# CLIMATE CHANGE AND THE MOST RECENT ECtHR GRAND CHAMBER RULINGS

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**Abstract**

*Climate change is a reality that is already threatening our existence, and it could not be ignored anymore. Every day, on television, at the radio, at work, on the streets, in schools and universities, at home, we discuss about climate change and its effects on our planet and on our lives. The politicians and the governments worldwide are addressing this matter more or less, but from the decisions taken, we can easily notice that the measures taken (if they are taken) are not sufficient to counteract climate change. Therefore, in our opinion, states worldwide are failing to do what is necessary to counteract climate change. Through the state's actions or, even worse, their inaction, on one part, they violate human rights, and, on the other part, they decrease the chances of ensuring a bright future that is worth living for the future generations on earth.*

*This is why, nowadays, more and more people, worldwide, young or elder, living in a state at risk or not, are taking these states to court, arguing that their individual rights were violated because of the States' failure to take sufficient measures to combat climate change. Since 2021, for the first time, the European Court of Human Rights in Strasbourg was faced with the responsibility of holding CoE Member States accountable for violating human rights by not taking such sufficient measures - in Duarte Agostinho and Others v. Portugal and Others and in Verein KlimaSeniorinnen Schweiz and Others v. Switzerland. On April 9th, 2024, ECtHR has delivered its Grand Chamber rulings in these two climate change cases.*

*This study will attempt to analyse the legal consequences of these rulings. What is the Strasbourg Court vision on climate change?*

**Keywords:** *climate change, Carême, Duarte Agostinho and Others, ECtHR, ECHR, failure, Strasbourg, Verein KlimaSeniorinnen Schweiz, violation.*

## 1. Introductory Remarks

The founders of the Council of Europe had a great idea when decided to create the European Court of Human Rights (hereinafter „*the Court*" or „*ECtHR*"), a permanent, independent international jurisdiction based in Strasbourg, that began its work on 21.01.1959 (when eight states accepted its jurisdiction). This international jurisdiction is specialised in human rights litigation, and it is worldwide recognised as the highest human rights regional court in the world, inspiring other international courts of law (*e.g.*, the European Court of Justice in Luxembourg[1]), national courts of law and constitutional courts[2] in the Member States[3], despite the fact that values and traditions[4] vary from State to State[5].

The Court has jurisdiction to examine individual applications and inter-State applications concerning violations of the provisions of the European Convention on Human Rights and the additional protocols to the

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[1] For more information about the European Union and the European Court of Justice, see A. Fuerea, *Dreptul Uniunii Europene - principii, acțiuni, libertăți*, Universul Juridic Publishing House, Bucharest, 2016. Additionally, regarding the two international courts and their reasoning, see M.-C. Cliza, C.-C. Ulariu, *Drept administrativ. Partea generală*, C.H. Beck Publishing House, Bucharest, 2023, p. 188.

[2] See, for instance, in Romania, the chapter regarding the control of constitutionality exercised by the Constitutional Court of Romania in the light of the Court's jurisprudence, in S.-G. Barbu, A. Muraru, V. Bărbățeanu, *Elemente de contencios constitutional*, C.H. Beck Publishing, Bucharest, 2021, p. 233 *et seq.*, and C. Ene-Dinu, *A Century of Constitutionalism,* in Challenges of the Knowledge Society (CKS) Proceedings, 2023, pp. 405-412, *https://cks.univnt.ro/cks_2023.html*, last consulted on 12.05.2024.

[3] See A.-G. Marin, *Current Justice Laws in Romania*, in Challenges of the Knowledge Society (CKS) Proceedings, 2023, pp. 413-426, *https://cks.univnt.ro/cks_2023.html*, last consulted on 12.05.2024.

[4] For instance, for Romania, please see E.-E. Ștefan, *Values and Traditions in the Administrative Code and Other Normative Acts,* in Challenges of the Knowledge Society (CKS) Proceedings, 2023, pp. 479-485, *https://cks.univnt.ro/cks_2023.html*, last consulted on 12.05.2024, and E. Anghel, *Values and Valorization,* in Challenges of the Knowledge Society (CKS) Proceedings, 2015, Pro Universitaria Publishing House, Bucharest, pp. 357-363, *https://cks.univnt.ro/cks_2015.html*, last consulted on 12.05.2024.

[5] For instance, regarding the history of Romania, see C. Ene-Dinu, *Istoria statului si dreptului românesc*, 2nd ed., Universul Juridic Publishing House, Bucharest, 2023.

Convention (hereinafter „*the Convention*" or „*ECHR*"[6]), reason for which this Court receives a great number of applications.

Thus, according to *the most recent general statistics communicated by the Court*[7], in 2023, 34,650 applications (compared to 45,500 applications in 2022[8]) were assigned to a judicial formation, and as of 31.03.2024 there were 65,700 applications pending before the Court's judicial formations[9] (compared to 77,400 in 2023).

One may ask why this international jurisdiction could be „appealing" from the point of view of climate change matters. Well, please note that besides the fact that the Court's judgments might impose States to pay sums of money by way of just satisfaction, in certain cases where the Court uses the pilot judgment procedure, the Court also might order the States to change the applicable domestic law in order to comply with the provisions of the Convention [*please* see*, for instance,* the *Maria Atanasiu and Others v. Romania*[10], *Rezmiveș and Others v. Romania*[11], *Burdov v. Russia (no. 2)*[12], *Gerasimov and Others v. Russia*[13]].

## 2. Is the Right to a Healthy Environment Enshrined in the Convention?

Although the Convention does not recognise, *expressis verbis*, the right to a healthy environment, given that the interpretation of the Convention is constantly evolving, the corollary of art. 8[14] ECHR - *Right to respect for private and family life*, also indirectly recognises the right to a healthy environment (an indirect protection, by ricochet, since pollution or degradation of the environment does not constitute direct violations of this right), which involves the protection of health.

Thus, the right to a healthy environment is not guaranteed *in terminis* by the ECHR, but derives from the right to privacy. In this respect, in a world where there appear very diverse environmental[15] issues, the Court has held that the following constitute interference with the privacy of individuals: noise pollution due to (i) heavy air, rail and road traffic, (ii) nightclubs in residential buildings, (iii) industrial premises in the vicinity of people's homes. Chemical pollution is another factor which may violate art. 8 ECHR.

According to the ECtHR case-law[16], in order to fall within the scope of art. 8 ECHR, complaints relating to environmental nuisances have to show:

- first, that there was an „actual interference" with the applicant's enjoyment of his or her private or family life or home. The „actual interference" relates to the existence of a direct and immediate link between the alleged environmental harm and the applicant's private or family life or home[17]. The general deterioration

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[6] Please see, for instance, C. Bîrsan, *Convenția europeană a drepturilor omului: comentariu pe articole*, C.H. Beck Publishing House, Bucharest, 2010, L.-C. Spătaru-Negură, *Protecția internațională a drepturilor omului. Note de curs*, 2nd ed., Hamangiu Publishing House, Bucharest, 2024. Additionally, please see R.-M. Popescu, *Theoretical Aspects Regarding the Application of Treaties in Time and Space*, in Challenges of the Knowledge Society (CKS) Proceedings, 2023, pp. 321-326, *https://cks.univnt.ro/cks_2023.html*, last consulted on 12.05.2024.

[7] See the statistics available at *https://www.echr.coe.int/statistical-reports*, last consulted on 12.05.2024.

[8] See the statistics available at *https://www.echr.coe.int/Documents/Stats_annual_2022_ENG.pdf*, last consulted on 12.05.2024.

[9] See the statistics available at *https://www.echr.coe.int/documents/d/echr/stats-pending-month-2024-bil*, last consulted on 12.05.2024.

[10] Grand Chamber, judgment from 12.10.2010, app. nos. 30767/05 and 33800/06, *https://hudoc.echr.coe.int/fre?i=001-100989*, last consulted on 12.05.2024.

[11] Fourth Section, judgment from 25.04.2017, app. nos. 61467/12, 39516/13, 48231/13 and 68191/13, https://hudoc.echr.coe.int/fre?i=001-173105, last time consulted on 12.05.2024.

[12] First Section, judgment from 15.01.2009, app. no. 33509/04, *https://hudoc.echr.coe.int/eng?i=001-90671*, last consulted on 12.05.2024 – the first judgment in the pilot procedure against Russia concerning non-execution or delayed execution of final domestic judgments.

[13] First Section, judgment from 01.07.2014, app. no. 29920/05, 3553/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11 and 60822/11, *https://hudoc.echr.coe.int/eng?i=001-145212*, last consulted on 12.05.2024.

[14] Ar. 8 ECHR provides that:

*„1. Everyone has the right to respect for his private and family life, his home and his correspondence.*

*2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection*

*of health or morals, or for the protection of the rights and freedoms of others*".

[15] For instance, for an interesting study regarding environmental issues, see, I. Pădurariu, *Space Debris, Another Environmental Issue,* in Challenges of the Knowledge Society (CKS) Proceedings, 2022, pp. 323-331, *https://cks.univnt.ro/cks_2022.html*, last consulted on 12.05.2024.

[16] Please see *Pavlov and Others v. Russia*, no. 31612/09, § 51, 11.10.2022, § 59, *Çiçek and Others v. Turkey* (dec.), no. 44837/07, 04.02.2020, § 22, *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, no. 53600/20, 09.04.2024, § 514.

[17] *Ivan Atanasov v. Bulgaria*, no. 12853/03, 02.12.2010, § 66, and *Hardy and Maile v. the United Kingdom*, no. 31965/07, 14.02. 2012,

of the environment is not sufficient, and there must be a negative effect on an individual's private or family sphere[18] and,

- secondly, that a certain minimum level of severity was attained[19]. Of course that the assessment of that minimum is relative and depends on all the circumstances of the case (*e.g.*, the intensity and duration of the nuisance and its physical or mental impact on the applicant's health or quality of life)[20].

Therefore, for environmental damage to constitute a violation of art. 8 para. 1 ECHR, it must be shown that the alleged environmental nuisance was serious enough to adversely affect (to a sufficient extent!) the applicant's enjoyment of his/her right to respect for private and family life and home.

The exposure of a person to a serious environmental risk may be sufficient to trigger the applicability of Article 8[21].

People have the right to be informed about risks, to have access to the results of studies on pollution and climate change, and the right to participate in environmental decision-making, therefore the States have several positive obligations in this respect.

In each case dealing with the right to a healthy environment under art. 8 ECHR, the Court examines whether the domestic authorities have struck a fair balance between the right of an individual to respect for private and family life and the economic well-being of the State concerned (the so-called „fair balance test").

Interestingly, the Romanian doctrine speaks of „a primacy over all other fundamental rights" of the right to a healthy environment - even over the right to life. This is possible because the right to a healthy environment goes beyond the right to life: „[a]lthough it cannot be accepted that future generations already have a right to life, there is nevertheless an obligation on the part of present generations to protect the environment in such a way as not to compromise the life expectancy of those who follow"[22].

## 3. The ECtHR Grand Chamber Rulings in the Climate Change Cases

On April 9th, 2024, the ECtHR delivered its Grand Chamber rulings in three climate change cases.

### 3.1. The Case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*[23]

This application was lodged at the ECtHR, in 2020, against the Swiss Confederation, by four individual applicants and by a Swiss association, Verein KlimaSeniorinnen Schweiz, whose members were concerned about the consequences of global warming on their living conditions and health.

They strongly considered that the Swiss authorities did not take sufficient action to mitigate the dramatic effects of climate change.

Analysing this case, the Court found that the Convention encompasses a right to effective protection by the domestic authorities from the serious adverse effects of climate change on lives, health, well-being and quality of life:

„519. Drawing on the above considerations, and having regard to the causal relationship between State actions and/or omissions relating to climate change and the harm, or risk of harm, affecting individuals (see paragraphs 435, 436 and 478 above), Article 8 must be seen as encompassing a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life."[24].

The Court also stressed that: „there will be no arguable claim under Article 8 if the detriment complained of is negligible in comparison to the environmental hazards inherent in life in every modern city. Conversely, severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes, in such a way as to affect their private and family life adversely, without, however, seriously endangering their

§ 187).

[18] *Kyrtatos v. Greece*, no. 41666/98, § 52.

[19] *Yevgeniy Dmitriyev v. Russia*, no. 17840/06, 01.12.2020, § 32.

[20] *Çiçek and Others*, cited above, § 22.

[21] See, for instance, *Hardy and Maile*, cited above, §§ 189-92, *Dzemyuk v. Ukraine*, no. 42488/02, 04.09.2014, §§ 82-84.

[22] Al. Boroi (coord.), M. Gorunescu, I.A. Barbu, B. Virjan, *Dreptul penal al afacerilor*, 6th ed., C.H. Beck Publishing House, Bucharest, 2016, p. 460.

[23] Grand Chamber, judgment from 09.04.2024, app. no. 53600/20, *https://hudoc.echr.coe.int/?i=001-233206*, last consulted on 12.05.2024.

[24] *Idem*, § 519.

health (see *Jugheli and Others v. Georgia*, no. 38342/05, § 62, 13.07.2017, with further references). Moreover, the Court has explained that it is often impossible to quantify the effects of the environmental nuisance at issue in each individual case and to distinguish them from the influence of other relevant factors such as age, profession or personal lifestyle. The same applies to the possible worsening of quality of life, which is a subjective characteristic that hardly lends itself to a precise definition (*idem*, § 63)"[25].

As regards the applicant association, Verein KlimaSeniorinnen Schweiz which was, according to its Statute, a non-profit association established under Swiss law to promote and implement effective climate protection on behalf of its members[26], the Court held that it had the necessary *locus standi* in this proceeding and that Article 8 is applicable to the complaint[27].

Moreover, in the respect of this association, after a very interesting analysis of the content of States' positive obligations, the Court found that the Swiss Confederation exceeded its margin of appreciation and failed to comply with its positive obligations under the Convention:

„572. In these circumstances, while acknowledging that the measures and methods determining the details of the State's climate policy fall within its wide margin of appreciation, *in the absence of any domestic measure attempting to quantify the respondent State's remaining carbon budget, the Court has difficulty accepting that the State could be regarded as complying effectively* with its regulatory obligation under Article 8 of the Convention (see para. 550 above).

573. In conclusion, there were some *critical lacunae in the Swiss authorities' process of putting in place the relevant domestic regulatory framework*, including a failure by them to quantify, through a carbon budget or otherwise, national GHG emissions limitations. Furthermore, the Court has noted that, *as recognised by the relevant authorities, the State had previously failed to meet its past GHG emission reduction targets* (see paragraphs 558 to 559 above). *By failing to act in good time and in an appropriate and consistent manner regarding the devising, development and implementation of the relevant legislative and administrative framework*, the respondent State exceeded its margin of appreciation and failed to comply with its positive obligations in the present context.

574. The above findings suffice for the Court to find that *there has been a violation of Article 8* of the Convention."[28].

Moreover, the Court engaged into analysing the alleged violation of art. 6 para. 1 (civil limb) of the Convention, considering that the applicants complained that they had not access to a domestic court in order to address the adverse effects of climate change.

We underline that the Court stressed that:

„604. In the environmental context, the Court has been prepared to accept that disputes concerning environmental matters were genuine and serious. It has drawn that conclusion from, in particular, the fact that the relevant appeal had been declared admissible at the domestic level (…), from the substance of the applicant's pleadings before the domestic courts (…), or from the arguments used by the domestic courts to dismiss a given action (…).

607. By contrast, *where the adverse environmental effects on an applicant's rights were immediate and certain, the Court considered that the dispute concerning the matter fell under Article 6 § 1*."[29].

After an extended analysis of the applicability of art. 6 para. 1 ECHR to this case, the Court held that the association's claims fell within the scope of art. 6, and that its right of access to a court was restricted in such a way and to such an extent that the very essence of the right was impaired.

In this respect, the Court stressed that:

„639. (…) the Court considers it essential to emphasise the *key role which domestic courts have played and will play in climate-change litigation*, a fact reflected in the case-law adopted to date in certain Council of Europe member States, highlighting the importance of access to justice in this field. Furthermore, given the principles of

[25] *Idem*, § 517.

[26] This association had more than 2,000 female members who live in Switzerland (average age 73 years), and approximately 650 members are 75 or older. The Statute provided that the association (i) is committed to engaging in various activities aimed at reducing GHG emissions in Switzerland and addressing their effects on global warming, and that it (ii) acts not only in the interest of its members, but also in the interest of the general public and future generations, with the aim of ensuring effective climate protection.

[27] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, § 526.

[28] *Idem*, §§ 572-574.

[29] *Idem*, §604, § 607.

shared responsibility and subsidiarity, it falls primarily to national authorities, including the courts, to ensure that Convention obligations are observed."[30].

Therefore, as regards the association, the Court held that (i) there had been a violation of the right to respect for private and family life enshrined in art. 8 ECHR and, additionally, that there had been a violation of the right to access to the court enshrined in art. 6 para. 1 ECHR, and that (ii) it is not necessary to examine the applicant association complaint under art. 13 ECHR separately.

As for the damage invoked by the applicant association, the Court held that the Swiss confederation is to pay to it, within three months, EUR 80,000 (eighty thousand euros), plus any tax that may be chargeable, in respect of costs and expenses.

Unfortunately, as regards the other four applicants (older women who are particularly at risk), the Court considered that they did not fulfil the victim-status criteria under art. 34[31] ECHR - *Individual applications*, reason for which the Court declared their applications inadmissible.

These applicants' complaints concerned the adverse effects of climate change which they suffer as a result of the Swiss authorities allegedly inadequate action concerning climate change - the increasing occurrence and intensity of heatwaves[32].

But, we draw attention on the separate opinion of Judge Eicke which is annexed to this judgment, which is very interesting to explore in a future study. Judge Eicke does not agree with the majority of his colleagues "either in relation to the methodology they have adopted or on the conclusions which they have come to both in relation to the admissibility (and, in particular, the question of „victim" status) as well as on the merits."[33].

For now, we only resume ourselves to underline that judge Eicke concluded his analysis, by saying that:

«68. In light of the above, and *plainly recognising the nature or magnitude of the risks and the challenges posed by anthropogenic climate change and the urgent need to address them*, the Court would already have achieved much if it had focussed on a violation of Article 6 of the Convention and, at a push, a procedural violation of Article 8 relating in particular to (again) the right of access to court and of access to information necessary to enable effective public participation in the process of devising the necessary policies and regulations and to ensure proper compliance with and enforcement of those policies and regulations as well as those already undertaken under domestic law. However, in my view, *the majority clearly „tried to run before it could walk" and, thereby, went beyond what was legitimate for this Court*, as the court charged with ensuring "the observance of the engagements by the High Contracting Parties in the Convention" (Article 19) by means of "interpretation and application of the Convention" (Article 32), to do.

69. I also do worry that, in having taken the approach and come to the conclusion they have, *the majority are, in effect, giving (false) hope that litigation and the courts can provide „the answer" without there being, in effect, any prospect of litigation* (especially before this Court) accelerating the taking of the necessary measures towards the fight against anthropogenic climate change.

70. Consequently, while I understand and share the very real sense of and need for urgency in relation to the fight against anthropogenic climate change, I fear that in this judgment the majority has gone beyond what it is legitimate and permissible for this Court to do and, unfortunately, in doing so, *may well have achieved exactly the opposite effect to what was intended.*»[34].

### 3.2. The Case Carême v. France[35]

This case concerned a complaint brought by a former inhabitant and mayor of the municipality of Grande-Synthe (i.e. a municipality of around 23,000 inhabitants, situated on the coast of the English Channel), Mr Daniel Carême, who was also a member of the European Parliament.

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[30] *Idem*, § 639.

[31] Art. 34 ECHR provides that: „*The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right*".

[32] The applicants, on one part, provided data showing that the summers in recent years have been among the warmest summers ever recorded in Switzerland, and, on the other part, that heatwaves are associated with increased mortality and morbidity, particularly in older women.

[33] Partly concurring dissenting opinion attached to the Judgement, § 1.

[34] *Idem*, §§ 68-70.

[35] Grand Chamber, dec. from 09.04.2024, app. no. 7189/21, *https://hudoc.echr.coe.int/eng?i=001-233174*, last consulted on 12.05.2024.

The claimant submitted that the respondent State has not taken sufficient steps to prevent global warming and that this failure entails a violation of the right to life enshrined in art. 2 ECHR and of the right to respect for private and family life enshrined in art. 8 ECHR.

Referring to the general principles on the victim status of physical persons under art. 24 ECHR, in the context of climate change litigation, the Court declared inadmissible the application, on the ground that the applicant did not have victim status.

We consider relevant for this study to point out the following ideas of the Court:

«84. Holding otherwise, and given the fact that *almost anyone could have a legitimate reason to feel some form of anxiety linked to the risks of the adverse effects of climate change in the future*, would make it difficult to delineate the *actio popularis* protection - not permitted in the Convention system - from situations where there is a pressing need to ensure an applicant's individual protection from the harm which the effects of climate change may have on the enjoyment of their human rights.

85. *As regards the applicant's argument that he complained to the Court as the former mayor* of Grande-Synthe, the Court refers to its well-established case-law according to which decentralised authorities that exercise public functions, regardless of their autonomy vis-à-vis the central organs - which applies to regional and local authorities, including municipalities - *are considered to be „governmental organisations" that have no standing* to make an application to the Court under Article 34 of the Convention (…). Accordingly, leaving aside the fact that he is no longer the mayor of Grande-Synthe, the Court finds that the applicant *had no right to apply to the Court or to lodge a complaint* with it on behalf of the municipality of Grande-Synthe. (…).»[36].

It is well known, that from *ratione personae* perspective, public authorities[37] are not entitled to lodge a complaint in front of the Strasbourg Court.

### 3.3. Case *Duarte Agostinho and Others v. Portugal and 32 Others*[38]

This case concerned a complaint brought by six Portuguese nationals against the Portuguese Republic and other 32 States: the Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Swiss Confederation, the Republic of Cyprus, the Czech Republic, the Federal Republic of Germany, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Estonia, the Republic of Finland, the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic, the Republic of Croatia, Hungary, Ireland, the Italian Republic, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Latvia, the Republic of Malta, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, Romania, the Russian Federation[39], the Slovak Republic, the Republic of Slovenia, the Kingdom of Sweden, the Republic of Türkiye and Ukraine[40].

The claimants, relying on the relevant international documents, reports and expert findings regarding the harm caused by climate change to human health, argued „in particular, that there had been a breach of Articles 2, 3, 8 and 14 of the Convention owing to the existing, and serious future, impacts of climate change imputable to the respondent States, and specifically those in relation to heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes."[41]. In this respect, they underlined that „they were currently exposed to a risk of harm from climate change and that the risk was set to increase significantly over the course of their lifetimes and would also affect any children they might have."[42],

[36] *Carême v. France*, § § 84-85.

[37] See E.E. Ștefan, *Disputed matters on the concept of public authority*, in the Challenges of the Knowledge Society (CKS) Proceedings, 2015, Pro Universitaria Publishing House, Bucharest, p. 535 *et seq.*, *https://cks.univnt.ro/cks_2015.html*, last consulted on 12.05.2024.

[38] Grand Chamber, judgment from 09.04.2024, app. no. 39371/20, *https://hudoc.echr.coe.int/eng?i=001-233261*, last consulted on 12.05.2024.

[39] Although the Russian Federation ceased to be a member of the Council of Europe (16 March 2022), and a Party to the Convention (16.09.2022), and even though the Russian Government did not submit any observations on the case, having in view that the facts giving rise to the violations of the Convention alleged by the applicants took place before 16.09.2022, the Court decided that it has jurisdiction to deal with them.

[40] Please note that on 18.11.2022 the applicants informed the Court that they wished to withdraw their application as it concerned Ukraine citing „the exceptional circumstances relating to the ongoing war", reason for which the Court struck out of the list of cases for Ukraine, in accordance with art. 37 § 1 (a) ECHR.

[41] *Duarte Agostinho and Others v. Portugal and 32 Others*, § 3.

[42] *Idem*, § 14.

being already subject to „reduced energy levels, difficulty sleeping and a curtailment on their ability to spend time or exercise outdoors during recent heatwaves”[43].

In their view, all the respondent States bore responsibility for this harm, by permitting:

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

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

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

(d) entities within their jurisdiction to contribute to the release of emissions overseas, namely, through the extraction of fossil fuels overseas or by financing such extraction.”[44].

As regards jurisdiction, after a thorough analysis regarding all States, the Court decided that:

„213. (…) while also mindful of the constant legal developments at national and international level and global responses to climate change, together with the ever-increasing scientific knowledge about climate change and its effects on individuals, the Court finds that *there are no grounds in the Convention for the extension, by way of judicial interpretation, of the respondent States' extraterritorial jurisdiction* in the manner requested by the applicants.”[45].

Therefore, territorial jurisdiction was established in respect of Portugal on the grounds that the applicants were within the jurisdiction of those States, whereas no jurisdiction could be established as regards the other respondent States on the grounds that the applicants were not within the jurisdiction of those States. For this reason, the applicants' complaint against the other respondent States was declared inadmissible pursuant to art. 35 §§ 3 and 4 ECHR.

But, having regard to the fact that the applicants had not pursued any legal avenue in Portugal concerning their complaints, the applicants' complaint against Portugal was declared also inadmissible for non-exhaustion of domestic remedies, and therefore rejected.

## 4. Conclusions

Chamber rulings in the climate change cases, we must confess that we are willing to see the further developments of the Court on climate change cases.

It is regrettable that in two (and a half) out of these three cases, the Strasbourg Court rejected the complaints as inadmissible for one reason or another. But this is only the beginning, and we are positive that the arguments expressed by Judge Eicke in the Partly concurring dissenting opinion attached to the judgement given in the case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, shall be further exploited.

Of course that there are other cases in the case-law of the Strasbourg Court that have to be followed, for example, the following cases adjourned: *Uricchiov v. Italy and 31 Other States* (app. no. 14615/21) and *De Conto v. Italy and 32 Other States* (app. no. 14620/21), *Müllner v. Austria* (application no. 18859/21), *Greenpeace Nordic and Others v. Norway* (app. no. 34068/21), *The Norwegian Grandparents' Climate Campaign and Others v. Norway* (app. no. 19026/21), *Soubeste and four other applications v. Austria and 11 Other States* (app. nos. 31925/22, 31932/22, 31938/22, 31943/22 and 31947/22), *Engels v. Germany* (app. no. 46906/22).

More complaints involving climate change litigation will be registered in the following years at the Court in Strasbourg (and not only here), and the cases will be huge, involving many claimants and many respondent States.

In parallel, other international courts of law will deal cases or will involving climate change issuer.

For instance, the International Tribunal for the Law of the Sea (ITLOS), in Hamburg, now deliberates on the case and it is expected to issue its advisory opinion on state responsibility[46] for the climate crisis by mid-2024[47].

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[43] *Ibidem*.

[44] *Idem*, § 13.

[45] *Idem*, § 213.

[46] On the responsibility principle, in general, see E. Anghel, *The responsibility principle*, in Challenges of the Knowledge Society (CKS) Proceedings, 2015, Pro Universitaria Publishing House, Bucharest, pp. 364-370, *https://cks.univnt.ro/cks_2015.html*, last consulted on 12.05.2024.

[47] Please see the Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law (Request for Advisory Opinion submitted to the Tribunal), case available at *https://www.itlos.org/en/main/cases/list-of-cases/request-for-an-advisory-opinion-submitted-by-the-commission-of-small-island-states-on-climate-change-and-international-law-request-for-advisory-opinion-submitted-to-the-tribunal/*, last consulted on 12.05.2024.

More than fifty states and organisations were involved in this procedure, and submitted written submissions and/or oral arguments. The hearings in front of ITLOS marked the first time an international judicial body has been called upon to clarify States' obligations to protect the world's oceans from fossil fuel-driven climate change, which threatens human rights, biodiversity, and the very existence of many island nations.

The International Tribunal for the Law of the Sea was the first of the three international judicial bodies currently working to prepare advisory opinions on climate change (the Inter-American Court of Human Rights[48] and the International Court of Justice have also been asked to clarify states' responsibility with respect to climate change, beyond ethics).

From this perspective, we consider that the box of Pandora was already opened… We only have to wait in order to see what this box reserves to us for the future.

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[48] See R.-M. Popescu, *Drept international public. Noțiuni introductive*, Universul Juridic Publishing House, Bucharest, 2023, p. 182 *et seq*.