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Litigating for a Just Tomorrow

Promoting Intergenerational Climate Justice through Strategic Climate Litigation at the ECtHR

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Abstract

The climate crisis is not only an ecological emergency, but also a profound human rights challenge characterised by deep intergenerational injustice. Today's children and future generations will bear the heaviest burden of inadequate climate action by current governments. In response, climate activism has increasingly shifted from the streets into courtrooms, with strategic climate litigation emerging as a powerful tool to promote climate justice and hold states accountable. This thesis explores how such litigation before the European Court of Human Rights (ECtHR) promotes intergenerational climate justice. Drawing upon a literature review, one expert interview and legal doctrinal analysis grounded in Edith Brown Weiss's Intergenerational Equity Triad, this thesis analyses the landmark ECtHR cases *Verein KlimaSeniorinnen v. Switzerland* and *Duarte Agostinho and Others v. Portugal and 32 Others* (April 2024). The findings demonstrate that, while strategic litigation can establish positive obligations and broaden legal standing, its transformative potential is constrained by procedural barriers, declaratory judgments and weak enforcement mechanisms. Thus, the ECtHR's evolving jurisprudence reveals both the promise and constraints of law as a catalyst for intergenerational climate justice. This highlights the need for robust implementation, political will and continued activism - both on the streets and in the Court.

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List of Abbreviations

AO	Advisory Opinion
ACHPR	African Charter on Human and People's Rights
ACHR	American Convention on Human Rights
AfCHPR	African Court of Human and Peoples' Rights
CESCR	UN Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
COE	Council of Europe
COP	Conference of the Parties
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GHG	Greenhouse Gas
GLAN	Global Legal Action Network
ICJ	International Court on Justice
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IPCC	Intergovernmental Panel on Climate Change
ITLOS	International Tribunal for the Law of the Sea
L&D	Loss and Damage
MEAs	Multilateral Environmental Agreements
NDCs	Nationally Determined Contributions
NGO	Non-governmental Organisation
OHCHR	United Nations Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNGA	United Nations General Assembly
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change

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1. Introduction

The world has never seen a threat to human rights of this scope. This is not a situation where any country, any institution, any policy-maker can stand on the sidelines. The economies of all nations; the institutional, political, social and cultural fabric of every State; and the rights of all your people - and future generations - will be impacted. (Bachelet, 2019)

This warning, voiced by former United Nations High Commissioner for Human Rights Michelle Bachelet at the Human Rights Council in 2019[1], encapsulates the gravity of the climate crisis and the urgency of a response. The crisis is not only environmental but fundamentally human: it is a crisis of rights, equity and justice. Rising temperatures, intensifying droughts and extreme weather events do not affect all people equally. They entrench deep injustices between communities, nations and hemispheres - particularly between the Global North and the Global South[2], and along lines of race, gender and class. Above all, they drive an intergenerational wedge between those who shaped the present crisis and those who must live with its escalating consequences.

The climate crisis has turned into a human rights crisis threatening fundamental rights - from health and housing to water and food security. Droughts parch crops and undermine food production, storms displace families and destroy communities, while heatwaves claim lives and strain public health systems (Bodansky et al., 2017, p. 31). These cascading impacts create what institutions like the UNHCR and IOM recognize as a new paradigm of climate mobility, where environmental degradation forces unprecedented scales of human displacement (IOM, 2024, p. 4; UNHCR, 2024, para. 2). As climate impacts intensify, the majority of people forcibly displaced by persecution, conflict, and violence now live in countries that are highly vulnerable and ill-prepared to adapt to climate change (UNHCR, 2024, para. 3). By 2022, disasters triggered a record 32.6 million internal displacements, with 98% caused by weather-related hazards, while projections suggest climate change could

[1] This statement was also cited by lead counsel Jessica Simor KC during the oral hearing of the KlimaSeniorinnen case before the ECtHR on 29 March 2023, underscoring its legal and symbolic relevance (Simor, 2023, p. 1)

[2] In this thesis, the terms Global North and Global South are capitalised to reflect their use as geopolitical and socio-economic categories that signal historically rooted global power asymmetries, particularly in relation to colonialism and orientalism. While not geographically literal or uncontested, this terminology is used in critical discourse as an alternative to outdated classifications such as 'developed' and 'developing' countries (Carlson, 2024; Kenny, 2025).

contribute to the movement of 216 million people within their own countries by 2050 (WMO, 2025, para. 4). These transformations of environmental degradation into human suffering mark climate change as fundamentally a human rights crisis threatening the very foundations of democratic governance (Letsas, 2024, p. 4).

Climate change transcends the temporal and territorial boundaries of representative democracy as traditionally conceived, creating what scholars term a 'democracy crisis' (Beacham et al., 2024, p. 1; IDEA, n.d.). Democratic systems, designed around electoral cycles and national constituencies, struggle to address a global challenge whose most severe impacts will be felt by future generations who lack political voice today (IWM, 2024, para. 3). Research by Beacham and colleagues demonstrates that 'compounding climate shocks create conditions under which democratic resilience diminishes', as the accelerated frequency and severity of climate-induced disasters increase civil unrest and push governments toward repressive measures (Beacham et al., 2024, p. 2). The climate crisis thus challenges core democratic principles: How can representative systems designed to serve present voters address threats that primarily affect future generations? As democratic institutions face mounting pressure from climate-induced instability, inequality, and resource scarcity, the temporal mismatch between democratic cycles and climate timeframes risks paralyzing the collective action necessary for effective climate governance (Tubiana, 2024, para. 4).

In this context, strategic climate litigation emerges as a significant instrument for bridging the temporal and democratic divide. Research by Andre and colleagues reveals that approximately two-thirds of the global population report being willing to incur personal costs to fight climate change, with 89% demanding increased political action from their governments (Andre et al., 2024, pp. 253-257). However, a critical 'perception gap' obscures this widespread support - people systematically underestimate others' climate commitment by an average of 26 percentage points (Andre et al., 2024, p. 257). While citizens can act through protests, consumer choices, and elections, strategic climate litigation has emerged as a uniquely powerful mechanism for translating this suppressed public will into enforceable legal obligations that transcend electoral cycles (Bookman & Wewerinke-Singh, 2025, p. 344).

The pursuit of intergenerational climate justice requires including future generations who will bear the burden of today's climate inaction while lacking present political representation. Law, especially human rights law, possesses unique potential to promote climate justice

across generations because climate protection is fundamentally about people's protection: their dignity, freedom, and life. Legal systems that fail to take the rights of both present and future generations seriously, risk becoming obsolete in the face of planetary destabilization (Bookman & Wewerinke-Singh, 2025, p. 345). The principle of intergenerational equity, reflected in international treaties and increasingly recognized by domestic and international tribunals, demands 'a just balance between the needs of present and future generations' (Bookman & Wewerinke-Singh, 2025, p. 344). This principle challenges the short-termism of contemporary decision-making while drawing on Indigenous wisdom that considers the impact of present choices on seven generations ahead.

Strategic climate litigation operationalizes these principles by transforming abstract intergenerational equity into enforceable legal standards. Climate litigation represents democracy in action: in constitutional democracies, courts belong as much to democratic governance as parliaments, setting guardrails when politics loses sight of fundamental rights (Letsas, 2024, p. 7). Rather than replacing politics, climate litigation reminds governments of their duty to protect people across time. It redefines climate inaction as a violation of fundamental rights, holding states accountable for both their actions and omissions. The courtroom - particularly the European Court of Human Rights (ECtHR) - becomes the arena where abstract principles of intergenerational equity transform into enforceable standards (Letsas, 2024, p. 8).

In this way, strategic climate litigation at the ECtHR can be regarded as both a symptom of democratic failure and a mechanism for democratic renewal. Thus, a means of ensuring that legal institutions can answer not only to the present, but also to the future, and thereby transforming intergenerational climate justice from a moral aspiration into justiciable law.

This transformation reached a historic moment in April 2024, when six young Portuguese plaintiffs and a group of elderly Swiss women stood before the ECtHR, united despite generational differences by shared vulnerability and determination. Their common demand - that European states take meaningful action to protect their futures and rights - crystallized decades of legal development. The Court's recognition that Article 8 ECHR 'encompasses a right for individuals to effective protection by the state authorities from serious adverse effects of climate change on their lives, health, well-being and quality of life' represents a watershed moment (ECtHR, 2024, para. 519). As the ECtHR noted in its 2024 annual report, the Court 'deals with the past by administering individual justice for violations

that have occurred' while simultaneously shaping 'the future by setting the standards of human rights that should be promoted and followed' (ECtHR, 2024, p. 4). Climate litigation exemplifies this dual function, addressing present harms while establishing frameworks for intergenerational protection.

Yet climate litigation remains contested. States fear judicial overreach and unwarranted interference in national jurisdiction, particularly regarding cases brought before international courts like the ECtHR, which maintains high admissibility thresholds (Letsas, 2024, p. 10). Even staunch Court supporters were skeptical 'that a state can be found legally liable for climate change within the logic of the Convention system,' given that the European Convention lacks explicit environmental rights (Letsas, 2024, p. 11). The attribution of climate harms to specific state actions poses particular challenges, as climate change represents global, cumulative harm rather than localized violations. These procedural hurdles reflect deeper questions about how courts should address future-oriented harms when constitutional frameworks were designed for addressing immediate violations.

This thesis confronts these challenges by asking: How can strategic climate litigation at the ECtHR promote intergenerational climate justice? This question proceeds from the assumption that intergenerational injustices represent a symptom of the advancing climate crisis, requiring legal mechanisms that can bridge temporal divides in democratic representation (Otto et al., 2020, p. 17). The research objective uses two landmark ECtHR cases - *Verein KlimaSeniorinnen and Others v. Switzerland* and *Duarte Agostinho and Others v. Portugal and 32 Others* - to analyze how intergenerational arguments shape climate litigation and how these judgments advance intergenerational justice.

This work provides a socio-legal rather than climate-scientific analysis, examining how strategic litigation aimed at holding states accountable for climate inaction can promote intergenerational climate justice. Following this introduction, Chapter 2 presents the methodology combining literature review, legal doctrinal analysis and expert interviews. Chapter 3 establishes the theoretical foundation, exploring climate justice with particular emphasis on intergenerational climate justice and rights of future generations. Chapter 4 examines strategic litigation as a mechanism for promoting climate justice, focusing on strategic climate litigation and youth litigation's intrinsic connection to intergenerational justice, while engaging with key challenges and limitations. Chapter 5 presents the relevant legal framework, surveying international legal instruments, European frameworks including

the ECHR and EU climate legislation, procedural pathways and emerging judicial interpretations. Chapter 6 applies these frameworks through legal doctrinal case analysis structured around Edith Brown Weiss's Intergenerational Equity Triad, examining the two landmark ECtHR climate cases through the lens of conservation of options, quality and access. Chapter 7 provides comparative discussion, assessing whether intergenerationality serves as a legal catalyst and identifying future pathways of the ECtHR. Chapter 8 concludes by synthesizing key findings and reflecting on the implications of using strategic climate litigation to promote intergenerational climate justice.

1.1 Context Climate Crisis

In order to meaningfully address the challenge of intergenerational climate injustice, it is essential to first understand the scale and nature of the climate crisis itself. It is notable that as early as 2008, the NASA climatologist James Hansen had already warned about the world having entered a state of planetary emergency (Hansen, 2008). Today, this alarm resonates more powerfully than ever before: 2024 was the hottest year on record, with global temperatures 1.6°C above pre-industrial levels, marking the first full year to exceed the Paris Agreement's 1.5°C threshold (Copernicus, 2025). To achieve this objective, it would be necessary to halve global emissions by 2030 and reach net-zero by 2050 (UNEP, n.d.(a); IPCC, 2023, p. 20). However, current national climate policies are projected to result in a 2.2-3.5°C increase by this century's end (IPCC, 2023, p. 11). This could potentially propel the Earth system to a 'point of no return', resulting in irreversible environmental consequences, including polar ice melt, escalating extreme weather events and Amazon rainforest dieback (Hansen et al., 2025, p. 32; Armstrong McKay et al., 2022).

The United Nations Framework Convention on Climate Change (UNFCCC) defines climate change as 'a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods' (UNFCCC, 1992, Article 1.2). The scientific consensus on this issue is unambiguous: over 99% of climate scientists concur that climate change is real, of anthropogenic origin, and a matter of urgency (Lynas et al., 2021). In light of this gravity, international bodies use terminology such as 'climate crisis',

'climate emergency' or 'triple planetary crisis', comprising climate change, biodiversity loss and pollution (UNEP, n.d.(a); UNFCCC, 2022).

Since the onset of the industrial era in the 18th century, human activity has increased atmospheric CO_2 levels by 50%, resulting in concentrations that now exceed 420 ppm (NASA, 2025). The Intergovernmental Panel on Climate Change (IPCC), the United Nations body responsible for assessing the scientific evidence related to the climate crisis, has reported that methane and nitrous oxide levels are at their highest in 800,000 years. Furthermore, sea levels have risen 15-25 cm between 1901 and 2018 (IPCC, 2023, p. 46), and are projected to continue rising for centuries due to ongoing ice sheet melt and ocean warming (IPCC, 2023, p. 18). Notwithstanding considerable reductions in emissions, it is now probable that several metres of sea-level rise will be irreversible for future generations (Richardson et al., 2023).

Central in addressing this crisis is the Planetary Boundaries framework, which identifies nine critical Earth systems and quantifies safe thresholds for each. Six of these have already been breached, including those relating to climate stability, biosphere integrity, and freshwater use, thereby signalling a deepening planetary instability (Rockström et al., 2009; Richardson et al., 2023; Stockholm Resilience Centre, 2023). The concept of tipping points further underscores the urgency of addressing these issues. First conceptualised by Lenton et al. (2008), these points refer to system elements - such as the Greenland Ice Sheet, the Amazon rainforest or the Atlantic Meridional Overturning Circulation (AMOC) - that could shift abruptly if global warming crosses certain thresholds. At least five of these 16 elements may already be destabilised at current warming levels of 1.55°C above pre-industrial levels as of 2024. The potential for cascading effects renders them even more pertinent, since a domino effect is plausible, whereby crossing one tipping point can destabilise others, endangering the planet's self-regulating capacity (Armstrong McKay et al., 2022; IPCC, 2023, p. 68; WMO, 2025).

Climate change mitigation and adaptation are therefore both necessary and inseparable. The objective of mitigation is to address the crisis' root cause by reducing heat-trapping greenhouse gas (GHG) emissions through systemic changes. These changes include the phase-out of fossil fuels, the transition to renewable energy sources and the restoration of ecosystems (IPCC, 2023, p. 21; UNDP, 2024; EEA, 2025). Yet, even the most ambitious mitigation strategies cannot avert all potential damage. Building climate resilience through

adaptation is imperative (IPCC, 2023, p. 19; Klein et al., 2007, p. 747). Adaptation involves a variety of actions aiming to minimise harm and enhance survival capacity, such as flood defences, early warning systems and drought-resistant agriculture. It is therefore a 'critical component of the long-term global response to climate change' (UNFCCC, n.d., p. 2). Notably, maladaptation can only be avoided through inclusive, long-term, flexible, and multi-sectoral planning (IPCC, 2023, p. 19). Despite these efforts, some climate harms are unavoidable and irreversible. This underscores the necessity for reparation as an ethical imperative, given that the 'loss and damage' are not distributed equally and are not addressed comprehensively by current adaptation and mitigation measures. This is especially salient with regard to vulnerable communities, often situated in the Global South, who contribute the least yet suffer the most (UNEP, n.d.(b), OHCHR, 2024, p. 3).

For these measures to promote climate resilience effectively, scientific clarity and climate governance must go hand in hand. Over the next decade, it is crucial to conduct further research to improve our understanding of the climate situation and the effectiveness of potential actions (Hansen et al., 2025, p. 32). Governance structures must align with the evolving science and remain responsive, even amidst policy disagreements and gridlock about the urgency of the climate crisis. (IPCC, 2023, p. 124; Hansen et al., 2025, p. 32).

The field of attribution science has emerged as one of the fundamental pillars of scientific accountability. It quantifies climate change by linking specific actions from identified actors to specific climate harms, thereby establishing a causal relationship and providing critical evidence for policymakers (Otto, 2023, pp. 813-815; Erinosho, 2024, pp. 72-73). Despite the methodological limitations and ongoing debates, particularly around the question of how to prove state responsibility for specific harms, it has emerged as a legal cornerstone, crucial for reinforcing accountability and shifting climate science from passive observation to an active justice tool (Union of Concerned Scientists, 2025; Salinas Alcegas, 2024, p. 307).

In the context of these developments, the law is beginning to establish a new trajectory for the promotion of climate justice, in addition to nature-based solutions (e.g. the protection of natural carbon sinks through reforestation or wetland restoration) and technology-based solutions (e.g. carbon capture or the development of renewable energy sources) (Wang et al., 2023). Climate litigation, grounded in rights-based frameworks and attribution science, is progressively establishing courts as guardians of climate justice. It has been proposed that

this could lead to a social tipping point, with the potential to trigger wider political and economic change through a cascade of legal, cultural, and institutional shifts (Global Tipping Points, 2023; Nijsse et al., 2025).

1. Methodology

This thesis investigates how strategic climate litigation can promote intergenerational climate justice, focusing on the ECtHR as both a legal and symbolic forum. The analysis is grounded in a human rights perspective, reflecting the author's background in human rights studies and bringing a normative and interdisciplinary sensibility to the doctrinal analysis.

A mixed qualitative methodology is adopted, combining an extensive literature review and legal doctrinal case analysis, which is further complemented by an expert interview. The research is anchored in a close reading of legal frameworks relevant for strategic climate litigation, augmented by scholarly literature on intergenerational justice, strategic litigation, and climate law. However, it has to be noted that the legal frameworks, procedural mechanisms and doctrinal concepts presented are not exhaustive but selected to reflect the most relevant treaties, conventions and mechanisms commonly invoked in ECtHR climate litigation, aligning with the thesis's aim to present the ECtHR as a forum for promoting intergenerational climate justice.

The core of this work is a doctrinal case study of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* and *Duarte Agostinho and Others v. Portugal and 32 Others*, both decided by the ECtHR in 2024. These cases were chosen for their landmark status and potential to demonstrate the ECtHR's evolving engagement with intergenerational climate justice. While *KlimaSeniorinnen* set a precedent as a successful strategic climate case, *Duarte Agostinho* - despite being dismissed on admissibility grounds - remains highly relevant for its focus on youth vulnerability and extraterritorial responsibility. This approach does not claim to capture the full spectrum of climate litigation but seeks to explore patterns and test theoretical expectations about the promotion of intergenerational justice.

The doctrinal analysis is systematically structured by Edith Brown Weiss's Intergenerational Equity Triad - conservation of options, quality and access (Weiss, 1989, pp.

38-44). This framework enables a nuanced evaluation of how ECtHR judgments protect future generations' interests through policy pathways, environmental quality and procedural rights. While the concept of intergenerational equity is explored in depth elsewhere, here it serves as a bridge between doctrinal legal analysis and normative debates on climate justice. However, it is acknowledged that Weiss's framework, while useful for assessing intergenerational dimensions, does not fully capture intragenerational or postcolonial justice claims, particularly salient in *Duarte Agostinho,* due to its particular focus on intergenerational equity and conservation of natural and cultural resources.

The legal frameworks discussed are key international treaties and conventions such as the UNFCCC and the Paris Agreement, as well as procedural mechanisms and doctrinal concepts shaping European climate litigation. They thus include both hard and soft law, as each plays a significant role in shaping judicial reasoning in strategic climate litigation. The ECtHR is chosen for its unique institutional role as Europe's most powerful human rights court, covering 46 states - including the EU and several of the world's largest emitters - and its demonstrated capacity to influence national legal systems (Stone Sweet & Keller, 2008, p. 8). Furthermore, the EU and its member states, as major historical and current emitters, bear particular responsibility for leading on climate action (Hickel, 2020, p. e404; Mead et al., 2024, p. 97).

To supplement the doctrinal analysis, the thesis incorporates insights from an expert interview with Dr. Corina Heri, a leading scholar on strategic climate litigation and the ECtHR. The interview, conducted as a semi-structured, open-narrative conversation via Zoom on 17 June 2025 in German, is not intended for systematic qualitative content analysis. Rather, its purpose is to provide contextual expertise and triangulate findings with current academic debates.

Limitations of this methodology include a Eurocentric focus, potentially overlooking Global South perspectives and the broader international landscape of climate litigation. Moreover, the application of Brown Weiss's triad, while innovative, focuses on intergenerational equity and may not fully capture intragenerational justice issues, as well present in the evaluated cases. Finally, as my academic background lies in political science and human rights, my perspective is grounded in rights-based analysis and may lack some technical legal nuance.

Despite these limitations, this approach enables a robust, interdisciplinary exploration of how strategic litigation at the ECtHR can catalyze intergenerational climate justice, bridging doctrinal legal analysis with normative and policy debates in the evolving field of climate law.

Finally, it should be noted that, in accordance with the EMA Policy on Artificial Intelligence (Academic Year 2024/2025), the AI tools DeepL Write Pro and Grammarly were used for the purpose of reviewing and refining grammar, spelling and coherence. These tools were employed to enhance the language, given that English is not my first language.

2. Theoretical Framework of Climate Justice

The concept of justice lies at the heart of societal cohesion, serving as the moral and ethical bedrock of the social contract - the implicit agreement that binds individuals and institutions to mutual responsibilities and demanding fairness across generations and societies (Rawls, 1971, pp. 10-12). John Rawls' seminal work A Theory of Justice (1971) remains foundational, framing justice as prioritizing the needs of the most vulnerable and balancing present interests with the rights of future generations. Climate change now exposes the fragility of this ethical foundation. The social contract is ruptured when states and societies prioritize short-term economic interests over the long-term survival and dignity of both current and future citizens. As UN Secretary-General António Guterres has warned: 'The climate crisis is a code red for humanity' (UN News, 2021). With those least responsible - marginalized communities, Indigenous Peoples[3] and Global South nations - suffering the gravest impacts; while wealthier nations, whose prosperity was built on fossil fuels, evade commensurate accountability. This stark inversion of responsibility and vulnerability transforms climate change from a purely environmental issue into a profound question of social and moral justice (Borràs-Pentinat, 2024, pp. 228-230). The concept of climate justice thus demands not only equitable solutions to the climate crisis but also recognition of historical responsibility and the urgent need for fair, inclusive and rights-based responses - a theme explored in depth in the following chapter.

[3] In this thesis, 'Indigenous Peoples' is capitalised in line with UN practice, in order to acknowledge the sovereignty, distinctiveness and rights of Indigenous and First Nation Peoples. The capitalisation of this term challenges colonial legacies of erasure and affirms their status as political and cultural collectives, just as other group identifiers such as 'African' or 'French' are capitalised (Charnley, 2021, p. 8; Indigenous Foundation, n.d.).

3.1 Climate Justice

3.1.1 A Brief History of the Climate Justice Movement

The historical emergence of climate justice is rooted in the environmental justice movement that began in the United States during the 1980s. This movement arose as a response to the disproportionate exposure of marginalized communities - particularly Black, Indigenous, and low-income groups - to environmental hazards such as toxic waste and industrial pollution. Landmark studies by the U.S. General Accounting Office (1983) and the United Church of Christ (1987) exposed the systemic nature of 'environmental racism', catalyzing demands for equal protection under environmental laws (Bullard, 1990; Schlosberg et al., 2025, p. 401). The environmental justice movement critically interrogated these institutionalised inequities and recognised that justice must be measured by both outcomes and the structures that produce them. Over time, critical EJ scholarship has broadened the field to address issues of power, colonialism and structural inequality (Schlosberg et al., 2025, p. 399), while also refining notions of distributive, procedural and recognition justice (Schlosberg et al., 2024, p. 415).

Building on these roots, the climate justice movement crystalised in the early 2000s. In 2002, the International Climate Justice Network published the Bali Principles, linking historical emissions, Indigenous rights and the demand for compensation. By 2009, grassroots coalitions such as the Climate Action Network (CAN) and the alternative 'Klimaforum' in Copenhagen narrowed these broad principles into four demands: abandoning fossil fuels, funding ecological debt, securing land and food sovereignty, and rejecting market-based solutions (Schlosberg & Collins, 2014).

In contrast to the more localised focus of environmental justice, climate justice addresses global and intergenerational inequities rooted in historical emissions and entrenched power imbalances, demanding a just transition to renewable economies (Schlosberg & Collins, 2014). This focus has been further reinforced by the emergence of Fridays for Future, a movement initiated by Greta Thunberg in 2018, which has led to a major influx of youth-driven energy into the discourse on climate justice. Fridays for Future has effectively framed the climate crisis as a profound intergenerational injustice, mobilising millions of young people worldwide (Daly, 2022, pp. 3-5; Borràs-Pentinat, 2024, pp. 231-232).

3.1.2 Defining Climate Justice: Scholarly, Movement and Institutional Perspectives

Shaped by these diverse intellectual traditions, grassroots activism and institutional frameworks, climate justice has emerged as a dynamic and pluralistic concept. Its definitions reflect the interplay of historical inequities, ethical imperatives and the urgent need for systemic transformation.

Scholars have long probed the ethical contours of climate justice, each contributing a layer of complexity to our understanding. Edith Brown Weiss's seminal 'planetary trust' model insists that 'each generation receives a natural and cultural legacy in trust from previous generations and holds it in trust for future generations' (Brown Weiss, 1989, p. 2). Her framework grounds climate justice in intergenerational equity, obliging present actors to conserve options, quality, and access for those to come (Brown Weiss, 1989, p. 38). Building on this, David Schlosberg advances a pluralist vision in which justice not only distributes burdens and benefits but also demands recognition of marginalized identities, inclusive procedures, and the cultivation of capabilities for both human and nonhuman life: 'a broad, multi-faceted, yet integrated notion of justice' (Schlosberg, 2007, p. 11). Henry Shue's conception of climate justice is deeply concerned with fairness in the distribution of the burdens and benefits of climate change and its mitigation, particularly between wealthy, high-emitting countries and poorer, low-emitting nations. At the heart of his thinking is the moral imperative to address the question, 'How can we limit the dangers resulting from climate change without driving hundreds of millions more people into poverty?' (Shue, 2014, p. 4). More recently, Kyle Whyte has situated justice within Indigenous relationality and sovereignty. He has observed that, for Native communities, climate change is not a new phenomenon, but rather a continuation of their experience of colonialism (Whyte, 2019, p. 3). Similarly, Osprey Orielle Lake, founder of WECAN (Women's Earth and Climate Action Network), builds on this systemic critique by calling for a transition from an extractivist, colonial 'exploit and extract' paradigm to a sustainable, globally conscious 'respect and restore' approach (WECAN, 2020).

Grassroots movements have translated these scholarly insights into collective action. The Climate Justice Alliance (CJA) puts frontline voices at the forefront and promotes local self-determination, arguing that those most affected should lead the transition to a clean

energy economy (CJA, n.d.). Likewise, the Indigenous Environmental Network (IEN) urges industrialised societies to honour the 'sacredness of Mother Earth' by abandoning fossil fuels and restoring Indigenous governance (MIT Environmental Solutions Initiative, 2023, p. 23). Grassroots International integrates racial, social, and economic justice into its climate agenda, contending that those bearing the most immediate impact from climate change must be central to the development of solutions (Grassroots International, 2016, p. 9). Together, these movements fuse local autonomy with global solidarity, forging a justice that is political, cultural and ecological.

International organisations have codified the principles touched upon in scholarly and grassroots definitions into normative frameworks. The UNDP asserts that 'climate justice means putting equity and human rights at the core of decision-making and action on climate change', requiring high-emitting countries to support vulnerable nations (UNDP, 2023). The UNEP emphasises that justice is based on equity, transparency and participation - the pillars of a 'just transition' for all generations (UNEP, 2023). The IPCC's Sixth Assessment Report defines climate justice as the integration of the principles of distributive, procedural, and recognition justice, ensuring 'fair consideration of diverse cultures and perspectives' and leaving no one behind (IPCC, 2022, p. 7). The UNFCCC codifies justice through the principle of 'common but differentiated responsibilities' (CBDR), obliging wealthy nations to take the lead on mitigation (UNFCCC, 1992, Art. 3.1).

These definitions highlight that achieving climate justice requires dismantling structural inequalities. As the next chapter will explore, the disproportionate impact of climate change on marginalised groups, shaped by factors such as race, gender, class and geography, demands an intersectional approach. By examining how overlapping systems of oppression amplify vulnerability, we can better understand why climate justice must prioritise the voices and needs of those affected first and worst.

3.1.3 Intersectionality and the Multidimensionality of Climate Justice

The notion that climate justice is a process rather than an end goal captures the movement's dynamism: 'There is no singular or ideal climate justice for all, no singular arrival point, but a becoming, of doing more and better' (Sultana, 2021, p. 122). Early debates distinguished between anthropocentric approaches, which focus on human rights - such as

Article 20a of the German Basic Law (Basic Law for the Federal Republic of Germany, 1949/2023) - and ecocentric perspectives, which recognise the intrinsic rights of nature and future generations. An example of the latter is Colombia's Supreme Court recognising the Amazon as a rights-bearing entity and ordering the government to stop deforestation to protect the rights of present and future generations to a healthy environment, life and health (Supreme Court of Colombia, 2018).

Over time, scholars have introduced the concept of critical climate justice, combining feminist, anti-racist, anti-capitalist and decolonial thought with grassroots action. Rather than merely allocating burdens and benefits, critical justice interrogates how existing power structures - colonial legacies, extractive capitalism, and patriarchal norms - produce unequal vulnerabilities (Sultana, 2021, pp. 119-120). By combining analyses of gendered marginalisation, race, and indigeneity, critical climate justice demands transformative solidarity that replaces exploitative growth with care, commoning and collaborative resistance (Sultana, 2021, p. 121).

Intersectional climate justice is central to this evolution, insisting that vulnerability is never one-dimensional. Climate impacts intersect with axes of difference, such as race, class, gender and geography, to produce layered injustices that require finely tuned responses (Sultana, 2021, p. 119). If policy and litigation are to address - rather than entrench - systemic inequities across communities and generations, it is essential to attend to these multidimensional power relations (p. 122).

Recently, there has been a growing call for Earth system justice, urging legal frameworks to recognise the interdependence of human and natural processes and to transcend anthropocentrism. Advocates of this approach argue that human governance must be aligned with planetary boundaries, ensuring that laws reflect Earth system science and safeguard resilience across the biosphere, climate and society (Gupta et al., 2023; Kotzé et al., 2022).

When considered together, these strands - anthropocentric and ecocentric, critical, intersectional, and earth system justice - reveal a multidimensional movement. The confluence of these strands - anthropocentric and ecocentric, critical, intersectional, and earth system justice - gives rise to a multifaceted movement. Each form contributes to a more profound comprehension of obligation and rights in the face of a changing planet,

emphasising that climate justice can only be achieved through an inclusive, power-sensitive and ecological perspective.

3.1.4 The Global North-South Divide and the Burden of Responsibility

The stark reality of the climate crisis is that its burdens are neither evenly distributed nor confined by national borders. There is a disproportionate burden of climate change on the Global South, where 92% of climate-related deaths occur despite contributing less than 10% of historical emissions (IPCC, 2023, p. 98). This exposes a profound moral and geopolitical divide. As Sultana (2021, p. 119) asserts, this inequity, which is deeply rooted in colonial exploitation and neoliberal resource extraction, underscores the intersectional nature of climate vulnerability, where race, class and geography compound harm. While the Global North's industrialisation has historically fuelled prosperity through the use of fossil fuels, the South is now facing a range of existential threats, including droughts, rising sea levels and displacement, raising pressing questions of accountability.

When it comes to the allocation of responsibility, scholars have divergent views. Axel Gosseries (2023, p. 123) rejects the concept of retroactive liability for past emissions, arguing that current generations cannot be held accountable for the actions of their ancestors. He advocates a forward-looking 'distributive approach' that prioritises equitable burden-sharing. Conversely, Simon Caney (2010) proposes a hybrid model in which the 'Polluter Pays Principle' - meaning those responsible for climate harm are held accountable for past emissions and required to pay - should play a key role in assigning climate responsibility. However, due to its limitations - also noted by Gosseries (2023, p. 123) - it should be supplemented by the 'Ability to Pay Principle', which holds that 'those who have the greatest ability to pay' (Caney, 2010, p. 204) should bear the burden, regardless of culpability. This would exempt poorer nations while obliging wealthy emitters and privileged groups to finance mitigation (pp. 210-222). Henry Shue (2014) critiques market-driven solutions such as carbon trading, warning that they risk 'condemning the poor' by pricing emissions beyond their means (p. 315). For Shue, achieving justice necessitates the safeguarding of the Global South's right to development without compromising climate stability.

3.1.5 Beyond Market Fixes: Systemic Change in Climate Justice

The concept of climate justice is inherently intertwined with that of human rights, as the climate crisis poses 'standard threats' to urgent individual interests - survival, health, and dignity - that human rights frameworks exist to protect (Shue, 2014, p. 301; Beitz, 2009, p. 109). Philip Alston, former UN Special Rapporteur on extreme poverty, has warned that unchecked climate change risks resulting in a form of 'climate apartheid', whereby wealthy populations are able to insulate themselves, whilst marginalised communities face displacement, food insecurity and preventable death (Alston, 2019, para. 51). This 'disequalising' effect deepens existing socioeconomic divisions, causing disproportionate harm to low-income nations and groups that are already denied recognition and resources (Donald, 2022, p. 11; UNDP, 2011).

Drawing upon the intersectional analyses previously discussed, climate justice movements contend that fragmented market-based reforms are inadequate in tackling a crisis that is deeply rooted in the dual legacies of colonial extraction and industrial exploitation. As Marie Anaïse Heglar notes, 'pipelines run through Black and Indigenous territories', illustrating that environmental harm is deeply intertwined with historical patterns of racial and economic domination (Heglar, 2021).

Scholars such as Schlosberg and Collins (2014, p. 33) challenge 'the moral economy' of voluntary offsets and carbon markets, advocating instead for movement-led visions. Movements such as Fridays for Future have been instrumental in amplifying this demand, mobilising youth worldwide to insist on systemic changes from the status quo.

In parallel with these calls, the *Just Transition* framework envisions a regenerative economy led by frontline communities, ensuring that workers displaced by decarbonisation receive social protection, skills training and co-ownership of new industries (Just Transition Alliance, 2018). Another noteworthy policy proposal is the 'Green New Deal', a framework advanced in both the US and the EU. This initiative integrates climate action with social justice, incorporating racial and gender equity into economic planning (Green New Deal Network, 2025). It calls for a just transition, prioritizing democratic participation, equitable access to resources and the creation of high-quality jobs in communities historically excluded from decision-making and economic opportunity. By embedding justice, equity and participatory governance at the core of systemic transformation the 'Green New Deal' is

distinguished from previous political climate initiatives (Boyle et al., 2021, p. 1; Brecher, 2021).

Furthermore, the 2010 Cochabamba Conference's 'Universal Declaration of the Rights of Mother Earth' presents a rights-based alternative to growth-centric models, advocating for legal personhood for ecosystems and reparatory measures for communities harmed by extraction (Schlosberg & Collins, 2014, p. 39). In combination, these scholarly insights and movement strategies propose a course of action towards the systemic change that is required for climate justice.

3.2 Intergenerational Climate Justice

The traditional conception of justice in scholarly discourse has focused predominantly on the distribution of rights and responsibilities among living generations, both within societies and across societies. Yet, as argued by Ohlsson and Skillington (2023, p. 223), such intragenerational framings are no longer adequate in a world where present actions irreversibly shape the lives of future generations. The climate crisis exposes a critical temporal dimension of justice: the need to account for those who will inherit its consequences but cannot yet participate in shaping its solutions. Drawing upon the previously outlined climate justice framework, this chapter explores the evolving discourse of intergenerational justice.

The groundwork for intergenerational ethics was laid by the *Brundtland Report's* seminal definition of sustainable development as 'meeting the needs of the present without compromising the ability of future generations to meet their own needs' (WCED, 1987, para. 1). The report recognised that environmental issues, poverty and unsustainable consumption and production patterns are interconnected and require integrated solutions. It emphasised the significance of meeting fundamental human needs and ensuring equitable opportunities for all individuals to improve their lives, while urging governments to adopt a long-term perspective, considering the impact of current actions on future generations. Following the argument set out by Henry Shue (2014, p. 303), 'any effective protections for later generations must be begun in prior generations', climate action is rendered a transgenerational imperative.

Intergenerational ethics challenges the short-termism which currently dominates political and economic systems. Concepts such as Roman Krznaric's 'cathedral thinking' advocate for societies to embrace long-term projects, reminiscent of medieval builders who laid foundations for cathedrals they themselves would never see completed. This ethos is in direct opposition to the 'colonization of the future' through extractive practices that prioritise immediate gains over long-term planetary legacies (Krznaric, 2020). This intergenerational ethic is exemplified by young activists, such as those involved in Fridays for Future, who frame climate inaction as a theft of their right to a habitable world. Conversely, the concept of intergenerational solidarity also demands engaging older generations, whose experience and political influence have the potential to amplify demands led by younger generations (Paullier & Robinson, 2025).

3.2.1 The Theory of Intergenerational Equity in International Law: Edith Brown Weiss's Foundational Framework

Edith Brown Weiss's translates the ethical tenants of intergenerational justice into a theoretical framework. Her seminal text in the field of international environmental law *In Fairness to Future Generations* (1989), reimagines the field through the lens of intergenerational equity. Brown Weiss posits that each generation holds the Earth in trust for those yet unborn. This 'planetary trust' framework imposes three core obligations: conservation of options, conservation of quality, and conservation of access. Grounded in ethical imperatives and legal doctrine, these principles aim to balance present needs with the rights of future generations, whilst addressing intragenerational inequities.

1. Conservation of Options: Sustaining Diversity for Robust Futures

The principle of conservation of options asserts that each generation must safeguard the diversity of natural and cultural resources to ensure that 'it does not unduly restrict the options available to future generations' (Brown Weiss, 1989, p. 38). This principle underscores the significance of biodiversity in ensuring ecological resilience. For instance, tropical forests - which are home to over half of the planet's species - must be protected not only for their role in carbon sequestration, but also as repositories of potential medicinal, agricultural and cultural value (p. 199). It is important to note that conservation of options is not synonymous with static preservation; it permits sustainable use and innovation, provided such actions do

not result in irreversible ecosystem degradation. As Brown Weiss clarifies, 'conservation of options does not mean freezing resources in their current state' but rather ensuring development does not foreclose future possibilities (p. 41).

2. Conservation of Quality: Avoiding Irreversible Harm

The principle of conservation of quality requires that generations pass on the planet in 'no worse condition' than they received it in (Brown Weiss, 1989, p. 38). This principle is particularly relevant in the context of addressing transgenerational harms, including pollution, deforestation, and climate disruption. As an illustration, today's unchecked industrial emissions impose potential health risks and ecological degradation on future societies, thereby violating their right to a habitable environment. Brown Weiss warns against 'passing on costs of [current] activities to future generations in the form of degraded quality of air and water' (1989, p. 42). While trade-offs are inevitable, such as the temporary utilisation of resources for the alleviation of poverty, it is imperative that they do not compromise the planet's life-support systems. To this end, restorative measures, including reforestation and pollution cleanup, are essential to offset harm and fulfil this duty.

3. Conservation of Access: Equity Across and Within Generations

The conservation of access ensures equitable rights to resources, both within a given generation and across successive generations. Each generation is obligated to ensure 'equitable rights of access to the legacy from past generations' while also safeguarding this access for the future (Brown Weiss, 1989, p. 38). In essence, this principle is a critique of extractive practices whereby wealthy nations exploit Global South resources without ensuring equitable benefit-sharing. For instance, foreign corporations deriving profit from biodiverse regions must ensure host communities receive technical assistance, fair compensation or licensing benefits (Brown Weiss, 1989, p. 199). Intragenerationally, the principle demands that marginalized groups - who are often disproportionately affected by environmental harm - be prioritized in terms of resource access and decision-making.

Critiques and Enduring Influence

Despite its pioneering status in the field of intergenerational justice, Brown Weiss's theory has also given rise to debates. As Axel Gosseries (2023) challenges retroactive

liability for historical emissions, advocating instead forward-looking burden-sharing (p. 123). Simon Caney (2010) has expanded the framework, integrating the 'polluter pays' and the 'ability to pay' principles to address climate finance (pp. 220-224). Notwithstanding the critiques, Brown Weiss' principles underpin key international instruments, including the UNFCCC preamble's recognition of duties to future generations or the International Union for Conservation of Nature's (IUCN) assertion that intergenerational equity is 'an essential foundation of all international law relating to environmental protection' (IUCN Draft Covenant, 2015, Art. 5). The theory has also informed modern concepts, such as the Sustainable Development Goals (SDGs), which explicitly require actions 'for the full benefit of all, for today's generation and for future generations' (United Nations, 2023, para. 8). Moreover, intergenerational equity has emerged as a central tenet of climate justice and climate litigations, given that legal and ethical arguments for climate mitigation frequently depend on these three principles.

3.2.2 Differentiation of Inter- and Intragenerational Climate Justice

While Edith Brown Weiss's framework prioritises obligations to future generations (intergenerational equity), climate justice requires simultaneous consideration of equity among the current generation (intragenerational justice). Intergenerational justice pertains to the moral and legal obligations owed to future generations, whereas intragenerational justice pertains to access to resources and rights within the current generation, across nations, communities, and socioeconomic groups (Ohlsson & Skillington, 2023, p. 225; Brown-Weiss, 1989, p. 21). These two dimensions are interdependent: intragenerational inequities, such as resource hoarding by wealthy states, exacerbate intergenerational harm by shifting the burden onto vulnerable populations and future generations (Brown Weiss, 1989, p. 28).

This temporal distinction reveals tensions. For example, measures aimed at alleviating poverty in the short term, such as expanding access to ecosystem services, can endanger long-term environmental stability and compromise the rights of future generations (Ohlsson & Skillington, 2023, p. 225).

Brown Weiss resolves this issue by linking the two concepts of justice: intergenerational equity requires intragenerational fairness, as burden-shifting onto impoverished communities

violates planetary obligations (1989, pp. 27-28). As primary beneficiaries of environmental preservation, wealthier states and communities bear greater responsibility for enabling poorer populations to realise their claims to the planetary legacy. The 'Ability to Pay Principle' operationalises this synergy by assigning mitigation costs to high-emission states, regardless of historical responsibility, to prevent present inequalities from compounding future harms (Caney, 2010, pp. 213-214).

Essentially, intergenerational and intragenerational justice are not mutually exclusive, but deeply intertwined. Effective climate policy must therefore balance temporal and spatial equity, recognising that 'intergenerational obligations flow both to future generations (...) and to members of the present generation' (Brown Weiss, 1989, p. 45).

3.2.3 The Role of Indigenous Thought in Intergenerational Climate Justice

Intergenerational justice is not a recent innovation within Western climate discourse, but rather emerges from Indigenous epistemologies, where the responsibility to ancestors, land and future generations constitutes the ethical foundation of governance and law (Lyons, 1980, p. 173; Tsosie, 2013, p. 244; Wewerinke-Singh et al., 2023, pp. 653-654).

Indigenous legal and philosophical traditions articulate intergenerational justice in ways that go beyond the linear, compartmentalised temporality characteristic of Western legal systems. The 'Haudenosaunee Great Law' stipulates that decisions must consider the impact on the 'seventh generation to come', thereby establishing an explicit connection between present actions and future well-being across centuries (Lyons, 1980, p. 173). In a similar manner, Māori concepts of 'whakapapa' (genealogy) and 'kaitiakitanga' (guardianship) position humans as stewards, the duty of which is to preserve land for 'mokopuna' (descendants) across the continuum of time (Mika, 2021, pp. 8-14, 50). These worldviews are characterised by a rejection of the present as isolated, and instead embed human life within webs of intergenerational and ecological relationships that extend beyond anthropocentric concerns.

Contemporary climate justice scholarship has increasingly recognised the importance of Indigenous perspectives in addressing structural injustices. However, there is often a risk of tokenistic inclusion. Schlosberg et al. (2025, p. 399) posit that critical environmental justice necessitates a 'transformation of power relations' and the adoption of 'decolonial analysis and

practices' in order to transcend Western-centric frameworks. The IACtHR demonstrated this integration in *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (2001, para. 149), affirming Indigenous territorial relationships as 'material and spiritual' necessities for transmitting 'cultural legacy (...) to future generations'.

Ultimately, the incorporation of Indigenous thought into intergenerational climate justice is not solely a matter of epistemic justice - recognising the validity and value of diverse knowledge systems - but also a pragmatic necessity. Indigenous communities have been at the forefront of climate activism, demonstrating how intergenerational responsibility informs resistance to extractivism (Dehm, 2016, p. 157-160). This has exposed the inadequacy of state-centric, technocratic climate solutions and has instead indicated the value of relational, place-based approaches that prioritise long-term planetary and human well-being. Yet this integration must avoid the colonial tendency to extract Indigenous knowledge while maintaining existing power structures.

3.3 Rights of Future Generations and Climate Justice

The *Brundtland Report*, 'Our Common Future' (1987), provides a concise articulation of the moral dilemma inherent to intergenerational justice: future generations possess neither the capacity to vote, exercise power, nor challenge existing decisions. Nonetheless, they will bear the full consequences of the present-day environmental degradation. The concept of rights for future generations aims to address this democratic deficit by granting legal recognition to the interests of those yet to be born (WCED, 1987; Brown Weiss, 1989, p. 96).

This legal-philosophical concept posits that justice must extend not only spatially but also temporally. Advocates posit that, while future generations are not yet defined, their interests – including, but not limited to, access to a habitable environment – are sufficiently identifiable to be protected under law (UN HLCP, 2023, paras. 10, 18). The approach has gained traction through soft law instruments such as the Maastricht Principles on the Human Rights of Future Generations (2023), which call for states to prevent foreseeable harm, align policy with climate science, and ensure equitable access to resources across time. The principles recognise Indigenous knowledge, advocate for guardianship mechanisms, and reject the notion that rights are limited to the present (Maastricht Principles, 2023).

Nevertheless, the absence of legally binding force is a substantial constraint (Suárez Franco & Liebenberg, 2023).

Critics have expressed concerns that attributing rights to future persons may give rise to issues of legal standing, vagueness and justiciability. Nolan (2022) cautions that 'framing the issue as a conflict between present and future generations distracts from the deeper and more pressing inequalities that exist within generations', especially along Global North-South lines and social classes. Thus, legal systems that universalise future rights risk entrenching abstract, anthropocentric frameworks without challenging the structural roots of ecological harm.

A parallel and increasingly influential response has been the recognition of the rights of nature. In contrast to future generations, ecosystems are already in existence, rendering legal personhood for rivers or forests more procedurally tangible. Latin American jurisdictions, including Ecuador and Colombia, have pioneered this approach, with courts recognising natural entities as rights-holders and obliging the state to protect them (Boyd, 2022, pp. 88-90).

Although not interchangeable, the rights of future generations and the rights of nature represent complementary shifts away from short-term, human-centred legal reasoning. Both of these approaches seek to embed ecological responsibility into legal norms. However, the extent to which they can be considered transformative depends on the degree to which they challenge, rather than reinforce, existing systems of inequality and environmental harm.

3. Strategic Litigation as a Tool for Intergenerational Climate Justice

Strategic litigation has emerged as an influential tool in shaping law and policy across a range of human rights and public interest issues by bridging the gaps between legal norms and societal progress. Rooted in the principles of accountability and equity, strategic litigation is a mechanism that reinforces democratic pillars - such as checks on power, access to justice and the rule of law - by holding states, corporations and institutions accountable for rights violations. Operating across national, regional, and international judicial systems, strategic litigation demonstrates a high degree of adaptability to diverse legal and cultural contexts (Open Society Justice Initiative, 2018, pp. 13-17, 32-36).

Strategic litigation diverges from conventional litigation, as it pursues not only individual redress but also systemic change. It aspires to reinterpret existing norms, catalyse public debate and prompt institutional reform. Indeed, it has been demonstrated to be effective in advancing rights in a variety of areas, including education, environment, health and anti-discrimination (Gauri & Brinks, 2008). As a method of legal activism, it frequently functions as a corrective to political inaction, providing judicial avenues through which to address pressing societal challenges. In the context of climate change, strategic litigation adopts a rights-based approach to press for stronger mitigation efforts and to safeguard the interests of future generations in the face of legislative stagnation (Peel & Osofsky, 2018).

4.1 Concept and Characteristics of Strategic Litigation

Strategic litigation, also referred to as public interest or impact litigation, involves the deliberate use of legal action to promote broader legal or social change that goes beyond the interests of a single case. It is frequently discussed alongside concepts such as cause lawyering and test-case litigation under the umbrella of 'lawyer for change' (Ramsden & Gledhill, 2019). Rather than seeking an individual remedy, strategic litigation aims to set legal precedents or influence policy by using the courts as an arena for agenda-setting (Peel & Markey-Towler, 2021). Core features include an 'extrinsic legacy' orientation - outcomes with long-term effects that transcend the original claimant's situation - and multifaceted objectives that extend beyond the courtroom (Ramsden & Gledhill, 2019). Cases are usually

started or backed by civil society organisations and advocacy groups, showing how NGOs and social movements use litigation to push for reform (van der Pas, 2021). Crucially, strategic litigation has both legal and extra-legal dimensions; success depends not only on persuasive legal arguments and courtroom advocacy, but also on shaping public discourse and political will through the media and campaigns. As Peel and Markey-Towler (2021) observe, such litigation seeks both direct legal impacts, such as changes in law or official policy, and indirect impacts, including raising awareness, pressuring authorities or shifting social norms.

The modern rise of strategic litigation can be traced back to the civil rights cases of the mid-20th century. The NAACP's campaign, which culminated in the landmark case of *Brown v. Board of Education* in 1954, exemplified how a carefully planned lawsuit could dismantle institutionalised segregation and produce broad social change. Similar approaches were soon adopted in other areas, including gender equality, environmental protection and international human rights enforcement. For example, human rights lawyers have used regional courts to address systemic abuses (Solvang, 2008), and recent climate change cases demonstrate the growing scope of strategic litigation across jurisdictions. While not all efforts succeed in court, even unsuccessful cases - such as certain youth-led climate suits - can galvanise public debate and encourage policy discussions, highlighting the wider impact of this practice.

Empirical research is beginning to shed light on what constitutes effective strategic litigation. Studies of high-profile cases suggest that success often hinges on the careful construction of a case, including the selection of plaintiffs who embody the issue (e.g. young people in climate litigation), the formulation of compelling legal claims (e.g. framing environmental harm as a human rights violation) and the pursuit of remedies that extend beyond the immediate parties to benefit a broader group or catalyse reforms (Peel & Markey-Towler, 2021). An experienced legal team and a supportive advocacy network are also essential. The legal context also matters - courts and legal systems vary in their receptiveness to public interest claims. For instance, jurisdictions with broad standing rules or strong judicial independence allow more scope for impact-driven cases, whereas restrictive standing rules or political question doctrines can hinder such litigation (Harlow & Rawlings, 1992; Sarat & Scheingold, 1998). Would-be strategic litigants must therefore navigate stringent admissibility criteria. Claimants must demonstrate sufficient standing, i.e. a direct stake in the issue, and in international human rights litigation they must also satisfy thresholds such as 'victim' status and exhaustion of domestic remedies before a supranational

court will hear the case. These procedural gateways ensure that strategic lawsuits remain grounded in actual legal disputes, even when seeking far-reaching change.

Strategic litigation constitutes a dynamic approach that straddles the line between legal practice and social activism. The strategy encompasses the utilisation of the formal justice system to effect *de jure* changes, such as the establishing of new precedents, the recognition of rights and policy shifts. Simultaneously, these legal battles are employed to drive *de facto* societal changes. This dual nature demands both rigorous legal work and savvy extra-legal strategy.

4.2 Strategic Climate Litigation: Law as a Catalyst for Change

Building on the broader tradition of strategic litigation, strategic climate litigation channels legal advocacy toward compelling climate action and accountability at both national and international levels. Thereby representing a fundamental evolution in environmental advocacy, transforming climate change from a diffuse policy issue into justiciable legal claims. Setzer and Higham (2024) define climate litigation as "consisting of cases brought before judicial and quasi-judicial bodies that involve material issues of climate change science, policy or law" (p. 7). This legal frontier has witnessed over a thousand new filings since the Paris Agreement's adoption, reflecting "a strategic movement, increasingly aiming for systemic, transformative changes rather than merely targeting specific instances of pollution" (Wewerinke-Singh & Mead, 2025, p. 1).

A defining feature of strategic climate litigation is that its objectives extend far beyond individual plaintiff interests; rather aiming to improve climate protection, establish precedents, catalyse political decisions and raise public awareness (Germanwatch, n.d.). This systemic orientation distinguishes strategic climate litigation from conventional environmental cases.

As argued by Neumann (2022), rights-based approaches offer particular advantages over tort mechanisms. Whilst tort claims typically yield monetary damages, it is important to note that 'damages are only of limited use in the environmental context as natural destruction cannot be reversed with financial means. Instead, an appropriate remedy must end harmful practices, mandate future improvements and ensure progressive change towards a more

sustainable world' (Neumann, 2022, p. 54). Rights-based frameworks empower judicial bodies to tackle systemic causation challenges by correlating present policies with prospective harms. The utilisation of intergenerational justice rationales has been demonstrated to be ‘successful in sustaining existing rights by allowing for a new intergenerational justice rationale, leading to the creation of additional rights’ (Neumann, 2022, p. 55).

Nevertheless, the establishment of causal relationships in climate cases remains a complex undertaking. Erinosho (2024) observes that establishing climate harm necessitates demonstrating 'a causal connection between the acts or omissions of the defendant and the injury or damage', encompassing both factual and legal causation (p. 72). While courts increasingly accept IPCC assessments as foundational evidence, Ekwurzel et al. (2017) emphasise that ‘assigning responsibility for climate change is a societal judgment, one that can be informed by but not determined through scientific analysis’ (p. 586), underscoring litigation's essential democratic function in climate governance.

4.3 Youth Climate Litigation and the Temporal Expansion of Legal Rights

Recent years have marked a pivotal shift in climate litigation, with young people emerging as central protagonists in the quest for intergenerational climate justice. Frustrated by governmental inaction and the disproportionate burdens they face, young people across the globe are increasingly turning to courts to demand accountability for climate harms that will shape their lives and those of future generations (Wang & Chan, 2023). This surge is not simply symbolic; young plaintiffs are uniquely vulnerable to the physical impacts of climate change, including extreme weather and threats to health and education, as well as the psychological toll of climate anxiety, given their contemplation of adulthood on a dangerously warming planet (IPCC, 2022; UNEP, 2022).

Youth-led cases, from *Juliana v. United States* to *Neubauer v. Germany* and *Future Generations v. Colombia*, have established new legal ground by emphasising intergenerational equity and the temporal expansion of rights. These cases have insisted that contemporary legal frameworks must account for harms that unfold across decades (Wang & Chan, 2023; Pues et al., p. 19).

These cases have prompted courts and treaty bodies to grapple with novel questions, including whether states can be held liable for foreseeable harms to children abroad (*Sacchi v. Argentina*) or if constitutional rights can be interpreted to protect the freedoms of future generations (*Neubauer v. Germany*). Despite the challenges imposed by procedural barriers, such as standing and exhaustion of remedies, youth litigation has catalysed the drafting of new legal standards (e.g., General Comment 26 on Children's Rights and the Environment) and encouraged courts to recognise the foreseeability and gravity of climate harms to young and future generations (Pues et al., p. 4).

Nevertheless, the prominence of youth in climate litigation evokes ethical and practical concerns. The over-reliance on children as plaintiffs carries the risk of shifting responsibility away from adults and institutions, potentially reducing youth to mere symbols unless litigation is firmly grounded in participatory, child-friendly processes (Donger, 2022, p. 272; Pues et al., 2024, p. 20). Effective practices, such as accessible communication and psychological support during the litigation process, are essential to ensure genuine empowerment and well-being (Pues et al., 2024, p. 9).

Ultimately, the objective of youth climate litigation is not merely to extend the temporal boundaries of legal rights; it is also about reimagining the role of law in safeguarding the interests of both present and future generations. Furthermore, it is essential to ensure that the voices of young people are not only heard, but meaningfully integrated into the pursuit of climate justice.

4.3 Procedural Requirements for Strategic Climate Litigation (400)

Procedural mechanisms, including access to justice, standing, victim status and remedies, form the essential underpinning for effective climate litigation. Consequently, they enable courts to address intergenerational inequities that are often sidelined by political processes. By ensuring access to information, participation in decision-making and the provision of effective remedies, these frameworks transform environmental rights from abstract ideals into enforceable legal entitlements. As outlined in the Aarhus Convention (1998), procedural pathways are increasingly recognised as vital for empowering individuals, communities and future generations to hold states to account for climate harms. However, their fragmented application reveals systemic tensions, with mechanisms designed for localised environmental

harms struggling to accommodate the diffuse, transboundary nature of climate change (Salinas Alcegas, 2024, p. 310; ClimateHughes, n.d.).

Procedural law determines whether individuals or groups can initiate legal proceedings regarding climate change and is thus central to the realisation of intergenerational climate justice. Nevertheless, access to justice remains unevenly distributed, particularly for marginalised groups. Both youth and Indigenous communities encounter substantial barriers, ranging from hefty legal costs to guardianship conflicts (Liefaard, 2019, pp. 203-204; Salinas Alcegas, 2024, p. 302). Further inconsistencies become evident when considering the ECtHR's rulings in April 2024, which recognised elderly women as particularly vulnerable to climate change in *KlimaSeniorinnen*. In contrast, the Court denied legal standing to youth in *Duarte Agostinho* (2024) for failing to exhaust domestic remedies. Such inconsistencies frequently result in the exclusion of individuals who are most affected by the climate crisis, thereby also underscoring a judicial reluctance to fully embrace intergenerational representation. Conversely, the restrictive standing rules of the ECtHR as well the CJEU (see *Carvalho v. EU,* 2019) are at odds with progressive national rulings, such as Colombia's 2018 *Future Generations* case, which granted standing to youth as custodians of ecological integrity.

Furthermore, the demonstration of victim state as an admissibility criterion, for both juvenile and adult applicants, persists among the most substantial barriers for climate litigants. Judicial and treaty bodies frequently require litigants to demonstrate direct, personal harm - a high bar in the context of a diffuse, collective threat such as climate change. International bodies, however, are increasingly accepting the concept of 'foreseeable harm' to marginalised groups (*Billy et al. v. Australia*). Nevertheless, domestic courts often dismiss cases citing the 'drop in the ocean' fallacy. The ECtHR's shift in jurisprudence towards assessing state inaction rather than direct causation (KlimaSeniorinnen, para. 549) offers a template for reframing litigation as a preventative measure, thereby bypassing the necessity of demonstrating individualised harm (Salinas Alcegas, 2024, pp. 304-306).

Finally, effective access to courts must be paired with enforceable outcomes, such as emissions reductions or regulatory changes, to ensure that today's legal actions protect tomorrow's rights. Consequently, remedies in climate cases must extend beyond symbolic recognition.

It is evident that procedural mechanisms are not without their limitations; whilst they do indeed empower litigants to demand accountability, they are also constrained by factors such as jurisdictional fragmentation and political resistance. In the absence of accessible pathways to justice and meaningful redress, climate litigation risks reinforcing, rather than resolving, the intergenerational dimensions of climate harm. It is only through the effective bridging of these fragmentation gaps that it can be determined whether courts are truly capable of safeguarding the rights of present and future generations (Strugovets, 2023, pp. 6-7; Salinas Alcegas, 2024, p. 310).

4.4 Challenges and Limitations of Strategic Climate Litigation

Whilst strategic climate litigation has emerged as a promising tool for promoting effective climate justice, significant limitations remain that constrain its transformative potential. Procedural barriers are arguably the most significant impediment, with standing requirements, justiciability doctrines, and temporal constraints establishing substantial barriers to entry for many plaintiffs (Setzer & Higham, 2024, p. 27).

Even favorable judgments, such as KlimaSeniorinnen, often result in merely declaratory findings without prescribing concrete measures or emissions pathways. This judicial reluctance - partly explained by the courts' function as the judiciary within a democratic system - nonetheless narrows the effective promotion of climate justice, as the wide margin of appreciation left to states creates significant ambiguity in compliance and weakens transformative impact. Implementation deficits remain a core limitation of strategic climate litigation. The lack of compliance of respondent states crtically limits the effectiveness of the judgment (Farré Fabregat, 2024, p. 254).

Another increasingly problematic dimension is that of bidirectionality. Strategic litigation has been shown to function as both a progressive catalyst and a conservative barrier, with "ESG [environmental, social, governance] backlash cases" and SLAPP suits (Strategic Lawsuits Against Public Participation) weaponising legal processes against climate advocates, particularly in the US (Setzer & Higham, 2024, pp. 5, 40). These counter-mobilization efforts exemplify how wealthy corporations can leverage litigation to 'harass opponents and prevent climate activism' (Kaminski, 2022 (a)).

Moreover, even when courts issue favourable judgments, such as in KlimaSeniorinnen, the results are often limited to declaratory findings rather than concrete, enforceable measures or specified emissions pathways. This judicial restraint, which is rooted in the courts' role within the democratic separation of powers, ultimately narrows the scope for advancing climate justice. By affording states a wide margin of appreciation, courts introduce a substantial ambiguity regarding compliance, which in turn undermines the transformative potential of these rulings. Persistent implementation deficits thus remain a core limitation: the lack of robust enforcement mechanisms and inconsistent compliance by respondent states critically compromise the practical effectiveness of even landmark judgments (Farré Fabregat, 2024, p. 254).

Furthermore, courts face institutional tensions between democratic legitimacy and judicial activism, creating inconsistent jurisprudential development that may inadvertently reinforce existing power hierarchies rather than dismantling them (Setzer & Higham, 2024, p. 15). It is important to note that these limitations are not exhaustive, but rather represent some of the most defining and restrictive when considering the promotion of intergenerational justice through strategic climate litigation.

4. Legal Framework for Strategic Climate Litigation

The premise of this research is that climate justice can be advanced through legal means, particularly by challenging state inaction through strategic climate litigation. One of the greatest challenges in this context, as Helena O'Mahony (2024) has noted, is the question of accountability - specifically, how states can be effectively compelled to honour their environmental commitments. This challenge is especially pressing given the absence of a binding international treaty that explicitly enshrines a stand-alone 'right to climate protection'. Nevertheless, evolving legal frameworks and judicial interpretations increasingly recognise climate action as a fundamental component of both human rights and environmental obligations. This chapter explores the legal frameworks most pertinent to such litigation that is oriented towards intergenerational climate justice, with a particular focus on frameworks that intersect with the jurisdiction of the European Court of Human Rights (ECtHR).

While the inevitable consequence of this is a Eurocentric perspective, a reflection of both the scope and objectives of this thesis, it is nevertheless crucial to acknowledge the sophisticated and evolving legal developments in regions beyond Europe. Notably, Latin American jurisdictions have produced pioneering jurisprudence that continues to shape the global climate justice discourse (Kaminski, 2022 (b); Beckhauser, 2023, pp. 13-14).

Furthermore, it is imperative to acknowledge that this chapter offers a highly selective overview of the extensive range of legal frameworks that facilitate and enable strategic climate litigation. The frameworks and principles discussed here have been selected on the basis of their relevance in litigation proceedings before the ECtHR and are not intended to be exhaustive. Instead, the objective is to provide a coherent analytical foundation for understanding how existing legal instruments can be mobilised in support of intergenerational climate justice.

5.1 Core International Frameworks

The core international frameworks underpinning strategic climate litigation are predominantly shaped at the United Nations level, encompassing both procedural and substantive elements. Despite the fact that these instruments are frequently not directly enforceable, their near-universal ratification provides a common normative foundation that informs regional and national law and judicial practice. This fundamental role is of particular significance in Europe, where such frameworks function as critical reference points for climate litigation, especially before the ECtHR.

5.1.1 The UN Climate Regime

International climate law provides the foundational framework for strategic climate litigation. At its core is the so-called UN climate regime, a complex and evolving legal web built around the multilateral environmental agreements (MEAs), such as the 1992 UNFCCC, the 1997 Kyoto Protocol and the 2015 Paris Agreement. While these treaties are legally binding, their provisions vary in normative weight, ranging from narrative commitments to enforceable obligations (Bodansky et al., 2017, p. 18; Brunnée, 2002, p. 1). Beyond treaty texts, the regime is shaped by hundreds of Conference of the Parties (COP) decisions that,

while often formally non-binding, significantly expand the normative scope and operational detail of the regime (Bodansky et al., 2017, p. 19). These instruments inform and intersect with the human rights regime, influencing regional frameworks such as the ECHR, as well as national constitutional and legislative systems worldwide.

United Nations Framework Convention on Climate Change (UNFCCC, 1992)

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 and ratified by 198 Parties (UNFCCC, n.d.), and it is widely regarded as the cornerstone of the international legal regime to address climate change. The central objective of the Convention, outlined in Article 2, is the stabilisation of greenhouse gas concentrations 'at a level that would prevent dangerous anthropogenic interference with the climate system' (UNFCCC, 1992, Art. 2). This provision is widely interpreted as articulating a duty of prevention, placing mitigation at the core of the Convention's legal structure (Voigt, 2008, p. 4-5).

Article 3(1) of the UNFCCC establishes the principle of equity and common but differentiated responsibilities and respective capabilities (CBDR-RC), requiring states to respond to climate change in a fair manner, considering historical emissions and varying capacities. Of particular significance is the way in which it instils intergenerational equity, conceptualising climate protection as a duty owed to both present and future generations (UNFCCC, 1992, Art. 3(1)).

The principles of equity and CBDR-RC are of particular relevance in the context of climate litigation, as they recognise historical disparities in emissions and provide a normative foundation for arguments concerning equitable burden-sharing. While the Convention establishes general commitments for all Parties under Article 4.1, it also differentiates more specific obligations for developed countries (Annex I) in Article 4.2, including the adoption of mitigation policies and measures. However, the vague formulation of these provisions, which lacks concrete targets or enforcement mechanisms, undermines their legal precision and has often been criticised for rendering obligations largely aspirational (Happold, 2013, p. 4). The corresponding provisions in Articles 4.3-4.5, which require developed countries to support developing states through financial and technological transfers, further reflect the operationalisation of CBDR-RC.

Initially, the UNFCCC's Annex-based structure appeared to offer clarity. Nevertheless, it has also generated enduring tensions regarding the question of what constitutes a fair share of climate action. Developing countries emphasise historical responsibility, while some developed states, for example the US, focus on current capacity. This contest over interpretation complicates litigation but simultaneously reinforces calls for equitable burden-sharing (Bodansky et al., 2017, pp. 26-28; Rajamani, 2018, p. 47).

The Convention sidesteps the issue of state responsibility for climate-related harm, opting instead to emphasise the encouragement of future mitigation efforts (Happold, 2013, pp. 2-3). This orientation is reflected in the absence of provisions on damage assessment or compensation, and in the limited scope of Article 14, which restricts dispute settlement to inter-state procedures concerning interpretation. Nonetheless, despite its legal limitations, the UNFCCC's near-universal legitimacy and its normative and procedural architecture provide a valuable platform for strategic litigation. By invoking its equity-based principles, litigants can demand accountability, reframing climate inaction as a violation of justice rather than a mere policy choice.

Paris Agreement (2015)

The UNFCCC has evolved through subsequent instruments, most notably the Paris Agreement (2015), which operationalises its core principles. In contrast to its predecessor the Kyoto Protocol (1997), the Paris Agreement applies to all countries, thereby reflecting the shared nature of climate responsibility. This Agreement represents a significant shift in climate governance by introducing a hybrid legal framework that combines binding procedural obligations with aspirational substantive long-term targets. The aim of this combination was to catalyse progressive climate action while preserving national sovereignty (Bodansky et al., 2017, pp. 3-5; Bodansky, 2016, pp. 145, 150).

Central to the Agreement is Article 2.1(a), which commits Parties to maintaining a global temperature increase 'well below 2°C above pre-industrial levels' and to 'pursue efforts' to limit it to 1.5°C. While initially regarded as aspirational, this dual framing has evolved into a normative benchmark, particularly in the context of rights-based climate litigation (Voditǎ, 2023). Yet, the vague language leaves open which threshold is legally binding. The IPCC's 2018 Special Report and again in its 2023 Synthesis Report, underscore the significant risks

associated with a 2°C rise and advocate for the 1.5°C target as crucial to preventing 'dangerous anthropogenic interference' with the climate system as targeted in the UNFCCC's Article 2 (IPCC, 2018, pp. 7-10; IPCC, 2023, pp. 10-11). Nonetheless, the provision of quantified emission pathways and impact assessments, as outlined in Article 2.1(a), in conjunction with the supporting IPCC reports, offer science-based standards that enable litigants - particularly within the context of human rights courts - to argue that inadequate state action breaches Articles 2 and 8 ECHR (Vodiţă, 2023).

Another key feature is the so-called 'ratchet mechanism'. Despite the absence of the term in the agreement, it is embedded in Article 4.9, which calls for Parties to submit increasingly ambitious Nationally Determined Contributions (NDCs) on a five-year basis. Although targets are self-determined and not subject to sanctions, states are legally obligated to 'prepare, communicate and maintain' their successive NDCs (Arts. 4.2, 13). In recent years, courts have increasingly employed these obligations to assess the adequacy of national climate action. The ratchet mechanism is a key tool in this process, operationalising the principle of progressive realisation and reinforcing accountability in litigation (UNDP, 2023; Yeo, 2015; Bodansky et al., 2017, pp. 25-26).

Furthermore, the Preamble acknowledges the necessity to protect intergenerational equity (UNFCCC, 2015, Preamble, para. 13). While this acknowledgement is lacking in real substance since it does not impose any substantive legal obligations, it has normative value in shaping obligations under evolving human rights frameworks (Neumann, 2022, p. 32).

Pushed by climate-vulnerable states, the concept of Loss and Damage (L&D) was established as a third pillar - alongside mitigation and adaptation - under Article 8 (UNFCCC, 2015; Bhandari et al., 2025). In contrast to the approach of adaptation, L&D employs a retrospective strategy that addresses the inevitable or already-occurred harm of climate change (Bodansky, 2016, p. 32). However, under the influence of Global North countries, the legal weight of the promising provision was diluted in the accompanying COP21 decision text, which excludes any liability or compensation (FCCC, 2016, para. 51). Despite this limitation, Article 8 remains a reference point for future L&D claims within the regime, legitimizing demands for reparations and adaptation funding (Bodansky, 2016, p. 32).

Despite the absence of direct enforcement mechanisms, the Paris Agreement serves as a central interpretive instrument in the context of climate litigation, particularly in proceedings

before the ECtHR. It provides a normative foundation for arguments regarding state accountability and redress for climate-related harms (Voigt, 2023, p. 243).

Aarhus Convention (1998)

The Aarhus Convention (UNECE, 1998) is considered a cornerstone of procedural environmental rights within Europe and beyond, embodying the principle that public engagement is essential for sustainable governance. Ratified by nearly all Council of Europe (CoE) member states and the EU itself, the Convention underscores in the preamble the significance of empowering the public to safeguard not only their own right to a healthy environment, but also the right of future generations. In order to achieve this objective, the Convention upholds three core procedural rights: access to information (Art. 9), public participation in decision-making (Arts. 6-8) and the ability to seek justice (Art. 9).

The three pillars empower individuals and NGOs to challenge climate inaction, thereby positioning the Convention as a key element in strategic litigation aimed at achieving intergenerational equity. By mandating transparency in environmental governance (Art. 4), it equips litigants with critical data to contest inadequate policies, while its public participation provisions (Arts. 6-8) ensure that marginalised voices, including those of youth and Indigenous groups, are given a voice in climate decisions. Article 9(3), the Convention's access-to-justice pillar, grants standing to environmental associations to enforce national climate laws, a mechanism pivotal in cases like *Urgenda v. Netherlands* and *Klimaatzaak v. Belgium*. In these cases, the courts invoked the Convention to validate NGO standing, framing emission reductions as enforceable legal duties. Yet, the ECtHR's 2024 *KlimaSeniorinnen v. Switzerland* ruling revealed certain limitations in its applicability in climate litigation. The Court held that the Convention was tailored to linear and localised harms (ECtHR, 2024a, para. 501), thereby as put by Eckes and Trapp (2024): ‘effectively drawing a line between environmental and climate litigation’.

A greater level of progressiveness is promised with the explicit linking of environmental protection to 'present and future generations' in the preamble of the Convention, thereby anchoring intergenerational justice in its procedural DNA. Furthermore, by recognizing NGOs as proxies for collective interests, it circumvents traditional standing barriers, enabling

challenges to projects like fossil fuel permits (Art. 2(5)). However, Article 2(2) excludes legislative acts, curtailing its utility in systemic policy cases.

Nonetheless, the Aarhus Convention's influence persists. A purposive interpretation supports inclusive standing rules - a crucial consideration if systemic climate litigation is to persist as a viable tool for enforcing mitigation duties (Raible, 2025). Thus, as a procedural bridge between environmental governance and human rights, the Convention remains essential as a framework for accountability in an era of ecological urgency.

5.1.2 Human Rights Law

In the context of climate litigation, human rights emerge as a pivotal element, particularly as the climate crisis intensifies and its consequences for human rights become increasingly evident. The serious threat posed by environmental degradation and climate change to civil, political, economic, social and cultural rights - including the rights to life, health, food and housing - is widely recognised today (Donald, 2022, p. 10). Consequently, human rights frameworks are increasingly being used in climate litigation to emphasise government inaction as a human rights violation and demand accountability where climate law is failing (ClimateHughes, n.d.). States have obligations under international human rights law to not only respect, but also to protect and promote human rights - this includes obligations in relation to threats from third parties and systemic risks like climate change (O'Mahony, 2023). Although most core international treaties do not explicitly recognise environmental rights, courts have interpreted environmental destruction as a violation of existing rights under instruments such as the American Convention on Human Rights (ACHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Convention on Human Rights (ECHR) (ClimateHughes, n.d.). Consequently, human rights are emerging as a key component in the pursuit of climate justice which will be discussed in the following paragraphs.

Universal Declaration of Human Rights (UDHR, 1948)

Though non-binding, the Universal Declaration of Human Rights (UDHR), adopted in 1948 by the United Nations General Assembly, forms the cornerstone of international human rights law, providing the basis for subsequent treaties and regional instruments. Providing a universally recognised ethical and legal framework, the UDHR links environmental degradation to violations of fundamental human rights, thereby bolstering climate justice claims (ClimateHughes, n.d.; Donald, 2022, pp. 8, 23). Its universal legitimacy and moral authority have made it a touchstone for strategic climate litigation, with a framework that links environmental protection to human dignity and justice. The UDHR's principles are often invoked to highlight state inaction on climate change as a failure to protect human rights, thus calling for accountability where environmental law alone is insufficient. Furthermore, the UDHR's universalist ethos underpins the doctrine of intergenerational equity, supporting the argument that states have a duty to protect not only current but also future generations from the harms of climate change (ClimateHughes, n.d.; Wang & Higham, 2023).

The substantive rights enshrined in the UDHR are increasingly threatened by climate change. The right to life (Article 3) is frequently invoked in climate litigation to emphasise that unchecked climate change poses direct and foreseeable threats to human survival, as rising temperatures and ecosystem collapse endanger lives globally (OHCHR, 2023; Bodansky et al., 2017). Article 25 affirms the right to an adequate standard of living, including access to food, water, housing and healthcare. This forms the basis of claims that climate inaction disproportionately harms vulnerable populations by causing food insecurity, displacement and health crises (ClimateHughes, n.d.). Article 12 (privacy, family and home) is relevant where environmental harm disrupts living conditions. Meanwhile, Article 2 (non-discrimination) is central to climate justice as climate change disproportionately affects already disadvantaged populations, thereby exacerbating social and economic inequalities (Donald, 2022, pp. 11-13).

Procedural rights are equally vital. The UDHR's provisions for access to information (Article 19), public participation (Article 27) and access to justice (Article 21) empower communities to demand transparency and accountability in climate-related decision-making processes (Donald, 2022, p. 16). These procedural dimensions are essential for successful climate litigation, enabling individuals and groups to challenge policies or projects that endanger environmental and human rights (Donald, 2022, pp. 21-22).

State obligations derived from the UDHR are further elaborated in the 'Framework Principles on Human Rights and the Environment' (Human Rights Council, 2018). These require states to respect, protect and fulfil human rights in environmental contexts and to take special measures for those most vulnerable to harm (Donald, 2022, pp. 26-27).

Although the UDHR itself is not directly enforceable, its principles have been incorporated into binding treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These treaties are increasingly being cited to reinforce state obligations in climate litigation. For these strategies to be effective, it is crucial to combine substantive rights (e.g. the right to life, health, food, water and housing) and procedural rights (e.g. the right to participate and access to justice) that are rooted in the UDHR (CIEL & GI-ESCR, 2020a, pp. 45-47; ClimateHughes, n.d.).

UNGA Resolution 76/300 (2022): Right to a Healthy Environment

The realisation of all rights enshrined in the UDHR is conditional upon a healthy environment, thus rendering environmental protection indispensable for the enjoyment of these rights. Despite its status as the cornerstone of modern rights discourse, the Universal Declaration of Human Rights (UDHR) notably lacks any mention of environmental protection which is indicative of a mid-20th-century perspective that segregated human rights from ecological considerations. This artificial division was only gradually bridged by developments including the 1972 Stockholm Declaration's recognition of the environment as 'essential to [human] well-being and […] basic rights' (Art. 24), as well as regional instruments such as the African Charter and the 1988 San Salvador Protocol (Donald, 2022, pp. 23-24).

Resolution 76/300 (2022) of the United Nations General Assembly (UNGA), adopted with near-unanimous support, marks a 'human rights turn' by formally recognising the Right to a Clean, Healthy and Sustainable Environment (R2HE) as a universal human right, integrating climate stability into its substantive and procedural dimensions (Fraser & Henderson, 2022, p. 4). In contrast to the first- and second-generation rights, R2HE emphasises intergenerational solidarity and ecological interdependence, thereby challenging states to address systemic inequities. R2HE has been posited as both a collective and

individual entitlement, thus constituting a third-generation right that transcends traditional civil, political and socioeconomic categories (Brown Weiss, 1989, p. 116). However, this categorisation of rights is contentious.

The resolution's four operative paragraphs call to establish a multidimensional framework: (1) recognising R2HE as a human right, (2) affirming its interdependence with existing rights, (3) mandating implementation of multilateral environmental treaties, and (4) calling for international cooperation and policy alignment (UNGA, 2022). By linking climate stability to procedural rights like access to information or participation, it empowers litigants to challenge inadequate policies, as seen in cases invoking the Paris Agreement's temperature goals (EPRS, 2021, p. 2). Yet ambiguities persist. The term 'sustainable' remains undefined, risking divergent interpretations, while the resolution's non-binding nature limits enforceability (Twentyman & Kim, 2022, p. 5). Critics debate whether R2HE constitutes a new autonomous right or merely 'greens' existing norms (Spijkers, 2025).

With over 150 states recognizing environmental rights domestically, Resolution 76/300 consolidates a rising customary norm, merging soft law aspirations with juridical accountability, thereby signifying a paradigm shift (Donald, 2022, p. 62). As Knox (2022, p. 13) asserts, this recognition obliges states to 'respect, protect, and fulfil' ecological integrity, thereby transforming environmental stewardship into a non-negotiable pillar of human dignity.

Convention on the Rights of the Child (CRC, 1989)

Children have emerged as powerful claimants in climate litigation, situated uniquely at the intersection of particular vulnerability today and future risk. As the group most affected by the long-term impacts of climate inaction yet lacking political agency, they have catalysed legal strategies grounded in intergenerational justice (UNFCCC, 2024, pp. 2-3). The Convention on the Rights of the Child (CRC), which has been ratified by 196 states, provides a vital legal framework for advancing these claims. While it does not explicitly mention climate change, Articles 6, 12 and 24 - concerning the right to life, participation and health - have been interpreted as providing protection from environmental harm (CIEL & GI-ESCR, 2020b, pp. 2-6; p. 2; Nolan, 2024, pp. 524-525).

General Comment No. 26 (2023) by the CRC Committee represents a significant interpretative shift, identifying the 'triple planetary crisis' of climate emergency, biodiversity loss and pollution as an immediate threat to children's rights (CRC/C/GC/26, para. 1). The Committee urges states to take urgent, science-based climate action and recognises that the best interests of the child should be a primary consideration in climate policymaking (CRC/C/GC/26, paras. 17-18, 69-71). Furthermore, it reaffirms children's procedural rights, including access to environmental information and judicial remedies (paras. 29-34). Notably, it expands the scope of state responsibility to include transboundary environmental harm, acknowledging the extraterritorial obligations faced by many Global North countries in relation to young populations in the Global South (paras. 84, 86, 88).

Nonetheless, limitations persist. The CRC's normative strength is undermined by its non-binding nature in litigation, and litigants face challenges in proving causation between state action and specific rights violations due to the diffuse nature of climate change (for example, Duarte Agostinho and Others v. Portugal and Others). Yet, when deployed strategically, the CRC can support a holistic, child-centred approach to climate justice, integrating substantive and procedural rights in order to hold states accountable for today's actions that endanger tomorrow's children (CRIN, 2024; Tigre & Iliopoulos, 2023).

5.2 European Frameworks

With a population exceeding 750 million and a significant legacy of historical emissions, Europe's legal frameworks play a pivotal role in shaping global climate governance. The region's binding instruments - ranging from the European Convention on Human Rights (ECHR) to the EU's ambitious climate laws - are some of the world's most specific and enforceable frameworks and thus crucial tools in promoting intergenerational climate justice.

5.2.1 European Convention on Human Rights (ECHR)

The ECHR, which was adopted in 1950 and came into force in 1953, is widely regarded as the most mature and influential regional human rights instrument, protecting the rights of over 700 million people. Binding on all 46 CoE states, its strength lies not only in its substantive guarantees, but also in its capacity to adapt to new societal and environmental

challenges. Despite the absence of explicit references to environmental protection or climate change in the Convention, its rights have been interpreted dynamically to address environmental harms. This interpretive elasticity is a consequence of the Strasbourg Court's 'living instrument' doctrine (Stone, Sweet & Keller, 2008, pp. 5-6; Council of Europe, n.d. (a)).

At the core of this jurisprudential evolution are Articles 2 and 8. The ECtHR has increasingly recognised that environmental degradation, including prolonged exposure to pollutants or failure to regulate known risks, can trigger Article 2 obligations if a 'real and immediate risk' to life is established (ECHR, Art. 2; Verfassungsblog, 2025). Meanwhile, Article 8 - the right to respect for private and family life - has served as a gateway to environmental protection, invoked where environmental degradation reaches a threshold of severity that significantly impairs the applicant's ability to enjoy his home, private or family life (Council of Europe, 2025, p. 53). These provisions have become pivotal instruments for climate litigants, although the elevated threshold of harm and strict victim status requirements remain considerable obstacles in light of the diffuse nature of climate risks (Salinas Alcegas, 2024; al Khatib & Linders, 2024).

The structure of the ECHR has a general tendency to favour a procedural, as opposed to a substantive, model of environmental justice. Rights such as the right to a fair trial (Art. 6) and the right to an effective remedy (Art. 13) are of central importance to climate-related claims and underpin access to justice. While the Court has acknowledged the significance of domestic courts in environmental matters and referenced the Aarhus Convention's pillars of access to information, participation, and justice (KlimaSeniorinnen, 2024, para. 602), its cautious stance on standing and *actio popularis* limits its accessibility to collective or intergenerational claims (Salinas Alcegas, 2024, p. 306).

The Convention's climate relevance is also shaped by doctrines such as proportionality and subsidiarity. The former allows for a balancing of individual rights with public interests, such as energy policy or economic development, while the latter gives primary responsibility to national authorities, with the ECtHR acting in a supervisory capacity. The result is a regime that is both empowering and restraining: on the one hand, it opens the door to climate justice claims, but on the other, it narrows the scope through procedural filters and interpretive caution (Stone, Sweet & Keller, 2008, pp. 10-11, 17). Despite this doctrinal conservatism and the persisting evidentiary burdens, the Convention's responsiveness to

evolving societal values continues to create space for climate litigation within Europe's most established rights regime in the absence of an explicit right to a healthy environment.

5.2.2 Charter of Fundamental Rights of the European Union

Although the Charter of Fundamental Rights of the European Union (EU) is often overshadowed by the ECHR in the context of climate litigation, its potential should not be underestimated. Following the Treaty of Lisbon in 2009, the Charter was granted legally binding status and became part of the EU's primary law, meaning that it holds the same legal force as the treaties themselves (Krommendijk & Sanderink, 2023, p. 617). This status empowers courts and litigants to invoke its provisions directly, particularly when interpreting or applying EU secondary law.

Furthermore, the Charter includes a dedicated environmental clause. Article 37, which obliges the Union to ensure 'a high level of environmental protection' and to integrate this aim into all EU policies, is guided by the principle of sustainable development (Charter, 2000, Art. 37). While Article 37 is framed as a principle rather than an enforceable right, it still serves as a significant interpretive tool, particularly when interpreted in conjunction with substantive rights like Article 2 (Right to life) and Article 7 (Respect for private and family life), which have both influenced the environmental jurisprudence of the Court of Justice of the European Union (CJEU) (Krommendijk & Sanderink, 2023, p. 616).

Article 52(3) is of particular importance in this regard, as it ensures that the protections afforded by the Charter are at least equivalent to those of the ECHR, with the possibility of exceeding these standards. This alignment provides a legal foundation for incorporating human rights and environmental concerns into EU case law, but also climate litigation. However, the Charter's impact has thus far been limited by strict standing rules and the lack of a directly enforceable right to a healthy environment (Krommendijk, 2025; Krommendijk & Sanderink, 2023, pp. 626-627). Nevertheless, its normative framing and growing judicial engagement position is a promising tool to advance intergenerational climate justice within the EU legal order.

5.2.2 EU Legal Climate Frameworks

The EU has established a robust legal architecture to advance intergenerational climate justice, anchored in the *European Climate Law* (Regulation (EU) 2021/1119), which enshrines the binding Union 2030 climate targets to achieve climate neutrality by 2050 and a 55% emissions reduction by 2030. This framework obliges EU member states to align policies with scientific imperatives (as reported by the IPCC and the European Scientific Advisory Board) in order to ensure 'a just and socially fair transition for all'. In the spirit of the trade union that the EU was set out to be from the beginning, cost-effectiveness and economic efficiency are also key considerations (Art. 4.5a, c, d). The *Fit for 55* Package operationalises these goals, in part by revising sectoral legislation such as the *EU Emissions Trading System* (EU ETS) and the EU Renewable Energy Directive, or by establishing a Social Climate Fund (Council of the EU, n.d.). The climate and energy targets set for 2030 are to be achieved through *National Energy and Climate Plans* (NECPs). The EU has mandated member states to 'outline precise actions and policies' as a strategic planning tool to achieve a fair, resilient and climate-neutral Europe, thereby creating legal hooks for litigation when policies are not adequately implemented (European Commission, n.d.).

However, enforcement gaps persist. Although the EU has adopted a substantial amount of novel climate legislation, member states frequently fail to meet NECP deadlines or submit adequate plans, as evidenced by complaints lodged in 2024 against France and Germany for fossil fuel subsidies and inadequate public participation (CAN Europe, 2024; Climate Plans, n.d.; Krommendijk, 2025). The European Court of Auditors (2024, pp. 47-48) further notes that the overall climate change adaptation framework is sound but points out a lack of local awareness about these existing EU tools and limitations in coordination across the governance levels. Furthermore, member states sometimes used outdated scientific data, which risks maladaptation.

The *European Green Deal* constitutes the EU's primary legal and policy framework for achieving climate neutrality by 2050, incorporating binding targets for emissions reductions, a just transition and environmental protection across all sectors. It stipulates comprehensive reforms, encompassing the domains of energy, agriculture, industry and finance, while integrating climate justice and human rights as core principles. By operationalising the Paris Agreement's 1.5°C goal, the Deal establishes climate action as a legal and ethical imperative,

despite political and corporate backlash threatening its transformative potential (Wewerinke-Singh et al., 2025; European Council, 2025).

5.4 Emerging Advisory Opinions

Advisory opinions (AOs) have emerged as a pivotal instrument in shaping the legal framework of climate governance. Although they are formally non-binding and therefore often considered a 'soft law litigation strategy', AOs issued by international courts - such as the International Court of Justice (ICJ), the International Tribunal for the Law of the Sea (ITLOS) and the Inter-American Court of Human Rights (IACtHR) - carry significant interpretative authority and are frequently cited by domestic and regional courts to clarify legal obligations (Rao et al., 2024). In the context of climate change, AOs play a vital role in strengthening accountability by establishing legal standards rooted in international law, including due diligence obligations, intergenerational equity and the precautionary principle.

These opinions fulfil a variety of strategic functions, including the clarification of states' legal duties under evolving international norms; guidance of climate policymaking at national and global levels; framing of climate change as a human rights issue; and influence of the trajectory of future litigation and political negotiations. As multiple courts concurrently engage with climate-related questions, the awaited jurisprudence has the potential to elevate voluntary climate commitments into enforceable legal norms. By addressing the deficiencies in legal accountability, AOs are progressively recognised as a cornerstone of a more extensive climate justice framework - enhancing litigation and reinforcing states' obligations to protect both the present and future generations (Mead & Doelle, 2025; Petit de Gabriel, 2023). The following section will present three recent key advisory opinions on the topic of climate change and state responsibility.

ICJ Advisory Opinion (Pending)

The ICJ AO was initiated by Vanuatu and 132 co-sponsoring states with the aim of clarifying states' duties to mitigate emissions and prevent transboundary harm under customary law, human rights treaties and the UN Charter (UNGA, 2023). The Court's anticipated integration of intergenerational equity - explicitly referenced in the request - has the potential to redefine 'significant harm' to include future impacts, compelling states to align policies with IPCC

pathways. This opinion could potentially set out a framework for reparations in favour of small island states and vulnerable communities, thus addressing the issue of historical emissions disparities (Petit de Gabriel, 2024, pp. 270-273;Wang & Chan, 2023). Moreover, the ICJ AO is expected to shape national and regional courts' interpretations of state obligations, influence pending and future climate cases, and compel governments to clarify their legal positions on climate responsibility.

ITLOS Advisory Opinion (2024)

In a groundbreaking ruling, ITLOS delivered a unanimous advisory opinion (Case No. 31) on climate change and marine pollution, establishing that 'anthropogenic greenhouse gas (GHG) emissions into the atmosphere constitute pollution of the marine environment' (Art. 179) under the United Nations Convention on the Law of the Sea (UNCLOS). Consequently, States Parties are obligated to undertake 'all measures (...) necessary to prevent, reduce and control' such pollution (Art. 194(1)). The Tribunal imposed stringent due diligence requirements: States are obliged to implement national legal frameworks (comprising legislation, regulations and enforcement measures) to ensure that the intended objective - the prevention of GHG pollution - is achieved. The ruling also incorporates equity by emphasizing that while all states must mitigate, those 'with greater means and capabilities must do more' (Art. 227). Consistent with the provisions of UNCLOS Articles 202-203, developed States have duties to support Global South nations through the provision of finance and technology (Yiallourides & Deva, 2024; BIICL, 2024, pp. 3-4; Webb et al., 2024).

IACtHR Advisory Opinion (Pending)[4]

In January 2023, Chile and Colombia submitted a joint request for an advisory opinion to the IACtHR, seeking clarification on the obligations of states (individually and collectively) under the American Convention on Human Rights in the context of climate change. Key themes include the protection of the rights of children and future generations; the safeguarding of indigenous, Afro-descendant and other vulnerable communities and environmental defenders; and the addressing of climate-induced displacement and loss of livelihoods (Climate Rights Database, 2023). Testimonies from Atakapa-Ishak and Afro-descendant communities highlighted climate-driven cultural erasure, urging the Court to mandate FPIC and land restitution (EarthRights, 2024). The opinion is expected to affirm

[4] The Advisory Opinion No. 32 of the IACtHR was scheduled for publication on 3 July 2025. As this thesis was finalized before, it was not possible to include a discussion of the opinion.

states' duties to protect both present and future generations' rights to a healthy environment, integrating Indigenous knowledge into adaptation frameworks (WYCJ, 2024).

5. Legal Doctrinal Analysis of Climate Case Law

Climate litigation has emerged as a potent instrument in addressing the global climate crisis, with courts increasingly recognising the interconnection between human rights, climate mitigation and environmental protection. Globally, the number of climate cases filed has exceeded 2,600 as of 2024, with more than two-thirds of these cases being filed in the United States. Of these cases, 70% have been filed since the adoption of the Paris Agreement in 2015, thereby demonstrating the growing momentum of legal action as a response to inadequate climate action. In 2023, approximately 40% of strategic climate litigation cases targeted corporate actors, while state accountability remained a central focus in 60% of cases (Setzer & Higham, 2024, pp. 2-3). In the latter cases, arguments regarding intergenerational justice are gaining importance in addressing governments' accountability, influence, policy, and legal reasoning. This development extends the temporal dimension in which the question of climate change is considered, thereby also encompassing future generations.

The present chapter focuses on the climate litigation jurisprudence of the ECtHR, in which the temporal dimension of climate change as well as intergenerational equity play a role. It is only recently that the Court has begun to play a central role in shaping climate accountability, thus giving further rise to the growing trend of utilising human rights arguments in climate litigation (Setzer & Higham, 2024, p. 2). Nevertheless, given the limited number of ECtHR decisions, this chapter will also examine landmark cases from national and international courts that incorporate generational or age-based arguments.

6.1 Climate Litigation before the ECtHR

The ECtHR, the body entrusted with examining alleged violations by Council of Europe member states of the rights enshrined in the ECHR and its protocols, is emerging as a key venue for advancing climate justice through a human rights lens. On 9 April 2024, the Court

delivered its first rulings on cases related to climate change (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland; Carême v. France; Duarte Agostinho and Others v. Portugal and 32 Others*). All three cases were referred to the Grand Chamber on account of the intricacy and extensive ramifications of the legal questions raised, which concerned the same core issue of the positive obligations of states in climate mitigation and the admissibility of related complaints (Council of Europe - European Court of Human Rights, 2024, p. 75).

Even though the ECHR does not explicitly recognize a right to a healthy environment, which has led the ECtHR to address environmental issues through other existing rights, such as the right to life and the right to private and family life (Council of Europe, n.d.; Ordóñez, 2023).

These rulings represent a moment of great significance within the field of international law, as the ECtHR is the first international judicial body to rule on the human rights dimensions of climate change. The *KlimaSeniorinnen* judgment thereby represents a historic breakthrough by explicitly framing climate change as a human rights issue under the ECHR - a landmark in international jurisprudence (European Network of National Human Rights Institutions, 2024). Concurrently, the *Duarte Agostinho* and *Carême* rulings, despite their inadmissibility, offer valuable guidance for future strategic climate litigation by refining the Court's standards on admissibility and victim status.

By engaging with climate science and aligning its interpretation of rights with global climate commitments, such as the Paris Agreement, the Court has demonstrated the potential of human rights frameworks in responding to the climate crisis. In consideration of the Courts' longstanding reputation as a beacon of human rights jurisprudence, it is anticipated that this emerging body of case law will serve as a catalyst for further litigation across Europe and beyond, thus empowering vulnerable communities and civil society to challenge systemic climate inaction (Higham et al., 2024; Savaresi et al., 2024).

6.2 Verein KlimaSeniorinnen Schweiz v. Switzerland

Heat, among all climate hazards, is the most significant cause of premature mortality and health impairments in Europe (ECtHR, 2024a, para. 65). These negative health impacts and the associated risk to life prompted a group of 40 senior women in Switzerland to take their government to court, contending that Switzerland's inadequate mitigation measures violated both constitutional and human rights of elderly women. In order to obtain legal standing and the ability to initiate legal action against the Swiss government, the group - comprising women aged 64 and above - founded the association *Verein KlimaSeniorinnen Schweiz* in 2016 (KlimaSeniorinnen Schweiz, n.d.).

However, their claims were rejected by Swiss domestic courts between 2017 and 2020. Supported by *Greenpeace Switzerland*, the association and four individual applicants submitted their complaint to the ECtHR on 26 November 2020. The Court communicated the case to Switzerland on 25 March 2021, thereby granting it priority status. A public hearing before the Grand Chamber was held on 29 March 2023 and the landmark ruling in favour of the KlimaSeniorinnen was delivered on 9 April 2024 (Climate Case Chart, n.d.).

The objective of the campaign was to compel the Swiss government to take all necessary measures - outlined by the Swiss Constitution and the ECHR - to prevent global temperature rise in order to protect the lives and health of senior women as a particularly vulnerable group (ECtHR, 2024a, para. 23). This assertion is underpinned by the prevailing global scientific consensus, which suggests that by adhering to the 1.5°C pathway outlined in the Paris Agreement, significant numbers of premature mortalities and health impairments can be averted (Application, 2020, para. 16).

In essence, the *KlimaSeniorinnen* case sought to determine whether a human right to climate protection is recognised under the ECHR, thereby establishing a direct link between state inaction on climate change and human rights violations (Climate Seniors Association). While centred on the rights of senior women, the case also framed climate inaction as an issue of intergenerational justice. As was stated by one of more than 2,500 members of the association by 2024: 'We act not for ourselves, but for our grandchildren's right to a stable climate' (Greenpeace, 2024, p. 2; ECtHR, 2024a, para. 10).

6.2.1 Factual Allegations

The association, *Verein KlimaSeniorinnen Schweiz*, along with four individual plaintiffs (all members of the association), asserted that Switzerland's climate policies, which were projected to result in a 3°C increase in global temperatures, had failed to sufficiently mitigate the occurrence of lethal heatwaves. This, they contended, constituted a violation of the ECHR Articles 2 (right to life) and 8 (right to private and family life) (ECtHR, 2024a, paras. 10-20, 25-26). As demonstrated by scientific findings, extreme heatwaves, exacerbated by global warming, are becoming more frequent and intense, posing disproportionate health risks to elderly populations. The applicants substantiated their claim with medical evidence and epidemiological studies demonstrating that elderly women face a higher mortality risk during extreme heat due to cardiovascular vulnerabilities (paras. 66-68, 73-74). Switzerland, however, has not established a quantified carbon budget, nor has it set Paris-aligned targets (NDCs) or regulatory frameworks to limit greenhouse gas emissions. Consequently, this has resulted in critical gaps in its climate governance, failing to prevent heatwaves and accelerating temperatures (paras. 75-82). Domestic courts dismissed the applicants' claims for lacking 'specific victimhood', denying substantive review of scientific evidence and thereby showcasing procedural gaps (paras. 18-22, 27). Following the exhaustion of all domestic remedies, the applicants contended that the Swiss authorities' refusal to reinstate their claims constituted a violation of Article 6 (right to a fair trial) (paras. 1, 420).

6.2.3 Substantive law: Alleged Rights Violations

As the ECHR does not contain an explicit right to a healthy environment, the applicants anchored their claims in Articles 2 (right to life) and 8 (right to private and family life). It was emphasised that Articles 2 and 8 ECHR overlap in environmental matters and establish 'a positive obligation on the respondent to put in place a legislative and administrative framework to provide effective protection' (KlimaSeniorinnen, 2020, p. 8). The applicants argued that Switzerland's climate inaction violated its 'positive obligations to put in place all necessary measures to protect the applicants effectively'. Consequently, the respondent was found to be in violation of its 'duty of care' with respect to the prevention of global warming beyond 1.5°C, given the limited time available for action (KlimaSeniorinnen, 2020, p. 8).

Article 2 ECHR: Right to Life

The applicants contended that Switzerland's inadequate policies exposed them to life-threatening heatwaves, arguing Article 2 applies preventively without requiring actual death, thereby relying on *Öneryildiz v. Türkey* (KlimaSeniorinnen, Additional Submission, para. 52). They highlighted that women over 75 face disproportionate mortality risks due to cardiovascular vulnerabilities, with scientific evidence confirming heightened susceptibility during extreme heat (KlimaSeniorinnen, 2020, p. 4; ECtHR, 2024a, para. 28). Crucially, they asserted 'all Applicants have been, are and will be at great risk of premature loss of life' solely due to their age and gender (KlimaSeniorinnen, Additional Submission, p. 1), invoking the precautionary principle to characterize climate change as an inherent danger triggering state obligations (KlimaSeniorinnen, Additional Submission, para. 52).

Article 8 ECHR: Right to Private and Family Life

Central to their case, the applicants claimed Switzerland's failures degraded their health and quality of life (KlimaSeniorinnen, Additional Submission, para. 53). The applicants highlighted how extreme heatwaves, exacerbated by inadequate mitigation efforts, directly impaired their health, well-being, and quality of life. Many members of the association described being forced to alter their daily routines, restrict outdoor activities, and even remain indoors for extended periods during heatwaves, leading to social isolation and psychological distress (ECtHR, 2024, paras. 11, 13-21; KlimaSeniorinnen, 201126, p. 5). They stressed Article 8 protects 'personal autonomy' the right to 'age with dignity' even without proven health deterioration, as the threat to well-being alone suffices (KlimaSeniorinnen, Additional Submission, para. 53).

Broader Obligations

The applicants based their arguments not only on the ECHR but also on broader principles of international environmental law, including Switzerland's obligations under the Paris Agreement (KlimaSeniorinnen, 201126, pp. 6-7; ECtHR, 2024a, para. 301-304). They contended that these international commitments should inform the interpretation of the Convention, particularly in light of the urgent need for states to address climate change as a global threat (KlimaSeniorinnen, 201126, p. 6). This framework implicitly safeguards future

generations, demanding science-based policies to avert intergenerational inequity (ECtHR, 2024a, para. 420; KlimaSeniorinnen, 2020, p. 7).

6.2.4 Procedural Law

Article 6 §1 ECHR: Access to Court

At the core of the applicants' procedural claims was the alleged violation of Article 6 §1 ECHR, which guarantees the right of access to court in the determination of civil rights and obligations, and subsidiarily on Article 13 ECHR, concerning the protection of their rights under Articles 2 and 8 of the Convention. The complaint's primary focus did not pertain to trial fairness; rather, it centred on the procedural aspect of Article 6 (1), namely the threshold issue of court access (ECtHR, 2024a, para. 577). The Federal Administrative Court - as the court of first instance in the case - had rejected the appeal of the applicant association, as well as the individual applicants, on grounds of insufficient individual affectation in comparison to the general public (Application, 2020, para. 27). The Federal Supreme Court in the last national instance further found that there was still time to limit warming 'well below 2°C' before 2040 (KlimaSeniorinnen, 2020, para. 28).

The Swiss courts dismissed the case without examining the scientific evidence or the merits of the applicants' arguments, including their vulnerability to heat-related afflictions, the heat-induced harms suffered by Applicants 2-5, or the adequacy of the state's legislative framework. The applicants contended that this procedural dismissal, stemming from a formalistic interpretation of standing, denies them an effective judicial remedy to challenge inadequate climate policies (ECtHR, 2024a, paras. 579). Drawing on the jurisprudence of *Bursa Barosu Başkanlığı and Others v. Turkey*, they contend that Article 6 is applicable even if the claims benefit not only the applicants exclusively, but also the general public (para. 50). It was further highlighted that the refusal of standing and the arbitrary application of the requirements for standing are contradictory to the obligations that arise from Switzerland's membership of the Aarhus Convention (KlimaSeniorinnen, 2020, para. 45).

Victim Status

The applicants contested the Swiss courts' denial of victim status, arguing that both the

individual applicants (2-5) and the association *Verein KlimaSeniorinnen Schweiz* (Applicant 1) qualified as victims under Article 34 in relation to Articles 2 and 8 ECHR. For the individual claimants, it was contended that the cumulative physical and psychological harm already suffered, including chronic illness and elevated mortality risks during heatwaves (KlimaSeniorinnen, 2020, paras. 33-35). The association claimed standing as a representative body for its 1,855 members at the time of application in 2020. Direct victim status is asserted as the statutory purpose is to 'prevent health hazards caused by dangerous climate change', and it is therefore directly affected by Switzerland's failure to reduce GHG emissions in line with the Paris Agreement (para. 35). The association also facilitates access to justice for its members - an especially vulnerable group - often serving as 'the only viable way to defend their rights effectively' (para. 36). In this respect, they also referred to the case of *Gorraiz Lizarraga and Others v. Spain*, in which, similarly to the Swiss case, the applicant association was set up for the specific purpose of defending the interests of its members, who also belonged to a particularly vulnerable group (para. 35; Gorraiz Lizarraga and Others v. Spain, no. 62543/00, ECHR 2004-III).

Contesting the assertion that bestowing victim status upon the applicants in this case could amount to *actio popularis*, the applicants contended that 'a general public interest co-exists with their particular interest', a position bolstered by ECtHR case law (*Di Sarno and Others v. Italy; Tâtar v. Romania*). They cautioned that imposing a high threshold for victim status in climate cases would be 'excessively formalistic and not a contemporary approach' (para. 39).

Exhaustion of Domestic Remedies

The applicants in *KlimaSeniorinnen* pursued all available domestic remedies, thereby satisfying the admissibility requirement under Article 35. Following the submission of formal requests to relevant Swiss authorities in 2016, the case was appealed to the Federal Administrative Court (FAC) and Federal Supreme Court (FSC). Both courts dismissed their claims, arguing that they lacked 'specific victimhood' under Swiss law and framing their petition as a general public interest claim (Application, 2020, paras. 27-28). In the absence of a substantive review and with no available legal avenues, the applicants instigated legal proceedings before the ECtHR in November 2020 following the FSC's rejection of their appeal in May 2020, within the extended deadline set during the COVD-19 pandemic,

invoking the Court's Priority Policy due to the 'extreme urgency' of the case (KlimaSeniorinnen, 2020).

6.2.5 State Response (Switzerland)

In response to the applicants' claims, Switzerland argued that its climate policies were sufficient and that the applicants lacked standing to challenge broad legislative and executive decisions (ECtHR, 2024, paras. 84-102; para. 582). The State also contested the causal link between its emissions and the specific harm suffered by the applicants, framing climate change as a global issue requiring collective rather than individual state responsibility (ECtHR 2024a, paras. 584-587)

6.2.6 Decision of the ECtHR

In its seminal ruling of 9 April 2024, the Grand Chamber of the ECtHR determined that Switzerland had infringed Articles 8 and 6 (1) of the Convention by its failure to adequately address the issue of climate change (ECtHR, 2024a, paras. 545, 548, 584). Of the three climate cases decided that day, only KlimaSeniorinnen was deemed admissible, marking a historic development in European human rights jurisprudence.

Positive State Obligations under Article 8

Article 8, traditionally linked to the protection of private and family life, was interpreted as including a positive obligation to protect individuals from serious climate-related harm. The Court determined that states are obligated to adopt and effectively implement science-based, legally binding climate policies to avert foreseeable risks to life, health and well-being (ECtHR, 2024a, paras. 519, 544-545). Of particular significance is the imposition of a new 'primary duty' on states 'to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible, future effects of climate change' (para. 545). Consequently, states are obligated to strive towards achieving net neutrality within the next three decades and to align their endeavours with scientific consensus on the matter, particularly as articulated by the IPCC and the Paris Agreement (paras. 546-549).

The ruling notably rejected the so-called 'drop in the ocean' argument, holding that every state bears responsibility for reducing its emissions irrespective of global proportionality (para. 444). While states enjoy a margin of appreciation, given their primary responsibility to secure rights and freedoms under the Convention (paras. 541-543), the Court found that Switzerland had exceeded this by failing to adopt a quantified carbon budget or to meet the mitigation obligations it had acknowledged. Therefore, Switzerland was found to be in violation of Article 8 (para. 573). The Court emphasised that these mitigation measures must be embedded in national law and immediately operationalised to avoid overburdening future generations (para. 549).

Although the applicants also invoked Article 2 (right to life), the Court found it more appropriate to assess the association's claim solely under Article 8 alone (para. 537). It questioned whether the shortcomings in Switzerland's climate policy had sufficiently life-threatening consequences to trigger Article 2 (para. 536). As the individual applicants' claims were found inadmissible under Article 8, the Court likewise rejected them under Article 2 (paras. 527-535).

Legal Standing for Associations

The Court revolutionised the standing criteria under Article 34 ECHR in the climate context by granting *locus stand*i to an environmental NGO (Verein KlimaSeniorinnen). Conversely, the individual applicants were deemed inadmissible on the grounds of inadequate exposure and an absence of pressing individual need (ECtHR, 2024a, para. 535). For associations, three cumulative criteria were established to claim victim status: (1) lawful establishment, (2) statutory purpose dedicated to climate advocacy, and (3) representative capacity for affected members (para. 502). Drawing on *Gorraiz Lizarraga and Others* (para. 489) and the *Aarhus Convention* (Article 2(5); para. 491), the Court acknowledged the importance of collective action in addressing systemic climate harms, particularly where 'the voice of those at a distinct representational disadvantage' (e.g., future generations) would otherwise be unheard (para. 489). Despite relying heavily on the Aarhus Convention, the Court dismissed its general applicability to climate litigation in passing, claiming its scope does not extend to the issue, thus creating a distinction between environmental and climate litigation (paras. 494, 501).

The Court further affirmed that victim status 'must be interpreted in an evolutive manner in the light of conditions in contemporary society' and not excessively formalistic so as to avoid rendering the Convention 'ineffectual and illusory' (para. 482). Nonetheless, the court reiterated its longstanding rejection of *actio popularis*, upholding strict threshold criteria for individual standing: a high intensity of exposure and a pressing need for individual protection (para. 487).

Access to Justice in Climate Cases

The Court determined a violation of Article 6(1), concluding that the Swiss courts' failure to substantively engage with the association's claims infringed upon their right of access to a tribunal (ECtHR, 2024a, paras. 635-640). The domestic judiciary's dismissal of the case on procedural grounds, without assessing the merits or urgency of the climate claims, undermined the very essence of the right to a fair hearing (paras. 636-637).

Furthermore, the ECtHR emphasised the pivotal role of domestic courts as the primary fora for enforcing Convention rights, particularly in complex and urgent domains like climate governance (para. 639). In light of the irreversible nature of climate-related harm, the judgment stressed that access to justice must be 'practical and effective, not theoretical and illusory' (paras. 613-614). The Court explicitly rejected the domestic findings that there remained sufficient time to avoid crossing critical climate thresholds (para. 635).

Dissenting Opinion

The judgement in *KlimaSeniorinnen* was not unanimous: Judge Eicke dissented on several pivotal points, articulating what he characterised as a disagreement 'of a more fundamental nature' that pertains to 'the heart of the role of the Court within the Convention system' (ECtHR, 2024a, Separate Opinion, para. 2). He fundamentally opposed both the majority's admissibility findings and its substantive reasoning, warning that the Court had ventured 'well beyond what I consider to be, as a matter of international law, the permissible limits of evolutive interpretation' (para. 3). From his perspective, the Court should have concentrated on violations under Article 6 and potentially the procedural aspects of Article 8, as opposed to insinuating extensive substantive obligations (para. 68). Eicke questioned the institutional capacity of courts to assess states' compliance with evolving climate science (para. 66), and cautioned that the judgment risks diverting attention from urgent legislative efforts by tying

authorities up in litigation (paras. 69-70). This dissenting opinion highlights the institutional tensions between judicial innovation and restraint in climate adjudication.

6.2.7 Implementation and Response of Switzerland

Following the *KlimaSeniorinnen* judgment, Switzerland fell under the supervision of the Council of Europe's Committee of Ministers to ensure compliance with the Court's findings (ECtHR, 2024a, paras. 655-657). While the Court refrained from issuing prescriptive remedies - citing the complexity of climate governance - it imposed a binding obligation under Article 46 ECHR to align national climate policy with science-based standards.

The initial reaction by Swiss authorities was marked by resistance. Government representatives challenged the legitimacy of the ruling, framing it as judicial overreach[5], while some political actors raised the prospect of reassessing Switzerland's ECHR membership (Communication DH-DD(2024)1123). Despite this backlash, the federal government submitted an Action Report in October 2024, outlining legal reforms, including a revised CO_2 Act for 2030[6] and updated NDCs for 2031-2035 (Swiss Confederation, 2025).

However, critical assessments by *Verein KlimaSeniorinnen*, other NGOs, and the Swiss National Human Rights Institution uniformly rejected the report, citing the absence of a quantified, 1.5°C-aligned national carbon budget. Greenpeace International and the Climate Litigation Network further underscored these shortcomings in their Rule 9.2 communication[7]. While the Committee of Ministers acknowledged legislative progress in its March 2025 decision, it emphasised that Switzerland had yet to fully comply, particularly regarding the Court's requirement for measurable emissions limits. As Çali (2025) notes, this decision not only reinforced the authority of the ECtHR but also marked a precedent in politically monitored implementation of climate judgments.

[5] This criticism emerged particularly in Swiss parliamentary debates, where some lawmakers framed the judgment as a breach of democratic sovereignty. These reactions echo broader tensions between supranational human rights enforcement and domestic constitutional autonomy.
[6] The revised CO_2 Act includes sectoral measures but does not yet embed a quantified carbon budget. The 2031-2035 NDCs submitted in January 2025 build on existing commitments but remain vague in terms of enforceable emissions ceilings.
[7] Rule 9.2 of the Committee of Ministers' Rules for the supervision of execution allows civil society to submit observations on the adequacy of state compliance. In the *KlimaSeniorinnen* case, NGOs used this mechanism to scrutinize the Swiss Action Report.

6.2.8 Case Analysis: Verein KlimaSeniorinnen Schweiz and Others v. Switzerland through the Lens of Intergenerational Equity

The 2024 judgment in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* is already widely regarded as a landmark in the field of climate litigation. While considerable attention focused on its articulation of states' positive obligations under Article 8 ECHR and its expansion of standing for environmental associations, less focus has been placed on its contribution to intergenerational climate justice. The ruling's significance becomes apparent when analysed through the lens of Edith Brown Weiss' triad of intergenerational equity (1989): the conservation of options, quality and access. These principles offer a normative framework for evaluating whether today's legal decisions enable, constrain or bypass justice for future generations. Utilising this theoretical framework, the present chapter provides a critical evaluation of the extent to which the *KlimaSeniorinnen* judgment fosters intergenerational climate justice and identifies its limitations.

Conservation of Options: Preserving Future Generations' Capacity for Climate Action

The principle of conservation of options asserts that current generations have a responsibility to safeguard environmental and cultural diversity for the benefit of future generations, thereby enabling them to address their own challenges (Brown Weiss, 1989, p. 38). The ECtHR's mandate that Switzerland establishes a quantified carbon budget is consistent with this imperative, as it prevents irreversible ecological degradation and policy lock-in (ECtHR, 2024a, para. 548). By anchoring its rationale in IPCC data and mandating budgets aligned with the 1.5°C target, the Court underscores that mitigation must be immediate, not postponed (paras. 107-120, 546-549). The reference to the 'intergenerational perspective' (para. 420) can be interpreted as an understanding that delayed action constitutes a violation of intergenerational equity.

This operationalises Brown Weiss's (1989, p. 84) call to prevent damage before it occurs. Nevertheless, the Court's deference to state discretion via the margin of appreciation weakens the transformative potential of its reasoning. As Heri (2025, Interview) notes, the judgment is symbolically strong but avoids prescribing detailed obligations, partly due to the Court's subsidiary role: 'it's not the Court's task to impose new climate targets.'

This institutional limitation enables states to comply in a superficial manner (e.g., through offsets or accounting loopholes) without addressing the structural drivers of emissions. Consequently, the ruling may potentially preserve formal but not substantive options for future generations.

Furthermore, the absence of any historical emissions accounting undermines the equitable allocation of the remaining carbon budget. By neglecting to acknowledge Switzerland's historical role in climate change, the Court evades the issue of the disproportionate burden placed on younger and future generations. While the Court dismisses Switzerland's 'drop in the ocean' argument (para. 444), it avoids engaging with the unequal consumption of the global carbon space, despite relevant third-party submissions (para. 393).

Ultimately, the judgment appears to prioritise the preservation of options in rhetoric rather than in enforcement. As Heri asserts, it 'represents more of a minimum and certainly not the maximum'. It is anticipated that future advisory opinions, in particular those of the ICJ, IACtHR and AfCHPR, may offer enhanced protections by explicitly recognising intergenerational claims and the right to a healthy environment.

Conservation of Quality: Establishing Environmental Standards Across Time

The principle of conservation of quality stipulates that future generations are to inherit environmental conditions that are no worse than those that have been passed down to the present generation (Brown Weiss, 1989, pp. 38, 42). In this regard, *KlimaSeniorinnen* contributes significantly by embedding climate science into human rights adjudication, operationalizing quality conservation. By anchoring state duties in IPCC science and the Paris Agreement's 1.5°C goal, the Court transforms abstract intergenerational obligations into enforceable environmental quality standards (paras. 113-118, 546-547). This signifies a substantial shift from a focus on procedural rights to a consideration of material ecological thresholds, aligning with Savaresi's (2025, p. 287) observation that the judgment integrates environmental protection and human rights.

The Court's demand that states prevent 'irreversible future effects' (para. 545) directly operationalises the conservation of environmental quality. Nevertheless, two limitations persist. Firstly, as Heri (2025, Interview) argues, the decision lacks transformative ambition: 'It's not that hard to implement.' Rather than necessitating the implementation of ambitious

new actions, it reaffirms targets already formally accepted by Switzerland. This minimalist posture may fail to drive the systemic changes necessary for genuine environmental preservation.

Secondly, the quality-conservation impact of the ruling depends entirely on its national implementation. According to reports from civil society groups (Climate Litigation Network, 2024; Greenpeace, 2024) and the Council of Europe's Committee of Ministers (2025), Switzerland has not yet fully complied with the ruling's mitigation requirements. As Çali (2025) underlines, it is the implementation, rather than the abstract commitment, that determines whether quality is meaningfully preserved.

The consequences of the failure to conserve environmental quality, with its compounding effect over time, are evident in *KlimaSeniorinnen*. The Court acknowledged the heightened vulnerability of elderly women to climatic risks (para. 377), yet it refrained from explicitly declaring that future generations possess rights. Instead, it merely observes that current failings may impact them (para. 410). This is indicative of the ECtHR's institutional caution and its reluctance to affirm explicit rights for future generations despite the existence of clear intergenerational implications.

Conservation of Access: Procedural Pathways to Protect Intergenerational Rights

Among the three principles, *KlimaSeniorinnen* most clearly advances the conservation of access. Brown Weiss (1989, pp. 43-44) argues that equitable and meaningful access to resources must be guaranteed for each generation. In the climate context, procedural access is central: it allows present actors to advocate on behalf of future ones and to safeguard access to a livable planet.

The Court's recognition of associational standing under Article 34 ECHR (ECtHR, 2024a, para. 502) is therefore groundbreaking. It can facilitate the representation of structurally disadvantaged groups in securing legal recognition in future climate cases, as demonstrated by *Verein KlimaSeniorinnen*. The judgment acknowledges the relevance of 'intergenerational burden-sharing' (para. 489) and positions procedural mechanisms as a vehicle for equity across time. This aligns closely with Brown Weiss's (1989, p. 44) concern that conserving access requires mechanisms preventing undue interference - both across generations and among contemporaries - to ensure equity.

The procedural dimension of access conservation is further reinforced by the Court's insistence that domestic courts must review climate inaction (Article 6 violation, paras. 635-637). This ensures that judicial mechanisms are available even when harm is diffuse or anticipatory, which is vital for safeguarding future-oriented claims.

Despite this, a tension persists. While associations gain procedural access under certain criteria, individuals must meet a strict admissibility threshold, including 'high intensity exposure' and a 'pressing need' (para. 487). This requirement, therefore, structurally excludes future generations from recognition, as their claims are necessarily prospective. Hence, while the judgment opens one procedural door, it discreetly closes another.

Finally, while the Court acknowledges states' 'obligation to protect the climate system for the benefit of present and future generations' under the UNFCCC (para. 420), it avoids grounding this in a binding legal principle such as the public trust doctrine. Heri (2025, Interview) attributes this caution to the ECtHR's sensitive political position: 'There is pressure on the Court and real fear that states might withdraw'. The judgment's institutional caution tempered its otherwise significant contribution to intergenerational equity in European human rights law.

6.2.9 Conclusion

The KlimaSeniorinnen judgment is a cautious yet transformative step towards operationalising intergenerational climate justice within European human rights law. As Corina Heri (2025, Interview) observes, this constitutes 'one of the first clear judgments saying yes, mitigation failures violate human rights', with considerable precedential effect beyond Europe. The judgment advances each component of Brown Weiss' intergenerational equity framework through distinct yet interconnected mechanisms: carbon budgets operationalise option conservation, science-based thresholds advance conservation of quality and expanded associational standing strengthens conservation of access.

However, as Heri (2025, Interview) cautions, the ruling 'sits between an advisory opinion and an individual case'. Whilst it breaks new ground by recognising the standing of associations representing disproportionately affected groups, it refrains from going further by acknowledging a right to a healthy environment or concretely operationalising

intergenerational equity. The Court's references to burden-sharing and intergenerational risks (para. 420) function more as an interpretation framework than enforceable legal obligations.

The judgment's influence lies much more in its normative signalling: it legitimises rights-based climate claims, demands procedural accountability and clarifies that mitigation failures fall within the scope of the Convention. By doing so, it thereby transforms human rights law into a vehicle for demanding substantive mitigation. Nevertheless, meaningful transformation requires more than judicial precedent; it demands political will and further jurisprudential development. *KlimaSeniorinnen* offers a legal stepping stone rather than a definitive framework, creating space for future courts, particularly outside Europe, to further embed intergenerational climate justice within human rights law.

6.3 Duarte Agostinho and Others v. Portugal and 32 Others

After enduring intensifying heatwaves and witnessing the deadly wildfires that swept through Portugal in 2017, six Portuguese young people decided to act to protect their futures: 'The fires made us realise that climate change is not just a threat to the planet's future or to the polar ice caps. It is a threat to us that is here, right now, on our doorstep.' (Duarte Agostinho, 2024, para. 17)

Acknowledging the insufficiency of domestic responses to climate change, they cooperated with the Global Legal Action Network (GLAN), a non-profit organisation specialising in transnational human rights litigation. United as *#Youth4ClimateJustice*, they initiated legal proceedings against not only their home state but also 32 other CoE states[8] before the ECtHR, alleging that the collective state inaction violated their rights and jeopardised their generation's future (Youth4ClimateJustice, n.d.; GLAN, n.d.).

The six individual applicants, aged between 8 and 21, argued that their physical and mental health had already been compromised by climate change and would continue to deteriorate unless European states drastically cut their greenhouse gas emissions in line with the 1.5°C target (ECtHR, 2024b, paras. 25-26). Together with GLAN, the group initiated a

[8] The applicants initially filed against 34 states, but the complaint against Ukraine was later withdrawn because of the 'exceptional circumstances relating to the ongoing war'. Although the Russian Federation ceased to be a CoE member during the proceedings, the application remained admissible as it concerned matters prior to its departure on 16 September 2022 (ECtHR, 2024b, paras. 158, 161-162)

crowdfunding campaign in 2017 and spent two years preparing their case, which was filed directly with the ECtHR on 7 September 2020 - circumventing domestic courts, under the assertion that fragmented national actions would be futile (Duarte, 2020). The Court accorded the matter priority status under Rule 41 and, in an exceptional move, referred it to the Grand Chamber, which held a hearing on 27 September 2023. The case attracted unprecedented media coverage, involved 86 government lawyers and received extensive third-party interventions, thus establishing itself as a litmus test for determining whether human rights law can meet the temporal and territorial complexities of climate breakdown.

6.3.1 Factual Allegations

The applicants strategically reframe climate change from an abstract environmental challenge into an immediate rights-based emergency affecting their generation. Utilising IPCC trajectories, they contend that the joint emissions pathways of the 33 respondent States delineate a future exceedingly beyond the 1.5°C threshold, thereby compromising their generation's life prospects (Duarte Agostinho, 2020, paras. 5-8, 21-23). This abstract threat is substantiated by Portugal's designation as 'one of the European countries that will be most affected by the adverse impact of climate change', facing hard adaptation limits (Duarte Agostinho, 2022, para. 13). In Portugal, a 1°C temperature increase would result in a 2.7% higher general mortality rate and a 1.7% increase in respiratory morbidity (Duarte Agostinho, 2022, para. 15).

The 2017 wildfires, which resulted in the deaths of over 60 people within an hour's drive of applicants 1-4's homes, serve as a clear example of this vulnerability to the region, with ash covering the applicants' gardens and leading to school closures due to toxic smoke (ECtHR, 2024b, paras. 14, 16, 20). The applicants document escalating physical impacts from intensifying heatwaves and air pollution, including disrupted sleep, restricted outdoor activities and exacerbated respiratory condiciones affecting applicant 2 and 4-6 (ECtHR, 2024b, paras. 26(a)-(c)). The applicants further allege to have sustained psychological harm, including 'climate anxiety' and 'moral injury', arising from their awareness of governmental failure to protect them (para. 26(d)). In an expert report, climate psychologist Caroline Hickman classified this suffering as an 'Adverse Childhood Experience' (ibid.; Hickman et al., 2021).

Instead of pursuing compensation, the applicants seek a declaratory ruling from the ECtHR, compelling the respondents to adopt climate measures in line with their mitigation duties, before it is too late to provide meaningful remedies (Duarte Agostinho, 2020, para. 32(a); Youth4ClimateJustice, n.d.). The case thus aims to safeguard the applicants' futures by establishing legal responsibility for the ongoing erosion of a liveable climate.

6.3.2 Substantive law: Alleged Rights Violations

The applicants in *Duarte Agostinho v. Portugal and 32 Others* assert that the failure of European states to take adequate climate action violates their rights under Articles 2, 3, 8 and 14 ECHR (Duarte Agostinho, 2020, paras. 24-31). Their legal strategy sought to establish climate change as a fundamental human rights issue affecting both present and future generations, with particular emphasis on the heightened vulnerability of children and young people to long-term climate impacts.

Article 2: The Right to Life

The applicants argue that the right to life is already imperilled by intensifying wildfires and heatwaves, particularly in Portugal, where the catastrophic fires of 2017 serve as a stark example of the foreseeable, avoidable harm (ECtHR, 2024b, paras. 14, 16-18). Citing *Öneryıldız v. Turkey* and *Budayeva v. Russia*, they contend that states have an obligation to act to prevent risks that are both long-term and scientifically predictable (Duarte Agostinho, 2022, para. 86). The submission also relies on *Billy et al. v. Australia*, in which the UN Human Rights Committee affirmed that insufficient climate action can breach the right to life when existential threats to a community are foreseeable. In this sense, Duarte calls for recognition of the fact that the state's failure to align with the 1.5°C threshold threatens young people's lives throughout their lifetime, not only in the immediate term (Duarte Agostinho, 2022, para. 89).

Article 3: Prohibition of Inhuman or Degrading Treatment

Despite not being included in the original application, the Court raised Article 3 on its own accord, a move which reflected the seriousness of the applicants' claims (Youth4ClimateJustice, n.d.). This was notable, given that the Court had never previously

found an Article 3 violation in an environmental context. The applicants argue that the cumulative physical, emotional and existential toll of climate inaction meets the threshold. The claim is supported by the combination of climate-induced fear (Duarte Agostinho, 2022, para. 92(a)), intensifying risks of physical harm (para. 92(b)) and the condition of 'moral injury' - a result of the applicants' vulnerability, the indifference of the authorities and the thus created prolonged uncertainty (para. 92(c)). The applicants thereby draw to the case law of *M.S.S. v. Belgium and Greece*, where the Court found that prolonged uncertainty, combined with vulnerability and state inaction, could amount to inhuman or degrading treatment under Article 3 (para. 92).

Article 8: Right to Private and Family Life

The applicants argue that climate change has already interfered with their well-being, living conditions and personal development, a situation which is likely to worsen throughout their lifetimes - thus breaching Article 8 (Duarte Agostinho, 2022, para. 85). They invoke *Fadeyeva v. Russia*, in which the Court recognised that prolonged exposure to environmental harm can breach Article 8, even in the absence of concrete health damage. Likewise, in *Tătar v. Romania*, the Court established that positive obligations arise when environmental threats are serious and substantial.

Significantly, they contest established causality criteria, contending that insisting on proximity, imminence or strict causation of harm in the context of climate change would nullify the protective purpose of Article 8 (Duarte Agostinho, 2022, para. 84).

Article 14: Prohibition of Discrimination

The applicants invoke Article 14 in conjunction with Articles 2 and 8, contending that inadequate climate action discriminates against them on the basis of age. As children and young people, they fall under the protected 'other status' of age and face more severe rights interferences than older generations - not only because they will live longer, but because climate impacts will intensify over time. The applicants argue that this disproportionate burden lacks objective justification and constitutes indirect discrimination (Duarte Agostinho, 2020, para. 31; Duarte Agostinho, 2022, paras. 93, 135). The Convention's equality guarantee thus becomes a vehicle for intergenerational justice, requiring states to acknowledge temporal inequality in their climate responses.

6.3.3 Procedural Law

Victim Status

In order to qualify as victims under Article 34 ECHR, the applicants contended that they had been directly affected by the respondent states' failure to mitigate emissions in line with the 1.5°C long-term temperature goal, thus violating their rights under Articles 2, 3, 8 and 14 (Duarte Agostinho, 2022, para. 72). They argued both actual (para. 73) and potential victimhood, highlighting the intensifying effects of anthropogenic climate change and presenting 'reasonable and convincing evidence' of future harm (para. 74). Building upon the case of *Roman Zakharov v. Russia*, they asserted that future risks, even if not yet manifest, are sufficient grounds for standing (Duarte Agostinho, 2020, para. 7). The youth applicants emphasised their particular vulnerability as youth and invoked a consistent line of case law affirming that victim status may be established through membership in a group at heightened risk, referencing *Burden v. United Kingdom* and *Open Door and Dublin Well Woman v. Ireland* (Duarte Agostinho, 2022, paras. 75, 78). Additionally, the precautionary principle, intergenerational equity and the best interests of the child under Article 3(1) CRC were invoked (Duarte Agostinho, 2020, para. 8), thereby denying any action popularis intent. It was argued that 'even if many other persons may be affected in a similar way', they remained legitimate victims meeting established criteria for actual or potential victim status (para. 75).

Exhaustion of Domestic Remedies

The young applicants bypassed domestic remedies in all 33 respondent states, arguing that doing so would be both futile and unreasonably burdensome for minors (Duarte Agostinho, 2020, para. 40). To justify this approach, they cited the complexity of legal systems, their age, limited resources and the urgency of climate impacts. Emphasising the Court's subsidiarity principle and its flexibility under Article 35(1) ECHR, they argued that exhaustion should not be applied with excessive formalism and only to remedies that are practically and effectively available (Duarte Agostinho, 2022, paras. 58-61). They observed that, even in respondent states with existing climate jurisprudence[9], remedies were ineffective in ensuring action that was consistent with a 1.5°C target (para. 64). Citing the disproportionate burden placed on youth litigants if they had to exhaust domestic remedies across 33 jurisdictions, they

[9] The applicants made reference to the climate cases of *Urgenda Foundation v. State of the Netherlands, Neubauer & Others v. Germany, Klimaatzaak v. Belgium* and *Klimaticka v. the Czech Republic*, among others.

concluded that requiring exhaustion would undermine the Convention's protective purpose (para. 69).

Extraterritorial Jurisdiction

Perhaps most ambitiously, the applicants asserted extraterritorial jurisdiction over 32 states beyond Portugal based on the cumulative, indivisible nature of climate harm (ECtHR, 2024b, para. 13). They posited that, whilst residing in Portugal, other respondent states held legal responsibility, as their 'emissions and failures to regulate/limit their emissions materially contribute to the risk of global warming and the corresponding impacts on the Applicants' rights' (Duarte Agostinho, 2022, para. 52). While acknowledging the exceptional nature of extraterritorial jurisdiction, they urged the Court to recognise the indivisibility of climate harm, drawing on international principles of causation and responsibility (Duarte Agostinho, 2020, Annex, para. 16). The applicants thus challenged conventional spatial and control-based models of state responsibility, emphasising that only collective mitigation could safeguard their rights.

6.3.4 State Responses

Prior to the Court's decision, the respondent put forward a coordinated procedural and substantive defence, contesting both the admissibility and the jurisdictional reach of the application. While acknowledging the severity of climate change and the necessity for global action, they rejected the assertion that this necessitated a 'radical overhaul' of the existing Convention jurisprudence or the expansion of extraterritorial obligations under Article 1 ECHR (Joint Reply, 2023, para. 3).

The respondents primarily contested the applicants' victim status, arguing that the alleged harms were either insufficiently immediate or lacked sufficient evidentiary footing. This included the reports by Climate Analytics, which the respondents claimed lacked proven facts and rested on assumptions (Joint Reply, 2023, paras. 4, 8, 13). Furthermore, the absence of independent medio-legal assessments was noted, thereby questioning the causal link between state conduct and the alleged injuries (para. 46).

Additionally, the states rejected the legal authority of assigning responsibility on the basis of emissions' 'fair share', asserting that such constructs lacked legal grounding under the

Convention (Joint Reply, 2023, para. 16). The extraterritorial claims were deemed to be founded on a 'cause and effect' notion of jurisdiction, which they argued departed significantly from established case law (para. 21). Finally, the shifting emphasis in the applicants' pleadings towards generational risk was cited as evidence of an impermissible *actio popularis* (para. 48).

6.3.5 Decision in Duarte Agostinho and Others v. Portugal and 32 Others

On 9 April 2024, the Grand Chamber of the ECtHR unanimously declared the application in Duarte *Agostinho and Others v. Portugal and 32 Others* inadmissible in its entirety on procedural grounds (ECtHR, 2024b, paras. 216, 231). The Court issued a extensive 231-paragraph judgment that addressed the procedural questions raised by this unprecedented climate case.

Extraterritorial Jurisdiction

The Court's primary finding concerned jurisdictional boundaries under Article 1 ECHR. While acknowledging that climate change poses a problem of 'existential nature' that 'sets it apart from other cause-and-effect situations' (para. 194), the Court rejected extending extraterritorial jurisdiction to the thirty-two respondent states beyond Portugal (paras. 104-106, 123-128). The Court recognized three aspects of the applicants' arguments: 'states have ultimate control over public and private activities based on their territories that produce GHG emissions' (para. 192); 'there is a certain causal relationship between public and private activities based on a State's territories that produce GHG emissions' affecting rights of people 'outside the remit of that State's democratic process' (para. 193); and 'the problem of climate change is of a truly existential nature for humankind' (para. 194).

Nevertheless, the Court concluded that 'these considerations cannot in themselves serve as a basis for creating by way of judicial interpretation a novel ground for extraterritorial jurisdiction' (para. 195). As the Court asserts, the applicants' arguments 'would turn the Convention into a global climate-change treaty' (para. 208), thereby engendering 'an untenable level of uncertainty for the States' and signifying 'a radical departure from the rationale of the Convention protection system, which was primarily and fundamentally based

on the principles of territorial jurisdiction and subsidiarity' (para. 205).

Exhaustion of Domestic Remedies

The Court's jurisdiction was accepted in the case against Portugal, the applicants' country of residence, but the complaint was dismissed on the grounds of 'non-exhaustion of domestic remedies', as required by Article 35(1) ECHR (para. 227). The applicants had not attempted to pursue domestic remedies in Portugal, nor had they demonstrated the ineffectiveness of available legal channels (paras. 133-136). In emphasising the subsidiarity principle, the Court noted that it is 'not a court of first instance' and does not have the capacity or function to rule on cases that are in the domain of domestic jurisdiction (para. 228). The Court further clarified the environmental scope of the Convention, stating that 'the Convention is not designed to provide general protection of the environment as such and that other international instruments and domestic legislation are specifically adapted to dealing with this particular matter' (para. 201).

Consequently, the application was dismissed in its entirety at the admissibility stage, without examining the alleged violations of Articles 2, 3, 8 and 14 ECHR. The decision was adopted unanimously, with no concurring or dissenting opinions added, and concluded the proceedings at the admissibility stage without determining any substantive violations.

6.3.6 Case Analysis: Duarte Agostinho and Others v. Portugal and 32 Others through the Lens of Intergenerational Equity Analysis

The *Duarte Agostinho* case exemplifies a profound paradox in strategic climate litigation: although procedurally unsuccessful, it exposes the fundamental tensions between traditional human rights frameworks and the temporal complexities of climate justice. The application of Edith Brown Weiss's intergenerational equity triad demonstrates the manner in which the ECtHR's inadmissibility decision impacts all three conservation principles

Conservation of Options: Judicial Reluctance to Embrace Intergenerational Claims

Brown Weiss's (1989, p. 38) option conservation principle asserts that present generations

should safeguard environmental and cultural diversity to ensure future generations can address their own needs and values. The Portuguese youth in *Duarte Agostinho* explicitly invoked this temporal perspective, emphasising that state inaction would increasingly harm both themselves and future children (ECtHR, 2024b, para. 14). Notwithstanding this, the Court's decision conspicuously omits any reference to 'generation', 'youth', 'children' or 'young', thus failing to acknowledge the applicants' particular vulnerability.

This omission is of particular significance, given the substantial third-party interventions which have highlighted intergenerational concerns (ECtHR, 2024b, paras. The Council of Europe Commissioner for Human Rights (2021, para. 47), for instance, warned against the risk of overburdening future generations, citing the German Federal Constitutional Court's Neubauer (2021) decision on the unfairness of current climate policies towards future generations. Yet the ECtHR neglected to engage with these temporal dimensions, thereby missing an opportunity to address this fundamental question. As Heri (2025, Interview) observes, 'the optics are somewhat odd that the youngest generations in particular, who are the most likely to be affected by these impacts, if you look at a longer timeline, have had no success in this first attempt'.

While the Court acknowledged a causal link between state emissions and transboundary harm (ECtHR, 2024b, paras. 193), it refrained from translating these findings into a basis for jurisdiction. This refusal further undermines the young plaintiffs' future access to options and, consequently, to a viable future.

Additionally, the Court's restrictive jurisdictional approach serves to impede future options. The applicants advocated for a novel reading of Article 1 ECHR, contending that both territorial and extraterritorial states share responsibility for climate harms (Duarte Agostinho, 2022, para. 52). Inspired by the IACtHR's Advisory Opinion OC-23/17, this theory could have supported climate litigants in advancing the preservation of options for future generations. Conversely, the Court's conservative stance has been cited in subsequent cases to reject similar extraterritorial claims, thereby further narrowing the path for future climate litigants (De Conte, 2025, para. 9; Uricchio, 2025, para. 9).

Conservation of Quality: Unexamined Environmental Degradation

The applicants' legal claims explicitly invoked Articles 2 and 8 ECHR, thereby linking

climate-induced heatwaves and wildfires to violations of the rights to life and private and family life. This is directly relevant to the principle of conservation of options, which stipulates that the environment passed on must maintain adequate standards of health, safety and sustainability (Brown Weiss, 1989, pp. 38, 42). The Portuguese applicants documented concrete environmental harms - including extreme heat, wildfires and air pollution - which compromise both present and future quality of life. They experienced 'reduced energy levels, difficulty sleeping and a curtailment on their ability to spend time or exercise outdoors during recent heatwaves' (ECtHR, 2024b, para. 14).

Crucially, the youth litigants emphasised the psychological harms (e.g., climate anxiety) caused by the respondents' insufficient efforts to conserve environmental quality, thus highlighting the intergenerational injustice of climate change (Duarte Agostinho, 2022, para. 92). This assertion is further supported by ENNHRI's third-party intervention, which contends that the occurrence of mental harm alone could suffice to establish victim status under Article 34 (ECtHR, 2024b, para. 146). However, in its assessment, the Court overlooked or did not engage with these mental health impacts.

In this regard, it is important to acknowledge that the Court's deficiencies in addressing psychological harms or the legal claims under Articles 2, 3, 8 and 14 ECHR can be attributed, in part, to the Court's inadmissibility decision, which precluded a comprehensive evaluation of the merits of these quality degradation claims. This proceduralism, while aligning with the principle of subsidiarity, arguably failed to acknowledge the urgency and irreversibility of climate-related harm, particularly for youth. Save the Children's third-party intervention had urged the Court to avoid an 'excessively exacting' admissibility standard for child litigants (Save the Children, 2021, para. 5(b)). The refusal to do so further cemented procedural barriers for youth claimants.

In the absence of any indication within the judgment as to how Article 8 ECHR might offer protection to young people against the psychological harm and environmental degradation resulting from climate change, there is a critical gap in the conservation of quality, as Jamali (2024) observes, the Court's reluctance to engage with novel legal frameworks despite 'recognising the evolving nature of international law and global responses to climate change' limits protection for future environmental quality.

Conservation of Access: Procedural Barriers to Intergenerational Justice

The *Duarte* decision significantly challenges Brown Weiss's principle of conservation of access, which asserts the necessity of ensuring equitable access to natural resources and justice across generations (Brown Weiss, 1989, pp. 43-44). Strategic litigation is pivotal in achieving this objective, yet the Court's procedural constraints - notably the stipulation to exhaust domestic remedies - effectively curtailed the young Portuguese applicants' access to justice. Whilst characterised as a procedural necessity, this requirement reflects a more extensive structural problem in ECtHR climate litigation. The high thresholds for victim status and strict admissibility rules are designed to prevent actio popularis and limit caseload, but they also create what Rocha (2024) calls a 'protection gap between emitters and affected individuals', particularly for youth seeking redress for transboundary climate harms.

It is evident that young litigants encounter distinctive and systemic obstacles, as they 'have limited resources' and lack 'political voice today' whilst bearing the gravest future burden of climate impacts (Lagan, 2024). The Court's insistence on territorial jurisdiction further exacerbates this exclusion, as it prevents CoE citizens from holding major emitting states accountable for harms that are inherently collective and cross-border in nature. The applicants themselves argued that suing only Portugal would be ineffective, given climate change's global nature (ECtHR, 2024b, para. 202). By distinguishing between jurisdiction and responsibility, the Court disregards this collective dimension of climate harm and fails to conserve access to a livable environment for both the present and future generations. This approach also undermines the principle of equality 'between members of the same generation' (Brown Weiss, 1989, p. 44), which cannot be realised unless the transboundary nature and unequal global impacts of climate change are adequately addressed.

6.3.7 Conclusion

In spite of its procedural failure, the Duarte Agostinho case demonstrates critical gaps in human rights frameworks for addressing intergenerational climate justice. The case analysis demonstrates that the Court's approach undermined each of Brown Weiss' conservation principles, particularly regarding youth-specific vulnerabilities that received no acknowledgment despite the explicit intergenerational framing by the applicants. The Court conspicuously omitted any reference to (future) generational terms while acknowledging

climate change as an existential problem; it precluded substantive assessment of climate-induced psychological harms; and erected procedural barriers that disproportionately affect young litigants with limited resources and no political voice. These results indicate what might be termed 'temporal discrimination' - youth face dual disadvantages due to both their age and the transboundary nature of climate harm.

Nevertheless, this procedural defeat also generates paradoxical power. As the 'most mediagenic, high-profile and ambitious case' of the April 2024 trilogy (Arntz & Krommendijk, 2024), Duarte attracted international attention and mobilised support while prompting crucial discussions about extraterritorial obligations . Research demonstrates that even unsuccessful cases can 'raise public awareness through significant media attention and pressure governments to ratchet ambitions on climate change' (Pues et al., 2024, p. 9).

Ultimately, the case sets negative precedents that clarify the procedural requirements for future litigation, while also contributing to the legal framework for intergenerational equity. It demonstrates that strategic climate litigation should be evaluated not only in terms of immediate legal success, but also by its contribution to the evolving framework of intergenerational justice. As Heri (2025, interview) observes: 'We are really in the very early stages - it will just take a while.'

6. Discussion

The two analysed April 2024 judgments in Verein KlimaSeniorinnen and Duarte Agostinho must be situated within their distinct socio-legal contexts; yet they are united by their shared ambition to confront the intergenerational injustices of climate change. This chapter synthesises the doctrinal findings of the two case studies, comparing them with landmark decisions elsewhere (Urgenda 2019, Neubauer 2021, Juliana 2020, Lliuya 2023, and Sacchi 2021) and critically reflecting the question of how the ECtHR can can promote intergenerational climate justice without over-reaching its democratic mandate. Particular attention is paid to age as an analytical variable in climate litigation. Finally, the chapter considers future pathways for the ECtHR, reflecting on how pending cases and evolving legal

frameworks may shape the Court's capacity to promote intergenerational climate justice.

7.1 Intergenerationality in Strategic Climate Litigation

KlimaSeniorinnen marks the first time the ECtHR operationalised intergenerational climate justice in a judgment without explicitly invoking the term. By acknowledging that 'intergenerational burden-sharing' is inherent to climate change (ECtHR, 2024a, paras. 419-420, 499), accepting that senior Swiss women form 'a group particularly susceptible to the effects of climate change' (para. 531) and ordering Switzerland to align its mitigation pathway with 1.5 °C trajectories, the Court converted Brown Weiss's conservation of quality principle into a concrete, justiciable obligation under Article 8 (ECtHR, 2024a, paras. 531-550). Conversely, in *Duarte* the Grand Chamber ultimately failed to grapple with the long-term implications of inaction, sidelining the applicants' claims of future harm. The Court's refusal to consider extraterritorial jurisdiction, and its rigid adherence to the requirement to exhaust domestic remedies, foreclosed a broader interpretation of Convention obligations suited to the systemic and forward-looking nature of climate change (Heri, 2024c; ECtHR, 2024b, paras. 134-146). The divergence underscores a structural dilemma: courts are willing to protect identifiable groups within national borders, yet they remain reluctant to assume responsibility for future-oriented harm that is diffuse and borderless.

Comparative jurisprudence suggests two avenues for overcoming this impasse. Firstly, the Dutch Supreme Court in *Urgenda Foundation v. Netherlands* established mitigation as a positive duty under Articles 2 and 8 ECHR, thereby anchoring intergenerational concerns in existing human-rights doctrine (HR, 2019, paras. 39-43). Secondly, in the case of *Neubauer et al. v. Germany*, the German Federal Constitutional Court ruled that inadequate 2030 targets constituted an undue limitation on the future freedom of today's youth, thereby imposing 'a special duty of care on the legislator, including a responsibility for future generations' (BVerfG, 2021, paras. 229), in accordance with Brown Weiss's option conservation rationale.Both approaches underscore that judicial bodies can exercise restraint while still encouraging legislative ambition by calibrating remedies to minimum, science-based benchmarks. They thereby respect the democratic margin of appreciation, while simultaneously preventing governments from externalising mitigation burdens to younger and future generations.

7.1.1 Age's Double-Edged Sword

Indeed, age is a quantifiable metric for assessing climate vulnerability; however, it also poses a substantial evidentiary hurdle in litigation. In *KlimaSeniorinnen*, granular data on heat-related mortality among senior women and the newly established victim status test met the ECtHR's strict victim-status criteria (ECtHR, 2024a, para. 478). Conversely, the youth applicants in Duarte submitted detailed accounts of physical and psychological harms linked to climate change (ECtHR, 2024b, para. 26), yet the Court rejected their standing due to insufficient individualisation (para. 229). A similar divide emerges in *Juliana v. US*, wherein youth claims were dismissed by the Ninth Circuit in 2020 due to a lack of standing, as their climate-related harms were not redressable by the courts (947 F.3d 1159, 1168). On the other hand, the legal case of *Held v. State of Montana* succeeded in 2023 when the Montana First Judicial District Court ruled that youth plaintiffs were suffering harm from climate change, which was attributable to Montana's energy policies and its failure to consider greenhouse gas emissions in environmental reviews. The court ruled that these pro-fossil fuel policies violated the state constitutional right to a clean and healthful environment (Held v. State, No. CDV-2020-307, Mont. 1st Jud. Dist. Ct., Aug. 14, 2023).

In this context, two insights emerge. Firstly, the judicial system tends to privilege present, quantifiable harms (e.g. mortality) over anticipatory or psychological impacts like climate anxiety, thereby disadvantaging youth whose harms are largely future-oriented. Secondly, it is important to consider the role of association-led litigation, as evidenced by Klima Seniorinnen, in its potential to circumvent the *actio popularis* bar in cases involving more abstract age-related harms.

However, despite the potential benefits of framing claims with age-specific arguments and along generational lines, such an approach may, in the broader context and in terms of public reception, risk the fragmentation of solidarity, thereby reducing complex structural injustices to binary and restrictive categories such as 'youth' versus 'elders'.

Furthermore, the migration of climate activism into courtrooms risks excluding many. It raises the question of whether strategic climate litigation - as a form of climate activism - not only aims to prioritize intersectionality in its litigation objectives but also reflects it in the

method itself. High legal thresholds, dependence on NGOs as case initiators and financiers and procedural complexities, risks pushing vulnerable groups (e.g. youth, Indigenous People, people with disabilities) into institutional dependency. This shift of climate activism could risk moving diverse activists into a system that reinforces reliance on adults and entrenched institutions, thereby introducing new barriers to intersectionality in climate activism.

7.1.2 Intergenerational Claims and the Limits of Standing

Another core tension in climate litigation before the ECtHR lies in the reconciliation of individual rights-based frameworks with systemic, intergenerational harms. As Brown Weiss's (1989, pp. 43-44) access conservation principle demands 'access to the natural and cultural resources of our planet', it is vital that equitable avenues to justice are established in order to facilitate this access. Yet Duarte demonstrates the limitations of the Convention's individual complaint mechanism when applied to collective, future-oriented harms which are at the core of youth-led strategic climate cases (see Neubauer; Juliana; Sacchi). The Court's rigorous interpretation of victim status as delineated in Article 34 resulted in the rejection of the applicants' argument that their actions were on behalf of their generation. Whilst intended to guard against actio popularis, this rigidity undermines the potential of strategic climate litigation to protect diffuse future interests. This tendency is further evidenced by the dismissal of Sacchi before the CRC Committee on similar grounds of exhaustion (CRC, 2021).

Conversely, in *KlimaSeniorinnen*, the Court accepted the association's standing by recognising its members' particular vulnerabilities, while simultaneously affirming that systemic issues such as climate change can be litigated without descending into abstract *actio popularis* complaints (Heri, 2024, pp. 317-319). This nuanced stance demonstrates that it is possible to accommodate public interest litigation within the Convention system without eroding the principle of individual justice.

Nonetheless, the negative precedents established in the Duarte case have the potential to be catalytic too. Pues et al. (2024) document how procedurally unsuccessful cases generate media attention and shift normative baselines, thereby raising public awareness and pressuring governments to tighten targets (p. 9). The submissions made in this case will serve

as a valuable resource for future litigants, particularly in the context of child rights and the rights of future generations.

7.2 Future Pathways of the ECtHR

The ECtHR's climate case trilogy of April 2024 constitutes a watershed moment in European human rights jurisprudence, yet critical questions remain regarding the Court's future trajectory in climate litigation. With cases such as *Müllner v. Austria* and *Greenpeace Nordic v. Norway* awaiting decisions, the Court is at a critical juncture where its institutional legitimacy, doctrinal coherence, and capacity to address climate harm will be assessed. As Heri emphasised, we are still 'in very early stage' of climate litigation development (2025, Interview). The path forward will be determined by the course of future climate case rulings, as well as a potential recognition of new rights with regard to the nexus between climate and human rights. This will establish whether the ECtHR can evolve into a meaningful forum for intergenerational climate justice or remain constrained by procedural orthodoxies that privilege present territorial sovereignty over future planetary survival. This will not only influence European climate governance, but also the broader evolution of international law towards planetary sustainability and intergenerational climate justice.

7.2.1 The Right to a Healthy Environment: Institutional Developments and Limitations

The recent adoption by the CoE of the 'Strategy on the Environment' (2025) signals an advancement in the institutional recognition of environmental rights, emphasising the interconnected nature of human rights and the environment. The Strategy asserts that 'a clean, healthy and sustainable environment is integral to the full enjoyment of human rights by present and future generations' (Council of Europe, 2025, p. 2). This policy document, while non-binding, could serve as interpretive guidance for the ECtHR in future climate cases and contribute to the promotion of intergenerational climate justice, particularly given the Court's practice of considering evolving European consensus when interpreting Convention rights. Despite this, the Strategy's deliberate circumvention of establishing novel customary law

obligations reflects member states' persistent reluctance to impose binding environmental obligations, thereby safeguarding their national sovereignty.

Of particular significance in European environmental law is also the 'Convention on the Protection of the Environment through Criminal Law' (2025), which represents the CoE's most concrete step towards environmental protection, establishing criminal liability for serious environmental harm, including ecocide (Council of Europe, 2025). While this instrument operates in the criminal sphere rather than human rights, its recognition of environmental protection as a fundamental European value could influence the ECtHR's interpretation of existing Convention rights in climate cases with intergenerational focus. However, the absence of an explicit right to a healthy environment in the ECHR system remains a notable gap when compared to other regional human rights instruments.

7.2.2 The Living Instrument Doctrine Under Pressure

The Court's future climate jurisprudence will test the limits of its 'living instrument' doctrine, which enables dynamic interpretation of Convention rights in light of present-day conditions (Letsas, 2024). This interpretive approach has faced mounting political pressure, culminating in the May 2025 joint letter from nine European governements, accusing the ECtHR of judicial overreach and threatening to restrict the Court's interpretive mandate. Despite the fact that the letter's thematic focus pertained to the issue of migration, it is indicative of a pervasive sense of scepticism. The signatory's assertion that 'what was once right might not be the answer of tomorrow' (Government of Italy et al., 2025, p. 1) directly challenges the temporal adaptability that facilitates the protection of environmental rights in the climate change context under the ECHR framework.

The backlash against the *KlimaSeniorinnen* judgment in Switzerland, where parliament denounced the ruling as 'inadmissible and disproportionate judicial activism' (Stahl et al., 2025), exemplifies this tension between judicial innovation and democratic accountability. Nonetheless, abandoning the living instrument approach would, as Hilpold notes, 'entail the loss of one of the Convention's most characteristic features' and potentially trigger 'broader global regression in human rights jurisprudence' (Hilpold, 2025).

The climate crisis could be argued to present the ultimate test case for the living instrument interpretation. The 1950 Convention drafters could not have foreseen the global crisis currently facing humanity; yet the Court's willingness to recognise climate-related violations and imposition of state obligations in *KlimaSeniorinnen* demonstrates how human rights can evolve to address unprecedented challenges. As Arntz and Krommendijk (2024) observe, the Court's climate trilogy 'evidences the beauty of the ECHR as a living instrument which enables the Court to engage with urgent issues'.

7.2.3 Legitimacy Challenges and Democratic Representation

The ECtHR is faced with fundamental questions regarding its democratic mandate in addressing climate change, a global challenge requiring coordinated policy responses that may exceed the traditional judicial competence. The insight offered by Stone-Sweet and Keller (2008, p. 8) concerning the dual role of the Convention system, in that it provides both 'individual or constitutional justice', becomes particularly relevant in the context of strategic climate litigation aimed at systematic policy change rather than individual remedies.

The Court's emphasis in *KlimaSeniorinnen* on the 'key role which domestic courts have played and will play in climate-change litigation' signals recognition of subsidiarity principles while acknowledging its own limitations in global governance (ECtHR, 2024a, para. 639). Nevertheless, this deference to national systems may be considered inadequate when addressing transboundary climate harm that transcends domestic jurisdictions, as evidenced by the *Duarte* case. In this regard, the Court has not yet indicated its willingness to grant this next step of territorial expansion of claims in the context of climate change.

7.2.4 Pending Cases: Potential for New Climate Jurisprudence

The ECtHR's willingness to expand its climate jurisdiction will be demonstrated in the pending *Müllner v. Austria* case, which will serve as a crucial test for the victim status framework established in KlimaSeniorinnen. As the first ECtHR climate case based on disability rights, it has the potential to clarify whether the Court's restrictive approach to individual standing can accommodate intersectional vulnerabilities. As posited by Heri (2025, Interview), Müllner's multiple sclerosis symptoms, compounded by climate-induced

heatwaves, render him 'most likely' to satisfy the Court's victim status test. This could potentially expand the scope of protection for persons with disabilities, while concomitantly establishing significant precedents for the nexus between climate change and health.

Moreover, the pending North Sea Fields Case (Greenpeace Nordic and Nature & Youth v. Energy Ministry) will serve as a litmus test for the Court's inclination to expand the scope of KlimaSeniorinnen to encompass fossil fuel licensing decisions. The argument advanced by the applicants, invoking concerns pertaining to energy security in following the Russo-Ukraine war, illustrates how geopolitical developments complicate judicial climate interventions. The case's focus on Scope 3 emissions from exported oil also raises complex questions concerning extraterritorial climate responsibility, with the potential to build upon the *Duarte* case.

It is important to note that both pending cases were initiated prior to the KlimaSeniorinnen and Duarte rulings, thereby precluding the full utilisation of their positive and negative precedents. As Heri observes, it will be years before cases that build on the innovations of KlimaSeniorinnen can be expected, following the exhaustion of domestic remedies (2025, Interview). This temporal lag signifies that the Court's future climate jurisprudence will unfold gradually, shaped by the evolving scientific knowledge and political developments.

The ECtHR's future climate trajectory will depend on the successful navigation of three interlocking challenges: the maintenance of institutional legitimacy in the face of political backlash; the development of coherent jurisprudence on transboundary environmental harm; and the establishment of meaningful pathways for intergenerational justice claims. The Court's choice between conservative consolidation and continued innovation will determine whether European human rights law can meaningfully address humanity's greatest challenge. Achieving success will require meticulous calibration, entailing the recognition of climate obligations without transgressing democratic boundaries, the protection of vulnerable populations without relinquishing individual justice principles and the cultivation of European consensus without compromising legal coherence.

7. Conclusion

Climate change represents humanity's greatest challenge, demanding urgent action that transcends electoral cycles and national borders. As global temperatures have reached 1.6°C above pre-industrial levels in 2024 - the first year to exceed the Paris Agreement's 1.5°C threshold - the window for preventing catastrophic climate shifts continues to narrow. Against this backdrop, strategic climate litigation has emerged as a powerful mechanism for translating abstract principles of intergenerational equity into enforceable legal standards, bridging the temporal gap between present decision-making and future consequences.

This thesis has demonstrated that the 1.5°C target remains both a scientific imperative and an ethical obligation, despite mounting evidence that current policies will result in 2.2-3.5°C warming by century's end (IPCC, 2023). Law has emerged as one of the most powerful tools for systemic change in addressing the climate emergency. Strategic climate litigation enables courts to hold states accountable where democratic processes have failed, creating 'cascading effects' that can trigger positive tipping points for rapid climate action (Eker et al., 2024). The ECtHR's April 2024 climate trilogy revealed both promise and limitations: while KlimaSeniorinnen established groundbreaking precedent by recognizing states' positive obligations under Article 8 ECHR, Duarte Agostinho's inadmissibility exposed the Court's reluctance to expand extraterritorial jurisdiction. Applying Brown Weiss's intergenerational equity triad revealed that courts are most willing to enforce conservation of quality principles, less consistent on options preservation, and least reliable on access across borders. Where admissibility gates remain open, robust scientific evidence and tailored age narratives can drive doctrinal innovation, converting abstract carbon budgets into judicially enforceable obligations.

Promotion of Intergenerational Climate Justice through Strategic Climate Litigation

Strategic climate litigation at the ECtHR promotes intergenerational climate justice through multiple interconnected pathways, though its effectiveness depends significantly on legal system characteristics and procedural barriers that vary across jurisdictions.

First, through establishing positive state obligations that safeguard future generations. The KlimaSeniorinnen judgment represents a watershed moment by deriving from Article 8 ECHR 'a right for individuals to enjoy effective protection by the State authorities from

serious adverse effects on their life, health, well-being and quality of life arising from the harmful effects and risks caused by climate change' (ECtHR, 2024a, para. 544). This ruling strengthens intergenerational climate justice by mandating adherence to climate targets and science-based emission reduction plans. However, as Heri (2025, Interview) notes, the actual impact depends on implementation and compliance by respondent states.

Second, through expanding legal standing mechanisms that enable collective representation. The Court's revolutionary extension of legal standing under Article 34 ECHR to environmental associations in KlimaSeniorinnen creates pathways for more associations to file applications concerning climate impacts. This represents a crucial step toward promoting intergenerational climate justice by enabling collective action where individual standing proves inadequate. However, a temporal expansion of standing rights to explicitly include future generations' interests would further strengthen intergenerational representation.

Third, through legitimizing climate change as a human rights issue worthy of judicial consideration. Both analyzed cases demonstrate that regardless of outcome, strategic climate litigation contributes to recognizing climate change as fundamentally linked to human rights, thereby providing intergenerational climate justice with new venues for advancement. As Heri notes, the KlimaSeniorinnen judgment 'makes clear that negative climate change impacts can be enforced as human rights in court to counter the effects of climate change' (Greenpeace, 2024).

Fourth, through creating legal precedents with global influence. Strategic climate litigation before the ECtHR helps promote intergenerational climate justice by establishing judicial precedents - both positive and negative - that serve as examples for courts worldwide. The KlimaSeniorinnen ruling has already been cited in climate cases beyond Europe, while Duarte's procedural lessons guide future litigation strategies.

Fifth, through signaling to other courts, academia, and media the legitimacy of rights-based climate claims. As the first international court to rule on climate change, the ECtHR's engagement with climate cases sends powerful signals about the intersection of human rights and environmental protection. The unprecedented media coverage demonstrated litigation's capacity to reframe climate activism beyond street protests toward concrete rights enforcement, enabling a new form of climate activism that may be less visible but potentially more structurally transformative.

The analysis reveals that intergenerational justice arguments are crucial for highlighting that today's children and future generations will bear the greatest burden of inadequate climate action. While the ECHR currently provides limited space for such arguments, intergenerational climate justice can be promoted even without explicit intergenerational framing, as every successful climate case that leads to enhanced mitigation contributes to protecting future generations.

Recommendations for Future Research Fields

This research opens three critical avenues for future investigation. First, with only three climate cases decided at the ECtHR as of April 2024, pending cases like Müllner v. Austria and Greenpeace Nordic v. Norway will clarify crucial questions about victim status thresholds and representative standing in climate litigation. The Müllner case, focusing on disability-related climate vulnerability, will test whether the Court's restrictive individual standing requirements can accommodate intersectional vulnerabilities, while Greenpeace Nordic will determine whether KlimaSeniorinnen's associational standing innovations extend to fossil fuel licensing decisions.

Second, future research should examine intergenerational litigation against non-state actors, including corporations and high-emitting individuals. While this thesis focused on state accountability, achieving meaningful carbon reduction requires holding accountable not only the highest-emitting states but also businesses and individuals. Given that 'half of the world's emissions come from the richest 10% of people', with 'the wealthiest 1% accounting for 16% of emissions', addressing individual responsibility represents a crucial lever for intergenerational climate justice (Oxfam, 2024).

Third, effective communication of climate science to judges emerges as a critical research priority. As the KlimaSeniorinnen case revealed, some courts lack basic understanding of climate science - the Swiss Federal Supreme Court erroneously held in 2020 that the 'well below 2°C' limit was not expected to be exceeded in the near future (ECtHR, 2024a, para. 58). Legal professionals and climate scientists noted at Columbia Law School's interdisciplinary conference that 'judges require support to evaluate evidence in climate litigation' (Reyes et al., 2025).

Climate litigation is not a panacea for climate inaction, but it represents a crucial component of the comprehensive response required to address the climate emergency. Law develops slowly, yet the ECtHR operates as a constantly evolving system whose standards adapt to present-day challenges through its living instrument doctrine. Despite many shortcomings inherent in being an international court that intervenes in national sovereignty, the Court possesses significant influence and power.

As Heri (2025, Interview) observes, 'in this area, things are developing incredibly quickly for the ECtHR, though not quickly enough for the climate.' The Court remains an international institution under enormous pressure, requiring climate action at all levels. While ECtHR jurisdiction can play an important role in the struggle for intergenerational climate justice, it equally requires civil grassroots activism, engaged political actors, responsible companies and committed individuals.

Strategic climate litigation with a focus on human rights that considers future generations has the potential to kickstart necessary mitigation efforts by setting the legal framework. This is only the beginning, with much potential still unrealized. However, it requires political will now to transform precedents into clarity and climate justice.

In the words of Corina Heri: 'The KlimaSeniorinnen judgment is perhaps a starting point, but certainly not the end of the story' (Heri, 2025, Interview). Indeed, as Johan Rockström noted (Arthur, 2024), we may have a mere five years to reverse global trends. This window is not merely scientific; it is moral. The climate crisis concerns not only ecosystems, but also futures, including those of young people and unborn generations. Thus, every legal case, every policy, every action or inaction ultimately reverberates across generations.

8. Literature

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