B. State(s) against which the application is directed

17. Tick the name(s) of the State(s) against which the application is directed.

- [ ] ALB - Albania
- [ ] AND - Andorra
- [ ] ARM - Armenia
- [x] AUT - Austria
- [ ] AZE - Azerbaijan
- [x] BEL - Belgium
- [x] BGR - Bulgaria
- [ ] BIH - Bosnia and Herzegovina
- [x] CHE - Switzerland
- [x] CYP - Cyprus
- [x] CZE - Czech Republic
- [x] DEU - Germany
- [x] DNK - Denmark
- [x] ESP - Spain
- [x] EST - Estonia
- [x] FIN - Finland
- [x] FRA - France
- [x] GBR - United Kingdom
- [ ] GEO - Georgia
- [x] GRC - Greece
- [x] HRV - Croatia
- [x] HUN - Hungary
- [x] IRL - Ireland
- [ ] ISL - Iceland
- [x] ITA - Italy
- [ ] LIE - Liechtenstein
- [x] LTU - Lithuania
- [x] LUX - Luxembourg
- [x] LVA - Latvia
- [ ] MCO - Monaco
- [ ] MDA - Republic of Moldova
- [ ] MKD - North Macedonia
- [x] MLT - Malta
- [ ] MNE - Montenegro
- [x] NLD - Netherlands
- [x] NOR - Norway
- [x] POL - Poland
- [x] PRT - Portugal
- [x] ROU - Romania
- [x] RUS - Russian Federation
- [ ] SMR - San Marino
- [ ] SRB - Serbia
- [x] SVK - Slovak Republic
- [x] SVN - Slovenia
- [x] SWE - Sweden
- [x] TUR - Turkey
- [x] UKR - Ukraine

Subject matter of the application

All the information concerning the facts, complaints and compliance with the requirements of exhaustion of domestic remedies and the six-month time-limit laid down in Article 35 § 1 of the Convention must be set out in this part of the application form (sections E, F and G). It is not acceptable to leave these sections blank or simply to refer to attached sheets. See Rule 47 § 2 and the Practice Direction on the Institution of proceedings as well as the "Notes for filling in the application form".

E. Statement of the facts

58.

AN EMERGENCY LIKE NO OTHER

1. In November 2019, over 11,000 scientists declared "clearly and unequivocally that planet Earth is facing a climate emergency" (Bundle, p.466). More recently, leading scientists warned that climate change poses "an existential threat to civilization" (p.277) and in a joint report the World Health Organization, UNICEF and Lancet noted environmental threats that "jeopardise the future for children on this planet" (p.473). This is the context for this application.

THE APPLICANTS

2. The Applicants are four Portuguese children (Sofia, born [redacted]; André, born [redacted]; Martim, born [redacted]; Mariana, born [redacted]) and two young adults (Cláudia, born [redacted]; Catarina, born [redacted]). They allege that the Respondents are breaching their Convention rights through their respective contributions to climate change. Their statements are attached as documents 13-18.

THE INTERNATIONAL CLIMATE CHANGE LEGAL FRAMEWORK: KEY PRINCIPLES

3. In 2015, the Conference of the Parties to the UN Framework Convention on Climate Change ('UNFCCC') adopted the Paris Agreement on climate change. Article 2 of the Paris Agreement commits the 195 parties which have ratified it (including each of the Respondents except Turkey, which is nonetheless a signatory) to aiming to hold "the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change" ('1.5°C target').

4. The Paris Agreement provides for the achievement of this target through a "bottom-up" approach according to which each party "must prepare, communicate and maintain successive nationally determined contributions that it intends to achieve" (Article 4(2)). Each successive nationally determined contribution ('NDC') must "represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (Article 4(3)). An NDC must be communicated by parties every five years (Article 4(9)). Each of the Respondents has submitted its first NDC, except Turkey and Russia which have nonetheless submitted "intended" NDCs; the EU has submitted a single NDC for all of its Member States. The Paris Agreement does not prescribe a specific approach to distributing among its parties the global burden of keeping global warming to the target enshrined in Article 2.

CLIMATE CHANGE: ITS CAUSES, CURRENT TRAJECTORY AND THE MEASURES REQUIRED TO MEET THE 1.5°C TARGET

5. The Summary for Policymakers of the Intergovernmental Panel on Climate Change's ('IPCC') 2018 'Special Report on Global Warming of 1.5°C' (doc.1; 'SR1.5') states: "Human activities are estimated to have caused approximately 1.0°C of global warming above pre-industrial levels, with a likely range of 0.8°C to 1.2°C [...] (high confidence)" (p.4; para. A.1). The activities concerned involve either release of greenhouse gas emissions (hereafter "emissions") into the atmosphere or destruction of "carbon sinks" which absorb such gases, in particular carbon dioxide. Furthermore, as the former UN Secretary-General Ban Ki-moon has stated, "emissions released anywhere contribute to [climate change] everywhere".

6. According to SR1.5, "[p]athways reflecting current nationally stated mitigation ambition until 2030 are broadly consistent with cost-effective pathways that result in global warming of about 3°C by 2100 [...] (medium confidence)" (p.18; para. D.1.1). The Climate Analytics report, 'Climate Impacts in Portugal' (doc.10; 'Expert Report') further identifies global warming of 4.1°C by 2100 as falling within the likely (i.e. 66% probability) temperature range according to a pathway based on the measures to reduce emissions ('mitigation measures') currently adopted worldwide (p.532?). According to the same pathway there exists a 17% possibility of warming exceeding that range (p.532?) These probabilities reflect the uncertainties as to the response of the climate system to emissions (p.532?). SR1.5 also states that "[g]lobal warming is likely to reach 1.5°C between 2030 and 2052 if it continues to increase at the current rate (high confidence)" (p.4; para. A.1). According to the Expert Report, the global mean temperature increase "will exceed 1.5°C around the year 2035 (model median) and 2°C around the year 2055; by 2100 it will have exceeded 3°C" (pp.532-533).

Statement of the facts (continued)

59.
7. Furthermore, while “[w]arming from anthropogenic emissions from the pre-industrial period to the present will persist for centuries to millennia and will continue to cause further long-term changes in the climate system, such as sea level rise, with associated impacts (high confidence), [...] these emissions alone are unlikely to cause global warming of 1.5°C (medium confidence)” (p.5/SR1.5, para.A.2). However, “[p]athways limiting global warming to 1.5°C with no or limited overshoot would require rapid and far-reaching transitions in energy, land, urban and infrastructure [sic.] (including transport and buildings), and industrial systems (high confidence)” (p.15/SR1.5, para.C.2) with "global CO2 emissions start[ing] to decline well before 2030 (high confidence)" (p.18/SR1.5, para.D.1).

8. According to the UN Environment Programme's ('UNEP') ‘Emissions Gap 2019’ report (doc.6), annual global emissions levels have risen by 1.5% year-on-year over the last decade with emissions levels reaching a record high in 2018 (pp.291, 306). Inger Andersen, the UNEP Executive Director, stated in a foreword to the report that "[o]ur collective failure to act strongly and early means that we must now implement deep and urgent cuts" (p.290). The report also found that “the required cuts in emissions are now [...] 7.6 per cent per year on average for the 1.5°C goal” (pp.297, 329). In its 2019 "Lessons from a decade of emissions gap assessments report" (doc.4), the UNEP stated that “the policies and technologies needed to bridge the gap [between current emissions levels and the level consistent with achieving the Paris Agreement target of 1.5°C] are readily available and at limited costs” but “unprecedented and immediate action is required" (p.263).

THE CONTRIBUTIONS OF THE RESPONDENTS TO CLIMATE CHANGE

9. States contribute to climate change by inter alia (a) permitting release of emissions within national territory and offshore areas over which they have jurisdiction (hereafter referred to collectively as States’ territory); (b) permitting export of fossil fuels extracted on their territory; (c) permitting import of goods the production of which involves release of emissions into the atmosphere; and (d) permitting entities within their jurisdiction to contribute to the release of emissions overseas, e.g. through their extraction of fossil fuels overseas or by financing such extraction (see Application Form, paras. 3-5 and docs.6, 7).

10. Each of the Respondents has contributed to climate change through the release of emissions from its territory. Furthermore, while each of the Respondents has adopted climate change mitigation measures, each of the Respondents continues to contribute to global emissions in this way and will continue to do so in the future.

11. According to the International Energy Agency's World Energy Balances 2019 report (doc.3), each of the Respondents bar Cyprus export fossil fuels. None of these Respondents has adopted adequate legislative or administrative measures that regulate such exports to keep global warming to 1.5°C.

12. None of the Respondents has adopted adequate legislative or administrative measures which mandate the off-setting of emissions released through the production of goods that they import (or the restriction of such imports).

13. None of the Respondents has adopted adequate legislative or administrative measures which restrict the extent to which entities within their jurisdiction may contribute to the release of emissions overseas.

IMPACTS OF CLIMATE CHANGE UPON THE APPLICANTS

14. The effects of climate change include harm to human health. According to the IPCC (in SR1.5), “[a]ny increase in global warming is projected to affect human health, with primarily negative consequences (high confidence). Lower risks are projected at 1.5°C than at 2°C for heat-related morbidity and mortality (very high confidence) [...]. Urban heat islands often amplify the impacts of heatwaves in cities (high confidence). Risks from some vector-borne diseases, such as malaria and dengue fever, are projected to increase with warming from 1.5°C to 2°C, including potential shifts in their geographic range (high confidence)” (p.9/para.B.5.2). Impacts on natural and human systems from global warming “have already been observed (high confidence)” (p.5/para.A.3.1).

15. Regarding the possibility of adapting to such impacts, the IPCC (in SR1.5) states that “[l]imits to adaptive capacity exist at 1.5°C of global warming, become more pronounced at higher levels of warming and vary by sector, with site-specific implications for vulnerable regions, ecosystems and human health (medium confidence)” (p.10/para. B.6.3).

16. The vulnerability of the Applicants to climate change impacts is outlined in the Expert Report. Portugal is already experiencing a range of climate change impacts including increases in mean and extreme high temperatures (p.528). Heatwaves are becoming more frequent as a direct consequence of general mean warming trends (p.540). During a

Statement of the facts (continued)

60.
heatwave in 2018, unprecedented absolute temperatures were recorded with Lisbon surpassing its previous temperature record of 42°C by 2°C. During the 2019 heatwave, absolute temperature records were broken again (p.540). In a 3°C warmer climate compared to pre-industrial times, a current 1-in-50-year heatwave may occur almost annually in parts of Portugal (p.543).

17. The yearly average number of heatwaves in Portugal is projected to increase by 7 to 9-fold by 2100 under a global warming scenario that is possible on the basis of current emissions levels, with the average length of such heatwaves increasing from 5 to 22 days throughout this century and 5% being more than 30 days (p.543). The number of tropical nights is expected to increase from 7 to 60 per annum (p.534).

18. Heatwaves are a major driver of wildfires (pp.543-545). During the extreme wildfires of 2017, which were preceded by a heatwave, a record 500,000 hectares were burned in Portugal with 120 human lives lost (p.544). Future warming will increase the number, duration and amplitude of heatwaves and thus wildfires in Portugal (p.545).

19. Abrupt increases in temperature cause fatal illness, such as heat stress, and increase death rates from respiratory diseases (p.560). Studies project a several-fold increase in the heat mortality rate in Portugal this century as a result of climate change (p.561). In Western Europe, it is projected that the number of deaths due to heatwaves will increase by around 3,000% in the period 2071-2100 relative to the period 1981-2010, under a warming scenario consistent with the current trajectory (p.561).

20. Ozone and particulate matter are airborne pollutants that are sensitive to changes in weather conditions, and which cause a broad range of health effects but mostly impact the respiratory and cardiovascular systems (p.565). The level of these pollutants, as well as aeroallergens such as pollen, in the atmosphere over Portugal is projected to increase with global warming (pp.566-567), exacerbating the various respiratory conditions from which Sofia, André, Catarina and Martim respectively suffer (see Statements/docs.13-18).

21. The Applicants are currently exposed to a risk of harm from climate change, in particular from increased heat and its associated consequences. This risk is set to increase significantly over the course of their lifetimes and will also affect any children they may have. The Applicants have already experienced reduced energy levels, difficulty sleeping and a curtailment on their ability to spend time or exercise outdoors during recent heatwaves.

22. Sofia and André live in Lisbon and Cláudia, Martim, Mariana and Catarina live in the district of Leiria, in the Centro region of Portugal. Both of these areas face an increase in extreme fire risk (pp.546-547). The 2017 wildfires came very close to Catarina's home as well as Cláudia, Martim and Mariana's family home; the garden of the latter was covered in ash. They also made Sofia and André anxious and upset. Similarly, Cláudia, Martim, Mariana and Catarina were horrified to know that people were being killed close to their home by these fires. Martim was unable to attend school for several days because of the amount of smoke in the air. The Applicants experience anxiety about the effects which climate change may have on them and their families, and the families they hope to have in future (Statements/docs.13-18).

23. That the Applicants face risks to their lives and wellbeing from climate change of the kinds outlined above is further supported by a report of the European Academies Science Advisory Council entitled "The imperative of climate action to protect human health in Europe" (doc.2). Notably, in the current context, this report highlights inter alia the propensity for climate change to increase the risk of spread of infectious diseases, including zoonotic diseases (pp.50-53; see also Expert Report, p.568).

F. Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments

61. Article invoked	Explanation
Articles 2 and 8	24. Article 2 imposes an obligation on States "to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life" (Öneryildiz v Turkey; App no 48939/99, ECtHR GC 30 November 2004, §89). Whenever a State authorises dangerous activities, it must ensure through a system of rules and through sufficient control that the risk is reduced to a reasonable minimum (Mučibabić v Serbia; App no 34661/07, ECtHR 12 July 2016, §126). 25. Article 8 requires reasonable and sufficient measures capable of protecting the right to a private life, a home and, more generally, a healthy, protected environment (Tatar v Romania; App no 67021/01, ECtHR 27 January 2009, §107). This positive obligation applies where there exists a serious and substantial threat to the health and well-being of persons (Tatar, §107), such as from release of hazardous emissions (e.g. Fadeyeva v Russia; App no 55723/00, ECtHR 9 June 2005). An obligation to prevent harm associated with an environmental hazard may arise under Article 8 specifically where it "attains a level of severity resulting in significant impairment of the applicant's ability to enjoy his home, private or family life" (Dubetska v Ukraine; App no 30499/03, ECtHR 10 February 2011, §105). The Court in Dubetska also noted that "[t]he assessment of that minimum level is relative and depends on all the circumstances of the case, such as the intensity and duration of the nuisance and its physical or mental effects on the individual's health or quality of life" (§105). In the context of dangerous activities "the scope of the positive obligations under Article 2 of the Convention largely overlap with those under Article 8" (Budayeva v Russia; App nos 15339/02 etc., ECtHR 29 September 2008, §133). 26. As regards both Article 2 and Article 8, the above duties apply to risks that may only materialise in the longer term/several decades into the future (Öneryildiz, §§98-101; Budayeva, §§147-158; Kolyadenko et al v Russia; App nos 17423/05 etc., ECtHR 9 July 2012, §§174-180; Taşkin and others v Turkey, §§107, 111-114). 27. These duties are triggered by each Respondent's contributions to emissions, including the types of activities to which para.9 above refers. As to interference with the rights/interests under Articles 2 and/or 8 of the Applicants specifically, climate change entails a current impact upon and risk to the lives and health of the Applicants. On the basis of the projected trajectory of climate change, this interference will progressively intensify over the course of their lifetimes. The current and future effects of climate change in Portugal were addressed above (inter alia paras.14-23). As noted above, the increased frequency and intensity of heatwaves in Portugal interferes with the Applicants' ability to sleep, exercise and spend time outdoors, and causes them anxiety about its potential impacts (both on them and the families they hope to have). Given that these interferences stand to intensify over the course of the entire lifetimes of the Applicants, they far exceed each of the thresholds that trigger the application of the general duties under Article 2 and/or 8. The related issue of the Applicants' status as 'victims' of each Respondent, within the meaning of Article 34, is addressed in the accompanying Annex (paras.7-13). Furthermore, the Applicants are within the 'jurisdiction' of each of the Respondents for present purposes (see Annex paras.14-25). 28. As per Demir & Baykara v Turkey (App no 34503/97, ECtHR GC, 12 November 2008, §§85, 86) the Court can and must take into account elements of international law in applying the Convention. The content of the Respondents' obligations under Articles 2 and/or 8 to mitigate climate change ought to be interpreted consistently with Article 2 of the Paris Agreement, regarding the need to limit global warming to the 1.5°C target, in order to prevent "significant deleterious effects [...] on human health and welfare" (UNFCCC Arts. 1(1), 3). Such effects could not be considered "necessary in a democratic society". Their duties to child Applicants must be interpreted in harmony with Article 3(1) of the UN Convention on the Rights of the Child, which provides: "In all actions concerning children, whether undertaken by public or private social welfare

Statement of alleged violation(s) of the Convention and/or Protocols and relevant arguments (continued)

62. Article invoked	Explanation
	institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration" (Neulinger v Switzerland; App no 41615/07, ECtHR GC 6 July 2010, §132). The Respondents' duties under the ECHR (and meaning of 'victim' under Article 34), ought to be interpreted in harmony as well with the principle of intergenerational equity, which "places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs" (see e.g., Principle 3 of the Rio Declaration on Environment and Development, 1992; UNFCCC Art. 3(1); preamble to the Paris Agreement). The Respondents' obligations under Articles 2 and 8 to prevent harm from climate change must also be understood in light of the precautionary principle (e.g. as to Article 8, Tatar, §120). This requires that mitigation measures be consistent with the need to prevent risks associated with the possible responses of the climate system to emissions that would result in higher warming levels and therefore more extreme impacts (see Statement of Facts, para.8). The Respondents are also required to adequately regulate their contributions to climate change of the types identified above at para.9(b)-(d) notwithstanding the fact that they materialise outside their territory (Ilaşcu and others v. Moldova & Russia; App no 48787/99, ECtHR 8 July 2004, §§317, 331; UN Committee on Economic, Social and Cultural Rights (2017), General Comment No. 24 (2017) (E/C.12/GC/24), §26; UN Human Rights Committee (2018), General Comment No. 36 (2018) (CCPR/C/GC/36), §22). 29. The Respondents have breached the above duties to the Applicants. The systemic duty requires not only the mere existence of appropriate systems, but also that they are put into practice, and are effective (e.g., Moreno Gomez v Spain; App no 4143/02, ECtHR 16 November 2004, §56). It follows that assessment of compatibility of a state's mitigation measures with the 1.5°C target must be based upon the emissions reductions actually entailed by those measures, including emissions that materialise outside their territory. Given that global warming is on course to vastly exceed the 1.5°C target, the Respondents' mitigation measures must be presumed inadequate; uncertainty as to each Respondent's 'fair share' of the global mitigation effort required to meet the 1.5°C target is to be resolved in favour of the Applicants: see Annex paras.26-34. Regarding contributions to global emissions of the kind identified at para.9(b)-(d), paras.11-13 are repeated. Failure to limit through regulation contributions of these types is per se a violation of the above duties. Further and in any event, for the reasons outlined in para. 29 (and Annex paras. 26-34), all contributions of this kind must be presumed excessive and uncertainty as to each Respondent's 'fair share', insofar as this question applies to such contributions, must be resolved in favour of the Applicants. 30. The effects upon the Applicants, set out above, cannot be justified as "necessary in a democratic society" or otherwise. The Applicants (being 'victims' per Annex paras.7-13) therefore, discharge their burden of showing the inadequacy of each Respondent's mitigation measures, unless/until it demonstrates the contrary.
Article 14 (taken together with Article 2 and/or Article 8)	31. Age is an "other status" under Article 14 (Schwizgebel v Switzerland; App no 25762/07 ECtHR 10 June 2010). There must not be a material difference in the treatment of persons in analogous, or relevantly similar, situations. Such difference is discriminatory if it does not pursue a legitimate aim or if it is disproportionate as regards that aim (Burden v United Kingdom; App no 13378/05, 29 April 2008, §60). The Respondents are in breach of Article 14, taken together with Article 2 and/or 8. The Applicants repeat their submissions as to breach of Articles 2 and 8, and contend that because of their age, the material interferences with their rights under Article 2 and/or Article 8 are greater than upon older generations, not only because they will live longer, but also because the impacts of climate change will worsen over time. There is no objective and reasonable justification for shifting the burden of climate change onto younger generations by adopting inadequate mitigation measures.

G. Compliance with admisibility criteria laid down in Article 35 § 1 of the Convention

For each complaint, please confirm that you have used the available effective remedies in the country concerned, including appeals, and also indicate the date when the final decision at domestic level was delivered and received, to show that you have complied with the six-month time-limit.

63. Complaint	Information about remedies used and the date of the final decision
Breach of Articles 2, 8, and/or 14	32. There is no adequate domestic remedy reasonably available to the Applicants for the following reasons: a) First, the Applicants' claim relates to the violations of their Convention rights cumulatively caused, in part, by the contributions of all of the Respondents to climate change, and the urgency of the matter prevents, in practice, pursuit of an adequate remedy in each and every Respondent State's domestic courts: A Portuguese court could not determine their complaint against the 32 Respondents other than Portugal (see, for example, Jones and others v. United Kingdom; App no 34356/06 & 40528/06, ECtHR 14 January 2014). Nor could it impose an enforceable remedy on the Respondents other than Portugal. It is not suggested that climate change is a problem that can only be addressed by the Court (or that it cannot be addressed by domestic courts). On the contrary, it follows from the arguments advanced herein that domestic courts in the Respondent States can and must provide an adequate remedy in respect of shortcomings in climate change mitigation measures. However, there is an extremely limited amount of time available to take the steps necessary to prevent global warming from exceeding 1.5°C. The adequacy of the remedy at the domestic level for the Respondents' combined contributions to the risk of harm from climate change is contingent upon every one of their domestic courts providing an adequate remedy in relation their own State's contributions. The likelihood of every one of the Respondents' domestic courts providing such a remedy in time to prevent global warming exceeding 1.5°C will be greatly enhanced if the ECtHR recognises that the Respondents share presumptive responsibility for climate change. There is an exceptional need for the Court to provide such recognition as a matter of urgency and therefore to absolve the Applicants from the requirement to exhaust domestic remedies before each of the Respondents' domestic courts. For context, an overview of the legal challenges brought, on human rights grounds, to the mitigation efforts of several of the Respondents in their domestic courts is provided in the accompanying Annex. b) Second, the Applicants are children/young adults from families of modest means: Requiring them to exhaust domestic remedies would involve them having to pursue proceedings to their final conclusion in each of the Respondent States - assuming they have standing to do so in the Respondent States other than Portugal - all while resident in Portugal. Such a requirement would be contrary to the principle that the exhaustion of domestic remedies rule ought not to be applied in a manner that would impose an unreasonable or disproportionate burden on an applicant (e.g. McFarlane v Ireland; App no 31333/06, ECtHR GC 10 September 2010, §124; Gaglione & ors. v Italy; App nos 45867/07 & ors, ECtHR 21 December 2012, §22.). 33. The Applicants' claim is within the six-month time-limit as it concerns a continuing situation (Sabri Güneş v Turkey; App no 27396/06, ECtHR GC 29 June 2012).

- Please ensure that the information you include here does not exceed the page allotted -

64. Is or was there an appeal or remedy available to you which you have not used?

- ○ Yes
- ◉ No

65. If you answered Yes above, please state which appeal or remedy you have not used and explain why not

See above.

H. Information concerning other international proceedings (if any)

66. Have you raised any of these complaints in another procedure of international investigation or settlement?

- ○ Yes
- ◉ No

67. If you answered Yes above, please give a concise summary of the procedure (complaints submitted, name of the international body and date and nature of any decisions given)

68. Do you (the applicant) currently have, or have you previously had, any other applications before the Court?

- ○ Yes
- ◉ No

69. If you answered Yes above, please write the relevant application number(s) in the box below

ANNEX

STATEMENT OF THE FACTS

1. This section supplements the content of section E of the Application Form.

2. According to Michelle Bachelet, the UN High Commissioner for Human Rights, "[t]he world has never seen a threat to human rights of this scope" as that posed by climate change.[1] The UN Special Rapporteur on extreme poverty and human rights, Philip Alston, has indicated that "human rights might not survive the coming upheaval" if climate change is allowed to continue on its current course.[2] On 28 November 2019 the European Parliament declared "a climate and environment emergency".[3]

3. According to the 2019 *Production Gap* report, "[g]overnments [worldwide] are planning to produce about 50% more fossil fuels by 2030 than would be consistent with a 2°C pathway and 120% more than would be consistent with a 1.5°C pathway".[4] Russia, Norway, Germany, Poland and the United Kingdom are listed among "[t]wenty-seven countries [which] produce the coal, oil, and gas that ultimately lead to 90% of global fossil fuel CO_2 emissions".[5] The domestic combustion of fossil fuels results in a contribution to climate change of the kind identified in para. 9(a) of the Application Form while the export of such fuels constitutes a contribution of the kind identified in para. 9(b). Regarding the latter, the 2019 *Production Gap* report notes that "[m]any countries appear to be banking on export markets to justify major increases in production," citing Russia as an example.[6] It also notes that restrictions on fossil fuel extraction have been adopted *inter alia* by: Denmark ("Ban on

---

[1] Office of the UN High Commissioner for Human Rights (9 September 2019), *Global update at the 42nd session of the Human Rights Council Opening statement by UN High Commissioner for Human Rights Michelle Bachelet*.

[2] Alston, P. (25 June 2019). *Climate change and poverty: Report of the Special Rapporteur on extreme poverty and human rights* (A/HRC/41/39), § 87.

[3] European Parliament resolution of 28 November 2019 on the climate and environment emergency (2019/2930(RSP)).

[4] Bundle, pp.395, 397, 405.

[5] Bundle, p.414. The report also notes that the combustion of fossil fuels "account[s] for over 75% of global greenhouse gas emissions and nearly 90% of all carbon dioxide emissions" (Bundle, p.399).

[6] Bundle, p.419.

exploration and drilling for oil, gas, and shale gas on land and in inland waters"); France ("No new or renewal of exploration permits for conventional and unconventional fossil fuels; Phase-out of all oil and gas production within the country and its overseas territories by 2040"); Italy ("18-month moratorium on offshore oil and gas exploration permits"); and Norway ("Certain offshore areas closed for drilling (including Lofoten archipelago and other coastal and sensitive areas and in the Arctic")).[7]

4. The adoption by a country of restrictions on fossil fuel extraction may clearly have an effect on the quantities of fossil fuels exported by that country.[8] Where such restrictions are not absolute (as in the case of the aforementioned restrictions) and exports therefore continue, the contribution to global emissions that is entailed by these exports must be presumed to be excessive (see also Application Form, paras. 29-31).

5. The 2019 UN *Emissions Gap* report notes as follows:[9]

> *"[…] the net flow of embodied carbon is from developing to developed countries [such that] even as developed countries reduce their territorial emissions this effect is being partially offset by importing embodied carbon [i.e. by importing goods the production of which involves the release of emissions], implying for example that EU per capita emissions are higher than Chinese when consumption-based emissions are included."*

[7] Bundle, p.436.
[8] Although that effect may be minimal: Norway, for example, remains "the largest oil and gas producer in Europe outside Russia" and a major exporter (see Bundle, p.430).
[9] Bundle, p.292.

STATEMENT OF ALLEGED VIOLATION(S)

6. This section supplements the content of section F of the Application Form.

Victim status of the Applicants & responsibility of the Respondents

7. Whilst victims within the meaning of Article 34 must have been "directly affected" by an alleged violation,[10] the need for "effective protection" of ECHR rights requires that Article 34 not be applied in a "rigid, mechanical and inflexible way".[11] Potential victimhood is sufficient if there is more than "mere suspicion or conjecture", namely "reasonable and convincing evidence of the likelihood that a violation affecting [an applicant] personally will occur": *Senator Lines GMBH v Austria*.[12] It is sufficient that an applicant is specifically likely to be affected by the impugned act/measure; or that the measure potentially affects everyone: *Zakharov v Russia*.[13]

8. The Applicants are victims for the purpose of Article 34: the effects upon them to which this Application relates constitute interference with their rights/interests under Article 2 and/or Article 8. On the basis outlined in section E of the Application Form (paras. 15-25), the effects of climate change at its current level and trajectory expose them to harm/risk to their lives, to their health, to their family lives, and to their privacy, now and/or in the future (and as to interference with their Convention rights, see also Application Form, para. 27). These harms/risks are set to increase significantly over the course of their lifetimes. *Immediate* action is required to prevent or mitigate, to the extent possible, the risks (of yet greater magnitude) that the Applicants stand to endure later in their lives (see, for example, 'UNEP' 'Emissions Gap 2019' report (doc.6), and para. 8 of the Application Form). The Court's assessment of these risks (as per submissions in the Application Form, para.28), must be undertaken bearing in mind the precautionary principle, the concept of intergenerational equity, and the requirement (under Article 3(1)

[10] *Zakharov v Russia* App no 47143/06 (ECtHR GC, 4 December 2015) ("*Zakharov*"), § 164; *Burden v UK* App no 13378/05 (ECtHR GC, 29 April 2008), § 33; *Centre for Legal Resources on Behalf of Valentin Campeanu v Romania* App no 47848/08 (ECtHR GC, 17 July 2014) ("*Campeanu*"), § 96.
[11] *Campeanu*, § 112; *Zakharov*, § 164.
[12] *Senator Lines GMBH v Austria and Others* App no 56672/00 (ECtHR, 10 March 2004), pp. 11-12.
[13] *Zakharov* § 171.

of the UN Convention on the Rights of the Child) that the "best interests of the child" must be "a primary consideration".[14]

9. As to each Respondent's role in these interferences with the Applicants' rights under Article 2 and/or Article 8, it would be no defence to assert that each Respondent's contribution to global emissions, taken in isolation, would not cause such interferences. There is no 'but for' test for causation in the jurisprudence of the ECtHR.[15] Breach is found in the absence of proven causation where reasonable preventive measures were available and not taken.[16] This is consistent with the approach taken by the Dutch Supreme Court in *Urgenda Foundation v the Netherlands* ('*Urgenda*'),[17] and by the International Court of Justice in the *Bosnian Genocide* case.[18] The latter held as follows:[19]

> *"it is irrelevant whether the State whose responsibility is in issue claims, or even proves, that even if it had employed all means reasonably at its disposal, they would not have sufficed to prevent the commission of genocide. As well as being generally difficult to prove, this is irrelevant to the breach of the obligation of conduct in question, the more so since the possibility remains that the combined efforts of several States, each complying with its obligation to prevent, might have achieved the result […] which the efforts of only one State were insufficient to produce."*

10. The commission by multiple international persons of one or more internationally wrongful acts that contribute to an indivisible injury entails shared responsibility. International persons share responsibility for multiple internationally wrongful acts when each of them engages in separate conduct consisting of an action or omission that:

---

[14] *Neulinger v Switzerland* App No 41615/07, (ECtHR GC 6 July 2010), § 132.
[15] See, for example, *O'Keeffe v Ireland* App No 35810/09, ECtHR GC 28 January 2014, § 149.
[16] See, for example, *Kiliç v. Turkey* [2000] ECHR 22492/93.
[17] ECLI:NL:HR:2019:2007
[18] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports [2007] 43, p.221.
[19] §§ 5.7.1-5.8.

(a) is attributable to each of them separately; and

(b) constitutes a breach of an international obligation for each of those international persons; and

(c) contributes to the indivisible injury of another person.

11. These submissions reflect the text of Principles 2 and 4 of the 'Guiding Principles on Shared Responsibility in International Law' ('Guiding Principles'),[20] as well as the content of those parts of the International Law Commission's 'Articles on the Responsibility of States for Internationally Wrongful Acts' ('ARSIWA')[21] that pertain to shared responsibility. The Court has repeatedly relied upon the latter, thereby dispelling any uncertainty as regards its application in the context of the Convention.[22] The Guiding Principles substantiate the existing rules of the law of international responsibility reflected in: the ARSIWA (as well as the International Law Commission's 'Articles on the Responsibility of International Organizations'[23]); the practice of states and international organisations; decisions by international and domestic courts and tribunals; and authoritative scholarly studies. They therefore reflect current, applicable international law for the purposes of the Court (and indeed Article 38 of the Statute of the International Court of Justice).

12. As per Principle 2, "[c]ontribution to an indivisible injury may be individual, concurrent or cumulative", the latter being where the conduct of multiple

---

[20] André Nollkaemper, Jean d'Aspremont, Christiane Ahlborn, Berenice Boutin, Nataša Nedeski & Ilias Plakokefalos, with the collaboration of Dov Jacobs, 'Guiding Principles on Shared Responsibility in International Law' 36 EJIL 31 (2020), 15–72 / https://academic.oup.com/ejil/article/31/1/15/5882075

[21] Articles on the Responsibility of States for Internationally Wrongful Acts, UN Doc. A/56/10, 2(2) ILC Yearbook (2001) 26; Articles on the Responsibility of States for Internationally Wrongful Acts with Commentaries Thereto, UN Doc. A/56/10, 2(2) ILC Yearbook (2001) 31.

[22] See for example, among many: *Blečić v. Croatia* App no. 59532/00 (ECtHR GC, 8 March 2006) § 48; *Salduz v. Turkey* App no. 36391/02 (ECtHR GC, 27 November 2008) § 8; *Kotov v Russia* App No 54522/00 (ECtHR GC, 3 April 2012), § 30; *Mammadov v. Azerbaijan* App no. 15172/13 (ECtHR GC, 29 May 2019) § 81.

[23] Articles on the Responsibility of International Organizations, UN Doc. A/66/10, 2(2) ILC Yearbook (2011) 40; Articles on the Responsibility of International Organizations with Commentaries, UN Doc. A/66/10, 2(2) ILC Yearbook (2011) 46.

international persons together results in an injury that none could have caused on their own.[24] Whilst the failure of a state to reduce its emissions in line with its international obligations may not be sufficient on its own to cause adverse global warming, the combined failure to reduce carbon dioxide emissions of many states can result in such an indivisible injury.[25]

13. As to a state's conduct that "constitutes a breach of an international obligation for each of those international persons" for the purposes of Principle 4, the commentary to that principle states, by way of example, that "in order to establish shared responsibility for the indivisible injury of climate change, violations of applicable international obligations incumbent on each of the responsible international persons need to be established, for instance under […] international human rights law".[26] The respective independent contributions of multiple states to environmental harm, in breach of each state's international obligations, give rise to shared responsibility for that harm. The relevant international obligations are the duties under Articles 2, 8, and 14, set out in the Application Form (paras. 24, 25, 26, 32) The Respondents must be presumed to share responsibility under the Convention for the interferences to the Applicants' rights caused by climate change (see below, paras.26-34).

Jurisdiction

14. The exercise of jurisdiction, under Article 1 of the Convention, is a necessary condition for a Contracting State to be held responsible for a violation of Convention rights.[27]

15. The Applicants are within the jurisdiction of Portugal, on whose territory they reside. Portugal is obliged to secure for them the entire range of Convention

[24] See Guiding Principles, Commentary; and Third Report on State Responsibility, by Mr James Crawford, Special Rapporteur, UN Doc. A/CN.4/507 and Add.1–4, 2(1) ILC Yearbook (2000) 3, § 31.
[25] See Guiding Principles, Commentary; and Peel, 'Climate Change', in Nollkaemper and Plakokefalos, Practice of Shared Responsibility
[26] Guiding Principles, Commentary to Principle 4, § 3, citing *inter alia* the decision in *Urgenda*.
[27] *Al-Skeini and others v United Kingdom* App No 55721/07 (ECtHR GC, 7 July 2011) ("*Al Skeini*"), § 130.

rights.

16. Whilst the mere fact that an act or omission attributable to a state has an effect outside its territory is not by itself sufficient to give rise to an exercise of jurisdiction for the purpose of Article 1,[28] the Applicants are within the extra-territorial jurisdiction of the 32 Respondent States other than Portugal ("the 32 Respondent States") in the particular circumstances of the present case. These other states are obliged to secure for them their Convention rights insofar as they are relevant to these particular circumstances.[29]

17. Acts which are "performed within […] national boundaries [but] which produce effects outside" those boundaries may give rise to jurisdiction in certain circumstances.[30] In *Ilaşcu v Moldova and Russia*, it was held that

> *"even in the absence of effective control over the Transdniestrian region, Moldova still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention"*

18. Contracting States have been held to exercise extra-territorial jurisdiction even though they did not exercise state agent authority and control or effective control of an area, where one or more of the following features were present:

    i. <u>The extra-territorial effect is envisaged by or a direct consequence of a law adopted by the Contracting State</u>. In *Kovaĉić and others v Slovenia* ('*Kovaĉić*'), for example, because the applicants' money "was and continues to be affected by [a] legislative measure" they were within the jurisdiction of Slovenia.[31] In *Liberty and others v UK*[32] ('*Liberty*') and *Big Brother Watch and others v UK*,[33] applicants situated outside the UK were

[28] *Banković and others v Belgium and others* App No 55207/99 (ECtHR GC, 12 December 2001) ("*Banković*"), § 75.
[29] Ibid., § 137.
[30] *Loizidou v Turkey* App No 15318/89 (ECtHR GC, 23 March 1995), § 62.
[31] App Nos 44574/98, 45133/98 and 48316/99 (ECtHR, 9 October 2003), p. 55.
[32] App No 58243/00 (ECtHR, 1 July 2008).
[33] App Nos 58170/13 62322/14 24960/15 (ECtHR, 13 September 2018).

affected by legislation which provided for the interception of external communications. In *Zouboulidis v Greece (No. 2)*[34] ('*Zouboulidis*') civil servants operating overseas who had a statutory entitlement to income supplements were found to be within the jurisdiction of Greece.

ii. It was entirely foreseeable that the act or omission of the Contracting State would produce effects outside its territory. In *Andreou v Turkey* ("*Andreou*"), for example, "even though the applicant sustained her injuries in territory over which Turkey exercised no control, the opening of fire on the crowd from close range, which was the direct and immediate cause of those injuries, was such that the applicant must be regarded as 'within [the] jurisdiction' of Turkey within the meaning of Article 1".[35]

iii. The relevant effects were felt both within and outside the territory of the Contracting State. In *Haydarie and others v The Netherlands*[36] members of the same family, some living in the Netherlands and some refused residency there, were all treated, in effect, as being within the jurisdiction of the Netherlands. In *Rantsev v Cyprus and Russia*[37] ("*Rantsev*"), Russia was held to owe obligations to prevent human trafficking which occurred both within and outside its territory.

iv. The Contracting State's act or omission gave rise to extra-territorial effects related to resources under its control. This is illustrated by, for example, *Kovaĉić*, as well as *Minasyan and Semerjyan v Armenia*[38] in which applicants situated in the U.S. were within the jurisdiction of Armenia with regard to its expropriation and demolition of their property in Armenia.

v. The extra-territorial effect in question arose from the implementation of

[34] App No 36963/06 (ECtHR, 25 June 2009).
[35] App No 45653/99 (ECtHR, 27 October 2009), p. 11.
[36] App No 8876/04 (ECtHR, 20 October 2005).
[37] App No 25965/04 (ECtHR, 7 January 2010).
[38] App No 27651/06 (ECtHR, 23 June 2009).

a particular international obligation. In *Nada v Switzerland*,[39] for example, it was held that an entry ban (necessarily a measure with extra-territorial effect) was an exercise of extra-territorial jurisdiction, with the Court noting that it was imposed on the basis of a UN Security Council resolution. In *Rantsev*, similarly, the international obligations undertaken by Russia to suppress human trafficking were relevant in establishing that Russia had an obligation to assist in the investigation of events which occurred outside its territory.

vi. The protection of an interest protected by the Convention required the intervention of more than one Contracting State. In *Rantsev*, the cross-border trafficking of the victim was held to have required intervention by both Cyprus and Russia.

vii. The extra-territorial effect was felt within the *espace juridique* of the Convention: see *Kovaĉić, Liberty, Zouboulidis, Andreou, Rantsev and Nada*.

19. In each of the above cases the Contracting State exercised a significant degree of control over a particular ECHR-protected interest or set of interests of a person outside of its territory and as a result of that control the state on whose territory that person was present had a limited ability to protect that interest or those interests.

20. Each of the above factors exists in the present case:

    i. The emissions reductions prescribed by the laws of the 32 Respondent States permit and therefore envisage the continued release of a certain amount of greenhouse gas emissions which contribute to climate change.

    ii. Each of the 32 Respondent States is or ought to be aware of the adverse impacts of climate change to which its emissions contribute on persons outside its territory.

    iii. The impacts of climate change are felt both within and outside each of

[39] App No 10593/08 (ECtHR GC, 12 September 2009).

the 32 Respondent States.

iv. The Respondents exercise control over: (i) the land and resources which are used to release emissions on their territory; (ii) fossil fuels extracted from their territory and exported for combustion overseas; (iii) the importation into their territory of goods the production of which involves the release of emissions into the atmosphere; (iv) companies and other entities domiciled on their territory with operations overseas which contribute to climate change.

v. The 32 Respondent States are each party to the UNFCCC and the Paris Agreement, treaties intended to prevent or minimise the global effects of climate change.[40]

vi. The prevention of harm resulting from climate change requires action by all of the Respondents.

vii. The Applicants reside within the *espace juridique* of the Convention. To hold that the 32 Respondent States should not be held accountable under the Convention for breaches of human rights would result in a vacuum of protection within the legal space of the Convention.[41]

21. More generally, through their contributions to climate change, each of the 32 Respondent States exercises significant control over the ECHR-protected interests of the Applicants; and Portugal, through adaptation measures, cannot adequately protect the Applicants from the adverse impacts of climate change.

22. Given that all of these factors exist, there is special justification in the particular circumstances of the present case for the Court to recognise that the Applicants are within the jurisdiction of all 33 Respondent States.[42]

---

[40] The Preamble to the UNFCCC states: "Recalling also that States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

[41] *Al Skeini*, § 142.

[42] *Banković*, § 61.

23. That states exercise jurisdiction for the purpose of Article 1 arising from the extra-territorial effects of climate change is further supported by the existence of a customary international law obligation, in cases involving significant transboundary environmental harm, to provide access to a remedy regardless of nationality, presence in the state concerned, or the location where the harm was suffered.[43]

24. It is also supported by the Advisory Opinion on Human Rights and the Environment of the Inter-American Court of Human Rights ('IACtHR') in which it held that state parties to the American Convention on Human Rights ('ACHR') are obliged to prevent harms to persons situated outside of their territories arising from cross-border environmental damage.[44] The IACtHR reached this conclusion in part on the basis of the customary international law obligation to prevent transboundary environmental harm.[45] According to the IACtHR, the exercise of jurisdiction for the purpose of Article 1 of the ACHR arises in these circumstances on the basis of the exercise of effective control by a state over the activities which may cause the harm to human rights.[46]

25. The jurisdiction of any state, within the meaning ascribed to the term by Article 1 of the Convention, does not exclude the simultaneous, concurrent existence of other jurisdictions. By way of illustration, in the occupation-type context, victims are presumed to fall within the territorial state's jurisdiction, even when a state is effectively prevented from exercising authority in part of its territory. In those circumstances, the territorial state is not discharged of its positive obligation to take the steps within its power to stop human rights violations.[47] The state's territory is presumed subject to the state's

---

[43] As evidenced by, for example, Article 15 of the International Law Commission's *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, 2001*, Report of the International Law Commission on the work of its fifty-third session (A/56/10), p. 167 and Article 3(9) of the *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* done at Aarhus, Denmark, on 25 June 1998 XXVII UNTS 13.
[44] Advisory Opinion OC-23/18, (IACtHR, 15 November 2017).
[45] Ibid. §§ 95-103.
[46] Ibid. § 104(h).
[47] *Ilascu v Moldova and Russia*, no. 48787/99 (2005) 40 EHRR 46, § 333; *Ivantoc v Moldova and Russia*, no. 23687/05, 15 November 2011 [2011] ECHR 1915, § 105.

competence, thereby requiring it to act to prevent human rights violations in its territory,[48] including violations by foreign states.[49]

Presumption of inadequacy of Respondents' mitigation measures

26. It is a general principle of law (for the purpose of Article 38(1) of the Statute of the ICJ) that where one or more of a number of potential wrongdoers must have caused a particular harm, but there is uncertainty as to which of them in fact caused that harm, then each of those potential wrongdoers is presumptively responsible in law for the harm in question, such that the onus is on those potential wrongdoers to show that they did not cause it: *Oil Platforms (Islamic Republic of Iran v United States of America* (Separate Opinion of Judge Simma).[50] Further support for the existence of this general principle of law may be found in domestic law.[51] In the leading UK case of *Fairchild v Glenhaven Funeral Services Ltd*,[52] Lord Bingham surveyed the authorities on this issue in multiple jurisdictions (references were made to the laws of Germany, France, Greece, Austria, the Netherlands, Spain, California, Canada, Norway, Austria, South Africa, Italy and Switzerland). He concluded that this principle operates in "most of the jurisdictions" surveyed.[53]

27. Given that global warming, on its current trajectory, is projected to exceed the 1.5°C target, the Respondents' mitigation measures must be presumed to be inadequate and the Respondents must, therefore, be presumptively responsible for breach of the Convention. These presumptions must apply

---

[48] *Assanidze v. Georgia*, (no. 71503/01) (2004), § 137-9; *Sargsyan v Azerbaijan* (no. 40167/06); *Chiragov v. Armenia* (no. 13216/05) (2016) 63 EHRR 9.

[49] *Vearncombe v the United Kingdom and the Federal Republic of Germany*, no. 12816/87.

[50] *Oil Platforms (Islamic Republic of Iran v United States of America* [2003] ICJ Rep 161 (Separate Opinion of Judge Simma), pp. 354-358

[51] For further support for this view see, for example, Van Dam, C. (2013), *European tort law*, Oxford University Press, pp. 329-334 (reviewing the tort law of Germany, France, England and the Netherlands); Von Bar, C. (1998), *The Common European Law of Torts: The Core Areas of Tort Law, Its Approximation in Europe, and Its Accommodation in the Legal System (Vol. 1)*, Clarendon Press, pp. 340-342 (reviewing the tort law of England, Ireland and the Scandinavian countries); van Gerven, W., Lever, J., and Larouche, P. (2000), *Cases, Materials and Text on National, Supranational and International Tort Law*, Hart, pp. 441, 465 (reviewing the tort law of France, Germany, Netherlands).

[52] [2003] 1 AC 32, (at pp. 58-66).

[53] As to relevance of domestic case law to the Court, see, for example *Golder v United Kingdom* App No 4451/70 (ECtHR, 21 February 1975), § 35.

with particular strength given the large extent to which global warming is projected to exceed 1.5°C.

28. This is consistent with the Court's approach to the burden of proof. In relation to Articles 2 and 3, for example, the Court has held that "[t]he State bears the burden of providing a plausible explanation for injuries and deaths occurring to persons in custody".[54] Furthermore, in the context of Article 8, the Court has repeatedly held that "the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden on behalf of the rest of the community."[55] Similarly as to Article 14, where it is established that a particular measure affects one category of individuals more than another, it is for the state to show that this is the result of objective factors unrelated to any discrimination.[56] The Applicants note that (i) the Respondents permit activity which the Convention requires them to regulate; and (ii) children and young adults like the Applicants are being made to bear the burden of climate change to a far greater extent than older generations. The onus must, therefore, be on the Respondents to provide a "satisfactory and convincing explanation"[57] that their contributions to the risk of harm posed by climate change are not excessive.

29. The question of what constitutes a state's 'fair share' of the global burden of mitigating climate change is central to the determination of whether that state's mitigation measures are adequate for the purpose of the Convention. In light of the above, ambiguity on this issue (or likewise as to the meaning, per Article 4(3) of the Paris Agreement, of the term "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances") must be resolved in favour of the Applicants. The Applicants contend, in this regard, as follows:

---

[54] *Aslakhanova and Others v Russia* App No 2944/06 (inter alia) (ECtHR 18 December 2012), § 97.
[55] For example, *Dubetska v Ukraine* App No 30499/03 (ECtHR 10 February 2011), § 145; *Fadeyeva v Russia* App No 55723/00 (ECtHR 9 June 2005), § 128.
[56] *Hoogendijk v The Netherland* App No 58641/00 (ECtHR, 6 January 2005).
[57] *El Masri v Former Yugoslav Republic of Macedonia* App No 39630/09 (ECtHR GC, 13 December 2012), § 151.

i. Resolution of the question of what constitutes a state's 'fair share' in favour of the Applicants is vital if the objective set out in Article 2 of the Paris Agreement – of preventing "significant deleterious effects [...] on human health and welfare" by limiting global warming to 1.5°C[58] – is to be achieved. It follows that the Respondent States' ECHR obligations must be understood in such a way that their collective implementation is consistent with keeping global warming to this target.[59]

ii. In the absence of a globally agreed approach to burden-sharing which would enable the precise identification of the amount by which each state must reduce its emissions in order to achieve this target, the proper approach to interpreting states' obligations to reduce their emissions is to draw on principles of international law, and domestic law applied in the majority of European states in situations where there exists causal uncertainty as a result of the involvement of multiple potential wrongdoers (as per para.26 above).

iii. In any event, it is more appropriate that the Respondents rather than the Applicants bear the consequences of the absence of a clearly defined approach to global burden-sharing. The ambiguity surrounding the nature of a state's 'fair share' is a direct consequence of the failure by states (globally) to agree a clearly defined approach to sharing the burden of mitigating climate change. Burden-sharing is, by definition, a matter for states, including the Respondents, to resolve between themselves rather than a matter arising as between the Applicants (or victims of climate change generally) and the Respondents (or states generally).

30. This means that when the Respondents seek to demonstrate the adequacy of their mitigation measures they must be required to do so according to relatively more demanding approaches to measuring their "fair share"; greater emphasis must be placed on the extent to which those measures are

[58] Articles 1(1) and 3 of the UNFCCC.
[59] See Application Form, para. 28.

consistent with their "highest possible ambition."[60] Importantly, the expectation in the Paris Agreement that developed countries take the lead in the area of mitigation justifies the application of this approach with greater force to such countries.[61]

31. In light of the above, the Applicants contend that the Court ought to adopt/rely upon the approach taken by the Climate Action Tracker ("CAT") – "an independent scientific analysis that tracks government climate action and measures it against the globally agreed [goal of the] Paris Agreement" – to assessing the fairness of states' mitigation measures.[62] The CAT's approach is to construct a "fair share range" from the wide range of approaches identified in the literature, including the relevant IPCC literature, to measure the fairness of a particular state's mitigation efforts.[63] That range is then divided into three sections: "insufficient," "2°C compatible" and "1.5°C compatible." Each section corresponds to the temperature outcome that would result if all other countries were to adopt mitigation efforts of equivalent ambition relative to their respective fair share ranges. This of course means that only where a state's mitigation efforts are compatible with the more exacting measures of fairness within its fair share range, will those efforts be rated as compatible with the 1.5°C target.

32. This would allow the Court to determine this application without any need to determine the "correct" measure for global burden-sharing. At the same time, it limits the potential for Respondents being able to "extricate" themselves from their presumptive shared responsibility for the harm caused by climate change by relying upon mitigation efforts which are collectively incapable of keeping global warming to the 1.5°C target. It is submitted, therefore, that use of the CAT as a basis for the Court's assessment produces an interpretation of the relevant Convention obligations which "is the most

[60] Article 4(3) of the Paris Agreement.
[61] Article 4(4) of the Paris Agreement.
[62] CAT, "About" available at <https://climateactiontracker.org/about/>
[63] See Document 11 generally, particularly Bundle pp.574-574.

appropriate in order to realise the aim and achieve the object of the treaty,"[64] that of course being the "protection of individual human beings."[65] Indeed, in the absence of an agreed approach to burden-sharing, it respectfully submitted that this is necessary in order to ensure that the right to live in an environment where global warming has not exceeded the 1.5°C target is "practical and effective" rather than "theoretical and illusory".[66]

33. This approach is also consistent with the "fair balance" principle. Insofar as "climate change is a common concern of humankind,"[67] there is no distinction between the "demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights"[68] when it comes to the need to hold global warming to the 1.5°C target. Indeed, according to this principle the Court must take into account the impacts which climate change at its current trajectory stands to have on people throughout Europe and beyond when addressing the obligations of the Respondents towards the Applicants.[69]

34. As noted in the Application Form, it is not for the Applicants to advance distinct evidence as to the inadequacy of the mitigation measures of each and every Respondent. It is of note, nonetheless, that the CAT rates as "insufficient" the mitigation measures adopted by the United Kingdom, Switzerland and Norway.[70] It rates as "highly insufficient" the mitigation measures adopted by Germany[71] and as "critically insufficient" the measures of Russia, Turkey and Ukraine.[72] It also rates as "insufficient" the mitigation measures adopted by the European Union (as a whole), and states that even the proposed 2030 reduction target of 55% by the EU would not be "enough

[64] *Wemhoff v Germany* App No 2122/64 (ECtHR, 27 June 1968), § 8.
[65] *Soering v United Kingdom* App No 14038/88 (ECtHR, 7 July 1989), § 87.
[66] *Airey v Ireland* App No 6289/73 (ECtHR, 9 October 1979), § 24.
[67] Preamble to the Paris Agreement.
[68] *Soering v United Kingdom* App No 14038/88 (ECtHR, 7 July 1989), § 89.
[69] See, for example, *Broniowski v Poland* App No 31443/96 (ECtHR GC, 22 June 2004), § 162.
[70] See Bundle, pp.588, 591, 593,
[71] See Bundle, pp.586, 587.
[72] See Bundle, pp.589, 590, 592, 594, 595.

to reach a Paris Agreement compatible emissions pathway".[73] The 7.6% year-on-year global emissions reductions which the UN Environment Programme indicates are necessary to achieve the 1.5°C target requires an emissions reduction target by 2030 for the EU of approximately 68%.[74]

[73] See Bundle, pp.584, 585.

[74] Meessen and others, "Increasing the EU's 2030 Reduction Target: How to cut EU GHG emissions by 55% or 65% by 2030" (Climact, June 2020), p. 6. Available at < https://climact.com/wp-content/uploads/2020/06/Climact_Target_Emissions_report_FINAL.pdf >

COMPLIANCE WITH ADMISSIBILITY CRITERIA LAID DOWN IN ARTICLE 35 § 1 OF THE CONVENTION

35. This section supplements the content of section G of the Application Form.

36. Cases challenging states' compliance with their human rights obligations in respect of their mitigation policies have been brought before the domestic courts of a number of the Respondents.[75] In *Urgenda* the Dutch Supreme Court held, with reference to the Netherlands' obligations under Articles 2 and 8 of the Convention, that the emissions reduction target originally set by the Dutch government was unlawfully low. It therefore ordered the Dutch government to reduce its emissions by 25% relative to 1990 levels by 2020. It did so on the basis that countries listed in Annex I to the UNFCCC (broadly corresponding to developed countries), including the Netherlands, had previously acknowledged that they would have to reduce their emissions by between 25% to 40% of 1990 levels by 2020 to ensure that the global average temperature target endorsed by the Dutch Supreme Court (i.e. global warming of no more than 2°C) could be achieved;[76] the 25% reduction could "therefore be regarded as an absolute minimum".[77]

37. Important as this decision is, it must be noted that if all domestic courts were to follow this approach and order a reduction by the lowest amount in the ranges applicable for both Annex I and non-Annex I countries, this would not be sufficient to maintain global warming at the level (i.e. no more than 2°C) to which these ranges relate.[78] While *Urgenda* correctly recognises that obligations arising under the Convention require states to adopt sufficiently ambitious mitigation policies, the approach to states' Convention obligations to prevent harm from climate change outlined in this Application demands a

---

[75] The Climate Change Litigation Database of the Sabin Center for Climate Change Law ("Sabin Database"), available at http://climatecasechart.com/, provides a helpful overview of climate change cases which have been brought or are ongoing in Europe.

[76] *Urgenda* Supreme Court Judgment, §§7.2.1 to 7.5.3.

[77] Ibid., § 7.5.1.

[78] As Robiou du Pont and Meinshausen have stated in relation to this decision, "systematic court decisions that governments must follow the least-ambitious end of an equity range would be insufficient to achieve the [goal of the] Paris Agreement." See, Yann Robiou du Pont and Malte Meinshausen, "Warming Assessment of the Bottom-up Paris Agreement Emissions Pledges" (2018) 9 Nature Communications 1, p. 2

more exacting remedy than that provided in *Urgenda*.

38. Other cases challenging the compliance of states' mitigation measures with their obligations under human rights law have been brought before the domestic courts of Germany,[79] Ireland,[80] Norway,[81] Sweden,[82] Switzerland,[83] and the United Kingdom,[84] as well as the General Court of the European Union.[85] In addition, cases of this nature filed in Austria,[86] Belgium,[87] France,[88] and Germany[89] are awaiting decisions from the relevant courts of first instance.

39. It is critical that the domestic courts in each of the Respondent States provide an adequate remedy, at the earliest possible time, in relation to those Respondents' respective contributions to global emissions. According to the Director of the UN Environment Programme, "[a]ny further delay [in cutting global emissions] brings the need for larger, more expensive and unlikely

---

[79] *Family Farmers and Greenpeace Germany v. Germany*, 00271/17/R/SP, Berlin Administrative Court, 31 October 2019.

[80] *Friends of the Irish Environment v. Ireland* 2017 No. 793 JR, High Court, 19 September 2019, [2019] IEHC 747; Supreme Court, [2020] IESC 49.

[81] *Greenpeace Nordic Association (Natur og Ungdom and Föreningen Greenpeace Norden) v. Government of Norway / Ministry of Petroleum and Energy*, case no. 18-060499ASD-BORG/03, Borgarting Court of Appeal, 23 January 2020 / http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200122_HR-2020-846-J_judgment.pdf

[82] *PUSH Sweden, Nature and Youth Sweden (PUSH Sverige, Fältbiologerna) and Others v. Government of Sweden* (see Sabin Database summary at http://climatecasechart.com/non-us-case/push-sweden-nature-youth-sweden-et-al-v-government-of-sweden/)

[83] *Union of Swiss Senior Women for Climate Protection (Verein KlimaSeniorinnen Schweiz) et al. v. Federal Department of the Environment, Transport, Energy and Communications (DETEC)*, Federal Supreme Court of Switzerland, Public Law Division I, Judgment 1C_37/2019 of 5 May 2020.

[84] *R. (on the application of Plan B Earth) v Secretary of State for Transport* [2020] EWCA Civ 214 [2020] 2 WLUK 372, Court of Appeal (Civil Division) 27 February 2020.

[85] *Armando Ferrão Carvalho and Others v. The European Parliament and the Council of the European Union*, case no. T-330/18, Order of 8 May 2019.

[86] *Greenpeace et al v. Austria* (see Sabin Database summary at http://climatecasechart.com/non-us-case/greenpeace-v-austria/)

[87] *VZW Klimaatzaak v. Kingdom of Belgium & Others* (see Sabin Database summary at http://climatecasechart.com/non-us-case/vzw-klimaatzaak-v-kingdom-of-belgium-et-al/)

[88] *Notre Affaire à Tous and Others v. France* (see Sabin Database summary at http://climatecasechart.com/non-us-case/notre-affaire-a-tous-and-others-v-france/) and *Commune de Grande-Synthe v. France* (see Sabin Database summary at http://climatecasechart.com/non-us-case/commune-de-grande-synthe-v-france/)

[89] Neubauer, et al. v. Germany (see complaint document in Sabin Database at http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200206_11817_complaint-1.pdf and Sabin Database summary at http://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/)

cuts." The Director continued, "[w]e need quick wins, or the 1.5°C goal of the Paris Agreement will slip out of reach."[90] To ensure the availability of an adequate remedy within the Respondent States which "bear[s] fruit in sufficient time",[91] the Applicants respectfully submit that the Court must recognise the approach to responsibility for climate change outlined in paras.10-13 above.

40. Finally, the status of the Applicants as children and young adults provides further justification for their absolution from the requirement to exhaust domestic remedies. The UN Committee on the Rights of the Child has noted that "[c]hildren's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights".[92] Similarly, UNICEF has noted that "[c]hildren have less knowledge, fewer financial resources and are generally less well equipped to deal with the complexity of the justice system".[93] The same is true of young adults in full-time education.

[90] Bundle, p.290.
[91] *Pine Valley Developments Ltd and others. v Ireland* (ECtHR 29 November 1991), § 47.
[92] UN Committee on the Rights of the Child (27 November 2003). *General measures of implementation of the Convention on the Rights of the Child* (CRC/GC/2003/5), § 24.
[93] UNICEF (May 2015) *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia*, p. 9. See also UN High Commissioner for Human Rights (16 December 2013). *Access to justice for children*, (UN Doc A/HRC/25/35), §§ 13-17.