Climate Change Mitigation as the New Human Rights Obligation

Analyzing the 2024 climate change decisions in the European Court of Human Rights

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Abstract

In 2020 the European Court of Human Rights received applications *KlimaSeniorinnen and Others v Switzerland* and *Duarte Agostinho and Others v Portugal and 32 Others*. Verein KlimaSerioninnen Schweiz is an association of some 2500 elderly Swiss women experiencing health issues due to rising temperatures. Applicants in the *Duarte* case are six Portuguese children and young people experiencing especially the mental health implications of the insufficient European climate policies. The applications claimed for the respondent governments to violate their human rights under Articles 2 (right to life) and 8 (right to respect for private- and family life) of the European Convention of Human Rights. The Grand Chamber of judges delivered decisions for these cases on April 9th 2024. The Court ruled in favor of the Swiss association *KlimaSeniorinnen* and rejected the rest of the climate change applicants on grounds of admissibility.

In my thesis project, I examine the 2024 decisions focusing especially on questions of victim status and causality. By discussing the rulings this thesis will map out criteria the potential climate change applicants must meet when seeking climate justice from the European Court of Human Rights.

Keywords; ECHR; ECtHR; Climate Change; Duarte Agostinho; KlimaSeniorinnen; Victim Status; Causality; Climate Responsibility; Right to Respect for Private- and Family Life

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1. Introduction

For this thesis project I decided to examine climate change cases in the European Court of Human Rights (ECtHR or 'The Court') and the compatibility between climate justice and European human rights law. The cases chosen for this analysis include *Duarte Agostinho and Others v Portugal and 32 Others* ('*Duarte'*) and *KlimaSeniorinnen and Others v Switzerland* (*'KlimaSeniorinnen'*).

To determine the necessary factual background, I will present the cases and the decisions delivered for them by ECtHR on April 9th 2024. Before diving into the 2024 decisions, I will shortly present a selection of cases that the applicants and/or Court referenced to reason their positions. This is especially relevant since the acceptance of climate change cases in ECtHR would not be possible had the Court relied strictly on statutory law of the European Convention of Human Rights (ECHR or 'The Convention'). This is because ECHR does not include articles codifying individual rights in environmental situations. Later in the analysis I will assess the findings and discuss the framework and limitations of climate justice within ECtHR based on the decisions. I will also present the scholarly debate about climate change cases in ECtHR and address the impact the 2024 decisions could have for the future of environmental human rights situations from the perspectives of the victims and the governments.

The analysis will include assessment of the Court's assessments in both cases, and a discussion of the legal framework on which the cases were constructed as well as the criteria and precedent they have for future climate litigation. This will include reviewing non-statutory norms in ECtHR litigation that established the context for a climate change case to get accepted by the ECtHR, and the limitations and potential of treaty interpretation in the context of ECHR and climate change.

1.1 Background and Context

The applications *Duarte* and *KlimaSeniorinnen* were submitted to ECtHR in 2020 as the personal impacts of global warming were being concretized for the applicants residing in Portugal and Switzerland. Both applications urged the Court to mandate for their respondent governments to mitigate Greenhouse Gas Emissions (GHG) and set more ambitious climate targets. Both cases rely on international climate treaties, most prominently the Paris Agreement, when determining the adequate targets and policies they are seeking from the governments. Applicants in the *KlimaSeniorinnen* case consist of the association Verein

KlimaSerioninnen Schweiz with over 2500 members, and four individual applicants (‘Others’). All applicants and members of the association are elderly women. Applicants in the *Duarte* case consist of six young persons from Portugal. *Duarte* applicants brought their case forward against 32 other ECHR member states in addition to Portugal based on extraterritorial special characteristics of climate change inducing behavior. Both applications claimed for the lack of mitigating action in terms of global warming to cause climate effects that violate the applicants’ human rights, most prominently the right to life and to respect for private and family life. Both applications also referred to the right to non-discrimination on the basis of age; applicants of *KlimaSeniorinnen* claimed the health impacts of rising temperatures to disproportionately affect the elderly, and the applicants of *Duarte* claimed for climate change to disproportionately affect the youth as they will suffer the effects for a longer time. Verein KlimaSeniorinnen Schweiz filed the application against Switzerland after having their domestic case dismissed by the Supreme Court of Switzerland. In the *Duarte* case, the applicants filed the application against 33 states without exploring the domestic courts in any of the states ((ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*; *Duarte Agostinho and Others v Portugal and 32 Others*)

KlimaSeniorinnen and *Duarte* passed the preliminary assessment that determined for the cases to have notable prospects for fulfilling admissibility criteria. The applications were referred directly to the Grand Chamber; this is a common practice in ECtHR for applications that challenge previous judgements and necessitate further interpretation of the Convention (Smith 2014, p. 107). The proceedings of the applications were composed in a staggered but separate manner within ECtHR. The Grand Chamber consists of 17 judges including the president and the presidents of the Court.

The Court accepted the *KlimaSeniorinnen* application in terms of Article 8 and the provisions of the right to private- and family life. The notions of violations of Articles 6 and 13 were also accepted, as Switzerland had failed in providing appropriate domestic remedy and respecting the applicant’s right to a fair trial. Switzerland was mandated to compensate the Verein KlimaSerioninnen Schweiz applicant association for 80 000€. The Court dismissed the application in so far as it concerns the individual applicants based on victim status criteria.

The Court dismissed *Duarte* application as inadmissible. In terms of Portugal, the determined inadmissibility was based on the lack of exhausted domestic remedy. In terms of the rest of the respondent states, the determined inadmissibility was based on Article 1 and the criteria for extraterritorial jurisdiction. The Court stated for an abstract of acceptance of

the extraterritoriality-characteristics of the application to comprise a precedent that would have disproportionately enabled victims of climate change phenomena to file applications against any European state regardless of their location in the world. For the purposes of this thesis I will dissect the cases and the differences regarding the outcomes, substantive and technical issues and introduce a prospective future framework for climate justice applications in ECtHR.

1.2 Research Questions

1) Why did ECtHR partly accept the application in the case *KlimaSeniorinnen and Others v Switzerland* ?
2) Why was *Duarte Agostinho and Others v Portugal and 32 Others* inadmissible?
3) Based on *KlimaSeniorinnen* and *Duarte*, what procedural and substantial criteria will the Court apply when assessing potential climate change applications in the future?

1.3 Objective and Scope

The objective of this thesis is to determine the current potential and limitations of ECtHR climate justice litigation. To achieve this, I will analyze two climate change cases submitted to ECtHR in 2020. The decisions of these cases were communicated by the ECtHR Grand Chamber on April 9th 2024. The topic and material are especially current and therefore the writing process of this thesis has relied on the primary material by the Court, as the secondary material consists for the most part of publications prior to the 2024 decisions.

For this thesis I decided to examine two of the three climate change cases the ECtHR Grand Chamber deliberated as a staggered process and delivered decisions for in the same hearing on April 9th 2024. The third application *Careme v France* was dismissed by ECtHR as inadmissible due to the applicant not fulfilling criteria for victim status criteria as determined in *KlimaSeniorinnen*. The application was based largely on the applicant's residency in the town Grande-Synthe within close proximity of the beach and being therefore at risk of flooding in a matter of decades. The Court found it ambiguous whether the applicant's current address could indicate their location of living in such an elongated time-span and further found the applicant had relocated to Brussels during the proceedings of the Court (*Careme v France 2024,* par 75-82). The relevance of *Careme v France* is minor compared to *Duarte* and *KlimaSeniorinnen*; this can be observed by lack of acknowledgements of the *Careme* application in the already limited scholarly discussion of

ECtHR climate cases. The reasons for inadmissibility of the application indicate a poorly constructed climate case, with little prospects of success from early on. The Court did not address the substantive issues of the case as the inadmissibility due to the applicants relocation was clear promptly after the deliberations of the case had begun. The ECtHR material on *Careme* case is in French, making the addition of the case for this thesis both rather insignificant for the discussion on climate justice, and laborious due to the translation work necessary.

This thesis will set focus in the European context of climate justice. The European Court is the most functional regional human rights court established. Though transnational issues are relevant especially when discussing the *Duarte* case, this will limit the human rights point of view to not include other regions with arguably disproportionate human rights implications; The most vulnerable populations in terms of climate change phenomena are located in sub-Saharan Africa and small island states of the Pacific (Closset et. al 2018, p. 19). Paradoxically, the most functional mechanisms for those suffering climate change induced harm can not address the populations most vulrnable to climate change. This can be seen also in the cases analyzed for this thesis; the substantial claims of the applicants in *Duarte* focus on *potential* harm and damage and on the mental health issues of young persons as an impact of climate change, and in *KlimaSeniorinnen* the individual applicants' cases were dismissed based on a lack of *severity* in terms of the harm.

1.4 Thesis Outline

This thesis begins with introducing the research problem, aims, questions and delimitations of the study. The primary and secondary material will be briefly introduced in the second section. The analysis section will begin by an introduction of relevant case law. After this I will include descriptive chapters of *KlimaSeniorinnen* and *Duarte*, where the background of both cases is outlined as well as the 2024 decisions. Following this, I will discuss the cases and their outcomes separately, answering the first and second research question. The analysis will end with a brief discussion of the implications the 2024 climate change cases might have in the European human rights context. In order to assess the third research question, criteria for potential climate change applicants is also discussed in the last part of the analysis. The thesis will end with concluding statements, where the findings of the analysis are brought together and prospects for future research are mentioned.

2. Material

2.1 Primary Material

The primary material on which this thesis is constructed includes materials from ECtHR. The most referenced material in addition to the Convention is the written submissions, third party interventions and decisions of the 2024 climate justice cases *Duarte* and *KlimaSeniorinnen*. In addition to the ECtHR documents, in terms of *KlimaSeniorinnen*, it is necessary to pay attention to documents from the domestic Court proceedings. The summaries of the domestic Swiss decisions used for this thesis are unofficial English translations, and in order to utilize them creditably the references to the domestic proceedings are supported by secondary academic journals in addition to the judicial documents.

When dissecting the cases I studied previous ECtHR cases with a connecting characteristic to the 2024 cases. These cases include most significantly *Cordella and Others v Italy* (2019), *Tyrer v United Kingdom* (1978), *Tâtar v Romania* (2009), *Di Sarno v Italy* (2012), *Gorraiz Lizarraga and Others v Spain* (2004) and *Bancovik and Others v Belgium and Others* (2001). Aside ECtHR, a landmark climate justice decision *Urgenda v Netherlands* from the Dutch Supreme Court plays a noteworthy part in multiple parts of the analysis.

2.2 Secondary Material

The lawyers representing *KlimaSeniorinnen* published an extensive report *Climate litigation before the European Court of Human Rights: some observations on the case Klimaseniorinnen and Others v Switzerland* detailing the background and arguments of the case. For this thesis, the report was a significant source especially in terms of the background of *KlimaSeniorinnen* in the Swiss courts.

A significant number of the scholarly material used in preparations for this thesis consists of publications prior April 9th 2024. It should be taken into account when reviewing the used sources for arguments about the cases, for the secondary sources published before the Court's decision date to be hypothetical in terms of the ruling, rather than analytical. In the thesis, when arguments for a differing result of the Court are constructed on material of this sort, it is important for the reader to consider for the author of the referenced material to not have necessarily written the text through a critical lens of the Court's decision, but as a well reasoned prediction.

Before the Court's decision, the articles analyzing the cases' potential mostly present views with differing degrees of optimism in terms of merging reduction of GHG with ECHR (Heri & Keller 2022; Malaihollo 2021; Feria-Tinta 2021; Rocha & Sampaio 2023; Nollkaemper & Burgers 2020). Alexander Zahar provides a more critical perspective in their 2022 article *Human Rights Law and the Obligation to Reduce Greenhouse Gas Emissions.* The article by Zahar dissects the challenges of utilizing human rights norms in the legal problematization of high emissions. The articles by Mohammad Habibur Rahman (2021) and Shai Dothan (2014) discuss ECHR interpretation through examples of rulings evolving with European consensus similarly evolving through time. A policy previously deemed lawful or fitting under margin of appreciation might a few decades later be ruled a violation if the necessary evidence, for example scientific findings, is presented to the Court (Rahman 2021, p. 12). I used the 2015 article by Cuckovic and Krstic to briefly discuss how the ECHR Article 8 is used to assess environmental situations.

Few publications have been made after the Court ruling. In the process of this thesis I have actively followed new publications of the issue, but have also had to consider weather constantly adding new material with new angles benefits the writing process as a whole; the timing of the thesis most definitely creates delimitations in terms of the material, and to some extent that must simply be accepted in order to meet the deadlines of the project. In their article *Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation* (2024) Angela Hefti analyzes *Duarte* and *KlimaSeniorinnen*, and specifically the notations of victimhood based on the intersectional inequalities of age, gender and health as grounds for establishing the 'directly affected' criteria of victim status. In *KlimaSeniorinnen and the Choice Between Imperfect Options* (2024) Johannes Reich critiques the European Court of Human Rights' approach, arguing that its reliance on voluntary commitments outlined in the Paris Agreement for addressing climate change in legal rulings may dilute the effectiveness of climate litigation by not imposing binding obligations on states.

3. Analysis

3.1 Relevant Case Law

Before discussing the climate change cases of 2024, I will present relevant cases that created the context in which a climate change application was able to succeed in ECtHR. Compared to many domestic European courts, the weight of non-statutory law is especially

high in ECtHR, as the procedure of amending ECHR is significantly more challenging and time consuming than amending state legislation. Every modification and addition requires ratification of each state party individually. The broad interpretation based on case law instead of additional protocols has been criticized for making the ratification of additional protocols unfavorable for governments; accepting additional clauses might come across as creating uncertainty in state obligations when the organ with judicial authority has a tendency of broad interpretation (Dothan 2014, p. 516). The climate change decisions referred to and related to several cases with notions of environmental law, transnational jurisdiction, pollution, positive obligations, evidence and victim status. In addition to the ECtHR cases, I will briefly introduce the *Urgenda* ruling by the Dutch Supreme Court, as the domestic case is of high relevance for both *KlimaSeniorinnen* and *Duarte*.

1) *Cordella and Others v Italy* (2019)

The Cordella et al. v. Italy -case centers on the long-standing environmental and health concerns stemming from the operations of the Ilva steel plant in Taranto, Italy. The judgment represents a significant milestone in the legal battle against industrial pollution. The case was brought forward by 180 citizens residing in Taranto and its vicinity, alleging that toxic emissions from the Ilva plant had detrimentally impacted their health and environment, thereby violating their rights under Articles 2 and 8 of the Convention. Additionally, the applicants claimed that Italy's failure to provide adequate judicial remedies amounted to a breach of Article 13 of the Convention (ECtHR 2019: *The Cordella et al. v. Italy* fact sheet section A).

The Court found Italy responsible for violating Articles 8 and 13 of the ECHR. Specifically, the Court emphasized Italy's failure to strike a fair balance between industrial interests and the fundamental rights of citizens. The state's inertia in adopting adequate measures to address environmental concerns and its lack of effective judicial remedies for affected individuals were deemed incompatible with its obligations under the Convention (ECtHR 2019: *The Cordella et al. v. Italy* fact sheet section B).

The Court's decision underscores the need for states to prioritize environmental protection and public health in industrial activities, ensuring that individuals have access to effective legal remedies to address violations of their rights. Perhaps most significantly for the context of this thesis, the judgment highlights the pivotal role of scientific evidence in assessing the causal link between environmental harm and human rights violations, setting a

precedent for future cases involving similar issues (Rocha & Sampaio 2023 p. 285)(ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 294; 445; 472).

2) *Tyrer v the United Kingdom* (1978)

The case of T*yrer v the United Kingdom* remains a seminal milestone in the evolution of human rights jurisprudence, particularly in its articulation of the "living instrument" doctrine within the framework of ECHR. This doctrine, as elucidated by the Court, signifies a dynamic approach to interpreting the Convention, emphasizing its adaptability to contemporary societal standards (ECtHR 1978: *Tyrer v the United Kingdom* par 13-14).

Central to the *Tyrer* case was the practice of judicial corporal punishment, specifically the birching of a schoolboy on the Isle of Man—a practice deemed incompatible with evolving human rights norms. The Court's pronouncement that such treatment amounted to a violation of Article 3 of the Convention marked a departure from rigid legal formalism towards a more nuanced understanding of human dignity and evolving societal mores (ECtHR 1978: *Tyrer v the United Kingdom* par 29).

Moreover, *Tyrer* exemplifies the pragmatic realities of legal advocacy and strategic maneuvering. The case was led by lawyers with somewhat activism-based motives, similarly to the 2024 climate cases. The procedural choice to pursue the case in ECHR despite the existing case law creating unfavorable odds for success was rewarded with the doctrine that ensures the Conventions flexibility to adapt to contemporary situations (ECtHR 1978: *Tyrer v the United Kingdom* par 32). The flexibility was without a doubt necessary and present in the deliberations and rulings of the climate change cases. Similarly to *Tyrer*, the applicants in the cases in 2024 can with certainty establish to having the objective of evolving ECHR. Through its articulation of the living instrument doctrine, the Court affirmed the Convention's adaptability to changing societal conditions, reaffirming the enduring quest for dignity and justice in the developing ethical landscape of European context.

3) *Tâtar v Romania* (2009) and *Di Sarno and Others v Italy* (2012)

Tâtar v Romania and *Di Sarno v Italy* are two examples of the Court accepting applications interpreting Article 8 of the Convention to be violated in situations of environmental harm. The decisions underline positive obligations in relation to environmental human rights situations.

Tâtar v Romania was brought to the Court by applicants living in close proximity to an area where a mining accident had resulted in significant environmental harm. ECtHR found that Romania had indeed violated Article 8, and determined that the state had not taken adequate measures to assess and manage the risks associated with the hazardous industrial activities, nor had it kept the public properly informed about these risks before and after the accident (ECtHR 2009: *Tâtar v Romania,* par 3-7). The Court's judgment highlighted the obligation of states to regulate and monitor industrial activities that could potentially harm the environment and public health. It emphasized that states must ensure that appropriate measures are in place to prevent environmental hazards and to mitigate their impact when they occur. The decision is of high relevance for this thesis for including notations of risk management and potential harm when determining a violation of ECHR (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 317; 364; 538).

Di Sarno and Others v Italy was brought before ECtHR by 18 applicants living in the Campania region. The residents of the area found the poor garbage management to lead to harmful effects of waste accumulation and compromise their health and living conditions. The Court ruled that Italy had indeed violated Article 8 by failing to take adequate measures to ensure the proper disposal and treatment of waste, which impacted the applicants' right to a healthy environment. This failure was seen as a breach of their right to private and family life due to the adverse environmental conditions they were subjected to (ECtHR 2012: *Di Sarno and Others v Italy*, par 104-107) (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 435; 472; 539).

4) *Gorraiz Lizarraga and Others v Spain* (2004)

Gorraiz Lizarraga and Others v Spain involved a group of residents from the Yesa Valley in Spain who opposed the construction of a dam that threatened their properties and environment. The applicants claimed that their rights under Article 6 and Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights were violated due to the lack of proper public participation in the decision-making process. In the decision of the case, The Court recognized that associations representing affected individuals could also be considered "victims" under the Convention, thereby broadening the scope of who can bring a claim before the ECtHR (ECtHR 2004: *Gorraiz Lizarraga and Others v Spain* par 34). This is especially relevant for *KlimaSeniorinnen*, as the precedent combines the themes of environmental situations and applicant associations being recognised as victims

in ECtHR. The general interest -objective of the association was determined in *Gorraiz Lizarraga and Others v Spain* to not exclude the association's role as an advocate for its members (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 307; 461; 482).

5) *Bancovik and Others v Belgium and Others* (2021)

Banković and Others v. Belgium and Others arose from NATO's aerial bombardment of the Radio Television of Serbia -building in Belgrade during the Kosovo conflict, which resulted in the deaths of sixteen people. The applicants, relatives of the deceased, brought the case against seventeen NATO member states, alleging violations of the Convention, specifically of Articles 2, 10, and 13 (ECtHR 2021: *Banković and Others v. Belgium and Others* par 6-13).

The central issue was whether the victims fell within the jurisdiction of the respondent states under Article 1 of the ECHR, which obliges states to secure the rights of everyone within their jurisdiction. The applicants argued that the bombing was an extraterritorial act that should be considered within the jurisdiction of the respondent states due to the significant control exercised by NATO forces. However, the respondent governments contended that jurisdiction under Article 1 did not extend to extraterritorial actions like the airstrike, as the victims were not within the legal authority or control of the respondent states at the time of the incident (ECtHR 2021: *Banković and Others v. Belgium and Others* par 35-36).

The Court ruled the application inadmissible, emphasizing that the ECHR primarily applies within the territories of the member states and that the concept of jurisdiction under Article 1 did not extend to the extraterritorial bombing in this case. The decision of the case is used to determine criteria for situations of extraterritorial jurisdiction (Keller & Heri 2022, p. 160). The Court determined for extraterritorial responsibility to necessitate for a state to be exercising effective control of an area outside its national territory. The Court rejected the idea that merely causing harm through actions such as airstrikes would automatically bring individuals within the jurisdiction of the state responsible for the action (ECtHR 2021: *Banković and Others v. Belgium and Others* par 74-81). The Court applied the *Bankovic* criteria in *Duarte* ruling (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 121; 170; 571).

6) Dutch Supreme Court: *Urgenda v Netherlands* (2019)

Originating in December 2013, Urgenda, a non-profit organization committed to advancing sustainability and addressing climate change, initiated a civil law action in The Hague District Court. Urgenda, representing both itself and its members, petitioned the court to mandate the Dutch government to significantly curtail its GHG. Central to Urgenda's argument were various legal grounds, encompassing Dutch law, European Union law, and international law. Urgenda invoked Article 21 of the Dutch Constitution, which mandates the state to protect and enhance the environment (Nollkaemper & Burgers, 2020 p. 3). Additionally, Urgenda contended that the Dutch government bears civil liability for breaches of environmental legislation and a general duty of care to safeguard the public from harmful pollution. Urgenda drew upon international legal frameworks, including the United Nations Framework Convention on Climate Change and ECHR. Urgenda argued that the state's obligation to reduce GHG stems from principles such as the "no-harm principle" in international law and the rights enshrined in the ECHR, particularly as codified in Article 2 and Article 8. The Hague District Court ruled in favor of Urgenda, finding that the Dutch government had failed in its duty of care by not implementing sufficiently ambitious measures to combat climate change. The court held that this failure amounted to a violation of Urgenda's and its members' rights under Dutch law, EU law, European human rights law and international law.

The Dutch government appealed the decision, leading to a subsequent ruling by the Court of Appeal. The Court of Appeal upheld the lower court's decision, grounding its judgment on Articles 2 and 8 of the ECHR. It held that the state has an obligation to take precautionary measures to prevent future violations of human rights related to life and privacy, including those arising from environmental harm. The case ultimately reached the Dutch Supreme Court, where the government contested the judgment on multiple grounds. Among these was the argument that the European Convention does not impose a positive obligation on the state to mitigate climate change. In its ruling, the Dutch Supreme Court departed from the government's stance and affirmed the lower courts' decisions. It emphasized that Articles 2 and 8 of the ECHR, along with the precautionary principle, require the state to take appropriate measures to protect individuals and society from the harmful effects of climate change (Nollkaemper & Burgers, 2020 p. 6).

3.2 *KlimaSeniorinnen*

3.2.1 Background: Swiss Ladies Against Climate Change

The movement that began the case of *KlimaSeniorinnen s*tarted in 2016, when a group of senior women sued several federal offices claiming that these state organs were violating their human rights by contributing to global warming and climate emergency. The departments representative of the state, determined to be of relevant character in the climate change case, were authorizing especially energy and construction. The claim was for the government to have violated the constitutional articles 10, 73 and 74. The first article ensures protection to the right to life, and the latter two describe obligations to sustainability principle and environmental protection. The applicants strived to change the state's climate targets from 20% below 1990 levels by 2020, and 30% by 2030 to at least 25% by 2020, and at least 50% by 2050. The case was influenced and inspired by the *Urgenda*-ruling in the Dutch Supreme Court. In the background of the case was GreenPeace Switzerland; after Urgenda GreenPeace started exploring the potential grounds for bringing a similar climate change case forward in Switzerland and ultimately organized the establishment of Verein KlimaSeniorinnen Schweiz (Hefti 2024, p. 24).

The association *KlimaSeniorinnen* argued for the human rights effect of climate change based on the heat waves causing a health hazard that disproportionately affects older women, and specifically older women with respiratory diseases. Data from 2003 shows extreme heat waves raise the death toll by nearly 7% in Switzerland and with climate change development, the heat periods are expected to grow both in frequency and intensity (Bähr et. al 2018, p. 200). The applicants also argue for the impact regarding the right to life to disproportionately affect women, as the highest growth in mortality during extreme heat waves is affecting their demographic group most (Bähr et. al 2018, p. 201). Determining the specific effect and vulnerability was crucial for constructing the domestic case in Switzerland, as the *locus standi* is reliant on the group being 'affected more than the general public' and having a direct and close connection to the context. ECHR does not include a similar criteria for victimhood. The approach was chosen also to ensure the case as promoting the protection of the petitioners specifically and not as a case rooted in *actio popularis* objectives. Though the success of the case would benefit the entire population, it can not be a determining factor in the legislative processes seeking to protect the most applicants.

The case was dismissed as the Federal Administrative Court agreed with respondents for the petitioners to be seeking a general reform, not direct remedy, and for them to lack

victim status as their objective was a more of a general societal interest. For the objective the applicants were seeking, the decisive authority was argued to be placed on democratically functioning organs instead of legislative branches of state organization. It was also contested for the petitioners' claim of specific victim status based on the demographic of senior women to be illegitimate as the climate phenomena does not single out any specific age group nor gender of people. The appeal made to the Supreme Court was also rejected, as the required intensity for a human rights violation to take place was not recognised (Bähr et. al 2018, p. 202-209).

3.2.2 ECtHR and *Klimaseniorinnen*

After the domestic case was dismissed, the applicants prepared a petition for ECtHR. In the application the original objectives remain, detailing the climate targets. The petition mentioned three aspects related to the neglected climate responsibility: state's *acts*, *targets* and *omissions*. The *acts* relate to the state practise and policy contributing to global warming. The *targets* relate to the climate targets previously mentioned in the federal appeal situation; in terms of the petition the applicants urge for the state government to make their climate decisions on the basis of a more ambitious climate target. The *omissions* relate especially to the insufficiency of the measures that constitute the alleged failure in terms of mitigating the omissions. The petition also included practical obligations for the states in order to meet the new climate targets, mainly concerning construction, communication and transportation. The government argued unsuccessfully for having the right to an 'ample' margin of appreciation taking into consideration the complex social and technical issues of climate change justice (Heri & Keller 2022, p. 170). The applicants urged the Court to determine an obligation for the state of Switzerland to do all in their power to limit the rise of global temperatures; the claim includes statements about the states' responsibility and control, as well as the applicants' victim status. Regarding both these aspects, the petition forced the Court to amend its stance on these factors.

The ECtHR case was brought with five applicants; (1) the association *KlimaSeniorinnen* consisting of some 2500 elderly women, and (2-5) individuals claiming to have been personally victimized by the Switzerland climate policy. The applicants claimed a violation of Article 2 and 8, regarding the climate change affecting their right to life and respect to private- and familylife. Articles 6 and 13 were also mentioned, regarding the right to fair trial and effective remedy when seeking domestic solutions. During the proceedings of

the case, applicant 5 was deceased and the case was carried on by close relatives on her behalf. It should be noted for ECtHR case proceedings to take place mainly through written reports by the applicants and governments. In addition, the Court is also often assisted by third party interventions. The hearings play a significantly less prominent role for ECtHR compared to many domestic courts, and the parties of the cases would typically not present findings they have not already addressed in the written submissions (CCBE 2014, p. 13).

KlimaSeniorinnen and Others v Switzerland passed the preliminary assessment of admissibility and was grouped together with the climate cases *Duarte Agostinho and Others v Portugal and 32 Others* and *Careme v France*. The Court decided to proceed with the three cases in the same manner and communication of the decisions on the cases was delivered in the same announcement on April 9th 2024. As the three applications were submitted around the same time and had similar merits and challenges to them, and had virtually no direct precedent to refer from, it was deemed fair to grant them the same procedural operations. The cases were not joined but the judicial steps within ECtHR were staggered to enable partly joined deliberations by the Grand Chamber and further to ensure coherency and fairness in the decisions (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 8).

The Court was assisted by a number of third party interventions by NGOs and ECHR member states. The NGOs provided the applicants' case with arguments and ECHR member states questioned the merits of the application in solidarity with the respondant government of Switzerland. For this thesis I will discuss two of the NGO interventions that were emphasized in the ruling and published in the HUDOC database. Sabin Center for Climate Change Law at Columbia Law School submitted an intervention where an insight to human rights climate change cases globally is brought up, including HRC cases and the Teitiota-ruling regarding environmental displacement. The intervention defends the applicants' case in its general interest element and victimhood, as well as scientific speculation when determining potential victimhood (Sabin Center 2022, par 6-10). The intervention also considers examples from US Courts, including the Supreme Court ruling of *Massachusetts v. EPA* and appeals cases *Natural Resources Defense Council v. Wheeler* and *Juliana v. United States* (Sabin Center 2022, par 11-14). The intervention has a heavy focus on the scope that the margin of appreciation should be given in climate change cases, and the siding it takes is positioned in the matter of admissibility rather than substantive issues of the case. Sabin intervention also dedicates space to consider the issue of potential victimhood by analyzing the 'likeliness' of harm and the definition of 'likely' in the sense that a state would be responsible for a violation based on its risk management (Sabin Center 2022, par 1-3).

The Swiss government argued for the age of the women to indicate a lack of likelihood for them to veritably suffer the major effects of global warming. The argument was for the applicants to likely die of natural causes before the deaths can sufficiently be linked to global warming. The Court did not find the argument satisfactory; firstly because of the effects of global warming to already have an impact on the wellbeing of the applicants; secondly because of high life expectancy of Swiss women to disprove the arguments content; thirdly because the argument included a recognition of the current policy to result in the sort of climate affects the applicants had been claiming, and further impact a new demographic of elderly women even in the case all the applicants are deceased before those affects (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 344).

Another intervention was submitted by Germanwatch, Greenpeace Germany and Scientists for Future. In the intervention, a comprehensive examination of climate change implications surfaced, offering insights crucial for contemporary legal deliberations. At the forefront was the consideration of the level of ambition required in emission reduction obligations to uphold fundamental rights. The intervention discusses possible criteria for states in fulfilling climate justice standards; such criteria would offer a comprehensive framework for determining the extent of state obligations in mitigating climate-related harms, aligning with the urgent imperative outlined in Articles 2 and 8 of the relevant legal instruments. Moreover, the intervention presented the intricate issue of attributing external emissions to states, urging a reevaluation of jurisdictional boundaries. It advocated for an expanded interpretation of state responsibility, emphasizing the significant causal impact of emissions irrespective of their origin. Drawing on principles of international law and the customary duty to prevent harm, the intervention underscored the imperative of extending state obligations to encompass emissions resulting from activities they influence, even beyond their territorial confines. Furthermore, the intervention advanced a refined conception of jurisdiction, premised on the notion of a 'qualified de facto regime causing transboundary injury' (GermanWatch et. al 2023, p. 8-9). This innovative approach recognizes legal regimes under state control that engender transboundary effects, thereby necessitating heightened obligations under international law. Additionally, it explored the inapplicability of Article 1 of the Convention in contexts involving negative obligations related to emissions.

Collectively, the NGO interventions underscored the need for adaptive legal frameworks capable of effectively addressing the multifaceted challenges the climate change cases and the Court face when working with the limitations of the existing instruments. By integrating principles of equity, accountability, and international cooperation, the

interventions advocated for a holistic approach to climate justice that acknowledges the interconnectedness of environmental protection and human rights preservation. In doing so, they laid the groundwork for innovative legal strategies aimed at mitigating the adverse impacts of climate change without compromising the object and purpose of the treaty.

Regarding *KlimaSeniorinnen*, the Court decided to accept the application partially for applicant 1. For the part of applicants 2-5, the case was deemed inadmissible due to failure in fulfilling the victim status -criteria. Criteria for fulfilling victim status as it is defined in Article 34 requires for a level of intensity and severity that was lacking from the applicants 2-5. The applicants also failed to prove 'pressing need for individual protection' (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 527). The Court claimed for the applicants to have certain elevated vulnerability due their demographic group, but for individual victimhood to necessitate more direct, personal and discriminate connection to the violation. The harm the applicants had suffered during the heat waves was not inflicting their health and quality of life with the standard for exceptionality the Court views as necessary for determining a violation (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 533). In terms of the first applicant, the association *Verein KlimaSeniorinnen*, the court ruled in the applicant's favor regarding Article 8 of ECHR and the insufficient local judicial remedy.

The Court decided to not discuss the case from the angle of Article 2 and therefore rejected the applicants' case in its issue of Article 2. The claim of the state violating the applicants' right to life could not be determined to take place with the necessary criteria for such violation. The applicants argued for the *risk* of early death in the heat wave situation to constitute such violation and the lack of climate action to be incompatible with the positive obligation to *protection* of life. The applicants' therefore argued for the remedy they seek to reduce the mentioned risk to a level where the state can not be argued to be acting in an informed negligent manner towards this obligation. Moreover, the Court found the aspects of positive obligations regarding articles 2 and 8 to be rather similar and the decision to place focus on Article 8 continued the line of environmental ECtHR cases being grouped under the same article (Liguori 2022, p. 42).

Most importantly, the Court accepted the claim of *KlimaSeniorinen* by agreeing for Switzerland's inaction in terms of mitigation emissions to constitute a violation of ECHR Article 8. The Court also recognised the importance of democratic policymaking in reaching a level of emissions in line with states' human rights obligations; this however leaves the margin of appreciation to only include the ways in which the goals are reached and can not be

utilized for arguing against states' obligations in this regard in general. The association was recognised as fulfilling criteria of victim status, and the judgment outlines clearly the criteria for environmental associations in this regard. The applicant's argument regarding the victimhood aspects of the case was connected to *Gorraiz Lizarraga and Others v Spain*; associations' ability to function is a crucial necessity for individuals within states to ensure the protection of their best interest in complex administrative situations with little precedents available. The association references *Tâtar v Romania* and *Di Sarno v Italy* to argue for the general interest elements of the case to coexist with the personal and specific interests of the applicant. *Cordella v Italy* is referenced to ensure the Court's judgments to previously take scientific research heavily into consideration in its environmental cases (Liguori 2022, p. 44).

3.3. *Duarte* Agostinho and Other Young Climate Activists in Portugal: Straight to Strasburg, Against 33 Governments

In the *Duarte* case, six children and young individuals from Portugal brought forth a legal action against Portugal and 32 other states for their collective failure to meet GHG reduction targets set by the Paris Agreement. They argued that the resulting climate change impacts, including wildfires, have infringed upon their rights to life, non-discrimination based on age, and respect to private- and familylife. The case was based on articles 2 and 8 of the Convention. Article 14 was also touched upon, regarding the discrimination of the applicants' demographic young group. The applicants also further in the proceeding of the case referred to Article 3, as they argued for the environmental policy of European states to cause them excessive mental distress. In preparation of the case the applicants decided not to seek domestic remedies from any of the states. The applicants defended their decision by reminding the Court of the procedural time and monetary capacity necessary when suing 33 states in domestic courts (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 128-134).

In the application the alleged unlawful activities are codified to include release of emissions, extraction of fossil fuels, import and production that can be connected to release of emissions and extraction of fossil fuels overseas. The harm that constituted the alleged violations consisted of both current and potential situations. The applicants had experienced direct consequences of the wildfires, air pollution, heatwaves and general anxiety about their

future. The applicants described the harm in detail in personal statements submitted to the Court (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 13-15).

Prior to the Grand Chamber hearing the applicants withdrew their application in so far as it concerned Ukraine due to the ongoing war creating exceptional circumstances for the state. The Russian membership of the Council of Europe ceased, and the Russian Federation withdrew its ratification of the Convention in 2022. The case involves violations of continuous nature, and a significant weight is placed on potential violations and risk management; this makes it challenging for the Court to assess the case insofar it concerns Russia. The Russian Federation also refused to participate in the Court's proceedings in relation to the alleged violations taking place prior to the withdrawal. Though the Court acknowledges for the Russian duty to continue cooperating with the Court regarding applications insofar the jurisdiction of the Court to be still applicable, the failure to engage with *Duarte* case by the government created an obstacle in examining the case (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 72-75 and 158-164).

The respondent states formed their written exchange in collision, with the exception of Ukraine, the Russian Federation and Netherlands. The joint submission was complemented with state-specific remarks detailing both available domestic remedies as well as the measures taken to mitigate global warming in the domestic legal systems. At the Grand Chamber hearing majority of the respondent states addressed the Court in the joint submission, with a representative of the United Kingdom providing an overview of the case, representative of Belgium addressing article 35(1) and domestic remedies and representative of Portugal addressing article 34 and the issue of victim status. Specific individual remarks were also made; Netherlands reminded the Court of the Urgenda ruling as evidence for a prominent domestic remedy to exist in the Dutch context; Portugal stressed the issue of causality and questioned weather Portugal's 0.14% contribution to global GHG could sufficiently be determined as the cause for a global phenomenon; Turkiye stressed to being bound by separate standards of international law compared to other respondent states due to their late ratification of Paris Agreement and lack of participation in EU climate policy (*Duarte Agostinho and Others v Portugal and 32 Others* 2024: par 76-90 joint submission; 101-109 Netherlands' submission; 110-116 Portugal's submission; 118-119 Turkiye's submission).

The case prompted the Court to address the issues of extra-territorial jurisdiction and the exhaustion of domestic remedies before assessing the merits of the case. While the applicants assert that the states bear extraterritorial responsibility due to their contribution to

climate impacts abroad, the Court did not agree for the application of ECHR in such interpretation of effective control and jurisdiction as being lawful and fair for the member states of the Convention. Additionally, the applicants' failure to exhaust domestic legal avenues raised questions about accessibility to justice, particularly for vulnerable groups like children, and the Court had to determine whether exceptions to the rule of exhaustion of domestic remedies apply.

The lack of exhausted domestic remedy was a matter of critique for the states; in its individual submission Netherlands reminded the Court of the *Urgenda*-precedent, and argued for it to prove an existence of sufficient domestic remedy for those applying for it. The applicants addressed the existing tort-law in multiple European states to reference climate targets exceeding 1.5°C as the referenced norm of a sufficient target was formulated in PA as "well below 2°C". The respondent states collectively argued for the proceeding with domestic remedies to vitally assist the Court in its proceedings and the lack of such to derive the Court of essential material needed for an adequate assessment of the circumstances. Concern over the Court's role as a subsidiary authority was also raised, as the states were not given the opportunity to address the alleged violations within their domestic capacities. The applicants argued for the exhaustion-criteria to be unfit for climate change cases because of their urgency and the widespread responsible actors (*Duarte Agostinho and Others v Portugal and 32 Others* 2024: par 84-88 governments' submission; 128-134 applicants' submission).

Within the process, there was little dispute between the respondent states and the applicants about the severity of climate change and its effects on young people of Portugal. The states' arguments focused primarily on the admissibility-issues of the applicants rather than the substance-related issues. The Court did not address the substantive issues of *Duarte* due to it failing to meet admissibility criteria.

The Court decided unanimously to dismiss the application *Duarte Agostinho and Others v Portugal and 32 Others* as inadmissible. In regards to Portugal, the application was inadmissible due the lack of exhausted domestic remedy. Regarding the respondent states apart from Portugal the Court stated for Article 1, regarding jurisdiction, to not be fulfilled. The Court did not agree with the applicants' petition of the article to be interpretable for current circumstances based on case *Tyrer v. United Kingdom* (1978) where the Convention text was codified as amenable when done in respect of the most effective human rights outcome. The court emphasized the importance of adhering to established legal principles,

stating that it was not equipped to rule on issues best addressed by national courts and that expanding extraterritorial jurisdiction would undermine the Convention's principles. While acknowledging the significance of the climate change issue, the judgment focused on procedural matters rather than substantive arguments under the ECHR. The model for extraterritorial jurisdiction was referred to from *Bancovik and Others v Belgium and Others*, where the jurisdictive responsibility over an individual outside a state's borders is applicable when the state is exercising exclusive control and authority over the person or their activities (Keller & Heri 2022, p. 160).

The issue of extraterritoriality was recognised by the Court; by accepting the application, the Court would have set the precedent for all individuals both within Europe and globally to filling the criteria of passing a case against any European government in climate change -related situations (*Duarte Agostinho and Others v Portugal and 32 Others*, 2024 par 206).

3.4 Position of ECtHR in Climate Change Cases

The Convention lacks codified environmental articles and/or an explicit notion of a right to an adequate standard of health. Prior 2024 ECtHR lacked litigation relating to climate change. Despite lacking the statutory clauses that would have justified rulings on climate change cases, the Court was able to accept some of the climate change applications partially. The Court has since *Tyrer v. United Kingdom* interpreted the Convention through the living instrument -doctrine. The doctrine should be understood through the general legal norms defining the interpretation of treaties, as classified in the 1969 Vienna Convention on the Law of Treaties (VCLT).

Article 31(1) of VCLT emphasizes the importance of interpreting treaties in a manner that reflects good faith and considers the treaty's intended objectives. This provision has become pivotal in various legal contexts, including the context of this thesis involving the intersection of climate change and human rights. In the realm of climate-related human rights cases, parties have invoked VCLT Article 31(1) to broaden the interpretation of human rights treaties. They argue that the evolving understanding of environmental rights, not explicitly envisaged during the treaty's drafting, should be incorporated into the treaty's objectives. However, contrasting interpretations arise when considering ECHR. Governments may view the adoption of a broader interpretation of the Convention, prioritizing non-statutory law over

the explicit text of treaties, as going against the object and purpose of the original treaty and invoke VCLT Article 31(1) to justify their stance.

Treaty-interpretation generally has three approaches; the textual approach, which emphasizes the *text* of the treaty; the subjective approach, which emphasizes the *intent* of the parties in their interpretation of the treaty; and teleological approach, which emphasizes the *object and purpose* of the treaty. The living instrument doctrine follows the third approach and the VCLT article 31(1) (Dothan 2014, p. 510). ECtHR has applied the principle of effectiveness in its decision making; in a situation with two possible interpretations of the treaty, the Court sides with the option with a more prominent effectiveness in terms of the object and purpose of the Convention. ECtHR however also considers the interests of the States in the process by invoking the principle of proportionality; this ensures for states to be allowed to compromise certain parts of the Convention when other interests necessitate this and the support of the other interests in the situation does not directly cause the infringement in question (Dothan 2014, p. 515). In the climate change situations, states could argue for the economical side of the failed mitigation practices, if simultaneously providing proof for those failures to not essentially cause the infringement. An example of the Court recognising economic state interests is the decision of *Powell and Rayner v the United Kingdom*, where the harm was determined to consist of an infringement to the applicants' rights, but the remedies fell within margin of appreciation in terms of how the state ought to mitigate the harm.

Prior to *Duarte* there remained little dialogue on interpreting the scope of ECtHR Article 1 detailing the scope of jurisdiction through the living instrument doctrine. The doctrine has been invoked previously to create the link between Article 8 and health, and further between Article 8 and environmental human rights situations (Dothan 2014, p. 514). By rejecting the applicants' claims in *Duarte*, the Court created a heavy precedent on this question; the scope of extraterritorial jurisdiction remains to function with the previously mentioned *Bankovic* criteria.

The trend of climate change related applications being submitted to Courts as a human rights issue indicates a general shift in the weight of climate law and policy being interpreted and practiced as a constitutional issue. There are means for questioning democratically led and decided state-policy when it infringes environmental norms agreed to on a global scale; and taking the critique as far as to raising legal actions against governments. *KlimaSeniorinnen* ruling provides a framework for de facto enforceable legal obligations mandating states to adapt their climate policy to fulfilling their climate

responsibility even when a democratically elected parliament would decide differently (Eckes 2024, p. 107).

For *KlimaSeniorinnen* application, the Court decided to deliberate the claims of positive obligations of the state in the context of Article 8 of ECHR and not consider the relevance of Article 2. Article 8 of ECHR reflects on Article 12 of UDHR and has been developed into an article with perhaps the most broad frame of interpretation. In addition to environmental situations, the article has been invoked for other situations where the statutory frames of the Convention do not codify the distinctive human rights situation. At the time of the ruling, the application of Article 8 in environmental human rights situations in ECtHR had become somewhat of a norm (Malaihollo 2021, p. 136).

Regarding Article 8, the Court has expanded its reliance on the concept of positive obligations of the states. The article has overtime been "proceduralized" to include environmental situations. The positive obligations have also been recognised in situations of preliminary action and prevention of harm (Krstic & Cuckovic 2015, p. 176). The Court has stated "there is no explicit right in the Convention to a clean and quiet environment, but where an individual is directly and seriously affected by noise or other pollution, an issue may arise under Article 8" (*Hatton and Others v. the United Kingdom* 2003, par. 96)

Before any of the cases ruled on April 9th was submitted to ECtHR or the domestic courts, ECHR was referred to in successful human rights decisions in domestic courts. Most notably the judges in the *Urgenda*-ruling mentioned previously in this thesis based their decision heavily on ECtHR law and litigation. When drafting their decision, the Court had to consider the impact of rejecting the climate cases entirely; this would have undermined *Urgenda*-precedent and set a precedent for all European states for cases with similar prospects. If reasoned with substantial arguments rather than admissibility-criteria, the establishment of ECHR to not be applicable for climate change related rulings would have been a commentary on faulty interpretation by the Dutch Supreme Court.

Urgenda created a landmark precedent for all climate change cases relating to human rights in both the European and international context. It has also been criticized as being nondemocratic and constituting a breach in terms of its authority, and for the impacts of the judgment to constitute a minor difference and affect in terms of the state emissions. The case was internationally noticed and UN high commissioner for Human Rights has stated for the decision to "-,, confirm that the Government of the Netherlands and, by implication, other

governments have binding legal obligations, based on international human rights law, to undertake strong reductions in emissions of GHG*"* (Bachelet 2019).

3.4.1 Why was the application by *KlimaSeniorinnen* partially accepted?

In the early stages of writing this thesis, I paid less attention to the *KlimaSeniorinnen* case in comparison to *Duarte*. Though *KlimaSeniorinnen* had been heard in Grand Chambers and was yet to be ruled inadmissible, I saw the argumentation of the applicants as strongly and openly basing on *actio popularis* -objectives and found it surprising to read the verdict. The Court certainly balances between individual victimhood and *actio popularis* in the reasoning of both parties and further the decisions; by determining a large group of individuals and forming them in an association, the widespread influence of climate change could be respected without changing the courts strong stance against *actio popularis* claims (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 460). The Court stated for associations to pass the victimhood criteria when first fulfilling criteria on functioning lawfully as an organization and having human rights centralized objectives. All parties of the association must be direct victims of the situation determined with specifics of each case, in *KlimaSeniorinnen* the criteria consists of age and gender as factors proving the vulnerability, and the place of living ensures both de facto harm suffered and the risk-factor (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 489).

Whilst it can be stated for warming temperatures to induce human rights situations to occur, and for the responsibility of the warming climate to be located in the governments of high emission states, for the result to be an obligation to mitigate emissions is exceptional. In environmental situations, for example earthquakes, governmental responsibility to ensure protection of human rights has been focused on pre-emptive protective actions of protecting persons and infrastructures in the case of an emergency and reconstructing the damage after the phenomenon; not preventing the phenomenon itself. The responsibility is determined in relation to state capabilities; both in terms of informational processes and economic capacity (Passarini 2024, p. 110). States have been informed of climate change as a human rights matter for enough time to determine their neglect as informed; the *KlimaSeniorinnen* applicants and the Court referred to Switzerland's Paris Agreement -ratification status as evidence for this. In terms of heat waves inflicting harm on the wellbeing of the elderly, the straightforward solution would be for the state to provide solutions to the harm, for example by providing ways to refresh and hydrate more efficiently during the challenging period. In

the climate change cases the seeked resolution is to obligate the state to take all efforts to *affect* and *prevent* the weather conditions (Passsarini 2024, p. 103).

Causality

Determining and recognising unsustainable GHG emissions as a violation through a human rights -perspective has been a subject of both criticism and praise. Creating a legal framework to examine emissions as violations would in some scholars view create an unmaintainable situation where practically all actors, from states to individuals, would be committing violations constantly. Those vulnerable and victimized would partly be held responsible for their situation. Placing the notion of a violation on the omission instead of the act, the prevention of mitigation, would be challenging when considering the risk management objectives and global influence; Switzerland could not assure secure climate conditions for its habitants by changing its climate policy, as the effects of GHG are not bound to their emitting state. Alexander Zahar argues for the causation chain to having weaknesses that force the legal assessment to bend on its principles fundamentally;

"--a human rights violation for greenhouse gas emissions becomes provable with respect to causation. The plaintiff need only prove the facts at either end: a contribution to the causes of climate change and an interference with a human right caused by climate change. The proponents' modified test breaks down the chain of causation in order to rid itself of the impossibly burdensome middle part" (Zahar 2022, p. 393).

The Court found the chain of causation to fulfill criteria for violation in terms of Article 8 of the Convention. Paragraphs 437-440 of the decision address this, with notion for the challenging determination of causation to require for ECHR's living instrument -doctrine to be utilized as otherwise the recognised harm would be left without remedy. The Court decided for the case to require scientific advisers to conduct an assessment of the causality. The paragraphs on causality ensure the Court's willingness to eliminate a threshold of climate cases, where the multitude of responsible actors would eliminate the possibility to seek justice against individual respondents.

Paragraphs 441 - 444 detail the issue of proportionality and Switzerland's individual responsibility over a global phenomenon. In its decision, the Court applied the common but differentiated responsibilities -doctrine, often utilized in climate litigation. The principle of Common But Differentiated Responsibilities (CBDR), established in the United Nations Framework Convention on Climate Change during the Earth Summit in 1992, recognizes that while all nations share an obligation to address environmental degradation, developed

countries bear greater responsibility due to their historical contributions to climate change through industrialization. This principle evolved from earlier notions of "common concern" and the "common heritage of mankind." CBDR aims to bring about substantive equality in justice frameworks, foster cooperation among states, and incentivize the fulfillment of environmental obligations (Atapattu 2018, p. 136). While initially dividing countries into rigid categories, as seen in the Kyoto Protocol, the Paris Agreement shifted towards a more flexible approach where each nation determines its contributions based on its unique circumstances. However, debates persist over the interpretation and implementation of CBDR, with concerns raised about fairness and effectiveness, particularly regarding the economic advantages of developing countries and the need for collective action in combating climate change. In *KlimaSeniorinnen* written submissions Switzerland refused its climate responsibility by appealing to 'drop in the ocean' sort of argumentation. The Courts assessed for the state of Switzerland ought to refer to the definition of responsibility detailed above, as a state-party to global climate agreements where the principle is framed (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 315; 444).

Another aspect complicating the placement of responsibility is the historic GHG package. The climate phenomena suffered today can not be differentiated by time of emissions any more than placement of them. Though the local GHG has some correlation with severity of local effects, the more pressing global and transboundary crisis is the product of historic patterns of behavior (Wewerinke & Doebbler 2011, par 13). Whilst it would be somewhat possible to draw a line of mental element criteria to somewhere in the later half of 20th century, it would not be possible to separate de facto harm between the emissions created after the information of the harmfulness has been reached. The climate change cases are focused on the aspects of mitigation and the lack thereof, instead of retroactively seeking justice for some amount of unlawful GHG. This frames the situation to shift attention from the historic practices and instead criminalize the lack of action in terms of current circumstances (Rocha & Sampaio 2023, p. 286). The historic responsibility bearing indirectly emanates when applying CBDR principle, as the states with history of industrialization are currently enjoying the wealth begotten from their unsustainable practices.

Victim-status

Facing the challenging task of interpreting ECHR through the foreign circumstances of climate change, the Court decided to adopt a "tailored approach" for *KlimaSeniorinnen*, where the litigation is formulated in respect to climate law and especially Paris Agreement.

The approach also considers the victim criteria in climate change -cases through a collective dimension. The approach enables for the Court to not compromise its victim criteria of intensity nor its position in relation to *actio popularis*, but also provides it with tools to address climate situations. The approach also creates a route to encompass the paradoxicality of the 'exceptionality'-criteria, that waters down human rights violations when taking place in a widespread manner with a large number of victims (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 422).

Accepting the victim status of *KlimaSeniorinnen* was contested in third party interventions by governments; most prominently Italy, Portugal, and Romania stressed that for applicants to claim victim status under Articles 2 and 8 of the ECHR, they must demonstrate a direct and significant impact on their rights. They argued that mere conjecture or statistical evidence of risk is insufficient. This was based on especially severity criteria, the states argued that the environmental impact must meet a certain threshold of severity to invoke the protections of Articles 2 and 8. They contended that there must be a real and imminent risk to life or serious effects on private and family life, and for the applicants' to fail in providing evidence of such effects (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 370 Italy; 373 Portugal; 374 Romania).

The line of action introduced in *KlimaSeniorinnen* ruling can be criticized as it, similarly to the Paris Agreement, lacks codified obligations of action. The measures for reaching the targets set in the Paris Agreement and the ruling are left for the state to determine. The lack of mechanisms can be seen as a way to leave ambitious goals on a theoretical level. The adoption of terminology from the Paris Agreement creates a softer set of obligations, and the ruling can be criticized for creating a dilution of ECtHR effectiveness. Without robust mechanisms for enforcement and compliance, states may not feel compelled to take meaningful action to address climate change, despite legal rulings (Reich 2024 p. 4).

3.4.2 Why was the application by Duarte Agostinho and Others dismissed as inadmissible?

The Court's examination of the *Duarte Agostinho* case presents an opportunity to clarify the scope of extra-territorial jurisdiction concerning climate harm and to evaluate the practicality and effectiveness of domestic legal remedies in addressing climate-related grievances. The applicants' argument for exemption from the exhaustion requirement underscores broader challenges in accessing justice, particularly for marginalized groups

facing the disproportionate impacts of climate change. By scrutinizing the accessibility, efficiency, and responsiveness of domestic legal systems, the Court's ruling does not only affect the outcome of this case but also sets precedents for future climate-related disputes in international forums, significantly impacting the intersection of human rights and environmental law.

Causality

The Court dismissed the applicants' claim of the states apart from Portugal to exercising extraterritorial jurisdiction over them in a way applicable within ECtHR. The material question related to the link between state and applicant, and whether the connection provided the Court reason to give rise to jurisdiction and therefore responsibility. The applicants articulated for a 'cause-and-effect'-jurisdiction to being insufficient in the context of *Duarte* case. Instead, they referred to special features" -test utilized in *H.F. and Others v. France* to determine whether the required link could be established. The criteria consists of seven elements, which the applicants claimed to fulfill.

1) The applicants argue for the respondent states to exercise control over their emissions, and for the multilateral dimension of climate change to materialize the increased risk of harm to the applicants; 2) The causal link to actualise as both territorial state and extraterritorial state impact the alleged experienced harm; 3) The states have been informed of the likely consequences of their pattern of actions; 4) The implications of the violation have long lasting effects on the applicants; 5) The actions leading to the harm took place within territories under the respondent states control; 6) The protection of the rights violated would have required action apart from the territorial actor and furthermore of collective change of behavior of all respondent states; 7) Relevant rules of international law harmoniously coexist with the finding of jurisdiction (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 126).

Interpretation of treaty-text exceeding the codified obligations is challenging as sovereign states are not obligated to follow rules to which they have not consented to. The establishment of ECtHR allows the Court to function as an authority above states' fulfillment of the Convention responsibilities. The Court has applied expansion to the Convention when and practice has been recorded as lawful in the Court's case law. There are two situations for which the living instrument -doctrine most prominently applies when aiming to provide satisfactory protection of human rights. The first situation is one where the general European moral consensus can be seen as contradictory to the responsible state's practice or inaction.

Without consent of the individual state, broad interpretation can be drawn if there exists a strong European moral consensus of the issue (Rahman 2021, p. 3-4). The question of European moral consensus in *Duarte* was challenging to establish for the favor of the applicants, since the applicants created a coalition of 33 states answering to the alleged violations in union. The applicants could therefore not argue for the majority of European states to side with them (Heller & Keri 2022, p. 160). Second situation is one where the states do not work democratically and their existence as representatives of their citizens can be argued against; the category is not possible to establish because of the extraterritorial aspects of *Duarte*.

Reaching the scope of jurisdiction has previously been defended by the exceptionality of climate change situations; the urgency-element of exceptionality was certainly an argument heavily used by the applicants of all climate change cases in ECtHR. The semantics of exceptionality are challenging to apply in climate change cases when the framework of jurisdictive responsibility has been limited to territorial aspects. The norm of unsustainable GHG in European states makes individual states emissions unexceptional. Exceptionality-requirement challenges the adequate protection of individuals, if the term is understood through quantitative aspects instead of qualitative ones; paradoxical situation of exceptionality standard makes a violation lawful when it is applied in a widespread manner enough (Besselink 2022, p. 175). The Court has shown its willingness to apply its jurisdiction on an individual respondent state despite other states' climate influence. This however leaves a number of states outside the scope of potential respondents in ECtHR climate change cases. The example verdicts of 2024 outline for climate responsibility to potentially violate ECHR responsibilities of states, and for the cases to necessitate a territorial link between the respondent and applicant. The Court would not consider progressive definitions of responsibility and jurisdiction that are often invoked in climate litigation; that often recognise the imbalance of both capabilities and risks relevant in terms of climate policy.

The governments argued for the extraterritoriality claims' inadmissibility as the recognition of extraterritorial effective control of GHG would have forced the Court and the applicants to consider climate change further as a global phenomenon instead of regional one. If the harm experienced by the Portuguese youth is determined to be a result of GHG by states outside Portugal, it would be challenging to determine the legal responsibility to not include all states in the world (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 81-83).

Modernizing interpretation of specific articles often requires a shift in the common consensus relevant for the subject. Furthermore, if a state fails to represent its citizens adequately and therefore can not be viewed by the Court as a democratic entity, its authority in this regard can be seen as weakening. Members of the general population with lesser political power in the state, for example to some extent inmates, can also more broadly criticize its democratic policymaking. The applicants' less accentuated claim of discrimination on the basis of young age could have been used as basis for interpreting the Convention more freely without compromising the states' democratic sovereignty, since the applicants could have argued for being exempt from democratic decision making (Dothan 2014, p. 521). This approach was not heavily exhausted by the applicants, perhaps to avoid invoking the complex discussion about children's democratic participation.

Another crucial aspect to consider in the context of treaty interpretation is the significance attributed to other instruments of public international law when assessing human rights violations within ECtHR. Many pertinent cases draw heavily upon environmental law, with particular emphasis on the Paris Agreement. Monica Feria Tinta concludes the significance of environmental instruments by concluding "--- the European Convention on human rights is to be interpreted in its normative environment which includes relevant binding rules such as those enshrined in climate change treaties such as the Paris Agreement. This is the correct approach under international law, reflecting the principle of systemic integration". In ECtHR climate change cases governments argued for the Court to not be a fitting space for discussing climate treaties (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 96).

3.5 Future of Climate justice and ECtHR

Both cases discussed in this thesis will be of great importance for those seeking climate justice through ECtHR in the upcoming decades, when it can be expected for climate change to increasingly infringe on life and wellbeing of persons and groups in Europe. In terms of *KlimaSeniorinnen* the most conspicuous aspects are those related to collective victim status. The case provides a framework for when and how ECtHR can intervene in states' climate policy. The dismissed case *Duarte Agostinho* functions as an example of the admissibility criteria and effective control.

3.5.1 Extraterritoriality and Exhaustion of Domestic Remedies

The dismissal of *Duarte* was a strong message by the Court in emphasizing the importance the domestic courts possess in ECtHR proceedings. By submitting their application without an attempt of seeking justice in the domestic courts, the applicants deprived the Court of material and substance necessary for its functionality. The decision also strengthened the Bankovic-criteria of extraterritorial jurisdiction to only apply when the individuals are within the effective control of the respondent state (*Duarte Agostinho and Others v Portugal and 32 Others* 2024, par 170). The decision creates a threshold for recognised responsibility of a state for situations where state's climate targets and actions are unsustainable, but persons within the state do not experience effects of climate change in a severe and exceptional way (Shelton 2009, p. 93). Both factors of inadmissibility signal for the Court to depend on its current procedures and rely on applicants operating within those frames.

The international character of climate change was also a matter of questioning in *KlimaSeniorinnen*. In third party interventions most governments, including Austria, Ireland, Italy, Norway, and Portugal, emphasized that the ECtHR's jurisdiction is primarily territorial . They argued against extending this jurisdiction to address global issues like climate change, which they believe fall outside the scope of the ECHR An important factor to consider when interpreting the *KlimaSeniorinnen* judgment is its extraterritorial aspects; the decision to mandate Switzerland to cut its GHG reaches also to foreign assets stored within Switzerland; the impact of the decision reaches further than just Switzerland (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 280).

The decision to not accept the exception to domestic remedy -requirement in *Duarte* combined with recognition of a violation in terms of Article 6 and 13 in *KlimaSeniorinnen* send a strong signal from the Court to ECHR member states; climate change cases are to be primarily assessed within the domestic legal capacities of the states.

3.5.2 Collective victimhood

The precedent also provides a framework for further climate justice to be seeked in the form of associations. ECtHR has referred to itself as 'victim of its own success' (Helfer 2008, p. 126). The Convention and the mechanisms of the Court were drafted since UDHR lacked adequate enforcement mechanisms. The Court has succeeded in making its mechanisms both functional and accessible; it has also been overloaded with applications.

When setting precedents, the Court must consider the practical aspects and the impact on future applications; accepting individual climate change applications would without a doubt open the doors for a mass of new applications. This is critical to consider, as the Court also wishes to remain functional in terms of its traditional human rights applications. Decision to accept the case of the association creates a framework where in order for the application to be successful, individual cases must be bundled into larger entities of individual victims. This is also a way to combat the issue of causality and victim status; individually the effects of climate change can not be determined being the product of governments targeting or neglecting the person affected; interpreting climate science to determine trends of victimizing characteristics, such as age, location and gender, the individuals can collectively seek justice against their governments' neglect if the climate policy is deemed insufficient (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 489).

In ECtHR, collective victimhood has previously been witnessed in the form of associations being accepted as applicants. In *Gorraiz Lizarraga and Others v Spain* par 44-46 the Court provides reasoning to how the applicant association can be recognised as fulfilling victimhood as it is described in Article 34 of the Convention. Most importantly, it is mentioned in the Court's judgment for the general interest -objective of the association to not defeat its primary objective of advocating for its members (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 499-500).

For future associations to be accepted as applicants in ECtHR, they must be lawfully established and function with the primary objective of advocating for its members' human rights. The frames of the association must be clearly communicated (in Swiss case, the combination of age, gender and location of the individuals). Though the association is allowed to have a public interest agenda to some extent, it must pursue the statutory objectives of its members with a special emphasis. The association must also be able to demonstrate it can be "--regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention" (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 502).

3.5.3 Margin of Appreciation

In both cases examined in this thesis, the respondent governments agreed with the applicants on the significance and urgency of climate change, and to some degree accepted

the personal experiences of compromised wellbeing of the applicants. The governments however argued for an ample margin of appreciation in climate change cases to apply, as the causality-questions were more ambiguous than traditional human rights situations and as there are multiple factors considered when determining a climate policy. In *Duarte* this was expressed in the governments' collective statements. In *KlimaSeniorinnen*, several governments, notably Ireland, Norway, and Portugal, argued in their third party interventions that addressing climate change should be the domain of political and democratic processes rather than judicial intervention. For the complex causality-chain, where the individual state's actions and mitigations do not necessarily have a direct effect on the alleged harm, the governments urged the Court to apply the proportionality principle and determine the climate change situations within the margin of appreciation. The states expressed climate policy to be a matter of international and domestic policymaking, not a matter of human rights courts. The Court did to some extent agree with the governments by not including the concrete notions of the mitigation practices, as detailed in *KlimaSeniorinnen* application (ECtHR 2024: *KlimaSeniorinnen and Others v Switzerland*, par 453-457).

The decision can also be challenged from the point of view of democratic policymaking; the Court's verdict mandates Switzerland to change their climate policy, which has previously been agreed within democratically chosen and functioning organs. Though the Court left the practical matters more open than the application reached for, the decision to rule based on scientific evidence disregards the political factors relevant in climate agreements and goals (Besselink 2022, p. 171). The Court's assessment includes paragraphs 412-414 where the questions of democratic decision making are determined, and the Court's scope of jurisdiction further discussed; "Judicial intervention, including by this Court, cannot replace or provide any substitute for the action which must be taken by the legislative and executive branches of government. However, democracy cannot be reduced to the will of the majority of the electorate and elected representatives, in disregard of the requirements of the rule of law*"*. The decision also reminds the state for the Court's authority to be granted by the democratically functioning state, and therefore the decisions made under its jurisdiction to support the states' democratic functioning, rather than compromise it.

Conclusion

April 9th 2024 marks a new era in climate justice and European human rights litigation. Imposing sanctions on Switzerland sends a message to all ECHR member states; in

terms of GHG emissions, Switzerland is reviewed by the Climate Change Performance Index as an overall medium performer (CCPI 2024). As a relatively small state, Alexander Zahar's argument from 2022 concerning *Urgenda* ruling is also relevant; Can there be a violation if the expected harm can occur regardless of the state's policy? ECtHR decision creates a model of responsibility for states regardless their size and de facto global impact. Human rights responsibility is only fulfilled when a state has set adequate mitigation targets and is consistently and effectively working towards the targets with policy choices. Switzerland has a somewhat differing political culture compared to other European states with its particularly common usage of referendums in decision making. By mandating Switzerland to adapt its climate policies according to human rights standards ECtHR assays climate change mitigation under normative legal culture of human rights. States can not appeal to democratic branches of policy making in climate change situations and states can be held accountable for lack of mitigation if the policy creates harm or risk of harm for individuals within the states jurisdiction. The economic standing of Switzerland globally also indicates for states' economic capacities to be taken into consideration in further climate rulings.

By ruling in favor of the applicant association in *KlimaSeniorinnen*, the Court demonstrated its capability of adapting the traditional tests and definitions for human rights violations and human rights victims. The decision to dismiss *Duarte* application as inadmissible on the other hand showcases the Court's nonflexibility in terms of the territoriality of responsibility.

The impacts on ECtHR of the 2024 climate change decisions can be expected to peak in a matter of some years. The Court's decision does not encourage potential applicants to follow *Duarte* example regarding the exhaustion of domestic remedies and the domestic judicial proceedings in European states take their respective time. The *Duarte* example also creates a barrier of responsibility for states with high GHG emissions and fortunate climate circumstances; for example the human rights impacts of individuals in Nordic countries are not expected to rise to the severity and urgency as those in more southern European states. These safe havens for GHG emissions certainly raise some concern and critique over the ECtHR decision. As private actors within European states with EU membership enjoy free movement within EU borders, domestic sanctions and restrictions on some private actors dependent on GHG contributions could with little friction relocate to a state with less domestic climate change harm on individuals. This scenario is of course also reliant on those states' domestic climate policy allowing such practices.

Bibliography

Primary Materials; ECtHR Resources and Other Judicial Documents

- *Banković and Others v. Belgium and Others;* 2001 ECtHR; application 52297/99
- *Carême v. France;* 2024 ECtHR; application 7189/21
- *Cordella and Others v Italy;* 2019 ECtHR; application 54414/13 and 54264/15
- *Di Sarno and Others v. Italy*; 2012 ECtHR; application 30765/08
- *Duarte Agostinho and Others v. Portugal and 32 Others* 2024; ECtHR; application 39371/20
- European Convention on Human Rights 1950; Retrieved from https://www.echr.coe.int/Documents/Convention_ENG.pdf
- *Gorraiz Lizarraga and Others v. Spain* 2004; ECtHR; application 61731/17
- *Powell and Rayner v. the United Kingdom* 1990; ECtHR; application 9319/81
- *Tatar and Tatar v. Romania* 2007; ECtHR; application 67021/01
- *Tyrer v. the United Kingdom* 1978; ECtHR; application 5856/72
- *Urgenda v Netherlands* 2019; Dutch Supreme Court; C/09/456689 / HA ZA 13-1396
- *Verein Klimaseniorinnen Schweiz and Others v. Switzerland* 2024; ECtHR application 536000/20
- *Verein KlimaSeniorinnen Schweiz v Switzerland* 2020; Federal Supreme Court of Switzerland; 1C_37/2019
- Vienna Convention on the Law of Treaties 1969; Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Third Party Interventions:

- GermanWatch, Greenpeace Germany and Scientists for Future. 2023. 'Verein Klimaseniorinnen and Others v. Switzerland – 53600/20 - Intervention by Germanwatch, Greenpeace Germany and Scientists for Future'
- Sabin Center. 'Third-Party Intervention in the Case of Verein KlimaSeniorinnen and Others v Switzerland (Application No. 53600/20)'. *Sabin Center for Climate Change Law, Columbia Law School (Sabin Center)*.

Secondary Materials; Scholarly Discussion

- Atapattu, Sumudu Anopama. 2018. 'Climate Change under Regional Human Rights Systems'. In *Routledge Handbook of Human Rights and Climate Governance*, eds. Sébastien Duyck, Sébastien Jodoin, and Alyssa Johl. Routledge, 128–44. doi:10.4324/9781315312576-9
- Besselink, Leonard F.M. 2022. 'The National and EU Targets for Reduction of Greenhouse Gas Emissions Infringe the ECHR: The Judicial Review of General Policy Objectives'. *European Constitutional Law Review* 18(1): 155–82. doi:10.1017/S1574019622000098
- CCBE. 2014. 'The European Court of Human Rights - Questions & Answers for Lawyers'. *Council of Bars and Law Societies of Europe*
- Closset, Mathilde, Sosso Feindouno, Patrick Guillaumont, and Catherine Simonet. 2017. 'A Physical Vulnerability to Climate Change Index: Which Are the Most Vulnerable Developing Countries?' *Fondation pour les études et recherches sur le développement international* https://hal.science/hal-01719925
- Dothan, Shai. 2014. 'IN DEFENCE OF EXPANSIVE INTERPRETATION IN THE EUROPEAN COURT OF HUMAN RIGHTS'. *Cambridge Journal of International and Comparative Law* 3(2): 508–31. doi:10.7574/cjicl.03.02.149.
- Eckes, Christina. 2024. 'Constitutionalising Climate Mitigation Norms in Europe'. In *Constitutionalism and Transnational Governance Failures*, Brill | Nijhoff. access
- Feria-Tinta, Monica. 2021. 'Climate Change Litigation in the European Court of Human Rights: Causation, Imminence and Other Key Underlying Notions'. *Europe des Droits & Libertés,*: 52–71. access
- Hefti, Angela. 2024. 'Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation'. *Transnational Environmental Law*: 1–26. doi:10.1017/S2047102524000128.
- Keller, Helen, and Corina Heri. 2022. 'The Future Is Now: Climate Cases Before the ECtHR'. *Nordic Journal of Human Rights* 40(1): 153–74. doi:10.1080/18918131.2022.2064074.
- Helfer, L. R. 2008. 'Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime'. *European Journal of International Law* 19(1): 125–59. doi:10.1093/ejil/chn004.

- Krstic, Ivana, and Bojana Cuckovic. 2015. 'Procedural Aspects of Article 8 of the ECHR in Environmental Cases: The Greening of Human Rights Law'. *Anali Pravnog fakulteta u Beogradu* 63(3): 170–89. doi:10.5937/AnaliPFB1503170K.
- Liguori, Anna. 2023. 'Climate litigation before the European Court of Human Rights: some observations on the case Klimaseniorinnen and Others v Switzerland'. *Diritto Pubblico Europeo - Rassegna online* 20(2). doi:10.6093/2421-0528/10206.
- Malaihollo, Medes. 2021. 'Due Diligence in International Environmental Law and International Human Rights Law: A Comparative Legal Study of the Nationally Determined Contributions under the Paris Agreement and Positive Obligations under the European Convention on Human Rights'. *Netherlands International Law Review* 68(1): 121–55. doi:10.1007/s40802-021-00188-5.
- Nollkaemper, A.; Burgers, L. 2020. 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case'. *University of Amsterdam: EJIL: Talk!* access
- Passarini, Federica. 2024. 'The Prevention of Disasters Related to Natural Hazards in the Practice of Human Rights Courts and Treaty Bodies: Towards a DRR Approach'. *Yearbook of International Disaster Law Online* 5(1): 101–32. doi:10.1163/26662531_00501_007.
- Rahman, Mohammad Habibur. 2021. 'Doctrine of Living Instrument: An Inevitable Doctrine to Keep the European Convention on Human Rights Alive'. *Lexkhoj Research Journal of Law & Socio-Economic Issues* doi:10.2139/ssrn.3840204.
- Reich, Johannes. 2024. 'KlimaSeniorinnen and the Choice Between Imperfect Options'. Verfassungsblog: *The Transformation of European Climate Litigation*. preprint. doi:10.59704/57e3e303d99f2f0e.
- Rocha, Armando, and Rômulo Sampaio. 2023. 'Climate Change before the European and Inter‐American Courts of Human Rights: Comparing Possible Avenues before Human Rights Bodies'. *Review of European, Comparative & International Environmental Law* 32(2): 279–89. doi:10.1111/reel.12502.
- Shelton, Dinah. 2009. 'Equitable Utilization of the Atmosphere: A Rights-Based Approach to Climate Change?' In *Human Rights and Climate Change*, ed. Stephen Humphreys. Cambridge University Press, 91–125. doi:10.1017/CBO9780511770722.005.
- Smith, Rhona K. M. 2014. *Textbook on International Human Rights*. 6th ed. Oxford University Press. access

- Wewerinke, M., and C. F. J. Doebbler. 2011. ‘Exploring the Legal Basis of a Human Rights Approach to Climate Change’. *Chinese Journal of International Law* 10(1): 141–60. doi:10.1093/chinesejil/jmr003.
- Zahar, Alexander. 2022. ‘Human Rights Law and the Obligation to Reduce Greenhouse Gas Emissions’. *Human Rights Review* 23(3): 385–411. doi:10.1007/s12142-021-00648-8.