

23 March 2023



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

CLIMATE CHANGE LITIGATION RELEVANT CASE-LAW OF THE ECtHR

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A teal circle is centered on a white background. Inside the circle, the word "INVENTORY" is written in a teal, uppercase, sans-serif font.

INVENTORY

+ 5 other applications v. Italy, UK and Norway

Duarte Agostinho & Others v. Portugal and 32 other States



Verein KlimaSeniorinnen & Others v. Switzerland



Engels and 8 Others v. Germany



Carême v. France



Soubeste and others v. Austria & 11 other States



Müllner v. Austria



Greenpeace Nordic & Others v. Norway



- + 3 other applications v. Italy and Norway, adjourned
- + 2 other applications v. UK, rejected

Intro: 07/09/2020
Comm: 13/11/2020
Relinquished to GC



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



Intro: 28/01/2021
Relinquished to GC



Intro: 08/04/2021
Adjourned



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



Intro: 21/06/2022
Adjourned



Intro: 28/09/2022
Adjourned



A teal circle is centered on a white background. Inside the circle, the text "ECHR ISSUES RAISED BY CLIMATE CHANGE CASES" is written in a teal, sans-serif font, centered horizontally and vertically.

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



Direct victim (past or ongoing harm)				
Potential victim (risk assessment)				
NGO as victim				
Cause-and-effect extraterritoriality				
Attribution of State responsibility				
Exhaustion of domestic remedies				
Material causality	(wild fires/ droughts/ heatwaves)	(heatwaves)	(petrol licences)	(rising sea)
Access to a court				
Severity of HR impact				
Discrimination & Intergenerational equity				
Right to a safe and healthy environment				
General measures				



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 Ilcesini Guzellestirme Yasatma Kultur Varliklarini 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'Erablère
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 env. and HR harm, based on: record of past accidents; official documents; EIA; cumulation of factors such as statistics and reports on *general* causation

Cordella and Others v. Italy, 2019, §§ 163-165; Dzemyuk v. Ukraine, 2014, §§ 81 and 84; Hardy and Maile v. the UK, 2012, §§ 189 and 192; Dubetska and Others v. Ukraine, 2011, §§ 111-123; Tătar v. Romania, 2009, §§ 97 and 106; Fadeyeva v. Russia, 2005, § 88; Taşkın and Others v. Turkey, 2004, § 113



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.

Dodov v. Bulgaria, 2008, § 70 and Öneriyıldız v. Turkey [GC], 2004, § 94

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

Tătar v. Romania, 2009, §§ 105-111; Calancea and Others v Moldova (dec.), 2018, § 31.

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)

Hatton and Others v. UK, 2003, § 96; Di Sarno and Others v. Italy, 2012, § 108; Dubetska and Others v. Ukraine, 2011, §§ 106 and 112; Deés v. Hungary, 2010, § 22, Ivan Atanasov v. Bulgaria, 2010, § 76; López Ostra, 1994; § 51

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.

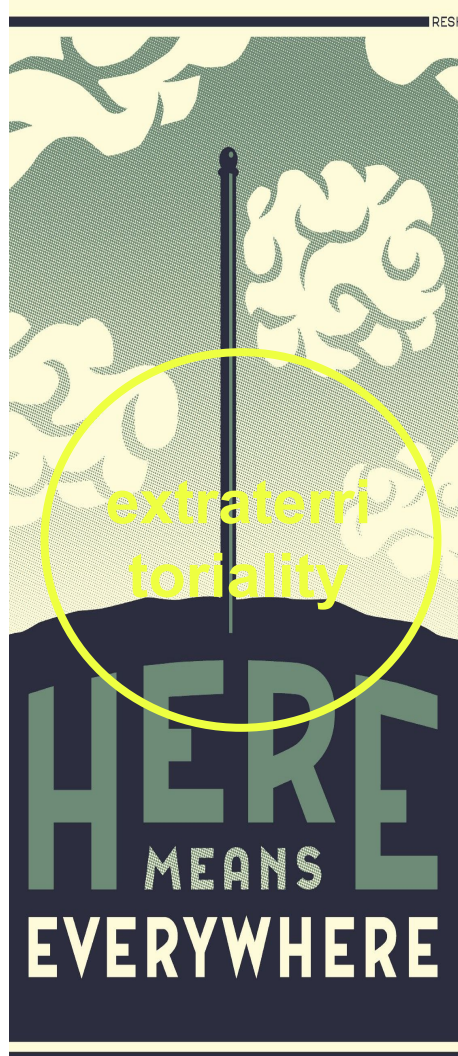
Article 1, *M.N. and Others v. Belgium (dec.)* [GC], 2020, §§ 97-98 and 101-02; *Hirsi Jamaa and Others v. Italy* [GC], 2012, §§ 130-32; *Al-Skeini and Others*, 2011, § 132

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



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Knowledge Sharing
Environment

<https://ks.echr.coe.int/web/echr-ks/environment>