to be approached where a death occurs outside the territory of the Contracting State in respect of which the procedural obligations under Article 2 of the Convention are said to arise (see

Güzelyurtlu and Others, cited above, §§ 188-90, 29 January 2019; *Georgia v. Russia (II)*, cited above, § 330; and *Hanan v. Germany* [GC], no. 4871/16, §§ 132-33, 16 February 2021). In this context, the Court has emphasised that the procedural obligation to carry out an effective investigation under Article 2 has evolved into a separate and autonomous obligation that can be considered to be a detachable obligation arising out of Article 2 and capable of binding the State even when the death occurred outside its jurisdiction (see *Güzelyurtlu and Others*, cited above, § 189). In such cases, the question is whether there is a jurisdictional link for the purposes of Article 1 of the Convention.

574. If the investigative or judicial authorities of a Contracting State institute, by virtue of their domestic law, their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, this may in itself be sufficient to establish a jurisdictional link between that State and the victim's relatives who later bring proceedings before the Court (see *Güzelyurtlu and Others*, cited above, § 188, as refined in *Hanan*, cited above, § 135).

575. Where no such investigation or proceedings have been instituted in a Contracting State, special features may trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2. It is not possible to set out an exhaustive list of such features since they will necessarily depend on the particular circumstances of each case and may vary considerably from one case to another (see *Güzelyurtlu and Others*, cited above, § 190). The Court has found special features sufficient to give rise to a jurisdictional link in a number of cases (see, for example, *Güzelyurtlu and Others*, cited above, §§ 191-96; *Georgia v. Russia (II)*, cited above, §§ 331-32; and *Hanan*, cited above, §§ 137-42)."

172. The Grand Chamber further elaborated on the issue of jurisdiction in *H.F. and Others v. France* (cited above), which concerned the applicants' complaints under Article 3 of the Convention and Article 3 § 2 of Protocol No. 4 about the implicit refusal of the French authorities to repatriate nationals held with their young children in Kurdish-run camps in north-eastern Syria after the fall of the "Islamic State" and the French court's decision to decline jurisdiction when this refusal was challenged by their relatives. The Court considered it important to differentiate between, on the one hand, Article 3 of the Convention, in respect of which it found no jurisdiction under Article 1 of the Convention (see paragraph 176 below), and, on the other hand, Article 3 § 2 of Protocol No. 4, in respect of which it established jurisdiction having regard to the very particular nature of that provision (see paragraph 175 below).

173. In particular, it may be noted that the Court referred to the question of "special features" which might be capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries; an issue which must be determined with reference to the particular facts. In that case, the Court examined the following aspects: whether France exercised "control" over the area in which the applicants' family members were being held; whether a jurisdictional link could be derived from the opening of domestic proceedings; and, lastly, whether there were any "connecting ties" with the State (through nationality and diplomatic or consular jurisdiction) in respect of each of the provisions at stake (ibid., § 190).

174. Having found that France did not exercise any "effective control" over the territory in question or "control" over the applicants' family members and that the opening of proceedings at the domestic level did not trigger France's jurisdiction, the Court turned to the question of whether "any special features, stemming from the bond of nationality between the applicants' family members and the respondent State, or from the diplomatic jurisdiction that should allegedly be exercised by that State in order to protect them from ill-treatment ... might trigger its jurisdiction *ratione loci* to examine the applications" (ibid., §§ 192, 196-97).

175. As regards the complaint under Article 3 § 2 of Protocol No. 4, and in view of the specific nature of that provision, the Court found that in addition to the legal link between the State and its nationals, there were other case-specific features bringing the applicants within the respondent State's jurisdiction for the purposes of that provision (ibid., §§ 212-14). In particular, the Court reasoned as follows (references omitted):

> "213. In the present case, the Court considers that it is necessary to take into account, in addition to the legal link between the State and its nationals, the following special features, which relate to the situation of the camps in north-eastern Syria. First, the applicants have addressed a number of official requests to the French authorities for repatriation and assistance, calling on the respondent State to allow their family members to exercise their right under this provision ... Second, those requests were made on the basis of the fundamental values of the democratic societies which make up the Council of Europe, while their family members were facing a real and immediate threat to their lives and physical well-being, on account of the living conditions and safety concerns in the camps, which are regarded as incompatible with respect for human dignity ..., and of the health of those family members and the extreme vulnerability of the children, in particular, in view of their age ... Third, having regard to the form and length of their detention, the individuals concerned are not able to leave the camps, or any other place where they may be held incommunicado, in order to return to France without the assistance of the French authorities, thus finding it materially impossible to reach the French border or any other State border from which they would be passed back to those authorities ... The Court notes, lastly, that the Kurdish authorities have indicated their willingness to hand over the female detainees of French nationality and their children to the national authorities ..."

176. By contrast, with respect to the complaint under Article 3, the Court held that the circumstances of the case were not such as to bring the applicants within the respondent State's jurisdiction. In so far as it may be relevant for the present case, the Court reasoned as follows (ibid., §§ 199-203):

> "199. ... [T]he Court considers that the mere reliance by the applicants on France's operational capacity to repatriate, seen by them as the normal exercise of its nationality-based jurisdiction *ratione personae* as defined in public international law, or as a form of control or authority which it has wrongly failed to exercise in the case of their family members, does not suffice to constitute a special feature capable of triggering an extraterritorial jurisdictional link ...
>
> 200. First, the mere fact that decisions taken at national level have had an impact on the situation of individuals residing abroad is not such as to establish the jurisdiction of

the State concerned over them outside its territory (see *M.N. and Others v. Belgium*, cited above, § 112).

201. Secondly, while the applicants maintained that the repatriation of their family members had been refused with full knowledge of their situation and that the repatriation operations carried out by France between 2019 and 2021 had demonstrated the exercise of control and authority over its nationals detained in the camps in Syria, the Court observes that neither domestic law ... nor international law – whether customary law on diplomatic and consular protection ... or Security Council resolutions ... – requires the State to act on behalf of its nationals and to repatriate them ...

202. Thirdly, even assuming, as the applicants do, that the situation of their family members does not fall within the classic scenarios of diplomatic and consular protection, defined and limited as they are by the sovereign territorial rights of the receiving States, and that only France, to which they have turned, is capable of providing them with assistance, the Court is of the view that these circumstances are not such as to establish France's jurisdiction over them ...

203. In conclusion, the Court is of the view that the applicants cannot validly argue that the mere decision of the French authorities not to repatriate their family members has the effect of bringing them within the scope of France's jurisdiction as regards the ill-treatment to which they are subjected in Syrian camps under Kurdish control. Such an extension of the Convention's scope finds no support in the case-law ..."

2. Application of the above principles and considerations in the present case

177. The Court will consider in turn the above-noted jurisdictional criteria in order to determine whether the respondent States' jurisdiction can be established in the present case.

(a) Territorial jurisdiction

178. All the applicants are residents of Portugal, and thus under its territorial jurisdiction, which means that under Article 1 of the Convention Portugal must answer for any infringement attributable to it of the rights and freedoms protected by the Convention in respect of the applicants (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 311-12, ECHR 2004-VII). This has not been challenged by the respondent Governments (see paragraph 77 above). However, the Government of Portugal stressed that the issue of jurisdiction should be separated from the question of its actual responsibility for the impugned violations of the Convention (see paragraph 110 above). The Court agrees with this. The issue of responsibility is a separate matter to be examined, if appropriate, on the merits of the complaint (see *Loizidou v. Turkey* (preliminary objections), 23 March 1995, § 61, Series A no. 310; *Georgia v. Russia (II)*, cited above, § 162; and *Ukraine and the Netherlands v. Russia*, cited above, § 549).

179. As regards the other respondent States, the applicants have not argued (see paragraph 121 above), nor would there be any basis to find, that their territorial jurisdiction could be established in respect of them.

180. Since the applicants argued, rather, that the other respondent States' jurisdiction could be established on the basis of the principles relating to extraterritorial jurisdiction, the Court will now examine this matter in the light of the relevant Convention criteria, bearing in mind that the complaints raised by the applicants concern alleged failures by the respondent States to comply with substantive positive obligations under Articles 2, 3 and 8 of the Convention.

(b) Extraterritorial jurisdiction

(i) Effective control over an area

181. There is no suggestion that any of the respondent States exercised in any manner effective control of an area outside its national territory bringing the applicants within its jurisdiction *ratione loci*.

(ii) State agent authority and control

182. In terms of the usual situations in the application of the "State agent authority and control" criterion (see paragraph 171 above, citing *Ukraine and the Netherlands v. Russia*, §§ 565-572), which presuppose some form of authority or control over the alleged victim (ibid., § 571), it cannot be held that any of the respondent States exercised authority or control over the applicants within the meaning of the Court's case-law on Article 1. No jurisdiction can therefore be established on this basis.

(iii) Jurisdictional link as regards the procedural obligation under Article 2

183. Having regard to the nature of the applicants' complaint (see paragraphs 13 and 180 above) and the manner in which the Court has construed the jurisdictional link as regards the procedural obligation to investigate under Article 2 (see paragraph 171 above, citing *Ukraine and the Netherlands v. Russia*, §§ 573-75), it is clear that no jurisdiction of the respondent States can be established on the basis of this criterion. The question whether and to what extent a jurisdictional link could potentially be established by instituting the relevant domestic proceedings does not arise in the present case where no such steps were taken by the applicants in any of the respondent States.

(iv) Whether there are relevant "special features" to establish the respondent States' jurisdiction

184. The Court would begin by reiterating that it has consistently rejected the idea that the fact of a decision being taken at national level which has an impact on the situation of a person abroad could in itself establish jurisdiction of the State concerned over the person. This concerns not only decisions taken by the authorities (see *M.N. and Others v. Belgium*, cited above, §§ 112-13)

but also the argument that the State is capable of taking a decision or action impacting the applicant's situation abroad (see *H.F. and Others v. France*, cited above, § 202).

185. While certain "special features" may lead the Court to a conclusion that a State exercised extraterritorial jurisdiction in a particular case, by contrast it is clear that the applicants' complaints in the present case do not correspond to any of the circumstances which in earlier cases have given rise to a finding of extraterritorial jurisdiction. The existing case-law therefore provides no basis for establishing extraterritorial jurisdiction of the respondent States (other than Portugal, which has territorial jurisdiction).

186. In their submissions, however, the applicants invoked a number of "exceptional circumstances" and "special features" in support of their argument that the Court should establish the respondent States' extraterritorial jurisdiction over the applicants within the specific context of climate change (see paragraphs 121-126 above).

187. In so far as the applicants relied on the "exceptional circumstances" mentioned in *M.N. and Others v. Belgium* (cited above, § 113; see paragraph 122 above) as a basis for establishing the extraterritorial jurisdiction of the respondent States, it is important to reiterate that, as explained in paragraph 169 above, in that case the Court did not establish the existence of extraterritorial jurisdiction of the respondent State.

188. Furthermore, the reference to "exceptional circumstances" in *M.N. and Others v. Belgium* was not intended to establish a distinct jurisdictional test. Within the specific context of that case, in which the applicants sought to rely on a combination of supposed substantive and procedural links to Belgium, it was noted that an assessment of any "exceptional circumstances" "requires [the Court] to explore the nature of the link between the applicants and the respondent State and to ascertain whether the latter effectively exercised authority or control over them" (see *M.N. and Others v. Belgium*, cited above, §§ 102 and 113). In other words, the assessment was ultimately one of effective authority or control over the applicants, in line with established case-law.

189. The Court has explained in *Verein KlimaSeniorinnen Schweiz and Others* (cited above, § 422) the reasons why climate-change cases present several specific characteristics distinguishing them from "classic" environmental cases. It has also explained why climate-change cases raise distinct issues and require various adaptations of the Court's existing case-law in order to determine the approach which can be taken as regards the adverse effects of climate change on the enjoyment of the rights protected under the Convention.

190. The Court will therefore assess whether there are valid grounds for developing the existing case-law on extraterritorial jurisdiction as put forward by the applicants in their submissions, taking into account their reliance on a number of exceptional circumstances and special features.

191. The Court acknowledges the following aspects of climate change emphasised by the applicants.

192. First, States have ultimate control over public and private activities based on their territories that produce GHG emissions. In this connection, they have undertaken certain international-law commitments, notably those set out in the Paris Agreement, which they have developed in their domestic laws and policy documents as well as in their Nationally Determined Contributions ("NDC") under the Paris Agreement. Moreover, as set out in *Verein KlimaSeniorinnen Schweiz and Others* (cited above, §§ 544-554), certain positive obligations arise under the Convention as regards climate change.

193. Secondly, albeit complex and multi-layered, there is a certain causal relationship between public and private activities based on a State's territories that produce GHG emissions and the adverse impact on the rights and well-being of people residing outside its borders and thus outside the remit of that State's democratic process. Climate change is a global phenomenon, and each State bears its share of responsibility for the global challenges generated by climate change and has a role to play in finding appropriate solutions.

194. Thirdly, the problem of climate change is of a truly existential nature for humankind, in a way that sets it apart from other cause-and-effect situations. More fossil fuels being extracted or burnt anywhere in the world, beyond what can be offset by natural carbon sinks (net zero), will inevitably lead to higher GHG concentrations in the atmosphere and therefore to worsening the effects of climate change globally.

195. However, the Court finds that these considerations cannot in themselves serve as a basis for creating by way of judicial interpretation a novel ground for extraterritorial jurisdiction or as justification for expanding on the existing ones. It will now proceed to address the other arguments put forward by the applicants as a basis for justifying an extension of extraterritorial jurisdiction.

196. First, the applicants seem to argue that jurisdiction should depend on the content of the positive obligations which they seek for the Court to impose on States given the gravity of the impact of climate change on their Convention rights (see paragraphs 123-124 above).

197. The Court has accepted that in the context of determining whether extraterritorial jurisdiction can be established or not, the rights under the Convention may to some extent be "divided and tailored" (see paragraph 170 above). At the same time, it has consistently held that in order for an alleged violation to fall within the Court's Article 19 jurisdiction to "ensure the observance of the engagements undertaken by the High Contracting Parties", the impugned circumstances must first be shown to fall under the jurisdiction of a High Contracting Party as required by Article 1. It is for this reason that the Court has described Article 1 jurisdiction as a threshold criterion (*conditio sine qua non*) and held that the question whether a complaint falls within the

jurisdiction of the respondent State is a preliminary issue to be determined before any assessment of the merits of the substantive allegations can take place (see *Ukraine and the Netherlands v. Russia*, cited above, § 506, with further references).

198. Moreover, there is no support in the Court's case-law for the argument that the State's obligations under a particular Article of the Convention or with respect to a particular Convention issue (irrespective of its alleged seriousness or gravity) would require the State to apply the Convention to the situation of individuals who are not within its jurisdiction (see, *mutatis mutandis*, *Abdul Wahab Khan v. the United Kingdom* (dec.), no. 11987/11, § 26, 28 January 2014). The Court does not find it possible to consider that the proposed positive obligations of States in the field of climate change could be a sufficient ground for holding that the State has jurisdiction over individuals outside its territory or otherwise outside its authority and control.

199. It is also important to note that in the present case there is no particular link or connection between the applicants and any of the respondent States (other than Portugal) that could form a basis for allowing the Court to consider that any positive obligations to which States might be subject had to be exercised with due regard to the applicants' particular situation. In this connection, it is reiterated that jurisdiction cannot be established merely on the basis of the argument that the State is capable of taking a decision or action impacting the applicant's situation abroad (see paragraph 184 above).

200. Moreover, the fact that through their Portuguese nationality the applicants also enjoy EU citizenship cannot serve to establish a jurisdictional link between them and the twenty-six respondent States that are also EU member States (other than Portugal where they reside). Such a position, which misconstrues the nature and effect of EU citizenship as provided in EU law and interpreted by the CJEU, would be tantamount to requiring the State to satisfy substantive obligations under the Convention despite the fact that it has neither "control", within the meaning of the Court's case-law, over the territory where the applicants are suffering the alleged impacts of climate change, which could, in principle, be anywhere, or control over the applicants themselves (see, *mutatis mutandis*, *H.F. and Others v. France*, cited above, § 198).

201. Secondly, with respect to the applicants' line of argument set out in paragraphs 124 and 125 above, it should first be noted that the Convention is not designed to provide general protection of the environment as such and that other international instruments and domestic legislation are specifically adapted to dealing with this particular matter (see *Verein KlimaSeniorinnen Schweiz and Others*, cited above, § 445). The applicants submitted that the Court should establish extraterritorial jurisdiction so as to facilitate broader litigation relating to climate change and to allow them to act instead of "appropriate applicants from each State [bringing] comparably ambitious

applications". Accepting this, however, would entail a radical departure from the rationale of the Convention protection system, which is primarily and fundamentally based on the principles of territorial jurisdiction and subsidiarity.

202. The applicants have also argued that bringing a case against Portugal alone would have been of limited efficacy and that they had no other means of holding the respondent States accountable for the impact of climate change on their Convention rights (see paragraphs 124 (c) and 125 above). The Court reiterates, however, that jurisdiction should be differentiated from the issue of responsibility, which constitutes a separate matter to be examined, if appropriate, in relation to the merits of the complaint (see paragraph 178 above). What is more, while the Court accepts that climate change is undoubtedly a global phenomenon which should be addressed at the global level by the community of States, it notes that each State has its own share of responsibilities to take measures to tackle climate change and that the taking of those measures is not determined by any specific action (or omission) of any other State (see *Verein KlimaSeniorinnen Schweiz and Others*, cited above, § 442). This approach is consistent with the Court's approach in cases involving concurrent responsibility of States for the alleged breaches of Convention rights, where each State can be held accountable for its share of the responsibility for the breach in question (see, for instance, *Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, nos. 75734/12 and 2 others, § 160, 19 November 2019). There is therefore no risk of a vacuum in the protection of Convention rights, nor can there be impunity by any of the respondent States in this context. It is also important to stress that there exists an extensive international process, under the umbrella of the United Nations, that allows States to address the climate-change responsibilities of other States.

203. Accordingly, the applicants' submission relating to the limited share of Portugal's alleged responsibility for climate change – as the territorial State – cannot be accepted as a basis for concluding that the jurisdiction of thirty-one other States should be established.

204. Thirdly, the applicants' arguments outlined in paragraph 126 above rest on factors of foreseeability, knowledge, duration and capacity of the States in the field of climate change. They submitted that the relevant test for establishing jurisdiction should be "control over the applicants' Convention interests". The applicants also referred to the multilateral dimension of climate change and on recent developments in international law. The Court will address these issues in turn, while noting that there is a close link between them.

205. As regards their reliance on a test of "control over the applicants' Convention interests", according to the Court's established case-law, extraterritorial jurisdiction as conceived under Article 1 of the Convention requires control over the person himself or herself rather than the person's

interests as such (see *Ukraine and the Netherlands v. Russia*, cited above, § 571). Leaving aside the particular case-law under Article 2 concerning intentional deprivation of life by State agents, there is no support in the case-law for a criterion such as "control over the Convention interests" as a basis for extraterritorial jurisdiction. The Court does not consider that the scope of extraterritorial jurisdiction could be expanded in such a manner, which would entail a radical departure from established principles under Article 1.

206. In particular, reliance on control over the person's interests as a criterion for establishing the State's extraterritorial jurisdiction would lead to a critical lack of foreseeability of the Convention's reach. Given, as the applicants themselves accepted, the multilateral dimension of climate change, almost anyone adversely affected by climate change wherever in the world he or she might feel its effects could be brought within the jurisdiction of any Contracting Party for the purposes of Article 1 of the Convention in relation to that Party's actions or omissions to tackle climate change. Such a position could not be accommodated under the Convention (see *Georgia v. Russia (II)*, cited above, § 134). The suggestion (see paragraphs 145 and 148 above) that such an extension of jurisdiction could be limited to the Convention's legal space – notwithstanding the fact that only some of its Contracting States have been selected by the applicants as respondents – is also not convincing. Given the nature of climate change, including its causes and effects, an extension of extraterritorial jurisdiction by reference to that criterion would be artificial and difficult to justify (see, albeit in another context, *Al-Skeini and Others*, cited above, § 142).

207. It is also important to note that, while the sources of GHG emissions are not limited to specific activities that could be labelled as dangerous and cannot generally be localised or limited to specific installations from which harmful effects emanate, the major sources of GHG emissions are in fields such as industry, energy, transport, housing, construction and agriculture and arise in the context of basic human activities within a given territory. Accordingly, combating climate change through the reduction of GHG emissions at source is chiefly a matter of exercise of territorial jurisdiction. In contrast, as regards the harmful consequences produced by GHG emissions, these are the result of a chain of effects that is both complex and more unpredictable in terms of time and place and are therefore particularly diffuse, making it difficult to establish the respective contributions to the adverse impact of the emissions abroad. The scope of the extraterritorial jurisdiction sought by the applicants would in effect be without any identifiable limits (see, further, *Verein KlimaSeniorinnen Schweiz and Others*, cited above, § 417).

208. In sum, extending the Contracting Parties' extraterritorial jurisdiction on the basis of the proposed criterion of "control over the applicants' Convention interests" in the field of climate change – be it within or outside the Convention's legal space – would lead to an untenable level of

uncertainty for the States. Action taken in relation to some of the basic human activities mentioned above, or any omission in managing the activity's potential harmful effects on climate change, could lead to the establishment of a State's extraterritorial jurisdiction over the interests of persons outside its territory and without any particular link with the State concerned. More importantly, accepting the applicants' arguments would entail an unlimited expansion of States' extraterritorial jurisdiction under the Convention and responsibilities under the Convention towards people practically anywhere in the world. This would turn the Convention into a global climate-change treaty. An extension of its scope in the manner requested by the applicants finds no support in the Convention.

209. As regards the applicants' reliance on the developments in other international instruments, the Court notes that while the concept of jurisdiction for the purposes of Article 1 of the Convention must be considered to reflect the term's meaning in public international law (see *Ukraine v. Russia (*re *Crimea)*, cited above, § 344), other instruments of international law may provide for a different scope of protection than the Convention. In any event, when exercising its duty under Article 19 of the Convention, the Court is not bound by interpretations given to similar instruments by other bodies, having regard to possible differences in the content of the provisions of other international instruments or possible differences in the role of the Court and that of other bodies (see, for instance regarding the interpretation of the substantive provisions, *Caamaño Valle v. Spain*, no. 43564/17, §§ 53-54, 11 May 2021, with further references).

210. The Court has given consideration to the possible relevance of the Preamble of the UNFCCC according to which the States have "the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction". It has also taken note of Articles 1 and 2 of the Articles on Prevention of Transboundary Harm from Hazardous Activities[26] which apply to, and define, transboundary harm, understood as "harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin". Moreover, it has taken note of the Inter-American Court's approach in its Advisory Opinion and the CRC's approach in *Sacchi and Others* (see paragraphs 59 and 63 above).

211. However, the Court does not find that these materials provide support for establishing the States' extraterritorial jurisdiction under the Convention in the manner, and on the grounds, proposed by the applicants.

212. First, the UNFCCC and the above-cited Draft Articles are documents of a fundamentally different nature than the Convention, which is a human rights instrument not specifically designed to provide general protection of

[26] Prevention of Transboundary Harm from Hazardous Activities, UN Doc. A/RES/56/82 (2001), UN Doc A/56/10, 10/08/2001.

the environment. Secondly, the former are primarily designed to govern the relationships between States, while the Convention comprises more than mere reciprocal engagements between Contracting States and rather creates, over and above a network of mutual, bilateral undertakings, a system of objective human rights obligations (see *Loizidou*, cited above, § 70). Lastly, while the above-mentioned documents refer to the issue of "damage" or "harm" occurring outside the borders of a State, they do not seem to suggest that such "damage" or "harm" would bring any impacted individuals under the jurisdiction of the State from which the damage or harm originated. In fact, these instruments clearly differentiate between the activity causing the damage or harm, which emanates from the jurisdiction of one State, and their effects, which fall within the jurisdiction of another State. As regards the Inter-American Court's approach in its Advisory Opinion and that of the CRC in *Sacchi and Others* (see paragraphs 59 and 63 above), the Court notes that both are based on a different notion of jurisdiction, which, however, has not been recognised in the Court's case-law (see *Georgia v. Russia (II)*, cited above, § 124).

213. In view of the above considerations, while also mindful of the constant legal developments at national and international level and global responses to climate change, together with the ever-increasing scientific knowledge about climate change and its effects on individuals, the Court finds that there are no grounds in the Convention for the extension, by way of judicial interpretation, of the respondent States' extraterritorial jurisdiction in the manner requested by the applicants.

(c) Conclusion

214. It follows from the above that territorial jurisdiction is established in respect of Portugal (see paragraph 178 above), whereas no jurisdiction can be established as regards the other respondent States (see paragraph 213 above). The applicants' complaint against the other respondent States must therefore be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

D. Exhaustion of domestic remedies

1. General principles

215. The general principles on exhaustion of domestic remedies were set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014; see also *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 83-89, 9 July 2015, and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-146, 27 November 2023):

> "69. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This

Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. The rule of exhaustion of domestic remedies is based on the assumption – reflected in Article 13 of the Convention, with which it has close affinity – that there is an effective remedy available in respect of the alleged violation. The rule is therefore an indispensable part of the functioning of this system of protection.

70. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports* [*of Judgments and Decisions*] 1996-IV). It should be emphasised that the Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 [and 7 others], § 69, ECHR 2010, where the Court in addition quoted the comprehensive statement of principles set out in §§ 66 to 69 of the *Akdivar and Others* judgment, which in so far as relevant are reiterated here below).

71. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, cited above, § 66).

72. Article 35 § 1 also requires that the complaints intended to be made subsequently [before the Court] should have been made to the appropriate domestic body, at least in substance (see, for instance, *Castells v. Spain*, 23 April 1992, § 32, Series A no. 236; *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144 and 146, ECHR 2010; and *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I) and in compliance with the formal requirements and time-limits laid down in domestic law and, further, that any procedural means that might prevent a breach of the Convention should have been used (see *Akdivar and Others*, cited above, § 66). Where an applicant has failed to comply with these requirements, his or her application should in principle be declared inadmissible for failure to exhaust domestic remedies (see, for example, *Cardot v. France*, 19 March 1991, § 34, Series A no. 200, and *Thiermann and Others v. Norway* (dec.), no. 18712/03, 8 March 2007).

73. However, there is, as indicated above, no obligation to have recourse to remedies which are inadequate or ineffective. In addition, according to the "generally recognised rules of international law" there may be special circumstances which absolve the applicant from the obligation to exhaust the domestic remedies at his or her disposal. The rule is also inapplicable where an administrative practice consisting of a repetition of acts incompatible with the Convention and official tolerance by the State authorities has been shown to exist, and is of such a nature as to make proceedings futile or ineffective (see *Akdivar and Others*, cited above, § 67).

74. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46,

ECHR 2006-II). However, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71, and *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009).

75. In so far as there exists at the national level a remedy enabling the domestic courts to address, at least in substance, the argument of a violation of a given Convention right, it is that remedy which should be exhausted (see *Azinas* [*v. Cyprus* [GC], no. 56679/00], § 38[, ECHR 2004-III]). It is not sufficient that the applicant may have unsuccessfully exercised another remedy which could have overturned the impugned measure on other grounds not connected with the complaint of a violation of a Convention right. It is the Convention complaint which must have been aired at national level for there to have been exhaustion of 'effective remedies'. It would be contrary to the subsidiary character of the Convention machinery if an applicant, ignoring a possible Convention argument, could rely on some other ground before the national authorities for challenging an impugned measure, but then lodge an application before the Court on the basis of the Convention argument (see *Van Oosterwijck*, 6 November 1980, Series A no. 40, §§ 33-34, and *Azinas*, cited above, § 38).

76. The Court has, however, also frequently underlined the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism (see *Ringeisen v. Austria*, 16 July 1971, § 89, Series A no. 13, and *Akdivar and Others*, cited above, § 69). It would, for example, be unduly formalistic to require the applicants to exercise a remedy which even the highest court of their country would not oblige them to exhaust (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 117-18, ECHR 2007-IV).

77. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *Demopoulos and Others*, cited above, § 69; and *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010)."

2. Application of these principles to the present case

216. As regards the respondent States other than Portugal, the Court has found that the present complaints are inadmissible on the grounds that the applicants are not within the jurisdiction of those States. Therefore, the issue of exhaustion of domestic remedies only remains to be determined in respect of Portugal, as the sole respondent State having jurisdiction concerning the applicants' complaints (see paragraph 214 above). The Court will therefore examine specifically whether there were effective remedies in Portugal concerning the applicants' complaints which the applicants were required to use (see paragraphs 217-227 below).

217. It is uncontested that the applicants did not pursue any legal avenue in Portugal concerning their complaints. They argued that the mere existence of a broad constitutional provision (as was, according to them, the case in Portugal and some other States) could not provide for an effective and

sufficiently certain remedy. They also challenged the effectiveness of the use of any possible domestic remedies (see paragraph 131 above).

218. The Court cannot accept these arguments having regard to the remedies available in the Portuguese legal system.

219. In this connection, the Court notes that there is not only an explicit Constitutional recognition of the right to a healthy and ecologically balanced environment (Article 66), but this Constitutional provision is directly applicable and enforceable by the domestic courts (see paragraphs 40 and 52 above). The Portuguese legal system also provides for a possibility of instituting *actio popularis* actions through which the claimant (without demonstrating a direct interest in the action) could request the adoption by public authorities of certain conduct regarding, *inter alia*, the protection of the environment and quality of life, categories explicitly enumerated in the relevant law (see paragraph 41 above; see also paragraph 40 above, Article 52 of the Constitution).

220. In this context, it should be noted that section 7(1) of Law no.19/2014 (the Environmental Policy Framework) guarantees to everyone the right to a full and effective protection of their rights and interests in environmental matters and section 7(2) also provides for a possibility of instituting an *actio popularis* (see paragraph 44 above). Moreover, the Climate Law recognises climate change as an emergency situation and provides to everyone the right to "climate balance" as the right of defence against the impact of climate change as well as the ability to demand that public and private entities comply with the duties and obligations to which they are bound in climate matters (see paragraph 49 above).

221. Furthermore, the above-noted constitutional right to a healthy and ecologically balanced environment is considered to be part of a general right of personality. Without being seriously challenged by the applicants, the Government have explained that this right can be enforced through a civil action which could lead to the prevention of the impugned threat or to mitigate the effects of harm that had already occurred (see paragraphs 114 (c) and 42-43 above; see also paragraph 52 (a) above).

222. Moreover, the domestic law provides for a non-contractual civil liability action against the State by which compensation could be obtained for harm or damages caused by unlawful action or inaction by the State (see paragraph 45 above). An environmental liability regime had been put in place by Decree-Law no. 147/2008, which applies to environmental damage (see paragraph 48 above).

223. The Portuguese legal system also provides for administrative remedies whereby administrative courts could be asked to compel the administration to adopt measures regarding, *inter alia*, the environment and quality of life (see paragraphs 46 and 52 (b) above).

224. Having regard to the above comprehensive system of remedies in the national legal order, it should be noted that the domestic case-law

demonstrates that, although no case specifically concerning climate change has so far been decided, environmental litigation is now a reality of the domestic legal system (see paragraph 52 above), as asserted by the Government (see paragraph 113 above).

225. Lastly, as regards the alleged difficulties in using the remedies impacting on their effectiveness, as alleged by the applicants (see paragraph 131 above), it is noted that the Portuguese legal system provides for both the mechanisms to overcome the parties' lack of means for legal representation (see paragraphs 43 and 50 above) and effective remedies for the excessive length of proceedings (see *Valada Matos das Neves*, cited above, § 101). In any event, according to the Court's case-law, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see paragraph 208 above, citing *Vučković and Others*, § 74, with further references).

226. In view of the above and having regard to the circumstances of the case as a whole, it cannot be considered that there were any special reasons for exempting the applicants from the requirement to exhaust domestic remedies in accordance with the applicable rules and the available procedures under domestic law. Had the applicants complied with this requirement, that would have given the domestic courts the opportunity which the rule of exhaustion of domestic remedies is designed to afford States, namely to determine the issue of compatibility of the impugned national measures, or omissions, with the Convention and, should the applicants have subsequently pursued their complaints before the Court, it would have had the benefit of the factual and legal findings and the assessment of the national courts. Thus, the applicants failed to take appropriate steps to enable the national courts to fulfil their fundamental role in the Convention protection system, that of the Court being subsidiary to theirs (compare *Vučković and Others*, cited above, § 90; see also *Communauté genevoise d'action syndicale (CGAS)*, cited above, § 164).

227. It therefore follows that the applicants' complaint against Portugal is inadmissible for non-exhaustion of domestic remedies and should be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

228. Lastly, the Court finds it difficult to accept the applicants' vision of subsidiarity according to which the Court should rule on the issue of climate change before the opportunity has been given to the respondent States' courts to do so (see paragraph 133 above). This stands in sharp contrast to the principle of subsidiarity underpinning the Convention system as a whole, and, most specifically, the rule of exhaustion of domestic remedies (see paragraph 208 above, citing *Vučković and Others*, §§ 69-70). As the Court explained in *Demopoulos and Others* (cited above, § 69), it is not a court of first instance. It does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the

finding of basic facts which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions (see paragraph 208 above, citing *Vučković and Others*, § 70 *in fine*).

E. Victim status

229. The Court notes that there is a significant lack of clarity as regards the applicants' individual situations, which makes it difficult to examine whether they satisfy the victim-status criteria set out in *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 487-488.

230. In the Court's view, this lack of clarity can be explained, in particular, by the applicants' failure to comply with the obligation to exhaust domestic remedies, a condition of admissibility closely linked to the question of victim status, particularly in the case of general measures such as those related to climate change. The fact remains, in any event, that the application is inadmissible for the reasons set out in paragraphs 214 and 227 above. In these circumstances, the Court will not examine further whether the applicants can claim victim status under Article 34 of the Convention (see, *mutatis mutandis*, *Zambrano v. France* (dec.), no 41994/21, § 47, 21 September 2021).

F. Conclusion

231. In its above assessment the Court has found the following:

(1) In so far as it concerns Ukraine, the application must be struck out of the list of cases in accordance with Article 37 § 1 (a) of the Convention.

(2) As regards the application lodged against the Russian Federation, in so far as the facts giving rise to the violations of the Convention alleged by the applicants took place before 16 September 2022, the Court has jurisdiction to deal with them. However, any complaint as regards the situation after that date is incompatible *ratione temporis* with Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

(3) The applicants are under the jurisdiction of Portugal, while no jurisdiction has been established as regards the other respondent States. The applicants' complaint against the latter must therefore be declared inadmissible pursuant to Article 35 §§ 3 and 4 of the Convention.

(4) The applicants' complaint against Portugal is inadmissible for non-exhaustion of domestic remedies and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

(5) The Court will not examine the existence of the applicants' victim status for the purposes of the various Convention provisions relied on by the applicants.

For these reasons, the Court, unanimously,

1. *Decides* to strike the application, in so far as it concerns Ukraine, out of its list of cases.

2. *Declares* the remainder of the application inadmissible.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 April 2024.

Søren Prebensen	Síofra O'Leary
Deputy to the Registrar	President

ANNEX

List of participants in the hearing of 27 September 2023

For the Governments

The representatives below whose names appear in bold addressed the Court.

1. **Portugal**
    1. **Mr R. MATOS,** *Agent*
    2. Ms A. GARCIA MARQUES
    3. Ms J. VELOSO, *Head of the Department for Climate Change of the Portuguese Environmental Agency, Advisers*

2. **Austria**
    1. Ms B. OHMS, *Deputy Agent*

3. **Belgium**
    1. **Ms I. NIEDLISPACHER**, *Agent*
    2. Mr H. KEVERS
    3. Ms L. CHANET
    4. Ms S. THYS, *Advisers*

4. **Bulgaria**
    1. Ms I. STANCHEVA-CHINOVA, *Agent*
    2. Ms V. HRISTOVA, *Agent*

5. **Switzerland**
    1. Mr A. CHABLAIS, *Agent*
    2. Ms M. BEELER-SIGRON, *Adviser*

6. **Cyprus**
    1. Ms T. CHRISTODOULIDOU, *Agent*
    2. Ms L. CARIOLOU, *Adviser*

7. **The Czech Republic**
    1. Mr P. KONŮPKA, *Agent*
    2. Ms J. MARTINKOVÁ, *Adviser*

8. **Germany**
    1. Mr H.-J. BEHRENS, *Agent*
    2. Ms N. WENZEL, *Agent*

3. Ms K. MELLECH, *Adviser*

9. **Denmark**
   1. Mr A. R. JACOBSEN, *Danish Ministry of Foreign Affairs*
   2. Ms E. MARIENDAL, *Danish Ministry of Climate, Energy and Utilities*

10. **Spain**
   1. Mr A. BREZMES MARTÍNEZ DE VILLARREAL, *Agent*
   2. Mr L. VACAS CHALFOUN, *Co-Agent*

11. **Estonia**
   1. Mr T. KOLK, *Agent*
   2. Ms H.-B. SILLAR
   3. Ms T. NYMANN, *Advisers*

12. **Finland**
   1. Ms K. OINONEN, *Agent*
   2. Ms K. ANTTONEN
   3. Ms P. RÄMÄ, *Advisers*

13. **France**
   1. Mr T. STEHELIN, *Co-Agent*
   2. Ms P. REPARAZ
   3. Ms Ch. BLONDEL, *Advisers*

14. **United Kingdom**
   1. Ms S. MACRORY, *Agent*
   2. **Mr S. SWAROOP** KC, *Counsel*
   3. Ms P. NEVILL, *Adviser*
   4. Ms V. BENNETT, *Department for Energy, Security and Net-Zero, Adviser*

15. **Greece**
   1. Ms V. PELEKOU, *Legal Counsellor of the State*
   2. Ms A. MAGRIPPI, *Adviser*

16. **Croatia**
   1. Ms Š. STAŽNIK, *Agent*
   2. Mr D. ADESOLA BANKOLE, *Adviser*

17. **Hungary**
   1. Mr Z. TALLÓDI, *Agent*

2. Mr D. ORAVECZ *from the Permanent Mission of Hungary to the Council of Europe*

18. **Ireland**
    1. Ms C. DONNELLY, *Counsel*
    2. Mr D. FENNELLY, *Counsel*
    3. Mr B. LYSAGHT, *Agent*
    4. Mr P. ROONEY, *Adviser*

19. **Italy**
    1. Mr L. D'ASCIA, State Counsel*, Agent*
    2. Ms L. CHIUSSI CURZI
    3. Mr A. DINISI, *Advisers*

20. **Lithuania**
    1. Ms K. BUBNYTĖ-ŠIRMENĖ, *Agent*

21. **Luxembourg**
    1. Ms C. WISELER, *Agent*
    2. Ms R. SPOTO
    3. Mr D. SIRY, *Advisers*

22. **Latvia**
    1. Ms E. L. VĪTOLA, *Deputy Agent*

23. **Malta**
    1. Mr J. VELLA, *Agent*

24. **The Netherlands**
    1. **Mr V. DE GRAAF**, *Deputy Agent*
    2. Mr F. TAN
    3. Ms M. DUIN, *Advisers*

25. **Norway**
    1. Ms H. BUSCH, *Acting Agent*
    2. Ms A. ROSTRUP GABRIELSEN, *Senior Adviser, Ministry of Climate and Environment*
    3. Mr D. ERLEND HENRIKSEN, *Deputy Director General, Ministry of Petroleum and Energy*
    4. Mr G. ØSTERMAN THENGS, *Advisers*

26. **Poland**
    1. Mr J. SOBCZAK, *Agent*

27. **Romania**
    1. Ms O.-F. EZER, *Agent*
    2. Mr S.-A. PURZA, *Co-Agent*
    3. Ms A.-M. BĂRBIERU, *Co-Agent*
    4. Mr I. JINGA, *Ambassador, Permanent Representative of Romania to the Council of Europe*

28. **The Russian Federation,** *this Government did not participate in the hearing*

29. **Slovak Republic**
    1. Ms M. BÁLINTOVÁ, *Agent*
    2. Ms E. VANČOVÁ, *Adviser*

30. **Slovenia**
    1. Ms B. JOVIN HRASTNIK, *Agent*
    2. Ms T. MIHELIČ ŽITKO, *Agent*
    3. Mr H. HARTMAN, *Co-Agent*
    4. Ms A. KERŠEVAN, *Adviser*

31. **Sweden**
    1. Ms Elinor HAMMARSKJÖLD, *Agent*
    2. Mr D. GILLGREN, *Adviser*
    3. Ms A. UPPFELDT, *Adviser*

32. **Türkiye**
    1. Mr H. ALI AÇIKGÜL, *Co-Agent*
    2. Mr A. MÜŞERREF YAKIŞIK
    3. Ms F. YILDIRIM
    4. Ms E. ÜNAL, *Advisers*

33. **Ukraine**, this Government did not participate in the hearing

For the applicants

The names of those who spoke on behalf of the applicants are in bold.

(a) Representatives of the applicants:
    1. Ms A. MACDONALD KC, *Counsel*
    2. Ms A. SANDER, *Counsel*
    3. Mr L. TATTERSALL
    4. Mr J. JACKSON
    5. Mr P. CLARK
    6. Mr R. REYNOLDS, *Advisers*

b) Applicants

1. Ms C. DUARTE AGOSTINHO
2. Mr M. DUARTE AGOSTINHO
3. Ms M. DUARTE AGOSTINHO
4. Ms C. DOS SANTOS MOTA
5. Ms S. DOS SANTOS OLIVEIRA
6. Mr A. DOS SANTOS OLIVEIRA

For the third parties

The names of those who spoke on behalf of the third parties are in bold.

1. **Office of the Commissioner for Human Rights**
   1. **Ms D. MIJATOVIĆ**, *Council of Europe Commissioner for Human Rights*
   2. Mr A. MANCEWICZ
   3. Mr M. BIRKER, *Advisers*

2. **European Commission:**
   1. **Mr D. CALLEJA CRESPO**, *Director General of the Legal Service, European Commission*
   2. Ms K. TALABÉR-RITZ
   3. Ms M. CARPUS-CARCEA, *Advisers*

3. **ENNHRI**
   1. **Ms A. MATHESON MESTAD**, *Director of the Norwegian National Human Rights Institution, Counsel*
   2. Ms K. SULYOK, *Chair of ENNHRI's Working group on Climate Crisis and Human Rights*
   3. Ms H. C. BRÆNDEN, *Adviser*
   4. Mr P. W. DAWSON, *Adviser*