

SUMMARY OF LEGAL ARGUMENTS

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*The case is grounded on the fact that the ECT irreversibly delays and impedes the energy transition, by limiting States ability to take steps to undertake deep and urgent GHG emissions reductions and phase out from fossil fuels without threat of liability.*

**Violation of the applicants' rights**

With regard to the applicability of Articles 2 and 8 in the context of climate change, the applicants notably rely on a growing body of case law before domestic and other international courts as well as the need to interpret the Convention in accordance with the principle that the Court must guarantee rights to be “practical and effective”. Positive obligations under these Articles include both substantive and procedural obligations:

- under the first, States are under the duty to put in place effective legislative and administrative frameworks to prevent or reduce environmental risks to life and private life;
- under the second, decision-making processes leading to interferences must be fair and afford due respect to the interests protected under Articles 2 and 8 (e.g. such process must involve appropriate studies and investigations of the potential risks and transparency).

It is argued that fulfilment of the substantive obligations under Articles 2 and 8 in the context of climate change requires each Respondent State to regulate and/or limit emissions of GHG in a manner that is consistent with achieving the long-term temperature goal of 1.5°C set by the Paris Agreement. The existence of this obligation is supported by a number of factors developed in the application. In light of the best available science, complying with this obligation requires States to, *inter alia*: urgently limit their territorial emissions by carrying out the energy transition away from fossil fuel-based energy to low-carbon sources and limit or prohibit fossil extraction, production, and use in existing and future installations.

However, membership and compliance with the ECT impedes the Respondent States' ability to comply with this obligation, as long as it impacts the extent States can – without the threat of liability – take such steps, as supported by specific examples in the application. In other words, incompatibility with the Convention arises from the protections the ECT affords to fossil fuel investments and infrastructure from State interference and the corresponding risk of “*carbon lock-in*”.

Therefore, this means that States are under a duty to take reasonable steps to remove the impediments created by the ECT to the fulfilment of their obligations under the Convention. In this regard, States cannot dilute the effectiveness of Convention rights through their commitments in separate treaties. It was notably observed by the Commission in *X. v Federal Republic of Germany* that “[i]f a State contracts treaty obligations and subsequently concludes another international agreement which disables it from performing its obligations under the first treaty, it will be answerable for any breach of its obligations under the treaty” (app. no. 235/56, 10 June 1958).<sup>1</sup>

Furthermore, it is argued that States' duty to cooperate under Articles 2 and 8, in the context of climate change, requires them not to impede other States' efforts to reduce their territorial emissions (e.g. by failing to take adequate steps to regulate companies under their jurisdiction).

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<sup>1</sup> See also *Al-Saadoon and Mufdhi v. United Kingdom*, app. no. 61498/08: “The State is considered to retain liability in respect of treaty commitments subsequent to the entry into force of the Convention”

As partly evidenced by their protracted and ineffective steps taken to renegotiate the ECT to date, as well as recent cases initiated by companies originated from some of the Respondent States and evidence of regulatory chill, the Respondent States have failed to take such steps, which exceeds their margins of appreciation partly due to the irreversible harm to the applicants' rights should the 1.5°C target be surpassed, even temporarily. Under these circumstances, States are therefore in breach of Articles 2 and 8.

The applicants also claim a breach of their rights under Article 3 and Article 14 (read in conjunction with Articles 2 and 8), as age is one of the statuses upon which discrimination is prohibited and they are expected experience a greater interference with their rights under the ECHR than upon older generations.

### **Exhaustion of domestic remedies**

The applicants rely on the Court's case law according to which applicants are not required to exhaust domestic remedies where the said remedies are neither effective or available.

In support of this, they submit that (i) requiring them to exhaust remedies in all Respondent States would place a disproportionate burden in terms of resources given their young age and would entail unreasonable delay in light of the urgency of the climate crisis, (ii) they would have been unable to access remedies in many of the Respondent States, (iii) potential domestic remedies are not capable of providing redress, notably because of the domestic courts' deference to the executive branch's commitments under international treaties, (iv) potential remedies would not be "sufficiently certain" and there is no relevant domestic jurisprudence which confirms that a remedy would be available in any of the Respondent States, and (v) the Court is uniquely placed to provide guidance on the nature of the Respondent States' obligations regarding this novel issue.

The case does not advocate for an unreasonable extension of the Court's case law that would result in opening wide the Court's gates, but only for lifting the exhaustion requirement in specific, given cases and under very exceptional circumstances – in line with existing jurisprudence, which is precisely the case here with regard to the urgency of the climate crisis, the energy transition and the need to phase out fossil fuels.

### **Victim status**

The applicants assert their status as actual and potential victims under Article 34 in light of past climate change-related events they suffered from (the direct effects of extreme weather events and the ensuing trauma and climate-related stress and anxiety) and the future increase in frequency and intensity of climate change impacts in areas where they reside which raise increased risks to their lives and health, in particular with regard to their status as youth. It is argued that, in the context of climate change and building on the Court's jurisprudence, there is a sufficient causal link between the impact on the applicants' rights and the acts and omissions of each Respondent State, in particular as it is not necessary to show a 'but for' test for causation under existing case law.