

GRAND CHAMBER HEARING

**VEREIN KLIMASENIORINNEN SCHWEIZ V.
SWITZERLAND**

APP. NO. 53600/20

Oral statement before the Grand Chamber of the European
Court of Human Rights, 29th March 2023.

By Jenny Sandvig, European Network of National Human
Rights Institutions (ENNHRI), Norway's National Human
Rights Institution.

* * *

Madam President, Members of the Court,

1. Introduction

Few people have it in their power to change the course of history. You do.

On behalf of all National Human Rights Institutions in Europe,¹ ENNHRI urges the Court to use its power to protect vulnerable individuals from irreversible and escalating climate harm.²

The facts are simple: Greenhouse gas emissions cause heat extremes that kill. Science shows that heat deaths are an “immediate and direct” impact of emissions.³ In Switzerland, in the canton of Zürich alone, more than 1700 individuals have already lost their lives to heat attributed to climate change.⁴ A disproportionate number were elderly women.⁵ They die because their bodies, just like the bodies of infants, are less able to cope with heat.⁶

¹ National Human Rights Institutions (NHRIs) are mandated by law to promote and protect human rights according to the UN General Assembly’s Paris Principles. The European Network of National Human Rights Institutions (ENNHRI) brings together all accredited NHRIs in Europe, from 40 Council of Europe States.

² These pleadings are based on ENNHRI’s observations of 5.12.2022 in *Verein Klimaseniorinnen et al. v. Switzerland*, *Duarte Agostinho et al. v. Portugal et al.* and *Carême v. France*, the latter two submitted as annex 1 and 2 to ENNHRI’s letter of 8.3.2023 in the present case.

³ Vicedo-Cabrera et al., “The burden of heat-related mortality attributable to recent human-induced climate change”, *Nat. Clim. Change* 11, no. 6 (2021) p. 492, see also pp. 492-494 (describing the method of attribution); IPCC, *AR6 Synthesis Report Climate Change 2023, Summary for Policymakers* para. A.2.1 (“Evidence of observed changes in extremes such as heatwaves ... and, in particular, their attribution to human influence, has further strengthened since AR5.”).

⁴ Stuart-Smith et al., “Quantifying heat-related mortality attributed to climate change”, pre-print, 2023. In Switzerland, between 1991-2018, 31.3% of heat-related deaths were attributable to human-induced climate change, see Vicedo-Cabrera et al., (2021) Supplementary Table 4.

⁵ Stuart-Smith et al., “Quantifying heat-related mortality attributed to climate change”, pre-print, 2023, p. 6; Vicedo-Cabrera et al. “Nationwide Analysis of the Heat- and Cold-Related Mortality Trends in Switzerland between 1969 and 2017: The Role of Population Aging.” *Environ Health Perspect.* 130 (2022). See further in ENNHRI’s observations of 5.12.2022 in *Verein Klimaseniorinnen et al. v. Switzerland* para. 4.

⁶ Kenny et al. “Heat Stress in Older Individuals and Patients with Common Chronic Diseases,” 182(10) *Canadian Medical Association Journal* 1053-60 (2010); IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability* pp. 1051-53, p. 1860; Vicedo-Cabrera et al., observations of 5.12.2022 in *Verein Klimaseniorinnen et al. v. Switzerland* p. 2-3.

The applicants have called on the Respondent State to reduce emissions to protect their rights under Articles 2 and 8. It would be consistent with the proper role and function of the Court to review the adequacy of emission reductions, on three grounds:

2. Preliminary remarks

First, the Convention is relevant to climate harm because it is interpreted in light of present-day conditions. Today, all Contracting States agree that climate change is one of the most pressing threats to all human rights.⁷ Based on ECHR case-law, apex courts in the Netherlands and Germany have applied the right to life and physical integrity to require States to cut emissions.⁸ Beyond Europe, a consensus is forming in courts that climate harm is a real and immediate risk to human life.⁹ This Court is not asked to break new ground, but to confirm what is already human rights law in Karlsruhe and The Hague.

Second, scrutiny of emission cuts would strengthen democracy. By requiring the Respondent State to

⁷ A/76/L.75, 26.07.2022 preamble recital 13, UN voting record available at <https://digitallibrary.un.org/record/3982659?ln=en>.

⁸ *Urgenda v. the Netherlands*, ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands), 20.12.2019 para. 8.3.4-5 (the State had not substantiated why it planned to cut less than the minimum range of 25-40% for Annex I countries by 2020 relative to 1990 levels and was ordered to increase its reductions to 25%); *Neubauer et al. v. Germany*, BvR 2656/18 (Federal Constitutional Court of Germany), 24.03.2021, paras. 137, 154-170, interpreting the right to life and physical integrity under the German Constitution art. 2(2) in light of the parallel rights under ECHR and ECtHR case-law as requiring emission cuts, and holding that 40% GHG reduction from 1990-2020, 55% by 2030 and net zero by 2050 did not breach art. 2 (2). See also *VZW Klimatzaak v. Belgium et al.*, no. 2015/4585/A (First Instance Court of Brussels), 17.6.2021 (appealed).

⁹ *Massachusetts v. EPA*, 549 U.S. 497 (Supreme Court of the United States), 02.04.2007 p. 23; *Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (Supreme Court of Canada), 25.03.2021, para. 171; *Future Generations v. Ministry of the Environment et al.*, STC4360-2018 (Supreme Court of Colombia), 05.04.2018, p. 34; *Shrestha v. Office of the Prime Minister et al.*, no. 10210, Order no. 074-WO-0283 (Supreme Court of Nepal), 25.12.2018; pp. 5, 11; *Waratah Coal Pty Ltd v. Youth Verdict et al.* (No 6) [2022] (Land Court of Queensland, Australia) 25.11.2022 para. 44; *PSB et al. v. Brazil*, 30.6.2022 (Supreme Court of Brazil) paras. 16-17.

substantiate that it is in fact cutting emissions as necessary to meet a target adopted by the State itself,¹⁰ the Court would ensure democratic accountability of climate targets and informed public debate.¹¹ The Court must, at any rate, uphold basic rights. Since climate harm is irreversible, allowing a present majority to use up the remaining carbon budget would limit the decision-making ability and rights of younger generations.¹² Preservation of equal democratic choices and respect for fundamental rights over time, requires scrutiny of emission cuts now.¹³

Third, scrutiny of emission cuts would be consistent with international law.¹⁴ It would further the object and purpose of the UN Framework Convention on Climate Change and the Paris Agreement to “prevent dangerous” human “interference with the climate system”¹⁵ from having “significant” harmful “effects on [...] human health and welfare”.¹⁶ It would accelerate emission cuts. According to the IPCC, successful court cases can “increase” State “ambition to tackle climate change”.¹⁷

¹⁰ *Switzerland’s nationally determined contribution (NDC) under the Paris Agreement (2021–2030)* p. 2 (“Switzerland is committed to follow recommendations of science in order to limit warming to 1.5 degrees Celsius”); Paris Agreement Article 2.1.a and Article 4.1 and 4.2.

¹¹ The Respondent State has pointed out that the 2021 referendum was not a rejection of climate targets, see *Memorandum of the Government of Switzerland to the Grand Chamber*, 5.12.2022, para 116 (“Le refus de la nouvelle loi sur le CO2 ne signifie pas que le peuple suisse ne veut pas lutter résolument contre le réchauffement climatique. Ces sont plutôt les outils prévus par le projet de nouvelle loi qui ont été rejetés.”); *Switzerland’s nationally determined contribution (NDC) under the Paris Agreement (2021–2030)* p. 2.

¹² IPCC, *AR6 Synthesis Report Climate Change 2023, Summary for Policymakers*, para 3.2.2.

¹³ *Neubauer*, para. 192. See also the Venice Commission, *Opinion No. 997/2020*, 9.10.2020, para. 114.

¹⁴ See *Demir and Baykara v. Turkey* [GC] (34503/97) 12.11.2008 §§ 68–86 with further references.

¹⁵ UN Framework Convention on Climate Change (UNFCCC) Article 2. The Paris Agreement Article 2.1.a “enhanc[es] the implementation” and the “objective” of the UNFCCC.

¹⁶ UNFCCC Article 1.1.

¹⁷ IPCC, *Climate Change 2022: Mitigation of Climate Change, Technical Summary* p. 125.

3. ENNHRI's views on the law

I turn now to ENNHRI's three views on the law.

3.1. A Contracting State may be held to account for territorial harm by emissions under its effective control

First, courts worldwide confirm that an individual State may be held to account for climate harm on its territory partly caused by its emissions, since any reduction of emissions matters.¹⁸ The responsibility under the Convention logically extends to all emissions under the Respondent State's control, even those that happen to be released abroad, since greenhouse gas emissions cause equal harm within the State's territory regardless of distance.¹⁹

¹⁸ *A de minimis* argument in the context of climate change has been rejected by courts, including *Urgenda v. the Netherlands*, ECLI:NL:HR:2019:2007 (Supreme Court of the Netherlands), 20.12.2019, paras. 5.7.1, 5.7.7-5.7.8; *Neubauer et al. v. Germany*, BvR 2656/18 (German Constitutional Court), 24.03.2021, paras. 149, 202-204; *Notre Affaire à Tous et al. v. France*, no. 1904967, 1904968, 1904972, 1904976/4-1 (Administrative Court of Paris), 3.2.2021, para 34; *Commune de Grande-Synthe v. France*, no. 427301, (Le Conseil d'État) 19.11.2020 para 12; *VZW Klimaatzaak v. Belgium et al.*, no. 2015/4585/A (First Instance Court of Brussels), 17.6.2021, p. 61 (appealed); *Massachusetts v. EPA*, 549 U.S. 497 (Supreme Court of the United States), 2.4.2007, p. 23, *Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 (Supreme Court of Canada), 25.3.2021, paras. 188–190; *Mathur v. Ontario*, 2020 ONSC 6918 (Superior Court of Justice, Ontario, Canada), 12.11.2020; *Future Generations v. Ministry of the Environment et al.*, STC4360- 2018 (Supreme Court of Colombia), 5.4.2018; *Shrestha v. Office of the Prime Minister et al.*, no. 10210, no. 074-WO-0283 (Supreme Court of Nepal), 25.12.2018; *Laghari v. Federation of Pakistan*, W.P. No. 25501/201 (Lahore High Court, Pakistan), 4.9.2015; *Waratah Coal Pty Ltd v. Youth Verdict et al.* (No 6) [2022] QLC 21, 25.11.2022 §§ 35, 36, 41, 44, 45. See similarly, with respect to emissions of sulphur dioxide, *BverwG*, Order of 17.2.1984, 7 C 8/82, *BverwGE* 69,37, holding that if there is an overall “concept” of reducing emissions, any contribution is of relevance.

¹⁹ *Bljakaj et al. v. Croatia* (74448/12) 18.9.2014 § 124; *O'Keeffe v. Ireland* (35810/09) [GC] 28.01.2014 § 149. See also *Sacchi et al. v. Germany* (dec.), 22.09.2021, CRC/C/88/D/107/2019 para. 9.9; *Greenpeace Nordic Ass. et al. v. Norway*, HR-2020-2472-P (Supreme Court of Norway), 22.12.2020 para. 149, ref. 155, confirming that a State can be held legally responsible for climate harm on its territory caused in part by “activities taking place abroad that Norwegian authorities may influence directly or take measures against”, such as “combustion of Norwegian-produced oil or gas abroad”. See further ENNHRI's observations of 5.12.2022 in *Duarte Agostinho et al. v. Portugal et al.* paras. 8–11; in *Verein Klimasenioren et al. v. Switzerland* (n)25.

3.2. Victim status for affected individuals

Second, individuals who are directly or likely affected by climate harm can be victims for the purposes of Article 34, even though countless others are similarly affected.²⁰ In *Pavlov v. Russia*, half a million residents were equally exposed to air pollution.²¹ In *Centrum for Rättvisa v. Sweden* and *Big Brother v. the UK*, entire populations of States were potentially affected.²² It is because, as the US Supreme Court points out, “[t]o deny standing simply because too many others are also injured, would mean that the most injurious and widespread Government action could be questioned by nobody.”²³

3.3. Articles 2 and 8 apply and require emission cuts to secure life and well-being

A. Applicability

Third, Articles 2 and 8 apply to life-threatening climate harm such as extreme heat. *Pavlov* confirms that it is not necessary to prove individual causality where an environmental situation “had a direct influence on morbidity rates”.²⁴ Climate-attributed heat has a “direct”

²⁰ *Cordella et al. c. Italie* (54414/13) §§ 100–109; *A.A. et al. c. Italie* (37277/16) 04.05.2022, *Perelli et al. c. Italie* (45242/17) 05.05.2022; *Di Sarno et al. c. Italie* (30765/08) 10.01.2012 § 108; *Okay et al. v. Turkey* (36220/97) 12.07.2005 § 66; *M.S.S. v. Belgium and Greece* [GC] (30696/09) 21.01.2011 § 255.

²¹ *Pavlov et al. v. Russia* (31612/09) 11.10.2022, §§ 67, 5.

²² *Centrum for Rättvisa v. Sweden* [GC] (35252/08) 25.05.2021 §§ 166-167; *Big Brother Watch et al. v. the UK* [GC] (58170/13 etc.) 25.05.2021 §§ 467–472.

²³ *Massachusetts v. EPA*, 549 U.S. 497 (Supreme Court of the United States), 02.04.2007 pp. 23– 25, n(24), citing 412 U. S. 669. See also *Neubauer* para. 110 (“The mere fact that very large numbers of people are affected does not exclude persons from being individually affected in their own fundamental rights”).

²⁴ *Pavlov* § 68; *Cordella* §§ 106-107, 160, 163-166, 172; *Tătar c. Roumanie* (67021/01) 27.01.2009 §§ 105-106.

influence on both mortality and morbidity rates.²⁵ Absent immediate emission cuts, an exponential increase in heat mortality is not only “foreseeable”²⁶ but certain.²⁷ Since this Court does not interpret imminence “so narrowly as to require a State to wait for disaster to strike before taking measures to deal with it”,²⁸ the risk of exceeding 1.5 and even 2 degrees is imminent now.²⁹

B. Obligations

To fulfil Articles 2 and 8, the Respondent State must take all appropriate steps to protect life and well-being. In the context of harmful emissions, Jugheli and Pavlov confirm that the Court can assess whether the Respondent State has acted with “due diligence” to cut emissions.³⁰ A similar obligation applies here. According to the IPCC, reduced emissions will have a “strong impact” on heatwaves in Europe.³¹

The duty would be violated in at least **three instances**:

²⁵ Vicedo-Cabrera et al., “The burden of heat-related mortality attributable to recent human-induced climate change”, *Nat. Clim. Change* 11, no. 6 (2021) p. 492.

²⁶ Compare *Kurt v. Austria* [GC] (62903/15) 15.06.2021 §§ 175-176, where a foreseeable risk was immediate.

²⁷ Mitchell, “Climate attribution of heat mortality”, *Nat. Clim. Chang.* 11, 467–468 (2021) (“showing the exponential increase in mortality with increasing temperatures”); Stuart-Smith et al., “Quantifying heat-related mortality attributed to climate change”, pre-print, 2023 p. 3 (“temperature-mortality relationships are continuous above the minimum-mortality temperature, and heat-related deaths increase non-linearly with progressively higher temperatures”).

²⁸ *A et al. v. the UK* [GC] (3444/05) 19.02.2009 § 177; *Taşkin et al. v. Turkey* (46117/99) 10.11.2004 § 113, see also § 107.

²⁹ Under *K. and T. v. Finland* [GC] (25702/94) 12.7.2001 § 147, “the Court is not prevented from taking into account any additional information”, including “new material”, from the IPCC reports published in 2020-2023. The Sixth Assessment Report (AR6) cover scientific literature accepted for publication before 31.1.2021 for Working Group (WG) I, 1.9.2021 for WGII, 11.10.2021 for WGIII.

³⁰ *Pavlov* § 90; *Jugheli and others v. Georgia* (38342/05) § 76 with further references.

³¹ IPCC, *Climate Change 2021: The Physical Science Basis*, Chapter 12, p. 1821-1822.

First, as German and Dutch courts point out, there would be a violation if the State relied on adaptation measures without adequate mitigation.³² Adaptation is already insufficient to protect against a significant burden of heat-related mortality.³³ Widespread breaches of adaptation limits are also expected if warming exceeds 1.5 degrees.³⁴

Second, there would be a violation if the State pursued policies, for instance fossil fuel licensing³⁵ or financing,³⁶ that undermined efforts to limit warming to 1.5 degrees.³⁷ It is scientifically proven that any warming above 1.5 degrees would make extreme and deadly heat commonplace in Switzerland.³⁸ 1.5 degrees is also the likely threshold for several tipping points, including the collapse of ice sheets resulting in sea level rise of up to 10 metres and abrupt thaw of permafrost releasing carbon dioxide and methane.³⁹

³² *Neubauer*, para. 157, considered it “completely inadequate” – and a violation of the right to life and physical integrity – to rely on adaptation alone; *Urgenda*, para 7.5.2, held that the Netherlands could not demonstrate that “the potentially disastrous consequences of excessive global warming can be adequately prevented by” adaptation measures. See further in ENNHRI’s observations of 5.12.2022 in *Carême c. France* para. 17.

³³ Stuart-Smith et al., *Quantifying heat-related mortality attributed to climate change*, pre-print, 2023. While this study shows that heat deaths absent adaptation in the period of 1969-2018 in Zurich would have been 6700 instead of 6000 overall, it does not find that adaptation measures have been able to avoid the substantial burden of heat-related mortality – 1700 of the 6000 deaths – that is attributable to climate change in the same period. Nor does the study provide any indication that adaptation measures could prevent further increases in mortality with increased temperatures. See also IPCC, *Climate Change 2022: Impacts, Adaptation and Vulnerability*, p. 1092 (“Estimates of future mortality that incorporate adaptation in addition to temperature change point to increases in heat-related mortality under global warming, albeit at lower levels than the case of no adaptation”).

³⁴ IPCC, *AR6 Synthesis Report Climate Change 2023, Summary for Policymakers*, paras. B.4.2 and B.4.3; World Climate Research Programme et al. *10 New Insights in Climate Science*, 10.11.2022, pp. 13–17.

³⁵ Exported emissions from fossil fuels extracted or licensed by the State is within its effective control, see n(19).

³⁶ Paris Agreement Article 2.1.c.

³⁷ *Mutatis mutandis*, see *Neubauer* paras. 202, 203; *Waratah* paras. 674-681. See further in ENNHRI’s observations in *Greenpeace Nordic et al. v. Norway*, 11.5.2022, paras. 3, 16-18.

³⁸ Robine et al., “Death toll exceeded 70,000 in Europe during the summer of 2003,” *Comptes Rendus Biologies*. 331, no. 2 (2008), pp. 174, 176; Christidis et al. (2015) updating original estimate in Peter Stott et al., “Human contribution to the European heatwave of 2003,” *Nature* 432 (2004) p. 48.

³⁹ McKay et al., “Exceeding 1.5°C global warming could trigger multiple climate tipping points,” *Science* 377, no. 6611 (2022); Boers et al., “Critical slowing down suggests that the western Greenland Ice Sheet is close to a tipping point,” *Proc. Natl. Acad. Sci.* 118, no. 21 (2021); IPCC, *AR6 Synthesis Report Climate Change 2023, Longer report* para 3.1.2. The permafrost contains almost twice the carbon in the atmosphere, see IPCC, *Special Report on the Ocean and Cryosphere in a Changing Climate, Summary for Policymakers* (2019) paras. A.1.3, B.1.4.

This could set off a tipping cascade leading to a 4 degree warmer “hot house Earth”.⁴⁰ In *Brincat v. Malta*, the Court relied on “objective scientific research” as the basis for its conclusions.⁴¹ In this case, such research confirms the 1.5 degrees target of the Paris Agreement as the maximum limit for safeguarding human life and health. At any rate, since even a carbon budget aimed at limiting warming to 1.5 degrees still holds a considerable probability of exceeding 2 degrees,⁴² the “well below 2 degrees” target can only be kept by aiming solely for 1.5 degrees.⁴³

Third, and relatedly, there would be a violation if the State failed to substantiate⁴⁴ that it is cutting emissions according to its fair share of the remaining global carbon budget to limit warming to 1.5 degrees.⁴⁵ The fact that there is no agreed method for converting the global budget to a national one, does not mean that the Convention obligation is limitless.⁴⁶ This is all the more so, since all available scientific studies suggest that the Respondent State must

⁴⁰ McKay et al. (2022) p. 1; Wunderling et al., “Interacting tipping elements increase risk of climate domino effects under global warming,” *Earth Syst. Dynam.* 12, no. 2 (2021); IPCC, *AR6 Synthesis Report Climate Change 2023, Summary for Policymakers* n(22) at p. 9.

⁴¹ *Brincat and others v. Malta*, (60908/11) 24.7.2014 § 105-106.

⁴² IPCC, *Global Warming of 1.5°C* (2018), Chapter 2, “Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development”, *Supplementary Material*, p. 19, table 2.SM.12, (showing that a carbon budget to limit warming to 1.5°C with high overshoot, still holds a 18% probability of exceeding 2.0°C and even a 3% probability of exceeding 2.5°C).

⁴³ Schleussner, CF., Ganti, G., Rogelj, J. et al. “An emission pathway classification reflecting the Paris Agreement climate objectives,” *Commun Earth Environ* 3, 135 (2022).

⁴⁴ *Urgenda* paras. 6.5, 5.3.3 and 7.5.1.

⁴⁵ To have an 83% probability of limiting warming to 1.5 degrees, the remaining global carbon budget per 2020 was 300 Gt CO₂, or, to have a 67% probability, 400 Gt CO₂, see IPCC, *Climate Change 2021: The Physical Science Basis, Summary for Policymakers*, p. 29.

⁴⁶ *Neubauer* para. 225 (“Nor can a specific constitutional obligation to reduce CO₂ emissions be invalidated by simply arguing that Germany’s share of the reduction burden and of the global CO₂ budget are impossible to determine.”); *Urgenda* paras. 6.3-6.4 (“Although determining the share to be contributed by the Netherlands in the reduction of greenhouse gas emissions is, in that context too, in principle, a matter for the Government and Parliament, the courts can assess whether the measures taken by the State are too little in view of what is clearly the lower limit of its share in the measures to be taken worldwide against dangerous climate change.”)

cut far more than it currently plans to.⁴⁷ Even an equal per capita approach, as used by the German Constitutional Court,⁴⁸ suggests that the Respondent State is on course to deplete its fair share between 2030 and 2034,⁴⁹ leaving no room for emissions from that point onwards. As in *Neubauer*, this could give rise to future impairments of fundamental rights for younger generations.⁵⁰

In the alternative, if the Court were to refrain from defining fair share, the domestic legal framework⁵¹ should as a minimum clearly define three components: i) a national carbon budget for 1.5 degrees, ii) a specified reduction rate to net neutrality, and iii) independent oversight.

- i. The national carbon budget must be based on science and not overuse emissions at the expense of younger generations. This is necessary to secure the rights of the Convention equally over time, in line with Article 14.⁵²

⁴⁷ Rajamani et al. “National ‘fair shares’ in reducing greenhouse gas emissions within the principled framework of international environmental law”, *Climate Policy*, 2021, p. 999 and Supplementary material for Switzerland (“Below 1.5C in 2100 and peak below 1.7C [% of 2010], -98.36%”); Climate Analytics, *A 1.5°C compatible Switzerland*, 15.6.2021 p. 3 (“The full fair share 2030 contribution by Switzerland to global emission reductions consistent with the Paris Agreement includes support to developing countries to reduce emissions on top of its own domestic emission reductions and is equivalent to an emissions reduction of 127% below 1990 levels”); Climate Action Tracker, *Switzerland, Targets*, updated 8.7.2022.

⁴⁸ In *Neubauer*, paras. 225-230.

⁴⁹ Applicant’s Memorial of 2.12.2022 para. 55, referenced in the Court’s additional questions of 16.3.2023.

⁵⁰ *Neubauer*, para. 243 seq. The constitutional obligation to take climate action under the GG Article 20a was “reinforced by duties of protection arising from fundamental rights under Art. 2(2) first sentence and Article 14(1) GG”, concerning the right to life and physical integrity and the right to property, see para. 246.

⁵¹ Compare *Big Brother Watch v. the UK* [GC] § 361. See further in ENNHRI’s observations in *Carême v. France* para. 16 on the quality of law requirement embedded in Article 8.

⁵² *Neubauer*, para. 192. See further in ENNHRI’s observations of 5.12.2022 in *Duarte Agostinho et al. v. Portugal et al.* paras. 19-22.

- ii. The specified reduction rate must lead to net neutrality⁵³ without relying on speculative or uncertain carbon removing technologies or unverifiable offsets.⁵⁴ This is necessary to ensure transparency and precaution.⁵⁵
- iii. Independent oversight⁵⁶ is necessary to prevent non-compliance and remedy excess emissions through corresponding cuts.⁵⁷

This would promote accountability and “the effective functioning of [a] regulatory framework” that protects life.⁵⁸

4. Conclusion

To conclude, it follows from the Court’s established case-law that Articles 2 and 8 logically apply to climate attributed death and sickness, requiring emission cuts to prevent irreparable harm. According to the IPCC, the window of opportunity to safeguard a livable future for all is rapidly closing.⁵⁹ It would be appropriate for the Court to uphold individual rights at this critical juncture in history. After all, the Court is set up within the Council of Europe

⁵³ *Neubauer* paras. 155, 183, 214–225, 229, 232–234, 243, 255; *Urgenda* paras. 8.3.4, 8.3.5; *Friends of the Irish Environment* paras. 9.2, 9.3; *Commune de Grande-Synthe v. France* no. 427301, Le Conseil d’État 1.7.2021 paras. 3–6. See further in ENNHRI’s observations of 5.12.2022 in *Carême c. France* para. 16 n(79).

⁵⁴ *Urgenda*, para. 7.2.5 (relying on technology to remove gases from the atmosphere that does not yet exist at scale would be taking “irresponsible risks” that “run counter to the precautionary principle”); *Neubauer*, paras. 33, 222, 226, 227; *Friends of the Irish Environment v. Ireland*, paras. 3.4, 6.47. See further in ENNHRI’s observations of 5.12.2022 in *Carême c. France* paras. 8-9, 16.

⁵⁵ *Tătar c. Roumanie* (67021/01) 27.1.2009 §§ 109, 112, 120; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ Judgement 20.4.2010, para. 164; UNFCCC Art. 3.3, Rio Declaration Principle. 15; Treaty on the Functioning of the European Union Art. 191(2). See further ENNHRI’s observations in *Carême*, paras. 8-9, 16.

⁵⁶ See e.g. the European Climate Law Regulation (EU) 2021/1119 Article 3.4, recommending national climate advisory bodies to ensure that climate policies are based on science. See further in ENNHRI’s observations of 5.12.2022 in *Carême c. France* para. 16 and n(82).

⁵⁷ See e.g. *Notre Affaire à Tous et al. v. France*, 3.2.2021 paras. 30–34, and 14.10.2021 Article 2.

⁵⁸ *Smiljanić v. Croatia* (35983/14) 25.3.2021 § 66.

⁵⁹ IPCC, *AR6 Synthesis Report Climate Change 2023, Summary for Policymakers*, paras. C.1, also B.3 and C.3.

to protect individuals for “the preservation of human society and civilization”.⁶⁰

Thank you for your attention.

⁶⁰ Statutes of the Council of Europe, ETS no. 1, London, 5.V.1949, Preamble, recital 2.