EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

VEREIN KLIMASENIORINNEN AND OTHERS v SWITZERLAND

(Application no. 53600/20)

THIRD PARTY SUBMISSIONS OF THE GOVERNMENT OF IRELAND

5 December 2022

I. Introduction

1. On 27 July 2022 the Government of Ireland ('the Government') sought leave to intervene as a third party in these proceedings, pursuant to Article 36 § 2 of the Convention, and Rule 44 of the Rules of Court. On 24 October 2022 the Government was informed that the President of the Grand Chamber had granted leave to Ireland to intervene. Having regard to the nature of third-party interventions, in these written submissions the Government confines itself to addressing the general principles which, it is respectfully submitted, are applicable to the determination of the case.

2. This application – like the application in *Agostinho & Others v. Portugal & Others* (application no. 39371/20) in which the Government is named as a respondent – raises fundamental issues about the proper role and function of the Convention and this Court in addressing the challenge of climate change. It is for this reason that the Government has sought leave to intervene as a third party in these proceedings.

3. In asking the Court to declare that the respondent Government has violated their rights under Articles 2, 6, 8 and 13 of the Convention in its response to climate change, it is respectfully submitted that the Applicants invite the Court to embark on a very significant and far-reaching expansion of the Court's jurisprudence under the Convention in essential respects and in a manner which cannot be reconciled with the proper role and function of the Court under the Convention.

4. Ireland recognises the severity of the threat facing the global community as a result of climate change and the imperative for urgent action to address that threat. By its nature, climate change – as an urgent, complex and multifaceted challenge facing the entire world – requires an effective global response. It is only through such a global framework that the challenge of climate change can be effectively addressed. While the Applicants seek to rely on certain elements of this global framework in support of their case, the specific obligations which are asserted to arise under the provisions of the Convention are not consistent with the dedicated, detailed and binding international law framework created by the United Nations Framework Convention on Climate Change ('UNFCCC') and its instruments, including the Paris Agreement. Moreover, the asserted obligations go beyond interpretation of the Convention and, in effect, invite the Court to engage in a form of law-making and regulation which would bypass the role of the democratic process and institutions in the response to climate change.

5. In these submissions, Ireland will first address the questions of jurisdiction and victim status before focusing on the applicability of Articles 2 and 8 of the Convention and the general principles to be applied in determining the merits of the Applicants' claims under

those provisions. In doing so, Ireland will have particular regard to the Court's Questions to the Parties.

II. Jurisdiction

6. With respect to the Court's Question 2, insofar as the arguments concerning greenhouse gas emissions generated abroad and attributed to the respondent State are considered to form part of the Applicants' claim, Ireland submits that such emissions do not fall within the jurisdiction of the respondent State for the purposes of Article 1 of the Convention and are not capable of engaging its responsibility as a matter of international law.

7. ***First***, the recognition of jurisdiction on this basis would run contrary to the primarily territorial character of jurisdiction under Article 1 of the Convention and would not come within any of the exceptions to territorial jurisdiction recognised in the Court's case-law;[i] rather the Court would be creating a new exception to the principle of territorial jurisdiction and departing from its well-established position that the criteria for recognition of extraterritorial jurisdiction by a State "*must remain exceptional*".[ii]

8. ***Second,*** the recognition of jurisdiction on this basis would also run contrary to the dedicated global framework governing climate change found in the UNFCCC. As reflected in the relevant Intergovernmental Panel on Climate Change ('IPCC') Guidelines adopted by the parties thereto,[iii] this framework mandates the attribution of emissions to States on a territorial basis and it is on that basis that the entire system established under this global framework operates. Given that the Convention does not contain any specific provision concerning protection of the environment (as noted in Question 5.3.2), it is particularly important that the Convention is interpreted in line with, and in light of, the specialised international instruments which are the more pertinent reference point in the field.[iv] To do otherwise would present the very real risk of imposing obligations on Contracting Parties to the Convention which are inconsistent with their obligations under the dedicated global framework governing climate change.

9. Consequently, in respect of Question 2.1, in the Government's submission, the specific characteristics of climate change do not warrant what would amount to a very far-reaching extension of the notion of the jurisdiction under the Convention, and, in particular, would risk undermining the international framework specially dedicated to climate change which exists outside the Convention.

III. Victim Status

10. As a third party, the Government limits itself to the following observations on the question of victim status which is first and foremost a matter for the Respondent.

11. With respect to the Court's Question 3, the Government submits that a legal entity cannot claim that it is itself the victim of a violation of the Articles 2 and 8, at least where such violation is asserted to occur by reason of risk to the applicant's life and health.[v] Consequently, the first Applicant cannot claim to be directly affected by the measures at issue here.[vi]

12. More generally, the Government notes that, in order to establish victim status in respect of past and ongoing harms, it is necessary to show that the alleged harm is a "*result of an act or omission attributable to a Contracting State".*[vii] In respect of future harm, victim status can be established based on the risk of a future violation of Convention rights only in "*highly exceptional circumstances"*[viii] and the onus lies on the applicant to *"produce reasonable and convincing evidence of the likelihood that a violation affecting him personally will occur".*[ix] The Court has recognised that, in the absence of evidence of the likelihood of a specific risk arising for the applicants, potential risks to the health of the general population are insufficient to establish victim status.[x]

13. In respect of Question 3.1, in the Government's submission, the mere fact that second to fifth Applicants may belong to a certain age group does not mean that they form part of a specific segment of the population particularly affected by climate change. If applicants are to be recognised as victims on the basis of their age, any member of the relevant age group could be regarded as victims. This would, in reality, create an *actio popularis* – concerned with the current and potential future impacts of climate change on the community as a whole – of a kind not provided for or permitted under the Convention.[xi]

IV. Applicability of the Convention provisions

14. Without prejudice to the preceding observations, the Government will address the applicability of the Convention provisions, raised in Question 4, focusing on Articles 2 and 8.

A. Article 2 – the Right to Life

15. Article 2 does not apply to every potential risk to life, irrespective of its remoteness. It is only engaged where an applicant can establish a "*real and imminent*" or "*real and immediate*" risk to their lives, as a result of any act or omission of the respondent State,[xii] or, where such a risk is not evident, the level of injuries arising from the conduct complained of places the victim's life in "*serious danger*".[xiii] In respect of environmental claims specifically, it is only in exceptional circumstances that Article 2 is engaged.[xiv]

16. Thus, regarding the cases cited in Question 4(a):

(a) In *Nicolae Virgiliu Tănase v. Romania*, the Court held that, in the context of accidents and alleged negligent conduct, Article 2 was applicable if the activity involved was dangerous by its very nature and put the life of the applicant at real and imminent risk or if the injuries the applicant had suffered were seriously life-threatening. According to the Court, the less evident the immediacy and reality of the risk stemming from the nature of the activity, the more significant the requirement as to the level of the injuries suffered by the applicant becomes.[xv]

(b) In *Budayeva v. Russia*, the applicability of Article 2 was not contested in circumstances where it was alleged that the major shortcomings in the system for protection against natural hazards had led to "*life-threatening*" mudslides resulting in casualties and losses in July 2020.[xvi]

(c) In *Brincat v. Malta*, the Court concluded that Article 2 did not apply to employees exposed to asbestos and suffering *"respiratory problems and plaques in their lungs*" and other asbestos-related complications, despite it being accepted that "*the presence of asbestos in their bodies made them prone to malignant mesothelioma*".[xvii] While Article 2 could be engaged by applicants even where they remained alive if "*there was a serious risk of an ensuing death*", it could not be said of the applicants, who had not been diagnosed with malignant mesothelioma, that their current conditions were of a "*life-threatening nature.*"

17. Thus, even if climate change were regarded as presenting in principle a *general* threat to life of the global community into the future, there must be evidence of a real and imminent risk to the lives of the applicants for an application to fall within the scope of Article 2.[xviii]

B. Article 8 – the Right to Private and Family Life

18. It is settled case-law that Article 8 does not apply with respect to the "*general deterioration of the environment"*[xix] and that the positive obligations under Article 8 do not arise, unless the environmental factors complained of reach a certain threshold of seriousness; namely, "*severe environmental pollution*"[xx] that has a "*direct,*"[xxi] *"immediate"*[xxii] and "*serious*"[xxiii] impact on the applicants' private or family rights must be established.

19. Further, to engage Article 8 with respect to a *future* risk, it must be *probable*[xxiv] or *likely*[xxv] that the actions at issue will impact on the Article 8 rights of the applicant and/or a clear and significant risk arising directly for the particular applicants must be demonstrated.[xxvi]

20. Thus, regarding the cases cited in Question 4(a):

(a) In *Atanasov v. Bulgaria*, the Court confirmed that Article 8 is not engaged "*every time environmental deterioration occurs*" and that the State's obligations are engaged in that context "*only if there is a direct and immediate link between the impugned situation and the applicant's home or private or family life*".[xxvii] In the case at hand, the Court was not persuaded that the pollution complained of affected the applicant's private sphere to the extent necessary to trigger the application of Article 8.[xxviii]

(b) In *Cordella v Italy*, the Court stated that an arguable complaint under Article 8 may arise if an environmental risk reaches a "*level of seriousness that significantly impairs the applicant's ability to enjoy his or her home or private or family life*", which depended on all the circumstances, including, in particular, the intensity and duration of the nuisance and its physical or psychological consequences for the applicant's health or quality of life. In that case, there was clear and uncontroverted scientific evidence that a defined group—all residents of a particular geographical area—had suffered harmful consequences to their health and had an increased risk of morbidity and mortality as compared to the general population, such that Article 8 was applicable.

21. Turning to this application, it is submitted that the Applicants' claim relates entirely to the "*general deterioration of the environment"*, rather than to specific "*serious"* pollution or other environmental harm with a direct, immediate and serious impact on the Applicants' private and family life. Insofar as the claim is based on a future risk of harm, the Applicants do not appear to have established a *probability* or *likelihood* that the actions complained of will impact in a direct and specific way on their Article 8 rights. Even if the Applicants were in a position to establish a causal link between the actions complained of and the alleged harm, the alleged impacts of climate change, insofar as they are said to affect the Applicants specifically, do not reach the threshold of severity required to engage Article 8. The Applicants therefore seek to extend the application of Article 8 in environmental matters very significantly beyond the scope of the Court's case-law.

22. For these reasons, Ireland submits that Article 8 of the Convention is not applicable in the present case.

V. Merits

23. Without prejudice to its preceding observations, the Government will address the general principles to be applied in determining the merits. In doing so, it will once again focus its observations on the alleged violations of Articles 2 and 8 of the Convention, the subject of the Court's Question 5.

A. The Nature and Scope of the Positive Obligations under Articles 2 and 8

24. ***First***, in respect of Questions 5.1 and 5.2, it is important to identify the nature and scope of the positive obligations under Articles 2 and 8 of the Convention.

25. Under Article 2, where there is a "*real and immediate risk to the life of an identified individual or individuals*",[xxix] the primary positive obligation is to take "*all appropriate steps to safeguard life*", primarily by putting in place a "*legislative and administrative framework"* designed to provide effective deterrence against threats to the right to life.[xxx] The obligation on the part of the State to safeguard the lives of those within its jurisdiction includes both substantive and procedural aspects, notably a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency, and to ensure that any occasion of the deaths caused thereby would be followed by a judicial enquiry.[xxxi]

26. Under Article 8, the primary positive obligation is to "*take reasonable and appropriate measures to secure the applicant's rights*."[xxxii] The test, in that respect, is whether a *"fair balance"* has been struck between "*the competing interests of the individual and of the community as a whole*".[xxxiii] Although positive obligations flow from Article 8(1), in striking the required balance the aims mentioned in Article 8(2) may have a certain relevance.[xxxiv]

27. In the context of environmental claims arising from dangerous activities, "*the scope of the positive obligations under Article 2 of the Convention largely overlap with those under Article 8*",[xxxv] and Article 8 requires the national authorities to take "*the same practical measures*" under both provisions.[xxxvi] Further, the principles developed with respect to Article 2 can also be applied with respect to Article 8.[xxxvii]

28. Applying these principles to the present application, it is submitted that, even if the Applicants meet the threshold for the applicability of Articles 2 and 8, the claim advanced under those provisions seeks to extend the scope of positive obligations far beyond that recognised in the Court's case-law and to involve very specific and prescriptive obligations. Thus, for example, the Applicants argue that "*the Respondent has to put in place not only all the necessary measures to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial level in terms of domestic emissions, but also to prevent and reduce any emissions occurring abroad that are within the control of the Respondent and thus directly or indirectly attributable to it, which go well beyond the domestic emissions".*[xxxviii] In the Government's submission, the Applicants have not established a failure on the part of the respondent State to comply with its positive obligations under Article 2 or Article 8 of the Convention.

B. The Margin of Appreciation

29. ***Second***, with respect to Question 5.3.1, on the margin of appreciation, the Government notes that there are two aspects to the Court's assessment of the decisions of public authorities involving environmental issues:

    i. First, the Court may assess the *substantive merits* of the government's decision, to ensure that it is compatible with Article 2 and 8 obligations ("*the substantive assessment*");
    ii. Second, it may scrutinise *the decision-making process* to ensure that due weight has been accorded to the interests of the individual [xxxix] ("*the procedural assessment*").

30. With respect to the *procedural element* of the Court's review of cases involving environmental issues, the Court will have regard to: (i) whether appropriate investigation and studies were carried out to allow a fair balance to be struck;[xl] (ii) the type of policy or decision involved;[xli] (iii) the extent to which the views of individuals (including the applicants) were taken into account throughout the decision-making procedure;[xlii] (iv) the extent to which the public was provided with information;[xliii] and (v) the procedural safeguards available.[xliv]

31. With respect to the assessment of the *substantive merits* of the government's decision, because environmental policy typically involves social and technical issues that are difficult to assess,[xlv] a *"wide margin of appreciation"* will apply.[xlvi] Having regard to *"the complexity of the issues involved",* the Court's role in environmental protection is "*primarily a subsidiary one".* With respect to general policy measures, "*where opinions within a democratic society may differ widely*", the role of the domestic policy-maker should be given special weight.[xlvii]

32. Arising from the principle of subsidiarity, and the wide margin of appreciation, the Court's main role in environmental claims is the procedural assessment of the decision-making process. It is only in "*exceptional circumstances*" that the Court should proceed to a substantive assessment of environmental policy.[xlviii] A substantive breach will arise only where there has been "*a manifest error of appreciation*" by the national authorities in striking a fair balance between the competing interests.[xlix]

33. In this regard, the Court has also emphasised that "*an impossible or disproportionate burden must not be imposed*" on the authorities in environmental cases without consideration being given, in particular, "*to the operational choices which they must make in terms of priorities and resources.*"[l] The Court's role is not to specify a particular result

that must be achieved by policies, but to assess whether authorities have approached the issue with due diligence, taking into account all competing interests.[li]

34. Applying these principles in the specific context of climate change, this means that states' margin of appreciation with respect to choice of means is not limited to choosing the policies by which a prescribed emissions reduction target will be achieved, but also applies to determining the appropriate level of emissions reduction, having regard to competing interests arising.[lii] In order to effectively address climate change, states must undertake a careful balancing of the different societal interests at stake. This is true both within the state, in terms of balancing of interests between different communities affected, and globally between states, as achieved by the Paris Agreement.

35. There can be no doubt that achieving the temperature goal of the Paris Agreement will require far-reaching and unprecedented changes. However, determining how and when those far-reaching and unprecedented changes are to occur, and balancing the myriad social, economic, technical, and constitutional interests and issues that inevitably arise, is precisely the kind of task that the Court has repeatedly characterised as being more appropriately dealt with at the domestic level. It is also necessary to acknowledge the imperative of democratic support for the far-reaching measures required to effectively combat climate change; mitigation measures impose enormous economic and societal burdens, and will not succeed without support and acceptance by those on whom the burdens fall. Accordingly, the Court should not seek to supplant measures agreed upon at national, EU, and international level by democratic process, or to mandate specific emissions reduction targets in absence of full understanding of the domestic situation and the interests to be balanced.

36. In conclusion, the wide margin of appreciation which must be afforded to States in the context of climate change reinforces the conclusion that no violation of Articles 2 and 8 has been established in this case.

C. The Relevance of International Law and the Convention as a Living Instrument

37. With respect to Question 5.3.2, in view of the fact that the Convention regime does not contain any specific provision concerning protection of the environment or indeed climate change specifically, it is incumbent on the Court, in line with its settled case-law, to take account of "*any relevant rules and principles of international law applicable in relations between the Contracting Parties*".[liii] However, it is important to note that this interpretive obligation can – and must in certain circumstances – serve to inform the limits of the scope of obligation arising under the Convention, particularly where international frameworks for cooperation already exist. In addition, consensus represents a fundamental limit on

evolutive interpretation, tying interpretation to the "*present-day*" understanding of legal obligations arising under the Convention, "*as the law currently stands*";[liv] the UNFCCC and its instruments, including the Paris Agreement, represent the undisputed consensus as to the climate mitigation obligations arising under international law.

38. With respect to Question 5.3.3, in view of the fact that the Convention is a living instrument, to be interpreted in light of present-day conditions, the Court is entitled to take account of evolving norms of national and international law in its interpretation of Convention provisions. At the same time, in the context of a Convention which binds 46 Contracting Parties, the interpretation adopted by one or more domestic courts – particularly where it goes beyond the settled case-law of this Court – cannot be regarded as setting the standard under the Convention itself as authoritatively determined by this Court.

39. In the context of climate change specifically, having regard to the global nature of this challenge, and the complexity of the response thereto, the Government submits that it is particularly important that the Convention is interpreted in line with, and in light of, the specialised international instruments which are the more pertinent reference point in the field, in particular, the UNFCCC and its instruments, including the Paris Agreement. To do otherwise would present a real risk of tension or even direct conflict between Contracting Parties' obligations under the Convention and under the UNFCCC framework and could result in a situation whereby States could, while fully complying with international obligations under the detailed and specific framework governing climate change, which has been endorsed by almost every State in the world, nevertheless be in breach of its Convention obligations.

40. The importance of coherence in states' international obligations in this sphere is reflected in the other instruments referenced in the Court's Question 5.3.2. Thus, for European Union Member States, the purpose of the European Climate Law, Regulation (EU) 2021/1119, is to deliver on the implementation of the Paris Agreement, guided by its principles and on the basis of the best available scientific knowledge, in the context of the long-term temperature goal of the Paris Agreement.[lv] For their part, the International Law Commission's Draft Articles on Prevention of Transboundary Harm from Hazardous Activities make clear that the *"appropriate measures"* to be taken must be considered to reflect – and go no further than – "*accepted international standards*", which, in this context, are found in the Paris Agreement framework.[lvi] Finally, in recognising the right to a clean, healthy and sustainable environment as a human right, the General Assembly expressly affirmed that the promotion of this right required "*the full implementation of the multilateral environmental agreements under the principles of international environmental law*".[lvii] Thus understood, the UNFCCC framework – to which Ireland is fully committed – supports the promotion of the right to clean, healthy and sustainable environment and

other rights related thereto, including the rights guaranteed under Articles 2 and 8 of the Convention.

D. Conclusion on the Merits

41. For these reasons, the Government submits that – interpreting the Convention provisions in light of the international obligations of Contracting Parties under the global framework governing climate change and having regard to the wide margin of appreciation which must be afforded to States in the substantive response to climate change – the Applicants have failed to establish any violation of the respondent State's obligations under Articles 2 and 8 of the Convention.

VI. Conclusion

42. For all these reasons, the Government of Ireland supports the submission of the Respondent that the Applicants' claim must be dismissed.

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[i] *See, e.g., Banković v Belgium and Others [GC], no. 52207/99, 12 December 2001 ("Banković v. Belgium"), §§ 59, 61, 67, 71; Al-Skeini and Others v. UK [GC], no. 55721/07, 7 July 2011 ("Al-Skeini v UK"); M.N. & Others v. Belgium [GC], no 3599/18, 5 May 2020 ("M.N. v Belgium").*
[ii] *Banković v Belgium, §114.*
[iii] *See, e.g., Decision 1/CP.21, §31(a); Decision 18/CMA.1.*
[iv] *See, e.g., Kyrtatos v Greece, no. 41666/98, 22 May 2003, §52.*
[v] *Greenpeace E.V. and others v. Germany,* no. 18215/06, 19 May 2009 *("Greenpeace v. Germany").*
[vi] *Yusufeli İlçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey (dec.),* no. 37857/14, 7 December 2021, §38.
[vii] *Tauira v. France, no. 28204/95, 4 December 1995 ("Tauira v. France").*
[viii] *Tauira v. France,* p. 130.
[ix] *Tauira v. France, p. 130; See also Mailloux v. France, no. 18108/20, 16 April 2020, §11.*
[x] *Caron and Others v. France, no. 48629/09, 29 June 2010 ("Caron v. France").*
[xi] *Tauira v. France, p. 130; Zakharov v. Russia [GC], no. 47143/06, 4 December 2015 ("Zakharov v. Russia"), §164.*
[xii] *Budayeva and Others v. Russia*, no. 15339/02 and 4 others, 20 March 2008, §137 *("Budayeva v. Russia")*; *Kolyadenko v. Russia*, nos. 17423/05 and 5 others, 28 February 2012, §161 ("*Kolyadenko v Russia"); Brincat v. Malta*, nos. 60908/11 and 4 others, 24 July 2014 ("*Brincat v. Malta"*); *Öneryildiz v. Turkey* [GC], no. 48939/99, §§63, 92-93 ("*Öneryildiz v. Turkey*").
[xiii] *Nicolae Virgiliu Tănase v. Romania*, no. 41720/13, 25 June 2019, §142 ("*Tănase v. Romania*").
[xiv] *See e.g., Öneryildiz v. Turkey*; *Brincat v. Malta*; *Kolyadenko v. Russia.*
[xv] *Tănase v. Romania*, § 144.
[xvi] *Budayeva v. Russia*, § 146.
[xvii] *Brincat v Malta, § 12. Article 2 was engaged by one applicant, whose husband had died of malignant mesothelioma.*
[xviii] *See by analogy Teitiota v New Zealand*, United Nations Human Rights Committee, 23 September 2020 ("*Teitiota v. New Zealand*").
[xix] *See, e.g. Fadeyeva v. Russia, §68; Dubetska & others v. Ukraine, no. 30499/03, 10 February 2011, §105 ("Dubetska v Ukraine"),; Apanasewicz v. Poland, no. 6854/07, 3 May 2011, §94 ("Apanasewicz v. Poland"); Flamenbaum and Others v. France, no 3675/04 and 23264/04, 13 December 2012, §133; Janina Furlepa v. Poland, 18 March 2008 ("Furlepa v. Poland"), p. 6; Hatton and Others v UK, [GC] App no. 36602/97, 8 July 2003, §96 ("Hatton v. UK").*
[xx] *López Ostra v Spain*, no. 16798/9, 9 December 1994, §51 *("Lopez Ostra v Spain")*; *Guerra v Italy*, no. 14967/89, 19 February 1998 *("Guerra v. Italy"); Hatton v UK,* §96*; Furlepa v. Poland,* p. 6.
[xxi] *Guerra v Italy, §57; Furlepa v. Poland,* p. 6.
[xxii] *Atanasov v. Bulgaria*, no. 12853/03, 2 December 2010 *("Atanasov v. Bulgaria"),* § 66.

[xxiii] *Hatton v. UK, §96; Furlepa v. Poland,* p. 6.
[xxiv] *Vecbaštika and Others v. Latvia,* App no. 52499/11, 19 November 2019 *("Vecbaštika v. Latvia"); Asselbourg v. Luxembourg,* App no. 29121/95, 2 June 1999 *("Asselbourg v. Luxembourg").*
[xxv] *Taskin v. Turkey*, App no. 46117/99, 10 November 2004 ("*Taskin v. Turkey*"), §113.
[xxvi] See, e.g., *Hardy & Maile v. United Kingdom,* App no, 31965/07, 14 February 2012 *("Hardy & Maile v UK")*
[xxvii] *Atanasov v. Bulgaria,* § 66.
[xxviii] *Cordella v Italy, no. 54414/13 and 54264/15, 24 January 2019 ("Cordella v Italy"),* § 76.
[xxix] *Osman v United Kingdom, no. 87/1997, 28 October 1998, §116.*
[xxx] *Öneryildiz v Turkey, § 89; Budayeva v. Russia, §129, Brincat v. Malta, §101.*
[xxxi] *Öneryildiz v Turkey, §§89-118; Budayeva v. Russia, §131.*
[xxxii] *Lopez Ostra v Spain, §51.*
[xxxiii] *Hatton v. UK, §98.*
[xxxiv] *Hatton v. UK, §98.*
[xxxv] *Budayeva v. Russia, §133*
[xxxvi] *Brincat v. Malta, §102, Kolyadenko v Russia, §216.*
[xxxvii] *Budayeva v. Russia, §133.*
[xxxviii] Applicants' Observations on the Law Reply to the Respondent's observations on the law, 13 October 2021, §68
[xxxix] *Hatton v. UK,* §99; See also *Taskin v. Turkey,* App no. 46117/99, 10 November 2004 *("**Taskin v. Turkey**"),* §115
[xl] *Hatton v. UK,* §128.
[xli] *Hatton v. UK,* §104.
[xlii] *Hatton v. UK,* §104.
[xliii] *Öneryildiz v Turkey, §89, Guerra v. Italy,* §60.
[xliv] *Hatton v. UK,* §104.
[xlv] *Powell and Rayner v. the United Kingdom,* no. 9310/81, 21 February 1990, §44*; Giacomelli v. Italy,* no. 59909/00, 2 November 2006, *§80; Budayeva v. Russia, §135; Fadeyeva v. Russia,* §104-105.
[xlvi] *Hatton v. UK,* §97.
[xlvii] *Hatton v. UK,* §97.
[xlviii] *Fadeyeva v. Russia,* §105.
[xlix] *Fadeyeva v. Russia,* §105.
[l] *Budayeva v. Russia,* §135. *See also Stoicescu v Romania,* no. 9718/03, 26 July 2011, §§ 51 and 59 applying the principle in the context of Article 8.
[li] *Fadeyeva v Russia,* §§68, 128; *Cordella v Italy,* §161.
[lii] See by analogy *Greenpeace v. Germany.*
[liii] *Demir and Baykara v. Turkey* [GC], no. 34503/97, ECHR 2008, §§ 67-68.
[liv] *Sitaropoulos and Giakoumopoulos v. Greece [GC], no. 42202/07, §75, ECHR 2012, Shindler v. The United Kingdon, no. 19840/09, §114, 7 May 2013.*
[lv] Regulation (EU) 2021/1119, recital (1) and *passim.*
[lvi] International Law Commission, *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities with Commentaries* (2001), Articles 3, 4, 9 and 10.
[lvii] UN General Assembly, Resolution A/76/L.75 of 26 July 2022, §3.