VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS
v.
SWITZERLAND

(application no.53600/20)

THIRD PARTY OBSERVATIONS
OF THE GOVERNMENT OF THE REPUBLIC OF LATVIA

I. INTRODUCTION

1. The present observations contain the views of the Government of the Republic of Latvia ('Latvia') intervening as a third party in the case of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* currently pending before the Grand Chamber. As outlined in its letter of 19 July 2022, Latvia is of the opinion that the questions raised in the present case touch upon serious issues related to the interpretation of the Convention, and the outcome of the present proceedings will have an irreversible impact on the further application of the Convention in cases related to climate change. Therefore, Latvia believes that the present intervention according to Article 36, paragraph 2, of the Convention would be in the interest of the proper administration of justice.

2. In view of the limits set by the Court by its letter no.ECHR-LE14.8aG3 DAR/ KKM/nsc of 24 October 2022, Latvia wishes to offer to the Court its observations as to the general principles applicable to the present case. Therefore, Latvia will focus on the interpretation and application of Article 1 of the Convention and the fundamental role of the principle of subsidiarity when it comes to issues pertaining to the protection of the environment and prevention of climate change. In doing so, without delving into the facts of the present case, Latvia's comments will focus on the following aspects of the case:

    1) the role of the principle of subsidiarity in cases related to climate change;

    2) whether the applicants could be considered to have been in the jurisdiction of other States with respect to greenhouse gas emissions generated abroad, and should the case law of the Court be further developed in order to take account of the specific characteristics of climate change?

    3) what is the interaction between the provisions of the Convention and other international instruments regarding protection of the environment and the prevention of climate change?

    4) what should be the Court's guidance regards the application of Article 46 of the Convention?

II. OBSERVATIONS OF LATVIA

3. As a preliminary remark, Latvia underlines that protection of the environment and prevention of any detrimental consequences that climate change may bring to the international society as a whole, which, as a consequence, includes the impact of climate change on individuals, is of paramount significance. The importance the States attach to this issue is evidenced by the substantial number of States parties to international agreements that govern the prevention of climate change, and consequently attest to the States' clear determination to deal with this issue.[1] However, being mindful of the need to tackle challenges that climate change as a global phenomenon presents, the obligations of the States under different international agreements were specifically designed to require that the States legislate and adopt measures, whilst acknowledging

[1] Currently, the *Paris Agreement* has 194 Parties, https://unfccc.int/process/the-paris-agreement/status-of-ratification; the *UNFCCC* has 198 parties, https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states.

that they are better placed to ascertain what is the proper balance of several competing interests, such as the economic well-being of the State, the need to ensure sustainable development, and the need to protect and preserve the environment, among others.[2] It therefore follows that the international consensus in this respect creates a very wide margin of appreciation for the States in the determination of what should be the appropriate balance of the competing interests, and establishes that the choice in means and terms within which those means ought to be implemented, subject to the deadlines set in those treaties, remains with the State concerned. Moreover, a similar approach has time and again been endorsed by the Court in its case law by finding that:

> "[t]he Court has already had occasion to note that town and country planning schemes involve the exercise of discretionary judgment in the implementation of policies adopted in the interest of the community. [..] It is not for the Court to substitute its own view of what would be the best policy in the planning sphere or the most appropriate individual measure in planning cases. By reason of their direct and continuous contact with the vital forces of their countries, the national authorities are in principle better placed than an international court to evaluate local needs and conditions. [..] In so far as the exercise of discretion involving a multitude of local factors is inherent in the choice and implementation of planning policies, the national authorities in principle enjoy a wide margin of appreciation."[3]

4. In this context, Latvia further recalls that following the entry into force of Protocol no.15 to the Convention, the principle of subsidiarity has been emphasised in the preamble of the Convention, thus reiterating and consolidating its fundamental character in the Convention system. Thereafter, the Court has emphasized the importance of the principles of subsidiarity and shared responsibility between the Court and the High Contracting Parties,[4] without which the Convention system would lose its purpose. Consequently, in view of the inherently environmental character of questions about climate change and the States' obligations in tackling it, which as a matter of fact requires from States to conduct a balancing exercise of several interests, the approach of the Court should follow its existing case law, which clearly supports the subsidiary role of the Convention system in such matters.

5. In view of the above, Latvia's observations as regards the questions formulated above will bear in mind the significance that the principle of subsidiarity has in the proper administration of justice at international level, especially as regards the international environmental law. At the same time, Latvia emphasizes that this principle is an extremely important aspect to be taken into account in all facets of the present case, as well as other similar cases pending before the Court. In particular, it has its role in the determination of whether the applicants are victims of an alleged violation of the Convention, whether they have exhausted domestic remedies, among others, which, however, in the present case Latvia will not comment on, as they would necessarily require it to comment on the facts of the case.

II.1. As regards the jurisdiction

6. Turning to the substantive observations of Latvia, it should be recalled that the notion of jurisdiction as expressed in Article 1 of the Convention is primarily territorial,[5] and its extra-

[2] E.g. Articles 4 and 5 of the *Paris Agreement*, https://unfccc.int/sites/default/files/english_paris_agreement.pdf..
[3] *Buckley v. The United Kingdom* (application no.20348/92), judgment of 25 September 1996, para.75; *Hatton and Others v. The United Kingdom* (application no.36022/97), Grand Chamber judgment of 8 July 2003, para.96.
[4] *Grzeda v. Poland* (application no.43572/18), Grand Chamber judgment of 15 March 2022, para.324; more recently *Pinkas and Others v. Bosnia and Herzegovina* (application no.8701/21), judgment of 4 October 2022, para.45, although not yet in force.
[5] *Assinadze v. Georgia* (application no. 75103/11), judgment of 8 April 2008, pars.137-139; *Al-Skeini and others v. the United Kingdom* (application no.55721/07), Grand Chamber judgment of 7 July 2011, paragraph 133; *Catan and*

territorial application is exceptional.[6] The Court has thus far established that individuals have been within the jurisdiction of the State extraterritorially, when those individuals are either under physical control by the State or its agents, or where the State in question exercises effective control over the territory of another State.[7] Further exceptions to the primarily territorial nature of jurisdiction under the Convention have been applied where the issue and complaint concerns the link between a State and its nationals in specific regimes, and procedural obligations that stem from the right to fair trial or the procedural obligations under Articles 2 and 3 of the Convention.[8] Otherwise, the Court's jurisprudence interprets the notion of jurisdiction narrowly and restrictively. As generally found by the Court in the *Bankovič* and later confirmed in the *M.N. and Others v. Belgium case*:

> "[..a]n exception to the principle that jurisdiction under Article 1 is limited to a State Party's own territory occurs where that State exerts effective control over an area outside its national territory. The obligation to secure the rights and freedoms set out in the Convention in such an area derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration. [..] Further, the use of force by a State's agents operating outside its territory may, in certain circumstances, bring persons who thereby find themselves under the control of the State's authorities into the State's Article 1 jurisdiction. [..] Equally, extraterritorial jurisdiction has been recognised as a result of situations in which the officials of a State operating outside its territory, through control over buildings, aircraft or ships in which individuals were held, exercised power and physical control over those persons. [..] As the Court reiterated in its judgment in *Al-Skeini and Others*, a State Party's jurisdiction may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property. [..] Lastly, specific circumstances of a procedural nature have been used to justify the application of the Convention in relation to events which occurred outside the respondent State's territory [..]"[9]

7. More recently, in the case of *H.F. and Others v. France* the Court has reiterated these general principles and emphasized that "*as an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory*,"[10] thus acknowledging that Convention rights can be "divided and tailored". However, the Court nevertheless highlighted "*that the mere fact that an applicant had brought proceedings in a State Party with which he or she had no connecting tie could not suffice to establish that State's jurisdiction over him or her. To find otherwise would amount to enshrining a near-universal application of the Convention on the basis of the unilateral choices of any individual, regardless of where in the world that individual might be*", which would go against the purpose and aim of Article 1 of the Convention.[11]

Others v. Moldova and Russia (application no.43370/04, 18454/06 and others), Grand Chamber judgment of 19 October 2012, para.104.

[6] *Bankovič and Others v. Belgium and Other States* (application no.52207/99), Grand Chamber decision of 12 December 2001, para.61; *Ilascu and Others v. Moldova and Russia* (application no.48787/99), Grand Chamber judgment of 8 July 2004.

[7] *Ibidem.*

[8] *X. and Y. v. Switzerland* (applications nos. 7289/75, 7349/76), decision of the Commission of 14 July 1977; *M v. Denmark* (application no. 17392/90), decision of the Commission of 14 October 1992; *Al-Sadoon and Mufdhi v. the United Kingdom* (application no. 61489/08), judgment of 2 March 2010, paragraph 132. However, the Court has on several occasions refused to apply in comparable situations, see: *Thanh v. the United Kingdom* (application no. 16137/90), decision of 12 March 1990; *Yonghong v. Portugal* (application no. 50887/99), judgment of 25 November 1999; *Öcalan v. Turkey* (application no. 46221/99), Grand Chamber judgment of 12 May 2005 and others.

[9] *M.N. and Others v. Belgium* (application no.3599/18), Grand Chamber decision of 5 May 2020, paras. 103 and further.

[10] *H.F. and Others v. France* (applications nos.24384/19 and 44234/20), Grand Chamber judgment of 14 September 2022, para.186.

[11] *Ibidem*, para.188.

8. It transpires from the above-described well-established principles, which the Court has applied consistently throughout its case law, that individuals cannot claim that they have been within the jurisdiction of a State under Article 1 of the Convention, where they cannot establish a sufficiently clear causal link between a particular action or set of actions of a State that created effective control over a particular individual's Convention rights. Latvia believes that one of the Court's recent judgments in the case of *Georgia v. Russia (II)* indicates an even stricter approach towards the interpretation of 'jurisdiction' under Article 1 of the Convention. In this case, the Court found that even despite Russia having forcefully entered another High Contracting Party's territory it had not exercised effective control over individuals or territory in Georgia during the active phase on an armed conflict in 2008. Without addressing the issue of whether the Court's conclusions in this case were in line with the *espace juridique* of the Convention, and whether the interpretation of 'effective' was in line with the principles protected by the Convention , in Latvia's strong view, the conclusions of the Court in that case signal that even where the international law, in that case the international humanitarian law/ peremptory norms of international law, in the present case international environmental law, requires States to abstain from certain activities or, on the contrary, take certain actions, which may create consequences in another State's territory, as such cannot lead to a conclusion that this State has exercised effective control and thus jurisdiction. That is to say, the fact that a given State has *erga omnes* obligations under international law, the nature of the obligation as such cannot establish the former State's extraterritorial jurisdiction over another State's territory or individuals in it. Thus, the Court has effectively denied a 'cause and effect' approach that is based merely on States' international obligations. Moreover, Latvia submits that the present case would require the Court to go even further than in the case of *Georgia v. Russia (II)* to establish the jurisdiction of a High Contracting Party other than the territorial one. Unlike in the *Georgia v. Russia (II) case*, in the present case there is no direct link between the applicants and any other High Contracting Party, and while it is true that emissions produced in one High Contracting Party can have an impact on the overall quality of the environment and may contribute to climate change, these emissions unlike measures adopted during an armed conflict do not reach the level of effective control to establish jurisdiction.

9. Furthermore, Latvia recalls that the Court found that:

> "[..] the conditions it has applied in its case-law to determine whether there was an exercise of extraterritorial jurisdiction by a State have not been met [.., and – the Government's redaction] this conclusion is confirmed by the practice of the High Contracting Parties in not derogating under Article 15 of the Convention in situations where they have engaged in an international armed conflict outside their own territory. In the Court's view, this may be interpreted as the High Contracting Parties considering that in such situations, they do not exercise jurisdiction within the meaning of Article 1 of the Convention, a position also defended by the respondent Government in the present case. That said, the Court is sensitive to the fact that such an interpretation of the notion of "jurisdiction" in Article 1 of the Convention may seem unsatisfactory to the alleged victims of acts and omissions by a respondent State during the active phase of hostilities in the context of an international armed conflict outside its territory but in the territory of another Contracting State, as well as to the State in whose territory the active hostilities take place. However, having regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations are predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict), the Court considers that it is not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date."[12]

To follow the Court's logic, Latvia underlines that in the present case and in other cases pertaining to climate change that have been brought to the attention of the Court, all of the respondent

[12] *Georgia v. Russia (II)* (application no.38263/08), Grand Chamber judgment of 21 January 2021, paras. 138 and further.

Governments submit that their policies and actions that may cause extraterritorial effects cannot place any individual anywhere in the world within their jurisdiction under Article 1 of the Convention.[13] To put it in the Court's phrasing, the High Contracting Parties have expressly underlined that they consider that in such circumstances they do not and cannot exercise jurisdiction within the meaning of Article 1 of the Convention. Therefore, it clearly follows that, as per the position of the High Contracting Parties, it is impossible to stretch the notion of jurisdiction under Article 1 of the Convention so that it would place the applicants or any other individual generally within their jurisdiction.

10. In addition, similarly to what the Court has underlined in the above case, the questions that are examined in the present case fall under a specific set of legal instruments other than the Convention. Consequently, Latvia strongly believes that if the Court found that it was impossible to establish a State's jurisdiction during the active phase of an armed conflict, where a given State evidently takes physical actions that cause direct consequences to the territory of another State and its inhabitants, then in a situation like the one examined in the present case, where the jurisdiction would be based on an alleged causal link that is unclear and vague, if any such link existed, the conclusions of the Court in the *Georgia v. Russia (II) case* and all of the above considerations indicate that the applicants could not be considered to have been in the jurisdiction of Latvia or any other State other than the territorial State.

11. Moreover, in view of the Court's recent jurisprudence, Latvia submits that the present case cannot warrant any development of the Court's case law. In particular, Latvia takes note of the recent developments in the practice of the Human Rights Committee and the Committee on the Rights of the Child in assessing complaints regarding alleged violations of the rights of children and minorities stemming from climate change.[14] More precisely, Latvia refers to the findings of the committees in the cases of *Chiara Sacchi and Others* and the *Torres Strait Islanders*, and submits that the concept of 'jurisdiction' under Article 1 of the Convention should not be developed in a manner that would essentially go against the Court's own jurisprudence. Even though, as described above, the Court has underlined that there are exceptions to the principally territorial nature of jurisdiction of High Contracting Parties under the Convention, these exceptions do not envisage a scenario of "*a near-universal application of the Convention on the basis of the*

[13] Among other cases, see, also *Duarte Agostinho and Others v. Portugal and 31 Other States* (application no.39371/20).

[14] *Chiara Sacchi et al v. Argentina* (application no.104/2019), opinion of the Committee on the Rights of the Child of 8 October 2021, available: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ARG/CRC_C_88_D_104_2019_33020_S.pdf ; *Chiara Sacchi et al v. Brazil* (application no.105/2019), opinion of the Committee on the Rights of the Child of 8 October 2019;, available: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/BRA/CRC_C_88_D_105_2019_33021_E.pdf; *Chiara Sacchi et al v. France* (application no.106/2019), opinion of the Committee on the Rights of the Child of 8 October 2021, available: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/FRA/CRC_C_88_D_106_2019_33022_F.pdf; *Chiara Sacchi et al v. Germany* (application no.107/2019), opinion of the Committee on the Rights of the Child of 8 October 2021, available: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/DEU/CRC_C_88_D_107_2019_33023_E.pdf; *Chiara Sacchi et al v. Turkey* (application no.108/2019), opinion of the Committee on the Rights of the Child of 8 October 2021, available: https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/TUR/CRC_C_88_D_108_2019_33024_E.pdf; *Daniel Billy et al. v. Australia* (application no.3624/2019), opinion of the Human Rights Committee of 22 September 2022, available: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_135_D_3624_2019_34335_E.docx.

unilateral choices of any individual, regardless of where in the world that individual might be"[15]. In this connection, Latvia recalls that the conclusions of the Human Rights Committee in the *Chiara Sacchi case* established that the respondent States exercised extraterritorial jurisdiction over those applicants due to the effects the emissions produced in the respondent States had on the environment in the States from where the applicants in those cases came. However, this approach essentially established that the answer to the question of whether a State exercises jurisdiction hinges on whether individuals can be considered to have been victims of an alleged violation of their rights. Moreover, the standard of proof applied to establish the victimhood of those individuals and thus jurisdiction of those respondent States was inconsistent with the Court's standard of proof as applied in cases concerning the rights invoked in the present case.[16]

12. In view of the foregoing considerations, Latvia strongly believes that it is impossible to conclude that the applicants in the present case could have been within the extraterritorial jurisdiction of a High Contracting Party other than the territorial High Contracting Party. Moreover, seeing the Court's approach towards the interpretation of the notion of jurisdiction under Article 1 of the Convention, the developments in other international human rights bodies, and the evident discrepancies between the both of them, the specific nature of the present case cannot warrant the development of the Court's case law as regards extraterritorial jurisdiction.

II.2. Application of international instruments in the interpretation of the Convention

13. Further, Latvia takes note that in its questions to the parties, the Court has requested their opinion as to what is the relevance of the concept of harmonious interpretation of the Convention and other instruments of international law. The Court especially refers to the *United Nations Framework Convention on Climate Change* ('*UNFCCC*'), the *Paris Agreement*, the International Law Commission's *Draft Articles on Prevention of Transboundary Harm from Hazardous Activities*, the *European Climate Law*, and the *UN General Assembly Resolution A/76/L.75 of 26 July 2022 'The human right to a clean and healthy and sustainable environment'* ('*UNGA Res.A/76/L.75*'). Accordingly, Latvia further presents its observations in this respect, and focuses on the 'living instrument doctrine' that the Court has developed in its case law.

14. In particular, as recognised by the Court in the *Tyrer v. the United Kingdom*, there is no doubt "*that the Convention is a living instrument* [..] *which must be interpreted in the light of present-day conditions*."[17] This allows the Court to consider not only developments in the social processes and thought in the High Contracting Parties, but also allows the Court to ensure a harmonious interpretation of obligations of States under the Convention, when read in context with other international instruments.[18] However, this evolutive approach does not establish to the Court an unfettered power to go beyond the text of the Convention.[19] The Court itself has

[15] *H.F. and Others v. France* (applications nos.24384/19 and 44234/20), Grand Chamber judgment of 14 September 2022, para.188; *M.N. and Others v. Belgium* (application no.3599/18), Grand Chamber decision of 5 May 2020, paras. 123.

[16] *Di Sarno and Others v. Italy* (application no.30765/08), judgment of 10 January 2012, para.80; *Cordella and Others v. Italy* (application no.54414/13 and 54264/15), judgment of 24 January 2019, para.101; *Caron and Others v. France* (application no.48629/08), decision of 29 June 2010; *Vecbaštika and Others v. Latvia* (application no.52499/11), decision of 19 November 2019.

[17] *Tyrer v. the United Kingdom* (application no.5856/72), judgment of 25 April 1978, para.31.

[18] *Demir and Baykara v. Turkey* (application no.34503/97), Grand Chamber judgment of 12 November 2008, para.68.; see also *Pavlov and Others v. Russia* (application no.31612/09), judgment of 11 October 2022, Separate opinion of judge Krenc.

[19] *Magyar Helsinki Bizottsag v. Hungary* (application no.18030/11), judgment of 8 November 2016, Separate opinion of judges Sicilianos and Raimondi, para.2.

found on several instances that, "[the Court] *is competent to apply only the* [Convention], *and* [..] *it is not its task to interpret or review compliance with other international conventions as such*."[20] Accordingly, the harmonious interpretation of the Convention provisions, in Latvia's strong view, cannot allow the Court to stretch the text of the Convention in a manner that would effectively allow individuals to bring complaints before the Court challenging the compatibility of obligations of the High Contracting Parties to the Convention under other international treaties, such as the *UNFCCC* or the *Paris Agreement*.

15. In this connection, Latvia draws the Court's attention to what it believes to be one of the central questions in the present case. Namely, one of the primary questions in the present case (and, for that matter, in the other cases that concern similar complaints) is whether an individual can derive a right, and thus a vertical obligation for States parties to the above international treaties, which expressly establish horizontal obligations among States parties to those instruments, to adopt a particular set of measures to tackle climate change and mitigate its consequences. In other words, by submitting the present complaints, the applicants claim that in addition to the horizontal obligations States have towards other States, the *UNFCCC* and the *Paris Agreement* enshrines for them a subsidiary right to claim that the alleged failure of States to sufficiently act under those treaties has led to an alleged violation of their individual rights. In the particular situation of the present and similar cases before the Court, the applicants have framed their complaints in a manner that, in their view, falls under the Convention system, yet ask the Court to significantly depart from its existing case law, and establish a universal right for individuals to derive substantive individual rights and thus vertical obligations for States under international law to which they have not subscribed.

16. Latvia recalls that none of the internationally binding instruments to which the Court refers establishes any rights to individuals. Instead, the obligations enshrined in the *Paris Agreement*, the *UNFCCC*, and the *European Climate Law* entail obligations of a horizontal character that States parties to those agreements owe to other States parties. That is to say, *erga omnes partes* obligations. Indeed, even if all of the instruments referred to by the Court, both, legally binding and of soft-law nature, refer to the important role the environment has for the effective implementation of the rights of individuals, none of them refers to the right of individuals to a benevolent, healthy or clean environment as a right that would give individuals the power to request that States adopt specific measures that the individuals consider to be effective and necessary, or reduce the deadlines for the adoption of appropriate measures as established in the *Paris Agreement*. The *UNGA Res. A/76/L.75* refers to a right to a benevolent, clean and safe environment, of which the prevention of climate change is a part, however, does not create a right for individuals to request specific measures to be taken by States with respect to tackling climate change. In other words, these instruments cannot be construed as setting out at international level obligations of the States parties to adopt specific measures that can be measured individually. On the contrary, all of the international instruments referred to by the Court leave this decision to be made by the States themselves, within the deadlines set by those instruments, and subject to the supervisory system established in those instruments.

17. Having established the above, Latvia further takes note that the Court's own case law has recognized that, while the Convention does not guarantee an explicit right to a benevolent

[20] *Somogyi v. Italy* (application no.67972/01), judgement of 18 May 2004, para.62; *Di Giovine v. Portugal* (application no.39912/98), decision of 31 August 1999; *Hermida Paz v. Spain* (application no.4160/02), decision of 28 January 2003; *Hristozov and Others v. Bulgaria* (applications nos.47039/11 and 358/12), judgement of 13 November 2012, para.105.

environment, there might arise an issue under Article 8 of the Convention where an individual is directly and seriously affected by noise or by another form of pollution or nuisance.[21] However, this right, like the interpretation of the Convention in the light of the living instrument doctrine, is not without its limits. Accordingly, while Latvia agrees that the above-mentioned international instruments should be taken into account by the Court in deciding the present case, the international legal framework pertaining to climate change, like the Convention, is designed around the understanding that States are better placed to assess the necessary policies to tackle climate change, accommodate other equally important interests of the State, and that States can certainly balance different competing interests better than an international organization. As a result, the international legal framework pertaining to climate change should be taken into account by the Court in determining the scope of the High Contracting Parties' obligations under the Convention, however, as the international legal framework does not foresee such a right, the Court cannot establish that there would be an autonomous right of individuals to request that States adopt specific actions and measures or policies to tackle climate change. Moreover, neither can the international legal framework have an impact on the procedural requirements for the examination of complaints, such as admissibility criteria, or the notion of jurisdiction under Article 1 of the Convention.

18. From the above, it equally follows that when assessing the High Contracting Parties' obligations under the Convention in context with the obligations of States under the international legal framework pertaining to prevention and mitigation of climate change, the obligations are not, as such, different from those already established by the Court in its case law. The difference in those obligations lies in the protected interest and subject for whose benefit the measures are to be adopted. In particular, both, the Convention and other international instruments impose a positive obligation towards States to regulate, adopt legislative and policy instruments in the field of environmental protection, when the failure of States could lead to a detrimental outcome. However, from the perspective of the international legal framework on the prevention of climate change, States have to adopt measures to prevent climate change and mitigate its consequences in general, whereas, from the perspective of the Convention, the High Contracting Parties have an obligation to legislate, ensure a sufficient legal framework so that the policies and legislation does not disproportionately infringe upon the rights of individuals, and individuals, whose rights are adversely affected by environmental catastrophes, environmental planning, pollution, etc. may challenge the measures before domestic authorities and courts.[22] None the above international legal framework establishes that States should adopt a specific set of measures to tackle climate change, leaving this to the States concerned, nor the Convention establishes such a right. Accordingly, Latvia believes that, even if read in context with the international legal framework pertaining to climate change, the obligations of States under the Convention remain unchanged.

II.3. As regards the application of Article 46 of the Convention

19. Finally, Latvia again recalls the principles outlined by it at the outset of these observations, *i.e* the role of the principle of subsidiarity as a core element of international obligations of States in the field of protection of the environment, and underlines that this should be considered in all

[21] *Tatar v Romania* (application no.67021/01), judgment of 27 January 2009, para.86; *Hatton and Others v. the United Kingdom* (application no.36022/97), Grand Chamber judgment of 8 July 2003, para.96.

[22] An overview of the obligations of the High Contracting Parties to the Convention is provided in the Court's guide on its case law on environment, available: https://www.echr.coe.int/Documents/Guide_Environment_ENG.pdf.

aspects of the present case. Not only should it be a guiding principle to be taken into account when determining whether the applicants have exhausted domestic remedies, what is the scope of obligations States have under the Convention, and their margin of appreciation, or what are the limits of the Court's competence to address such complaints, but also as regards the guidance the Court could give to a High Contracting Party should Article 46 of the Convention be applied. Namely, in Latvia's strong view, the choice of measures to be taken by the High Contracting Party to the Convention for the execution of a judgment, were the Court to find a violation of the Convention, should be left for the High Contracting Party concerned. This follows not only from the Court's existing case law under Article 46 of the Convention, but also from the nature and character of the obligations States have under international law pertaining to the protection of the environment and mitigating effects of climate change.

20. Latvia recalls the Court's well-established case law according to which, in principle, it is primarily for the High Contracting Party concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention.[23] This principle can, exceptionally, be disregarded by the Court, as noted by the Court itself, in cases of systemic violation and with an intent to help the High Contracting Parties to the Convention in the fulfilment of their obligations under Article 46 of the Convention.[24] At the same time, the supervisory procedure remains the same – the execution of judgments of the Court is supervised by the Committee of Ministers of the Council of Europe. Therefore, Latvia recalls that, as explained above, the international legal framework on environmental protection, which includes the *Paris Agreement*, the *UNFCCC*, the *European Climate Law*, among others, leaves the choice of measures, means and activities to tackle climate change to the States parties to those agreements. It should be reiterated in this regard that this approach was chosen specifically in view of the evidently complex balancing exercise States have to conduct in order to achieve their goals in tackling climate change. Thus, both the international legal framework and the Court's own jurisprudence concerning cases with elements that concern environmental protection are grounded in the subsidiarity, leaving the choice of appropriate measures to be taken by High Contracting Parties to themselves.

21. Having established the above, Latvia submits that were the Court to indicate any type of general measures to be taken to execute its judgment in the present case that relate to the substantive amount of GHG emissions and measures to be taken to tackle climate change, this indication would, as such, go against the very nature of the obligations of States under international environmental law as described above. Even more so, in such an event, the Committee of Ministers would, in effect, become a body that supervises the compliance of the Respondent Governments with the obligations set in the *Paris Agreement* with the additional guidance provided by the Court. Thus, the Convention system would assume competencies that the States themselves have given to another body within a completely different international treaty system.[25]

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[23] *Ilgar Mammadov v. Azerbaijan* (application no.15172/13), Grand Chamber judgment as regards the application of Article 46 of the Convention of 29 May 2019, para.148; *Hirst v. the United Kingdom* (application no.74025/01), Grand Chamber judgment of 6 October 2005, para.83.

[24] *Broniowski v. Poland* (application no.31443/96), Grand Chamber judgment of 22 June 2004, paras.190-194; *Stanev v. Bulgaria* (application no.36760/06), Grand Chamber judgment of 17 January 2012, para.255.

[25] As per Article 14 of the *Paris Agreement*, the Respondent Governments have agreed to the global stocktake to be conducted in 2023; and under Article 15 of the *Paris Agreement* the Respondent Governments have acknowledged the competence of the expert-based committee, see also paragraphs 45-46 of the Government's Memorial.

22. Moreover, Latvia believes that exactly because of these considerations in the *Torres Islanders Case* the Human Rights Committee did not elaborate on the measures to be taken by Australia in order to comply with its obligations under the International Covenant on Civil and Political Rights.[26] Seeing that the material obligations, timeline, the supervisory system, and other related issues are governed by another body of international law, any indications from the Human Rights Committee would have encroached upon that other system.

23. In view of the above considerations and the technical complexity of issues regarding environmental protection and the delicate balance which has to be found between the various interests at stake so as to achieve the objectives of climate and environmental protection while at the same time taking into consideration other potentially conflicting individual rights and public objectives (e.g. economic freedom, social solidarity, fiscal justice) not only justify the recognition of a wide margin of appreciation to the States, but also refers to the subsidiarity, which should lead the Court to refrain from indicating general measures.

III. CONCLUSIONS

24. In view of the foregoing, Latvia invites the Court to conclude that:

1) the notion of 'jurisdiction' as enshrined in Article 1 of the Convention as interpreted in the Court's existing case law cannot be construed as establishing that any individual anywhere in the world could be considered to be within the jurisdiction of any High Contracting Party to the Convention;
2) the specific circumstances of cases pertaining to climate change cannot warrant developing the notion of 'jurisdiction' under Article 1 of the Convention so as to accommodate complaints regarding climate change in a manner that would essentially go against the core jurisprudence of the Court;
3) the international instruments that govern the protection of environment and tackle climate change should be taken into account in the interpretation of obligations the States have under the provisions of the Convention, however, these instruments do not themselves, and therefore cannot establish through the 'living instrument doctrine' that individuals would have a right under the Convention to request from the High Contracting Parties to take specific actions to tackle climate change;
4) the international body of law governing environmental protection cannot affect the procedural requirements for the assessment of complaints, and cannot have an impact on the notion of 'jurisdiction' under Article 1 of the Convention;
5) the Court should not indicate any measures under Article 46 of the Convention for High Contracting Parties to the Convention for the execution of judgments concerning climate change as it would go against the nature of States' obligations under international environmental law.

Kristīne Līce
Agent of the Government of the Republic of Latvia

Riga, 5 December 2022

[26] *Daniel Billy et al. v. Australia* (application no.3624/2019), opinion of the Human Rights Committee of 22 September 2022, available: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AUS/CCPR_C_135_D_3624_2019_34335_E.docx.