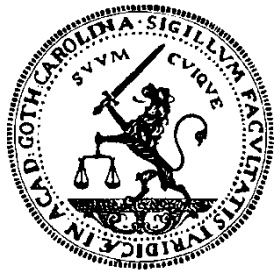

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About Time

An Examination of the Threats Posed by Climate Change and the Protection of Individuals Against Them Offered by the European Convention of Human Rights

LAGF03 Essay in Legal Science

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Contents

Summary

Anthropogenically caused climate change is now considered a reality. Recent climate scientific insights regarding climate-related risks, e.g. heat-waves, floods, droughts etc., have generated an increased focus on limiting the rise in global mean temperature to not exceeding the 1.5°C target enshrined in the Paris Agreement. Currently however, that target is estimated to be exceeded somewhere between 2030–2052 and global mean temperature is on a trajectory towards at least 2.5°C. Hence, it's about time to upscale climate change combatting measures!

In Europe, domestic attempts of upscaling State climate change response have recently focused on linking climate risks to the European Convention on Human Rights (ECHR), primarily Articles 2 (the Right to Life) and 8 (the Right to Respect for Private and Family Life). The thesis examines this recent development and asks how suitable those Articles are to serve as a protection of individuals against the dangerous materialization of climate risks by generating State responsibility to combat climate change.

The thesis mainly focuses on the foundational topic regarding the existence of an ECHR climate change protection at all and its existential conditions. Despite no final rulings on climate change matters by the European Court of Human Rights (ECtHR), its vast case-law on environmental matters constitutes the linchpin of this research. As is shown, both Articles are able to generate State responsibility in terms of positive obligations in states of risk. However, some challenges to the extension of ECHR protection to climate change matters, thus questioning its suitability, are identified. The main challenge is constituted by the need for those trying to link climate change to the ECHR to show an existence of a 'real and immediate'/'direct and severe' risk.

After investigating and analyzing how these challenges have been dealt with in three domestic cases, the thesis concludes that theoretically, the challenges can be overcome, thus the ECHR Articles can be quite suitable also regarding climate matters. However, because of the domestic courts' different interpretations of ECtHR case-law, especially whether current climate risks temporally fit the risk conditions required to give rise to positive obligations, the suitability can be questioned in practice. Nonetheless, the suitability question clearly is largely a question about time.

Sammanfattning

Att människan orsakat och orsakar klimatförändringar betraktas numera som en realitet. Färska klimatforskningsresultat angående klimatrelaterade risker, t.ex. värmeböljor, översvämningar, torka etc., har medfört ett ökat fokus på att begränsa höjningen av den globala medeltemperaturen så att den inte överskrider 1,5°C-målet i Parisavtalet. För närvarande uppskattas dock att det målet kommer överskridas någon gång mellan åren 2030–2052 samt att den globala medeltemperaturen är på väg att höjas med åtminstone 2,5°C. Således är det hög tid att höja ribban för klimatförändringsbegränsande åtgärder!

I Europa har inhemska försök att höja staters klimatbekämpningsribba under senare år präglats av argument där klimatrisker kopplas samman med Europakonvention för mänskliga rättigheter (EKMR) och främst dess artiklar 2 (Rätt till liv) och 8 (Rätt till skydd för privat- och familjeliv). Den här uppsatsen undersöker denna utveckling. Utifrån idéen att klimatförändringarnas farliga konsekvenser fortsatt ligger framför oss i tiden, behandlas frågan om hur lämpliga de två konventionsartiklarna är som skydd för individer mot faran klimatrisker medför, genom artiklarnas förmåga att ge upphov till statligt ansvar.

Uppsatsen fokuserar främst på de grundläggande frågorna kring EKMRs förmåga att generera klimatförändringskydd överhuvudtaget och i så fall under vilka villkor. Trots att Europadomstolen hittills inte dömt i klimatförändringsfall så utgör dess omfattande praxis i miljöfrågor grundbulten för undersökningen. Här visas att båda konventionsartiklarna kan ge upphov till statligt ansvar i form av positiva skyldigheter i situationer som involverar risk. Emellertid identifieras också ett antal utmaningar gällande utvidgandet av EKMR till att omfatta klimatfrågor, vilka i sin tur medför frågetecken för skyddets lämplighet. Störst utmaning utgör behovet att påvisa existensen av en ’äkta och omedelbar’/’direkt och allvarlig’ risk. Sedan undersöks och analyseras hur dessa utmaningar har hanterats i tre inhemska rättsfall. Till slut fastslås att i teorin är inga av dessa utmaningar oöverstigliga och således *kan* konventionsartiklarna och dess medförande skydd betraktas som lämpliga även i klimatfall. Eftersom de nationella domstolarna dock har tolkat Europadomstolens praxis olika – främst om de nuvarande klimatriskerna rent tidsmässigt passar och därmed uppfyller de riskvillkor som krävs för att ge upphov till positiva skyldigheter – kan skyddets lämplighet i praktiken ifrågasättas. Icke desto mindre råder det inga tvivel om att lämplighetsfrågan främst är en fråga om tid.

Abbreviations

Article 2	Article 2 (Right to Life) of the European Convention on Human Rights
Article 8	Article 8 (Right to Respect for Private and Family Life) of the European Convention on Human Rights
ECHR	The European Convention on Human Rights
ECtHR	The European Court of Human Rights
IPCC	International Panel on Climate Change
Paris Agreement	Paris Agreement to the United Nations Framework Convention on Climate Change
Urgenda	Urgenda Foundation

1 Introduction

1.1 Background

Anthropogenically caused climate change, driven primarily by emissions of greenhouse gases, is now considered a reality and its potentially both long-standing and irreversible consequences–e.g. sea-level rise, floods, increase and decrease of precipitation, increase in number and intensity of heat-waves, and forest fires[1]–constitute dangerous threats to, *inter alia*, human life on earth.[2] Since climate risks are understood to be much lower if the global mean temperature stays below 1.5°C instead of 2°C compared to pre-industrial levels, there has been an increase of focus on not exceeding the 1.5°C target enshrined in Article 3 of the Paris Agreement, primarily by limiting greenhouse gas emissions.[3] To date, anthropogenically caused climate change has resulted in an estimated rise in global temperature of approximately 1.0°C and it is anticipated to exceed 1.5°C in the period 2030–2052.[4] At the moment, global temperature is on a trajectory towards an increase of at least 2.5°C by the end of the century. Furthermore, the nationally determined contributions to combat climate change have been deemed "completely inadequate to achieve the climate goals of the Paris Agreement."[5] In short, it's about time to upscale our response to climate change!

The increasingly critical situation serves as an explanation of the legal spin of climate activism,[6] namely the growing legal area that has become known as climate change litigation, or simply climate litigation.[7] In Europe, despite the non-existence of climate change rulings made by the European Court of Human Rights (ECtHR),[8] the European

[1] Henceforth: climate risks.
[2] IPCC (2018), sections A–B. For a European perspective of the risks involved, see European Commission, 'Climate Change Consequences'.
[3] IPCC (2018), sections B–D. Paris Agreement to the United Nations Framework Convention on Climate Change.
[4] IPCC (2018), section A.1.
[5] United Nations Environment Programme, 'The Emissions Gap Report 2020', p. 35.
[6] Cf. Liston (2020), p. 242.
[7] See Setzer and Byrnes (2020).
[8] Although the ECtHR has dealt with environmental issues for quite some time, until now (May 20th 2021), it has not ruled in any climate litigation cases. However, at the moment, two cases are being handled by the Court, see the communicated cases of *Duarte Agostinho and Others v. Portugal and Others* and *Verein KlimaSeniorinnen Schweiz and others v. Switzerland.*

Convention of Human Rights (ECHR) and particularly Articles 2 (the Right to Life) and 8 (the Right to Respect for Private and Family Life)[9] have frequently been used, with varying success, in recent domestic attempts of upscaling State climate response by asserting that those articles give rise to state responsibility in terms of positive obligations. The disparity of these recent rulings, the current formulation of the ECHR lacking an article regarding environmental protection, and the non-existence of ECtHR climate case-law create an uncertainty of what protection really is offered by the ECHR in relation to climate change.

1.2 Purpose and Research Question

The purpose of this thesis is to: examine the environmental protection offered by Articles 2 and 8, assess the protection's applicability as a protection of individuals against climate risks, and analyse its suitability as a catalyst in attempts to upscale state climate change response. In particular, it aims to analyse how the interpretation of the potential existence of State responsibility is affected by the fact that much of the materialization of climate risks still lies ahead. Capturing the overall purpose, the thesis attempts to answer the following research question:

> How well-suited, given the currently prospective nature of the dangerous impacts of climate change, is the protection offered by Articles 2 and 8 of the ECHR to serve as a protection of individuals against those impacts by generating State responsibility to combat climate change?

In order to answer the main research question, the following sub-questions will be addressed:

- What kind of environmental protection has Articles 2 and 8 provided to date?
- How is the notion of unmaterialized risk treated within the aforementioned protection?
- How can the protection be extended to climate change cases?
- What challenges exist for those claiming that the current (ill-)treatment of climate change is in violation of Articles 2 and 8?

[9] Henceforth: Article 2 and Article 8.

- How has Articles 2 and 8 been interpreted and the aforementioned challenges been treated in domestic cases of climate litigation?

1.3 Delimitations

Reflecting how climate change poses a "complex, polycentric, and seemingly intractable policy challenge,"[10] climate legislation revolves around a number of hard, contested and intertwined issues, all of which are in need of an answer to satisfyingly outline the ECHR protection. *Prima facie*, four general topics of questions are of essence in relation to climate change protection and the suitability of the ECHR in general: (i) Standing; who can have their rights breached and take that matter to court?[11] (ii) The existence of rights; are there rights generating protection at all, and if so, under what conditions?[12] (iii) The extent of rights; if there are rights, how big is the protection they offer?[13] (iv) Remedies; if there is a rights breach, what remedies are available and how effective are they?[14] Due to matters of space, this thesis will mainly focus on what I take to be the most fundamental question, namely (ii).

As for the ECHR, except for becoming relevant via Articles 2 and/or 8, other articles with protection potential will be left unexamined.[15] The ECHR must be interpreted in accordance with developments in international law,[16] which in turn opens up a Pandora's box of potential interesting analytical focal points.[17] Due to matters of space, nothing except for what is explicitly discussed within the ECtHR case-law will be examined.

Regarding domestic cases, this thesis will focus on those that have dealt with the question of rights existence, and where, at the time of writing (May 20th 2021), final domestic rulings have been made. Due to the thesis' focus on the ECHR, no attention will be given to the parts of the domestic decisions that are based on national legislation.

[10] Bodansky, Brunée, and Rajamani (2017) p. 2.
[11] See Francioni (2010); Peters (2018) and (2020).
[12] See e.g. Peters (2020); Leijten (2019); and Braig and Panov (2020).
[13] See Liston (2020).
[14] See Peters (2020); and Savaresi and Auz (2019).
[15] E.g. both article 3 (*Prohibition of torture*) and article 6 (*Right to a fair* trial) have received scholarly attention by Peters (2020) and Scott (2014).
[16] *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 85–86 ECHR 2008 (Henceforth: *Demir and Baykara*).
[17] Cf. Sands et al. (2018), pp. 197–251.

1.4 Methodology, Material, and Perspective

In an attempt to reconstruct a legal norm (the environmental protection generated by articles 2 and 8) and apply it to a legal problem (State responsibility and the threat of climate change) using established sources of law, this thesis applies the doctrinal method.[18] Besides outlining the norm in question and how it has been interpreted in court practice, i.e. argumenting *de lege lata*, the thesis will include critical assessment of the domestic court practice and further contemplate how the protection ought to be interpreted, i.e. argumenting *de lege ferenda*.[19] Hence, the method can be described as critical doctrinal.[20] Applying a critical perspective– through identifying potential challenges to the extension of the ECHR protection to climate change cases and further both assessing how well they have been overcome in practice and could be overcome in theory–is what will allow for the central assessment of 'suitability'. If swamped by insurmountable challenges, the ECHR must be deemed ill-suited, if not, then it is a matter of scale.

Due to the delimitations made above and the lack of explicit environmental protection within the ECHR, the vast case-law developed by the ECtHR constitutes the linchpin of this research.[21] For interpretational purposes both official ECtHR documents and doctrinal commentaries will be used. Because of the lack of climate change treatment by the ECtHR, domestic cases act as further sources of interpretation of how the ECHR might extend to climate change cases.

1.5 Previous Research

The literature on climate change litigation has rightfully been described as copious.[22] In relation to the ECHR, it can roughly be divided into three branches. First, treatments of climate change litigation in general, i.e. the litigation phenomenon itself, its relationship with human rights, and often with a global focus.[23] Second, trend analyses and commentaries of

[18] Kleineman (2018), p. 21.
[19] Kleineman (2018), pp. 36–38.
[20] Kleineman (2018), p. 40.
[21] Thus, the thesis here concentrates on what, following Dzehtsiarou (2018) p. 91, can be characterized as *internal* legal interpretation sources used by the ECtHR, as opposed to *external*, e.g. treaty-based and customary international law.
[22] Savaresi and Auz (2019), p. 246.
[23] See e.g. Peel and Osofsky (2018); Knox (2009); Knox (2019); Savaresi and Auz (2019); and Fisher, Scotford, and Barritt (2017).

the development of certain climate change litigation cases, particularly the *Urgenda* case.[24] Third, examinations of the ECHR environmental protection, often combined with an analytical and prospective perspective discussing various aspects when applying the ECHR to climate change issues.[25] Although building on all of the above, doubtlessly the third branch serves as the primary source of inspiration for this thesis.

Regarding the general mechanics of Article 2 and the *'real and immediate risk' standard*, there exists relatively little research.[26] A great starter and discussion is nonetheless found in Stoyanova.[27]

1.6 Outline

The thesis is structured as follows: Section 2 will set the foundation by outlining the overall environmental protection offered by Articles 2 and 8. Further it will include pondering on some general points relating to the internal mechanisms of the ECHR and what kind of challenges this in total creates for those trying to assert the applicability of the ECHR in climate change cases. Section 3 will then examine how those challenges have been interpreted in domestic climate litigation cases and how willing the domestic courts have been to link Articles 2 and 8 to climate change protection. Section 4 ties all analytical knots together before a conclusion is presented in the fifth and final section.

[24] See section 3.1 and e.g. Pedersen (2020); Yoshida and Setzer (2020); and Hellner (2020).
[25] See Braig and Panov (2020); Ebbesson (2020); Francioni (2010); Heiskanen (2018); Karlsson Niska (2020); Leijten (2019); Liston (2020); Pedersen (2018); and Peters (2018) and (2020).
[26] See section 2.2.1.
[27] Stoyanova (2020).

2 The Environmental Protection Offered by Articles 2 and 8 of the ECHR

2.1 General Remarks

The ECHR does not include any explicit environmental rights. How then, is it possible to speak of an environmental protection arising from the ECHR?

The answer relies on the interpretational elements developed and used by the ECtHR.[28] First and foremost, the living instrument doctrine, i.e. that the ECHR is a living instrument which must be interpreted in light of present-day conditions and thus is open to change.[29] The change in turn, might mainly come through two closely related directions: (i) developments in international law, including new declarations, reflecting the "increasingly high standard being required in the area of the protection of human rights,"[30] and (ii) the developments in domestic legal systems indicating what is called 'European consensus'.[31] Furthermore, the interpretation of the ECHR can, *inter alia*, take scientific changes into account.[32] Except for allowing the ECtHR to develop a rather extensive environmental case-law,[33] the interpretational elements are also what, in theory, enables the extension of the ECHR to climate change matters despite the current lack of ECtHR decisions.[34] Now, let's take a look at the environmental protection of the articles in question.[35]

[28] See e.g. *Demir and Baykara* §§ 67–68.
[29] *Demir and Baykara* §§ 83–84, 146.
[30] *Demir and Baykara* § 146.
[31] *Demir and Baykara* § 85.
[32] Cf. ECtHR, 'The Convention as a Living Instrument at 70. Background Document', p. 5.
[33] For an overview, see ECtHR 'Factsheet – Environment and the European Convention of Human Rights'.
[34] That international human rights law along with the ECHR could provide basis for State responsibility and action in climate change matters has been argued by e.g. Wewerinke-Singh (2018).
[35] The environmental protection offered by Articles 2 and 8 have been interpreted as overlapping and hence to a degree can be treated together, see *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 133 ECHR 2008 (henceforth: *Budayeva*). However, due to both educational reasons and reflecting the way they are mostly treated by the domestic courts, the Articles will be treated separately.

2.2 Article 2 of the ECHR

Article 2 constitutes one of the most fundamental provisions of the ECHR and must be interpreted and applied to make its safeguards practical and effective.[36] Besides prohibiting the State from intentional and unlawful takings of lives, the Article also requires the State to take appropriate steps to safeguard the lives within its jurisdiction.[37] These steps apply in the context of any activity where the right to life is at stake and include establishing an effectively deterring legislative and administrative framework, with a particular emphasis on the public's right to information. However, the steps must not create an impossible or disproportionate burden and if a requirement exists, the choice of means fall within a wide margin of appreciation.[38]

In relation to environmental protection, the Article's substantive aspect has been violated in cases involving dangerous industrial activities and environmental disasters.[39] The former kind of violation is represented in *Öneryildiz v. Turkey* where an accidental gas explosion at a rubbish tip resulted in deaths in a nearby shanty town. Importantly, two years before the explosion, the Turkish authorities had been informed by an expert report of an already long existing risk of explosion at any time.[40] The ECtHR thus concluded that the Turkish authorities "knew or ought to have known that there was a real and immediate risk [and] … consequently had a positive obligation under Article 2 of the Convention to take such preventive operational measures as were necessary and sufficient to protect those individuals."[41]

The latter kind of violation is represented by two cases. *Budayeva and Others v. Russia* regarded deaths caused by a mudslide. Here, the ECtHR held that Article 2 had been violated because of how the Russian authorities, despite numerous warnings of potentially dangerous mudslides in the following year, had failed to establish an effectively deterring legislative and administrative framework.[42] In *Kolyadenko and Others v. Russia*, regarding a flood caused by the necessary outflow from a reservoir because of exceptionally heavy rains, the

[36] *McCann and Others v. the United Kingdom*, 27 September 1995, §§ 146–147, Series A no. 324.
[37] *Öneryıldız v. Turkey* [GC], no. 48939/99, § 71, ECHR 2004-XII, (henceforth: *Öneryıldız*).
[38] Budayeva §§ 134–135.
[39] Article 2 also has a procedural aspects, see e.g. *Öneryıldız §§* 91–96, which will not further be elaborated on here.
[40] *Öneryıldız* §§ 97–100.
[41] *Öneryıldız* § 101.
[42] *Budayeva* §§ 128–137 and 147–160.

ECtHR found the Government violating Article 2 in a similar way as in *Budayeva*.[43] Interestingly however, was how the ECtHR found that simply because of them being at work the day in question, Article 2 was inapplicable to some Applicants since "there was no evidence that any threat to the lives" of those Applicants existed on the day in question.[44]

2.2.1 The 'real and immediate risk' standard and the '*ex post facto* issue'

As witnessed, the existence of positive obligations relies on the existence of a real and immediate risk that the State knew or ought to have known existed, sometimes referred to as the 'real and immediate' standard.[45] Although never specifically elaborated by the ECtHR, the standard has in general been proposed by commentators to mean a risk that is, *inter alia*, objectively given or probable ("real") and 'present and continuing' or able to 'materialize at any time' ("immediate"), and have, correctly, been described in total as ambiguous.[46]

Focusing on the environmental case-law in relation to climate change and given that the materialization of climate risks at large neither are present and continuing nor could materialize at any time, the lack of immediacy creates a challenge for those claiming the State are violating the ECHR in climate change matters. However, as witnessed in *Budayeva*, a known presumed disaster *can* be enough to generate a State obligation despite there being a gap between the State gaining knowledge about the risk and the materialization of it. A challenge still remains though, as the time-span in climate change matters at the moment exceeds that of one year by multiple times. [47] The courts thus must be persuaded that an interpretation including a corresponding extension of the time-scale is appropriate.

Furthermore, as witnessed in *Kolyadenko*, an environmental risk might lose its relevancy due to how someone initially at risk merely out of chance is unaffected when the risk materializes. What does this mean in terms of the existence of protection? To understand this we must look closer at the way the ECtHR deals with its cases.

To date, the ECtHR has dealt with cases involving Article 2 *ex post facto*, i.e. in a situation where the risks already have materialized and victims already have suffered its

[43] *Kolyadenko and Others v. Russia*, nos. 17423/05 and 5 others, §§ 162–185, 28 February 2012, (henceforth: *Kolyadenko*).
[44] *Kolyadenko* §§ 37–38, 152.
[45] Cf. Stoyanova (2020), p. 612.
[46] See Stoyanova (2020) pp. 612–615 with corresponding references.
[47] See section 1.1.

consequences.[48] However, when the materialization of risk still lies ahead, we are in a situation involving *potential* victims.[49] In comparison, this makes the situation blurred since both the Applicant and the defending State must rely solely on arguments of probability. Further, one might ask if Article 2 can be seen as giving protection in such a situation at all given how the protection partly appears to have evaporated in *Kolyadenko*.

In *Kolyadenko*, *ex-ante*, the existence of risk was clear which gave rise to positive obligations of the State towards *all* those at risk. *Ex post facto* however, the obligations towards some were alleviated. The case thus shows that the existence of a risk affecting individuals, in turn creates a risk of violation of rights affecting the State. The situation creates an *ex-ante* incentive for the State to minimize both risks simultaneously, thus enabling protection.

Kolyadenko also indicates the rather narrow interpretation of 'victim' the ECtHR has applied in relation to Article 2 to date. In theory, two aspects support the fact that an extension is possible. First, in order for the ECHR to live up to its often cited 'safeguarding function', the ECHR cannot be seen as only applying in situations where the damage is already done.[50] To actually safeguard the rights of people, the risk, and not its materialization, should be enough to generate both positive obligations, *and* a violation if the State does not fulfill its obligations and thus allows for the persons to be at risk. Second, the ECtHR has argued along these lines in relation to other rights, including environmental cases.[51]

Nonetheless, persuading the courts of extending the interpretation to include potential victims constitutes a true challenge for those claiming a violation of Article 2 because of insufficient State climate response.

[48] Stoyanova (2020) p. 611.
[49] As such, the question somewhat conflates with that of standing, since victim status is required, under Article 34, in order to get an application admissible to the ECtHR. Noteworthy is also how the ECtHR consistently has refuted *actio popularis* complaints and, as a starting point, but not dogmatically, has not allowed for complaints in abstract, cf. ECtHR, 'Practical Guide on Admissibility Criteria', pp. 11 and 15–16, which presumably further complicates the challenge.
[50] See e.g. *Öneryıldız* § 71.
[51] See *Taşkın and Others v. Turkey*, no. 46117/99, ECHR 2004-X, (henceforth: *Taşkın*) below and e.g. *Soering v. the United Kingdom*, 7 July 1989, Series A no. 161 in relation to Article 3. Cf. Braig and Panov (2020), pp. 287–290.

2.3 Article 8 of the ECHR

Although not violated every time environmental deterioration occurs and not entailing a right to nature preservation,[52] Article 8 has been violated in a wide range of cases. Primarily, these cases have involved various forms of pollution, creating, in turn, issues for individuals' surrounding environment because of how the individuals' wellbeing–in terms of their home, private or family life–thus have been negatively impacted by unsafe or disruptive conditions without necessarily endangering the individuals' health. The Article can give rise to positive obligations.[53] However the applicant must show that there has been an direct interference with his/hers private sphere and that it reached a required level of severity to constitute a violation. This 'severity test' in turn is judged contextually, depending on *all* circumstance of the case, e.g. the intensity, duration, and physical or mental effects of the nuisance as well as the general context of the environment.[54] The positive obligations are largely equal to those of Article 2,[55] including a wide margin of appreciation.[56]

Interestingly, the ECtHR has on occasion held that the obligations include the securing the enjoyment of a healthy and protected environment,[57] and recognized the importance of the precautionary principle.[58] However, how the latter principle interplays with climate change remains a highly contested matter in both Conventional and more general international law.[59] Furthermore, in *Taşkın*, the ECtHR held that a potential risk, not necessarily materializing but in 25–50 years, was enough to create a positive obligation and in turn a violation.[60] And in a recent case involving toxic steelwork emissions constituting a risk of e.g. increased mortality, the ECtHR found a violation of Article 8 because of the failure of Italian authorities to, *inter alia*, handle the situation with due diligence. [61] However, to date the decisions have remained fairly local in scope, and e.g. in the lastly mentioned case the ECtHR reiterated its reluctance against *actio popularis* complaints and denied 19

[52] *Ivan Atanasov v. Bulgaria*, no. 12853/03, § 66, 2 December 2010, (henceforth: *Ivan Atanasov).*
[53] See *López Ostra v. Spain*, 9 December 1994, § 51, Series A no. 303-C, and further ECtHR, 'Guide on Article 8', pp. 37–38. Like Article 2, Article 8 contains both substantive and procedural aspects, and only the former will be dealt with.
[54] *Fadeyeva v. Russia*, no. 55723/00, §§ 68–70, ECHR 2005-IV, (henceforth: *Fadeyeva*).
[55] *Cordella and Others v. Italy*, nos. 54414/13 and 54264/15, § 159, 24 January 2019, (henceforth: *Cordella*).
[56] *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 100, ECHR 2003-VIII.
[57] *Tătar v. Romania*, no. 67021/01, § 110, 27 January 2009, (henceforth: *Tătar*).
[58] *Tătar* § 120.
[59] de Sadeleer (2016), p. 30.
[60] Cf. §§ 26, 111–117.
[61] *Cordella* §§ 161–174.

applicants because of them living too far away from the steelwork and thus were not affected personally.[62]

In sum, the case-law of Article 8 to date constitutes a seemingly disparate potpourri of protection, highlighted, above all, by the ECtHR's unwillingness accept a right to nature preservation but still holding that a State might be obliged to secure the enjoyment of a healthy and protected environment. In relation to climate change, besides persuading the courts to follow those parts of the case-law allowing for a greater environmental protection, persuading the courts of the current existence of a risk passing the severity test and, crucially, that has a direct link the individual's home, family or private life constitute further challenges. Similarly as with Article 2, the lack of *ex post facto* situations blurs the situation for all participants.

[62] *Cordella* §§ 100–108.

3 Domestic Climate Change Litigation Cases

3.1 Urgenda Foundation v. State of the Netherlands (*Urgenda* case)

The *Urgenda* case originated with the Urgenda Foundation (*Urgenda*) on behalf of 886 Dutch citizens sued the Dutch government seeking a court order demanding the Dutch State to limit its greenhouse gas emissions by the end of 2020 25–40% compared to its 1990 levels. Briefly, *Urgenda's* grounds were that the Dutch territorial emissions excessively contributed to dangerous climate change, which, by violating the State's duty of care enshrined in both domestic law and Articles 2 and 8, made them unlawful. Due to the State's sovereign power, *Urgenda* claimed that the State, under both domestic and international law, had a systemic responsibility to fulfill its duty of care by limiting its emissions. The state objected, *inter alia*, by questioning the standing of *Urgenda*, the existence of binding legal obligations to combat climate change, and the Court's ability to order the State in the matter.[63] Both the District Court and the Court of Appeals ruled in favor of *Urgenda* and ordered a 25% limitation. Notably, the latter grounded it directly on the ECHR. In 2019, the Dutch Supreme Court, acting as a court of cassation, handed down a final decision.[64] The Supreme Court argued as follows.

Beginning with Article 2, the Court acknowledged the ECtHR case-law establishing both State positive obligations to take appropriate steps to safeguard the lives of those within its jurisdiction and how the Article has been violated due to acts or omissions in relation to natural or environmental disasters. Noting the 'real and immediate risk' condition and citing *Öneryıldız*, *Budayeva*, and *Kolyandenko*, the Court interpreted the condition as a risk being both genuine and imminent. 'Imminent', in turn, was interpreted as the risk being "directly

[63] *Urgenda v de Staat der Nederlanden AppNo.19/00135), Supreme Court of the Netherlands, judgment of 20 December 2019* (Henceforth: Dutch Supreme Court), sections 2.2.1–2.2.3.
[64] Dutch Supreme Court, section 1.

threatening the persons involved."[65] Interestingly, the Court held that it is enough if the risks involved only *might* materialize "*in the longer run.*"[66]

Regarding Article 8, the Court noted that according to the ECtHR case-law, the Article does not directly entail a right to protection of the living environment. However, if environmental hazards have direct and sufficiently serious consequences for a person's private life, a right and a positive obligation to take reasonable and appropriate measures may be entailed indirectly. Citing *Taşkın* and *Tătar*, the Court held that if there is a risk–not necessarily short term–of serious environmental contamination affecting individuals' well-being and preventing them from enjoying their homes in such a way that their private and family life is adversely affected, it is enough for the obligation to arise.

Having observed that the positive obligations related to Articles 2 and 8 largely overlap and thus could be collectively treated,[67] the Court noted that: (i) although environmental cases to date only has allowed for regional extensions, by drawing analogies from other, non-environmental cases,[68] the protection offered by the Articles is not limited to specific persons but can be extended to society as a whole; (ii) the positive obligations include taking preventive measures despite uncertainty of risk materialization and are consistent with the precautionary principle; (iii) the State's margin of appreciation does not apply to the acceptance of the obligation itself, but only to the choice of means, although the Court can assess this in terms of due diligence; (iv) the State burden must not be impossible or disproportionate given the circumstances; (v) the ECHR should be interpreted in light of international law, widely accepted scientific insights, and by using the common-ground method; and (vi) the fact that one State cannot solve the issue of climate change alone does not alleviate that State's obligation to do their part.[69] All-in-all, the Court concluded that the genuine threat of climate change constitutes a real and immediate risk that in turn, pursuant to Articles 2 and 8, gives rise to a positive obligation to take countermeasures.[70] Having both set the obligation to limit emissions by 25% and dismissed the Government's claim of the Court overstepping its functional boundaries,[71] the Supreme Court upheld the Court of Appeal's decision.

[65] Dutch Supreme Court, section 5.2.2 with corresponding notes.
[66] Dutch Supreme Court, section 5.2.2 with corresponding notes. My emphasis.
[67] Dutch Supreme Court, 5.2.4.
[68] Dutch Supreme Court, note 14 with corresponding cases.
[69] Dutch Supreme Court, sections 5.2.4–5.4.3.
[70] Dutch Supreme Court, sections 5.6.2 and 5.8.
[71] Dutch Supreme Court, sections 6–8.

3.2 Union of Swiss Senior Women for Climate Protection v. Swiss Federal Council and Others (*Swiss Senior* case)

The *Swiss Senior* case originated in 2016, when the association *KlimaSeniorinnen Schweiz* and four women, all being or representing women aged 75 or more, petitioned against four Swiss government bodies requesting a discontinuation of perceived omissions in climate protection. The petitioners claimed, *inter alia*, that women aged 75 or more to be especially vulnerable to the impacts of climate change and that the alleged governmental omissions resulted in violations of both Swiss constitutional rights and Articles 2 and 8. To stop the alleged violations, the petitioners requested remedies such as a regulatory development–including spread of information about the need of emission reduction and measure implementation–capable of reaching a greenhouse gas emission reduction of 25% by 2020 and 50% by 2030 in compared to 1990 levels.[72]

Both the petition and a following appeal was dismissed, before the case reached the Supreme Court.[73] Although the central question at the Supreme Court was whether the petitioners' constitutional and conventional rights to a fair trial (Article 6 ECHR) and an effective remedy (Article 13 ECHR) had been breached; by dealing with the latter article, the Supreme Court had to address whether the Swiss State's alleged omissions constituted a breach of Articles 2 and 8.[74] Regarding Articles 2 and 8 the Supreme Court reasoned as follows.

First, the Court stated that despite claims of the group of women aged 75 and over already being particularly affected by the consequences of climate change and that they would be even more so if the targets of the Paris Agreement were missed, the supposed inaction by

[72] Federal Supreme Court, Public Law Division I – Judgment 1C_37/2019 of 5 May 2020 Verein KlimaSeniorinnen Schweiz et al. v. DETEC – Ruling on real acts relating to climate protection, (henceforth: Swiss Supreme Court), section A.
[73] Swiss Supreme Court, sections A–B.
[74] Swiss Supreme Court, section C. *Prima facie*, it might not seem like Articles 2 and 8 are treated separately from domestic constitutional aspects. However, in section 7, the Supreme Court states that none of the appellants are affected in legally relevant way by the alleged omissions in order to speak of violations of the ECHR articles.

the authorities did not in itself constitute a rights violation.[75] The Court then observed that, given a United Nations report,[76] the targets of the Paris Agreement probably will not be exceeded prior to 2040 and that both the Paris Agreement and its Swiss implementation were based on the assumption that there still was time left to prevent the target from being exceeded.[77] Further, the Court noted the possibility and urgent need of global warming to be slowed down. Moreover, the Court held that the current Swiss implementation measures pursued the objective that the consequences of a global warming exceeding the targets of the Paris Agreement, only shall occur in a medium to more distant future, i.e. around 2040.[78] As a result, the Court concluded that at the moment in question, neither the appellants nor anyone in the Swiss population,[79] were sufficiently affected by the alleged domestic omissions to say that Articles 2 and 8 have been violated. Hence, the complaint was dismissed as *actio popularis*.[80] Consequently, the Court found no breach of Article 13 ECHR.[81] Finally, since the Court found no breach of domestic law nor of Article 13 ECHR, the appeal was dismissed.[82]

3.3 People v. Artic Oil (*People* case)

The *People* case revolved around the validity of a 2016 Government resolution awarding 10 petroleum production licenses on the Norwegian continental shelf in the maritime area of the Barents Sea. The resolution was deemed valid in both the District Court and the Court of Appeals before reaching the Norwegian Supreme Court who handed down its decision in 2020.[83] The appellants–a combination of environmental non-governmental organizations–claimed that Norway already emitted too much carbon dioxide, needed to limit, and certainly not expand, its petroleum production, and thus had to reduce its emissions.[84] Hence, the

[75] Swiss Supreme Court, section 5.2.
[76] IPCC (2018), see section 1.1.
[77] Swiss Supreme Court, section 5.3. See section 1.1. above.
[78] Swiss Supreme Court, section 5.4.
[79] Swiss Supreme Court, section 5.5.
[80] Swiss Supreme Court, section 5.4. In support but without any comment, the Supreme Court refers, *inter alia*, to *Kolyadenko*, presumably indicating the narrow sense of victim the ECtHR hitherto has allowed for.
[81] Swiss Supreme Court, sections 5.4 and 7.
[82] Swiss Supreme Court, section 6 and 8.
[83] HR-2020-2472-P, (case no. 20-051052SIV-HRET) Appeal from the Borgarting Court of Appeal judgment of 23 January 2020, (henceforth: Norwegian Supreme Court), §§ 2–19.
[84] Norwegian Supreme Court, §§ 26–27.

Appellants argued, first and foremost, that the resolution contradicted the Norwegian constitution. Second, by referring to the *Urgenda* case and asserting that the climate crisis undoubtedly constitutes a real and imminent threat, that the resolution violated Articles 2 and 8.[85] Against the ECHR line of argument, the Government in turn held that the Appellants could not invoke the ECHR due to lack of victim status, or, anyhow, that there had not been an infringement because of, *inter alia*, a lack of relevant causal relationship.[86] Regarding Articles 2 and 8 the Supreme Court reasoned as follows.

First, the Court observed that Articles 2 and 8 can be used in environmental cases and that the organizations can allege conventional violations before Norwegian courts.[87] The Court then noted how Article 2 can give rise to positive governmental obligations, but, citing *Öneryildiz*, that the risk of loss of life must be real and immediate, which the Court in turn understood as an "*actual and imminent risk to life."*[88] The Court then stated that climate change undoubtedly might lead to loss of human life in Norway, e.g. through landslides and floods. However, because of (i) the uncertainty of both *if* and *to what degree* the licensing would result in greenhouse gas emissions and (ii) how its potential climate effects nonetheless would lie quite a bit ahead in time, the Court held that the real and immediate condition was not met. Thus Article 2 was not violated.[89]

Turning to Article 8, the Court first noted that how it could give rise to positive governmental obligations and be applied in environmental cases. Using *Ivan Atanasov* as a starting point, the Court then observed that Article 8 cannot be used for all environmental impairments and that calls for supplementing the ECHR with an environmental protection have not been approved by the Committee of Ministers. The Court further held that the current ECtHR case-law only enables the application of Article 8 in cases where the threat is caused by dangerous activities that are close to home and, importantly, "direct *and* close in time."[90] Thus, the consequences of the potential emissions due to the licensing were deemed not falling under the protection of Article 8.[91]

The Court further dismissed both the reasoning in the *Urgenda* case, primarily because the Norwegian case regarded a specific measure and not general State climate policy, and

[85] Norwegian Supreme Court, §§ 20–29.
[86] Norwegian Supreme Court, § 43.
[87] Norwegian Supreme Court, §§ 164–165.
[88] In Norwegian, "aktuel og nærliggende risiko for liv", Norwegian Supreme Court, § 166.
[89] Norwegian Supreme Court, §§ 167–168.
[90] In Norwegian "direkte og tidsnær" Norwegian Supreme Court, § 170.
[91] Norwegian Supreme Court, § 171.

claims of an existing common ground in the ECHR on environmental issues. In total, the Court concluded that no breach of the ECHR had been found. Finding the resolution in line with domestic legislation, the Court finally dismissed the appeal.[92]

[92] Norwegian Supreme Court, § 251. Although some judges were of a somewhat dissenting opinion, they still supported the ECHR reasoning, cf. §§ 254, 289–291.

4 Analysis

Let us start with recalling the already made analytical points relating to posed sub-questions. First, due to the 'living instrument doctrine', the ECHR can theoretically be extended to deal with climate change issues. Second, the environmental protection offered by Articles 2 and 8 in theory enables the interpretation of positive obligations existing *ex-ante* and this protection can be applied in situations where the risk only is presumed.[93] However, as the, evidently quite disparate, ECtHR case-law shows, the protection entailed, primarily by Article 8, can take two directions differencing in the conceived protection's width.[94] Third, the lack of an *ex post facto* situation, *inter alia*, blurs the assessment of individuals being in the state of risk required for a potential a violation.[95]

With all this in mind, the spread of results in the domestic cases comes as no surprise. However, some points are noteworthy. By linking current climate change measures to the ECHR protection, the *Urgenda* case stands out the most. By holding that Dutch citizens in general are exposed to dangerous climate change impacts, i.e. that all are in a relevant state of risk, unlike other commentators, I do not view it as an *actio popularis* case.[96] However, the Dutch Court's overall creative argumentation, hefty use of analogies, and largely extended interpretation of an applicable time-frame giving rise to positive obligations, show the length needed to go in order to extend the ECHR to climate change issues.

As the other two cases show, not all courts are willing to go as far. Here, temporal questions relating to the prospective nature of climate change and its causing's long extension over time played a big part. In the *Swiss Senior* case, the Swiss Court could be understood as simply stating that the Swiss government is acting in accordance with its Paris Agreement obligation. However, the Swiss Court's rather peculiar interpretation of that obligation in terms of aiming at not allowing the temperature targets of the Paris Agreement to be exceeded earlier than around 2040 (instead of never or at least in a foreseeable future) and that climate risks, at the time of the ruling, thus were not constituting a legally relevant threat because of that time gap, show how temporal questions were decisive.

[93] See section 2.2.1.
[94] See section 2.3.
[95] See section 2.2.1. and 2.3.
[96] Cf. Leijten (2018) p. 116.

In the *People* case, due to it regarding a specific measure and the wide margin of appreciation allowed in environmental issues established in the ECtHR case-law, the Norwegian Court was able to align with the Dutch Court and hold that climate change in general can give rise to ECHR violations, but still that the measure in question was lawful. However, by grounding its decision on the less protective direction of the ECtHR case-law and being reluctant to give a wide interpretation of the risk element conditions (crucially, interpreting the temporal aspect of both the existence of risk *and* its materialization as 'imminent'), the Norwegian Court followed the Swiss Court in an another example dismissing the applicability of the ECHR in climate issues because of temporal aspects.

In sum, we can conclude that although none of the courts denied the dangerous implications climate change presumably will have, the sides trying to persuade the courts of there being a link to and potential violation of Articles 2 and 8, were often seriously hampered by the fact that the dangers still lie in the future and the risk conditions could not be met.

Was the Swiss and Norwegian Courts correct when rejecting in general that the threat of climate change can give rise to positive obligations at the moment? I think not, instead here is how I think that the risk conditions ought to be interpreted:

(i) By generating long-standing, potentially irreversible effects that are global in scope and endangers a number of human rights in a number of ways, and recalling the contextual conditions laid out in *Fadeyeva*, like few other phenomena, climate change constitutes a severe threat.

(ii) The still prospective nature of dangerous climate change implications to individuals ought to be seen as an opportunity to avoid those implications, instead of merely an opportunity to postpone the implications, as was argued in the *Swiss Senior* case.

(iii) The foreseeability of a risk can give rise to positive obligations despite there being a gap in time between when the State gains knowledge about the risk in question and the risk's materialization, as seen in e.g. *Budayeva*.

(iv) Together, the severity of risk and the 'opportunity to avoid' view, constitute strong reasons to extend the temporal interpretation, i.e. the time-scale, used in *Budayeva*, thus securing the 'safeguarding function' of the ECHR often cited by the ECtHR.

(v) Hence, the ECHR ought to be interpreted as already giving rise to positive obligations of combatting climate change, and by not fulfilling those, the States can be shown as violating Articles 2 and 8.

5 Conclusion

As now shown, climate change constitutes a threat to the human rights protected by Articles 2 and 8. Further, the environmental protection of the ECHR related to individuals can in theory and in practice–exemplified by the *Urgenda* case–be extended to climate change issues and generate State responsibility in terms of positive obligations to take certain climate change combatting measures. However, depending on the courts choice of direction within the ECtHR case-law, and, crucially, how the 'real and immediate'/'direct and severe' risk conditions are interpreted (without *ex post facto* situations), the existence of the required prospective protection offered remains in practice at large highly unclear.

As for the suitability of the ECHR in climate matters, we can now state the divisive conclusion that in theory the protection can be quite well-suited as none of the challenges to the existence of a protection need to be insurmountable and there are good reasons to extend the protection, but in practice it still remains unclear, largely due to conflicting interpretations of the Articles' risk conditions.

As witnessed in *Urgenda*, to cover climate change cases, the ECHR requires a quite far-reaching stretch. As such, it is understandable that the case launched a discussion of how far the power of courts go. That discussion, along with this thesis' topically close related questions of standing, the extent of the protection, and remedies are examples of topics in need of further examination in order to fully answer the suitability question.

Clear nonetheless is that it sure is about time to upscale our response to climate change. About time are also the central questions relating to the existence of ECHR climate change protection. However, how the upscaling will go and the questions will be answered by the ECtHR, only time can tell.

Bibliography

Literature

Bodansky, Daniel, Brunnée, Jutta & Rajamani, Lavanya, *International climate change law*, Oxford University Press, Oxford, 2017.

Braig, Katharina Franziska, and Stoyan Panov. "The Doctrine of Positive Obligations as a Starting Point for Climate Litigation in Strasbourg: The European Court of Human Rights as a Hilfssheriff in Combating Climate Change?." *J. Envtl. L. & Litig.* 35 (2020): 261.

de Sadeleer, Nicolas. "The precautionary principle and climate change." *Elgar Encyclopedia of Environmental Law*. Edward Elgar Publishing Limited, 2016. 20-31.

Dzehtsiarou, Kanstantsin. "What is law for the European Court of Human Rights." *Geo. J. Int'l L.* 49 (2017): 89.

Ebbesson, Jonas. "Klimatprocesser mot staten–runt om i världen och i Sverige." *Juridisk Tidskrift* (2020): 106-137.

Fisher, Elizabeth, Eloise Scotford, and Emily Barritt. "The legally disruptive nature of climate change." *The Modern Law Review* 80.2 (2017): 173-201.

Francioni, Francesco. "International human rights in an environmental horizon." *European Journal of International Law* 21.1 (2010): 41-55.

Heiskanen, Heta. "Climate change and the European Court of Human Rights: Future potentials." *Routledge handbook of human rights and Climate governance*. Routledge, 2018. 319-324.

Hellner, Agnes. "Klimatrelaterad strategisk processföring: Nederländska Urgenda, norska Klimasøksmålet och svenska Preemraff i ett jämförande perspektiv." *Förvaltningsrättslig Tidskrift* 3 (2020): 401-426.

Karlsson Niska, Therese. "Climate Change Litigation and the European Court of Human Rights-A Strategic Next Step?." *The Journal of World Energy Law & Business* 13.4 (2020): 331-342.

Kleineman, Jan, ”Rättsdogmatisk metod” i Nääv, Maria & Zamboni, Mauro (red.), Juridisk metodlära, 2:a uppl. Lund: Studentlitteratur, 2018.

Knox, John H. "Bringing Human Rights to Bear on Climate Change." *Climate Law* 9.3 (2019): 165-179.

Knox, John H. "Climate change and human rights law." *Virginia Journal of International Law.* 50 (2009): 163.

Leijten, Ingrid. "Human rights v. Insufficient climate action: The Urgenda case." *Netherlands Quarterly of Human Rights* 37.2 (2019): 112-118.

Liston, Gerry. "Enhancing the efficacy of climate change litigation: how to resolve the ‘fair share question’in the context of international human rights law." *Cambridge International Law Journal* 9.2 (2020): 241-263.

Pedersen, Ole W. "The European Court of Human Rights and International Environmental Law." *The Human Right to a Healthy Environment* 18 (2018): 86.

Pedersen, Ole W. "The networks of human rights and climate change: The State of the Netherlands v Stichting Urgenda, Supreme Court of the Netherlands, 20 December 2019 (19/00135)." *Environmental Law Review* 22.3 (2020): 227-234.

Peel, Jacqueline, and Hari M. Osofsky. "A rights turn in climate change litigation?." *Transnational Environmental Law* 7.1 (2018): 37-67.

Peters, Birgit. "Unpacking the diversity of procedural environmental rights: the European Convention on Human Rights and the Aarhus Convention." *Journal of Environmental Law* 30.1 (2018): 1-27.

Peters, Birgit. "The European Court of Human Rights and the environment." *International Courts and Tribunals and the Protection of the Environment, Mead/Samson/Sobenes (eds.) Asser Press, Forthcoming* (2020).

Sands, Philippe, Peel, Jacqueline, Fabra Aguilar, Adriana & MacKenzie, Ruth, *Principles of international environmental law*, Fourth edition., Cambridge University Press, Cambridge, 2018.

Savaresi, Annalisa, and Juan Auz. "Climate change litigation and human rights: pushing the boundaries." *Climate Law* 9.3 (2019): 244-262.

Scott, Matthew. "Natural disasters, climate change and non-refoulement: What Scope for Resisting Expulsion under Articles 3 and 8 of the European Convention on Human Rights?." *International Journal of Refugee Law* 26.3 (2014): 404-432.

Stoyanova, Vladislava. "Fault, knowledge and risk within the framework of positive obligations under the European Convention on Human Rights." *Leiden Journal of International Law* 33.3 (2020): 601-620.

Wewerinke-Singh, Margaretha. "State responsibility for human rights violations associated with climate change." *Routledge handbook of human rights and climate governance*. Routledge, 2018. 75-89.

Yoshida, Keina, and Joana Setzer. "The trends and challenges of climate change litigation and human rights." *European Human Rights Law Review* 2020.2 (2020): 140-152.

Climate Change Litigation Report

Setzer J and Byrnes R (2020) *Global trends in climate change litigation: 2020 snapshot*. London: Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science.

Scientific Basis on Climate Change

Scientific Reports

IPCC, 2018: Summary for Policymakers. In: *Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty* [Masson-Delmotte, V., P. Zhai, H.-O. Pörtner, D. Roberts, J. Skea, P.R. Shukla, A. Pirani, W. Moufouma-Okia, C. Péan, R. Pidcock, S. Connors, J.B.R.

Matthews, Y. Chen, X. Zhou, M.I. Gomis, E. Lonnoy, T. Maycock, M. Tignor, and T. Waterfield (eds.)]. In Press.
United Nations Environment Programme (2020). *Emissions Gap Report 2020*. Nairobi.

Electronic source

European Commission. Climate Change Consequences. *European Commission.* https://ec.europa.eu/clima/change/consequences_en (Accessed 20 May 2021).

Official Documents

Council of Europe European Court of Human Rights, Press Unit, *Factsheet – Environment and the European Convention of Human Rights,* April 2021. https://www.echr.coe.int/documents/fs_environment_eng.pdf (accessed 20 May 2021).
Council of Europe: European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2020. https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf (accessed 20 May 2021).
Council of Europe: European Court of Human Rights, *Practical Guide on Admissibility Criteria*, 28 February 2021. https://www.echr.coe.int/documents/admissibility_guide_eng.pdf (accessed 20 May 2021).

International Treaties

Paris Agreement to the United Nations Framework Convention on Climate Change (adopted 12 December 2015, entered into force 4 November 2016) XXVII UNTS 7.d.

Miscellaneous

European Court of Human Rights: Judicial Seminar, *The Convention as a Living Instrument at 70. Background Document*, 2020. https://www.echr.coe.int/Documents/Seminar_background_paper_2020_ENG.pdf (accessed 20 May 2021).

Table of Cases

The European Court of Human Rights

Budayeva and Others v. Russia, nos. 15339/02 and 4 others, ECHR 2008.
Cordella and Others v. Italy, nos. 54414/13 and 54264/15, 24 January 2019.
Demir and Baykara v. Turkey [GC], no. 34503/97, ECHR 2008.
Fadeyeva v. Russia, no. 55723/00, ECHR 2005-IV.
Hatton and Others v. the United Kingdom [GC], no. 36022/97, ECHR 2003-VIII.
Ivan Atanasov v. Bulgaria, no. 12853/03, 2 December 2010.
Kolyadenko and Others v. Russia, nos. 17423/05 and 5 others, 28 February 2012.
López Ostra v. Spain, 9 December 1994, Series A no. 303-C.
McCann and Others v. the United Kingdom, 27 September 1995, , Series A no. 324.
Öneryıldız v. Turkey [GC], no. 48939/99, ECHR 2004-XII.
Soering v. the United Kingdom, 7 July 1989, Series A no. 161.
Taşkın and Others v. Turkey, no. 46117/99, ECHR 2004-X.
Tătar v. Romania, no. 67021/01, 27 January 2009.

Pending Cases

Duarte Agostinho and Others v. Portugal and Others (communicated case) - 39371/20 (December 2020).
Verein Klimaseniorinnen Schweiz and others v. Switzerland (communicated case) - 53600/20 (April 2021).

Domestic Court Cases

Federal Supreme Court, Public Law Division I – Judgment 1C_37/2019 of 5 May 2020 Verein KlimaSeniorinnen Schweiz et al. v. DETEC – Ruling on real acts relating to climate protection. An unofficial translation of the ruling can be found here: http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200505_No.-A-29922017_judgment.pdf (accessed 20 May 2021).
HR-2020-2472-P, (case no. 20-051052SIV-HRET) Appeal from the Borgarting Court of Appeal judgment of 23 January 2020. The ruling can be found in Norwegian here: https://www.domstol.no/globalassets/upload/hret/avgjorelser/2020/desember-2020/hr-2020-2472-p.pdf (accessed 20 May 2021).
Urgenda v de Staat der Nederlanden AppNo.19/00135), Supreme Court of the Netherlands, judgment of 20 December. An unofficial translation of the ruling can be found here: https://www.urgenda.nl/wp-content/uploads/ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf (accessed 20 May 2021).