CLIMATE CHANGE
LITIGATION
RELEVANT CASE-LAW
OF THE ECtHR

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The views expressed in this presentation are those of the speaker and do not represent the official position of the European Court of Human Rights or the Council of Europe.
INVENTORY
Duarte Agostinho & Others v. Portugal and 32 other States

Verein KlimaSeniorinnen & Others v. Switzerland

Greenpeace Nordic & Others v. Norway

Carême v. France

Müllner v. Austria

5 other applications v. Italy, UK and Norway

Engels and 8 Others v. Germany

Soubeste and others v. Austria & 11 other States
Intro: 07/09/2020
Comm: 13/11/2020
Relinquished to GC

Intro: 26/11/2020
Comm: 17/03/2021
Relinquished to GC

Intro: 15/06/2021
Comm: 16/12/2021
Adjourned

Intro: 28/01/2021
Relinquished to GC

Intro: 08/04/2021
Adjourned

Intro: 21/06/2022
Adjourned

Intro: 28/09/2022
Adjourned

+ 3 other applications v. Italy and Norway, adjourned
+ 2 other applications v. UK, rejected
ECHR ISSUES RAISED BY CLIMATE CHANGE CASES
Relinquishment to the Grand Chamber

Art 43 ECHR
Explanatory Report to Protocol No. 11

A case must raise a serious question affecting the interpretation (i) or application (ii) of the Convention or the Protocols, or a serious issue of general importance (iii).

(i) where the case raises new issues, not yet decided by the Court or it is of importance for the development of the Court’s case-law (goes beyond the scope of existing case-law / reflects a change in the society and calls for an update of case-law in the light of present-day conditions / offers opportunity for clarification of existing principles)

(ii) where a judgment necessitates a substantial change to national law or administrative practice

(iii) where the case involves substantial political issues or an important issue of policy
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RELEVANT CASE-LAW
Person, NGO, group of individuals affected by harm to his/her/its human rights

Article 34 ECHR

No actio popularis

Direct victim
Affected by past or ongoing harm

Potential victim
(1) having a valid and personal interest in seeing the situation brought to an end [modification of conduct at risk of being directly affected by legislation]

Potential victim
(2) where substantial grounds have been shown for believing that the person would face a real risk of being subjected to hr harm

ENVIR TEST: serious specific & imminent danger

IMMIG TEST: foreseeable consequences of removal in light of personal circumstances or general situation of violence
F.G. v. Sweden [GC], 2016

INCIDENTS TEST: regular occurrence of incidents Stoicescu v. Romania, 2011

A legal entity (NGO) cannot rely on rights that are inherently attributable to natural persons only - right to life, private life, dignity
Yusufeli Iclesini Guzellestirme Yasatma Kultur Vartliklarini Koruma Dernegi v. Turkey (dec.), no. 37857/14, § 43, 2021; Greenpeace e. V. and Others v. Germany (dec.), 2009

An eNGO can in principle rely on Art 10 that prohibits restrictions on access to information where it is instrumental for the NGO’s exercise of its right to freedom impart information
BureStop 55 and Others v. France, 2021

The result of the proceedings must be directly decisive for the right.
While the purpose of the proceedings was to protect the general interest, the “dispute” also had a sufficient link with a “right” to which and eNGO could claim to be entitled as a legal entity for Art 6 § 1.
BureStop 55 and Others v. France, 2021

Legal standing is only granted to persons that were parties to the procedure - either in person or, exceptionally through an NGO
Bursa Barosu Başkanlığı and Others v. Turkey, 2018; L’Erablière A.S.B.L. v. Belgium, 2009; Gorraiz Lizarraga and Others v. Spain, 2004
Past or ongoing harm
Băcilă v. Romania, 2010, § 64; Fadeyeva v. Russia, 2005, § 68; Guerra and Others v. Italy, 1998, § 57

Risk of future harm
Athanassoglou v. Switzerland [GC], 2000, § 51; Balmer-Schafroth e.a v. Switzerland [GC], 1997, § 40

Article 2: States must mitigate (natural) environmental hazards where they are **imminent and clearly identifiable**.
Budayeva and Others v. Russia, 2008, § 137

a recurring calamity affecting a distinct area developed for human habitation or use
M. Özel and Others v. Turkey, 2015, § 171

Article 8: **direct and immediate link**, required.
Ivan Atanasov v. Bulgaria, 2010, § 66

Article 8: **sufficiently close link** between ongoing or future envir. and HR harm, based on: record of past accidents; official documents; EIA; cumulation of factors such as statistics and reports on **general causation**

**Causation on the basis of probabilities**?
Fadeyeva v. Russia, 2005, §§ 79 and 88

Quantifying the effects of environmental harm on a person could be impossible because of the influence of other factors.
Cordella and Others v. Italy, 2019, § 160

Article 2: situations where death has occurred & situations where, although an applicant survived, there clearly existed a risk to his/her life (near-death situations).
Kolyadenko and Others v. Russia, 2012, § 160

Chains of events that were triggered by a negligent act and led to loss of life may fall under Article 2.

Article 8: Specific impacts on health where those are alleged by the applicant

General health vulnerability
Fadeyeva v. Russia, 2005, § 88; Jugheli and Others v. Georgia, 2017, §; Cordella and Others v. Italy, 2019, §105

Well-being & quality of private life (nuisance)
State’s jurisdictional competence under Article 1 is primarily territorial, but the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries.

In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to particular facts.

Article 1, M.N. and Others v. Belgium (dec.) [GC], 2020, §§ 97-98 and 101-02; Hirsi Jamaa and Others v. Italy [GC], 2012, §§ 130-32; Al-Skeini and Others, 2011, § 132

The two main criteria governing the exercise of extraterritorial jurisdiction:

“effective control” by the State over an area outside its territory (spatial concept of jurisdiction)

“State agent authority and control” over individuals (personal concept of jurisdiction)

Ukraine and the Netherlands v. Russia (dec.) [GC], 2022, §§ 560, 565-72; Georgia v. Russia (II) [GC], 2021, § 115; Al-Skeini and Others, 2011, §§ 133-40

Ext. responsibility cannot, in principle, stem from an instantaneous extraterritorial act, but extraterritorial jurisdiction has been extended to situations arising from full and exclusive control that was continuous and uninterrupted.

Medvedyev v. France, [GC], 2010, § 66

Ext. responsibility can cover isolated and specific acts committed by State agents who exercise physical power and control over the victim in a situation of proximity.

Carter v. Russia, 2021, § 130; Georgia v. Russia (II) [GC], 2021, §§ 130-31

Ext. responsibility cannot extend to actions that occurred “in a context of chaos” during a military operation “in the active phase of hostilities” …

Georgia v. Russia (II) (dec), 2021 §§ 126-37; Ukraine and the Netherlands v. Russia (dec.) [GC], § 558

…unless it possible to pierce “the fog of war” in relation to particular incidents committed in the active phase of hostilities, provided that there is “clarity” as to the circumstances surrounding these incidents.

Ukraine and the Netherlands v. Russia (dec.) [GC], §§ 703-06

Ext. responsibility did not extend to co-financing of a project with a foreign State, that allegedly caused environmental degradation.

Zeynep Ahunbay and Others v. Turkey, Austria and Germany (dec.), 2016 § 94