Háskólinn á Akureyri

The Rights of Children and Future Generations of the European Arctic to a Healthy Environment

Soňa Karbanová Schweizer

Faculty of Law
University of Akureyri
2022

The Rights of Children and Future Generations of the European Arctic to a Healthy Environment

Soňa Karbanová Schweizer

30 ECTS thesis submitted in
partial fulfilment of the degree of
Master of Polar Law (LLM)

Advisor
Antje Neumann

Faculty of Law
School of Humanities and Social Sciences
University of Akureyri
Akureyri, August 2022

The Rights of Children and Future Generations of the European Arctic to a Healthy Environment
30 ECTS thesis submitted in partial fulfilment of the degree of Master of Polar Law (LLM)

Faculty of Law
School of Humanities and Social Sciences
University of Akureyri
Sólborg, Norðurslóð 2
600 Akureyri

Telephone: 460 8000

Bibliographic information:
Soňa Karbanová Schweizer, 2022, The Rights of Children and Future Generations of the European Arctic to a Healthy Environment, Master's thesis, Faculty of Law, University of Akureyri, pp. 103.

Akureyri, August 2022

Abstract

The consequences of climate change on the Arctic's environment and its inhabitants are evident. Among all people, children and yet unborn generations that will live in the Arctic in the future are most vulnerable to the implications of climate change. In view of their special vulnerability, the question of legal protection arises, and more particularly, what rights these groups can claim to be protected against the negative impacts of climate change. Central to this question is the debate surrounding the human right to a healthy environment. Even though such a right is not recognized in international law yet, recent developments at the intersection between environmental protection and human rights might serve to argue in such a direction.

Under the auspices of the European Court of Human Rights, a significant amount of environmental jurisprudence has been developed based on the evolving interpretation of the European Convention on Human Rights under the doctrine of 'living instrument'. Therefore, it is possible to analyse to what extent the right to a healthy environment of children and future Arctic generations is guaranteed in this case law. Furthermore, the ECtHR is about to decide the first climate change cases in its history.

The analysis shows that the right to a healthy environment of the children and future Arctic generations is somehow protected by the ECtHR; however, only in a limited way. The environmental jurisprudence of the ECtHR is quite advanced, but the environment is not protected by the ECHR *per se*. The individualistic approach of the human rights law requires that the individual is personally affected by the environmental harm, thus the global character of the climate change impacts is not reflected in the ECtHR's case law so far. It seems that the ECtHR is willing to give its opinion on the problem of climate change and to contribute to its mitigation. However, the analysis shows some of the ECHR's rules should be reassessed and the interpretation of the relevant rights should be extended if fundamental outcomes will arise.

For Alan, whose right to a bright future must be preserved

Table of contents

Acronyms and Abbreviations

Aarhus Convention	Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters
ACIA	Arctic Climate Impact Assessment
CRC	United Nations Convention on Rights of the Child
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)
ECtHR	European Court of Human Rights
GHG	Greenhouse gasses
IACHR	Inter-American Commission of Human Rights
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
OHCHR	Office of the High Commissioner of the Human Rights
Paris Agreement	Paris Agreement adopted under the United Nations Framework Convention on Climate Change by the Conference of the Parties (Paris, 2015)
Rio Declaration	Rio Declaration on Environment and Development, the UN Conference on Environment and Development (Rio de Janeiro, 1992)
Stockholm Declaration	Declaration of the UN Conference on the Human Environment (Stockholm, 1972)
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNFCCC	United Nations Framework Convention on Climate Change
WFP	World Food Programme
WHO	World Health Organization

Table of Treaties

- Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters European Convention on Human Rights (1998)
- African Charter on Human Peoples' Rights (1981)
- Inter-American Protocol of San Salvador (1988)
- Paris Agreement (2015) adopted under the United Nations Framework Convention on Climate Change by the Conference of the Parties.
- Rio Declaration on Environment and Development, the UN Conference on Environment and Development (Rio de Janeiro, 1992)
- Stockholm Declaration of the UN Conference on the Human Environment (Stockholm, 1972)
- United Nations Convention on Rights of the Child (1989), adopted by the UN General Assembly
- United Nations Framework Convention on Climate Change (1992), adopted at the UN Conference on environment and Development in Rio de Janeiro

Table of Cases

European Court of Human Rights

- *Ahunbay and Others v Turkey*, App no 6080/06 ECHR, January 2019.
- *Budayeva and Others v Russia*, App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 ECHR, 22 March 2008.
- *Cordella an Others v Italy*, App nos 54414/13, 54264/15 ECHR, 24 January 2019.
- *De Conto v Italy and 32 other States*, App no 14620/21, ECHR, app submitted on 3 March 2021.
- *Duarte Agostinho et. Al v Portugal and 32 other States*, App no 39371/20, ECHR, app submitted on 7 September 2020.
- *Fadeyeva v Russia*, App no 55723/00 ECHR, 30 November 2005.
- *Greenpeace Nordic and Others v Norway*, App no 34068/21, ECHR, app submitted on 15 June 2021.
- *Guerra and Others v Italy*, App no 14967/89 ECHR, 19 February 1998.
- *Handölsdalen Sami Village and Others v Sweden*, App no 39013/04 ECHR, 17 February 2009.
- *Hatton and Others v. the United Kingdom* [GC], App no.: 36022/97 ECHR, 2003-VIII.
- *Chagos Islanders v United Kingdom*, App no 35622/04 ECHR, 20 December 2012.
- *Chapman v The United Kingdom*, App no 27238/95 ECHR 18 January 2001.
- *Kyrtatos v Greece*, App no 41666/98 ECHR, 22 August 2003.
- *López Ostra v Spain*, App no 16798/90 ECHR, 9 December 1994.
- *Öneryıldız v Turkey* [GC], App no 48939/99 ECHR, 30 November 2004.
- *Taşkin and Others v Turkey*, App no 46117/99 ECHR, 30 March 2005.
- *Tătar v Romania*, App no 67021/01 ECHR, 27 January 2009.
- *Uricchio v Italy and 32 other States*, App no 14615/21, ECHR, app submitted on 3 March 2021.
- *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App no 53600/20, ECHR, app submitted on 26 November 2020.
- *Yordanova and Others v Bulgaria*, App no 25446/06 ECHR 24 September 2012.

Inter-American Commission on Human Rights

- *Inuit Petition*, Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (7 December 2005).

Inter-American Court on Human Rights

- Advisory Opinion OC-23/17 (15 November 2017), Requested by the Republic of Colombia.

UN Committee on the Rights of the Child

- *Sacchi v Argentina*, Communication No. CRC/C/88/D/104/2019 (8 October 2021).

Domestic cases

- *Urgenda and Others v The State of the Netherlands*, Distric Court, case no.: C/09/456689 / HA ZA 13-1396, judgement of 24 June 2015.
- *The State of the Netherlands v Stichting Urgenda,* 2018, Court of Appeal, case no.: 200.178.245/01, jedgement of 9 October 2018.
- *The State of the Netherlands v Stichting Urgenda,* 2019, Supreme Court, case no.: 19/00135, judgement of 20 December 2019.
- *Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v Arctic Oil,* Oslo District Court case no.: 16-166674TVI-OTIR/06, judgement of 4 January 2018.
- Borgarting Court of Appeal case no.: 18-060499ASD-BORG/03, judgement of 23 January 2020.
- Supreme Court of Norway case no.: 20-051052SIV-HRET, judgement of 22 December 2020**.**
- *Verein KlimaSeniorinnen Schweiz et al. v Federal Department of the Environment, Transport, Energy and Communications (DETEC)*, Federal Administrative Court of Switzerland, judgement A-2992/2017 of 27 November 2018.
- Federal Supreme Court of Switzerland, judgement 1C_37/2019 of 5 May 2020.

Acknowledgements

I would like to thank my supervisor, Professor Antje Neumann, for her support, suggestions, expertise and for her kind and human approach; it was a pleasure to work with her not only during the writing process but also in the classes. I would also like to thank Professor Rachael Lorna Johnstone for introducing me to the beauty of Polar Law.

The writing of this thesis would not have been possible without extraordinary support of my husband, Adam. I would also like to thank my mother Daniela for her support and help. Last but not least, my son Alan has brought a lot of joy to my work and sense of purpose to what I do.

1 Introduction

'We do not inherit the Earth from our ancestors; we borrow it from our children.'[1]

The Arctic[2] is experiencing the greatest regional warming on earth.[3] It is warming more than twice as fast as the global mean[4] and there are even studies claiming that its temperatures are increasing four times faster than global warming.[5] The consequences of climate change on the Arctic's environment and its inhabitants cannot be denied. The commonplace and cumulative changes; melting glaciers; thawing permafrost, resulting in beach slumping and lake erosions; increased snowfalls; emerging or invasive new species of birds, fish and insects near the community[6] and increases in precipitation; are just a few examples of the changes that can be observed in the nature these days. The sea ice is melting and will likely disappear in summertime within a century.[7] These changes have

[1] Secretary James Baker, Current Policy No. 1254, US Dept. of State, Bureau of Public Affairs Office of Communication (February 1990) in Randall S. Abate, *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources* (Cambridge University Press, 2020), 43.

[2] For purpose of this thesis, the Arctic is the area within the Arctic Circle, a line of latitude about 66.5° north of the Equator. Arctic states are those that possess areas of territorial sovereignty above the Arctic Circle, i.e. Canada, Denmark (Greenland), Finland, Iceland, Norway, Russia, Sweden, United States of America.

[3] ACIA, 2005. Arctic Climate Impact Assessment. Cambridge University Press, 1042, 9 (ACIA).

[4] IPCC, Sixth Assessment Report (AR6), Climate Change 2022: Impacts, Adaptation and Vulnerability, 162.

[5] Petr Chylek, Chris Folland, James D. Klett, Muyin Wang, Nick Hengartner, Glen Lesins and Manvendra K. Dubey, 'Annual Mean Arctic Amplification 1970-2020: Observed and simulated by CMIP6 climate models' in Geophysical Research Letters. https://doi.org/10.1029/2022GL099371.

[6] Duane Smith, 'Climate Change In The Arctic: An Inuit Reality' Vol. XLIV, No. 2, "Green Our World!", 2007 <https://www.un.org/en/chronicle/article/climate-change-arctic-inuit-reality> accessed 25 July 2022.

[7] IPCC, Sixth Assessment Report (AR6), Climate Change 2022: Impacts, Adaptation and Vulnerability, 168.

been interpreted to be due (at least in part) to anthropogenic intensification of the global greenhouse effect.[8] The Arctic is like a sample of the future of the whole planet. If we want to see how climate change might affect us in the coming years, the processes in the Arctic are an example. They are unfortunately also the current reality, not just a forecast of what may happen. Furthermore, what happens in the Arctic does not stay in the Arctic. On the contrary, it will influence the rest of our planet, because the Arctic is an important part of the global climate system.[9] For areas even thousands of kilometres south of the Arctic this might mean rising sea levels, changing temperature and precipitation patterns, and more severe weather events.[10] For instance, at the time of this writing several European states, California and other parts of the world are experiencing forest fires, just like the applicants in the *Duarte Agostinho* case, which will be presented in this thesis, allege before the European Court of the Human Rights (the ECtHR or the Court). The seriousness of the problem is thus evident.

The impacts of climate change affect not only the Arctic's fragile ecosystems but also cultures, lifestyles and economies across the Arctic, considering that the Arctic is home to around 4,000,000 people.[11] People living in the Arctic, in particular the indigenous communities, have a solid relationship with nature and the environment in which they live.[12] The changes in the environment and its degradation are therefore very significant for the Arctic people's way of life. Among all people, children and yet unborn generations that will live in the Arctic in the future are most vulnerable to the implications of climate change. Children belong to a vulnerable group because of their unique metabolism, physiology and developmental needs. 'They are more susceptible than adults to risks from the higher incidence of disease, malnutrition, fires, floods and displacement that may result from climate change'.[13] At the same time, they are the least equipped to protect themselves, especially at an early age when they are dependent on adults, and they are

[8] ACIA (n 3) 10.
[9] Ibid 4.
[10] WWF Arctic Programme, 'Climate Change: Why are we concerned?' <https://www.arcticwwf.org/threats/climate-change/> accessed 25 July 2022.
[11] Mary Durfee; Rachael Lorna Johnstone, *Arctic governance in a changing world*, (Rowman & Littlefield 2019) (344), 62.
[12] ACIA (n 3) 865.
[13] Communication to the Committee on the Rights of the Child, pp. 24 ff., <https://childrenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al-Redacted.pdf> accessed 30 July 2022.

unable to raise their voices against injustice. Another reason for their special status in this perspective is that 'climate change will progressively worsen over time, affecting children and the succeeding generations with increasing severity'.[14] Future generations also belong among the most vulnerable groups affected by climate change for the following reasons – they cannot protect themselves, they do not have a legal personality, and at the same time they will be much more affected by climate change than people living today. Therefore, current generations should have an obligation to leave the planet to their successors in no worse shape than they received it.[15]

In view of the special vulnerability of children and future generations living in the Arctic, the question of legal protection arises, and more particularly, what rights these groups can claim to be protected against the negative impacts of climate change. Central to this question is the debate surrounding the human right to a healthy environment. Even though such a right is not recognized in international law yet, recent developments at the intersection between environmental protection and human rights might serve to argue in such a direction. This intersection has been constituted for many years in the theory and jurisprudence of international tribunals among which the ECtHR holds a privileged position as the human rights court with some of the richest environmental case law. While there have not been any specific climate change decisions of the ECtHR so far, there are numerous decisions and judgments in cases raising environment-related issues[16], some of them with particular relevance to the two vulnerable groups in question.

The research question:

Against this background, the central research question of this thesis is defined as follows:

To what extent is the right to a healthy environment for children living in the European Arctic and of future Arctic generations considered in the

[14] Randall S. Abate, *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources* (Cambridge University Press, 2020), 48.
[15] Ibid.
[16] Tim Eicke, 'Human Rights and Climate Change: What Role for the European Court of Human Rights' (Inaugural Annual Human Rights Lecture at Goldsmith University, 2 March 2021), para 16 <https://rm.coe.int/human-rights-and-climate-change-judge-eicke-speech/1680a195d4> accessed 25 July 2022.

jurisprudence of the European Court of Human Rights, in particular in relation to the consequences of climate change?

The scope of research and limitations:

The research question will be analysed primarily from the human rights law perspective. Within this scope, the relationship between human rights and environmental protection will be analysed first, along with human rights approaches to climate change.

The main sources of human rights law relevant to the Arctic are the UN system, the Council of Europe system (applicable to Finland, Sweden, Norway, Denmark and Iceland, but due to the recent geopolitical situation not Russia anymore[17]) and the Inter-American system (applicable to the United States and Canada)[18]. I will focus on the Council of Europe and thus on the European Arctic in particular.

The Council of Europe system is based on the European Convention on Human Rights (the ECHR or the Convention)[19] supervised by the ECtHR. Under its auspices, a significant amount of environmental jurisprudence has been developed based on the evolving interpretation of the ECHR under the doctrine of 'living instrument', which means that the ECtHR interpret the ECHR under the present-day conditions reflecting the current problems of society.[20] Therefore, it is possible to analyse to what extent the right to a healthy environment is guaranteed in this case law. Furthermore, the ECtHR is about to decide the first climate change cases in its history, which brings attention to this regional court. As the enjoyment of the healthy environment of children living in the Arctic is significantly affected by the consequences of climate change, the cases pending before the Court bring us to the question if

[17] Russia withdrew from the jurisdiction of the Court upon its invasion to Ukraine. At the same time, the Committee of Ministers of the Council of Europe decided to exclude Russia from the organisation, of which the ECtHR is part, with the date of 15 March 2022, in response to the war in Ukraine.

[18] Durfee, Johnstone (n 11) 169.

[19] Convention for the Protection of Human Rights and Fundamental Freedoms (1950), as amended by Protocols Nos. 11, 14 and 15 and supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16, <https://www.echr.coe.int/Documents/Convention_ENG.pdf> accessed on 25 July 2022.

[20] Council of Europe, *Manual on Human Rights and the Environment*, 3rd edition, (Council of Europe Publishing, 2022), 135 (Manual on Human Rights and the Environment).

there is a solid ground in the ECtHR's case law for a relevant decision regarding climate change mitigation and what aspects of the Court's jurisprudence should be reviewed and/or changed.

In relation to the Inter-American system, some indications are made in respect to the petition mechanisms to the Inter-American Commission on Human Rights, as the famous *Inuit Petition*[21] is one of the first climate change litigation examples and furthermore it is very relevant to the situation of Arctic children. Many cases pertaining to indigenous peoples, which are applicable to Arctic inhabitants as well, have been decided under the Inter-American system[22]; however, I decided to focus on the European Arctic and leave the Inter-American system for possible future research.

As far as the UN system is concerned, the general human rights treaties and declarations are not the subject matter of this thesis, but special attention will be paid to the United Nations Convention on the Rights of the Child[23] along with the related case law. In this context, the rights relevant for children living in the Arctic will be analysed. Furthermore, theoretical approaches to the protection of future generations will be addressed.

Despite the emphasis on human rights law, also international environmental law is relevant under the given scope, in particular international law on climate change. In this respect, the Stockholm Declaration[24], the Rio Declaration[25], the

[21] Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (7 December 2005) <https://www.law.uh.edu/faculty/thester/courses/ICC_Petition_7Dec05.pdf> accsessed 25 July 2022.

[22] The Inter-American system is more complicated in the Arctic. Neither the United States nor Canada are parties to the American Convention on Human Rights, which means that the Inter-American Court of Human Rights does not have jurisdiction in United States' and Canada's Arctic regions. However, both states are members of the Organization of American States, and one of the key instruments within this system is the American Declaration of the Rights and Duties of Man (ADRDM). Thus, the case law of the Inter-American Court of Human Rights and Inter-American Commission of Human Rights is applicable to the United States and Canada to the extent it reflects the ADRDM [Durfee, Johnstone (n11) 180 – 181].

[23] United Nations Convention on Rights of the Child (1989), adopted by the UN General Assembly, <https://www.unicef.org/child-rights-convention/convention-text> accessed on 25 July 2022.

[24] Declaration of the UN Conference on the Human Environment (Stockholm, 1972).

[25] Rio Declaration on Environment and Development, the UN Conference on Environment and Development (Rio de Janeiro, 1992).

United Nations Framework Convention on Climate Change[26] and the Paris Agreement[27] are of particular relevance. Moreover, the Aarhus Convention[28], which bares characteristics typical for traditional human rights treaties, will be considered as well. All these instruments will be dealt with from the human rights perspective, more specifically, their influence on the ECtHR's interpretation of the Convention will be analysed.

At the intersection between international human rights law and environmental law, developments under the ECHR are central to the present study. It will be shown that the ECHR must be interpreted not only in light of the human rights enshrined in the Convention, but also in consideration of international environmental principles. In this context, the phenomenon of climate change litigation will be considered as well, as this kind of litigation is on the rise all over the world and it bears some common characteristics. Climate change litigation seeks 'to hold public and private actors accountable for their contributions to climate change consequences and their failure to act (or at least to act adequately) to address the problem'.[29] People bringing their claims before the courts are indeed able to point out the deficiencies of the current regulatory regimes dealing with environmental degradation and climate change. The climate change mitigation provided by states on the international and domestic level takes a considerable amount of time (which we do not have). Therefore, it is not surprising that individuals turn to the courts hoping for a swifter and more concrete legal remedy towards the impacts of climate change and seek guarantees of a healthy environment.[30] The question is whether the courts can offer such guarantee and are able to respond to today's environmental challenges.

The research is conducted from the perspective of the vulnerable groups of children and future generations of the Arctic, because these groups are the most affected by climate change. These vulnerable groups are on spot nowadays as

[26] United Nations Framework Convention on Climate Change (1992), adopted at the UN Conference on environment and Development in Rio de Janeiro.
[27] Paris Agreement (2015) adopted under the United Nations Framework Convention on Climate Change by the Conference of the Parties.
[28] Aarhus Convention on Access to information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) adopted by the UN Economic Commission for Europe.
[29] Abate (n 14) 17.
[30] Eicke (n 16) para 8-9.

many of the climate change litigants are children and young adults who try to protect not only their right to a healthy environment, but they also show concerns for future generations. In this relation, it is interesting to study the current approaches to climate change mitigation from the perspective of litigation led by children.

The research is made only to cover the European Arctic even though there are numerous relevant examples of children led climate change litigation in other parts of the world. The European Arctic was chosen because of the particular evolved environmental jurisprudence of the ECtHR as well as because of the current pending climate change cases. The Court's interpretation of the Convention towards the protection of rights from violations caused by the impact of climate change is expected to be made soon, and considering the existing case law, the Court's decisions shall be very relevant. Another reason for limiting this study to the European Arctic is of course the space limit of this thesis. The interpretation from the environmental perspective of the right to life, right to respect for private and family life and home and some of the procedural rights are most important for the analysis and therefore only this part of the Court's jurisprudence will be dealt with. Such analysis is important in terms to evaluate the current stage of the guarantee of the right to a healthy environment of Arctic children and future generations as well as to consider if such case law presents a solid ground for the expected climate change case law of the ECtHR.

Methodology and structure:
According to the scope of the thesis, the research will be based on legal research methodology, more specifically, on doctrinal and analytical legal methodology. Furthermore, to some extent, comparative legal methodology will be applied as well, as far as the decisions and case law of other courts will be discussed.

The analysis covers, in particular, primary legal sources, namely international treaties, the case law of the ECtHR and partially also the case law of domestic courts and international bodies for comparative purposes. The source of information involves secondary legal sources, being the related legal commentaries, academic books, research articles and reports of international bodies.

The structure of the thesis is as follows: Following the introduction, Chapter 2 introduces the main consequences of climate change for children and future generations in the Arctic. This presentation of impacts on various aspects of life is the reason why it is important to deal with the research question at all. Chapter 3 will introduce the main concepts important for further analysis, being the relevance of human rights to environmental protection, in general and for climate change in particular, the question of climate change litigation, the importance of recognizing the specific rights of children as a vulnerable group and the question of the rights of future generations and its current recognition in law and theory. An analysis of the ECtHR's case law related to the interpretation of the right to life, the right to respect for private and family life and home and some of the procedural rights will follow in Chapter 4. Furthermore, the question how indigenous rights are protected under ECtHR will be considered, as climate change also affects the rights of Arctic children belonging to indigenous communities. In Chapter 5, the thesis will continue with the presentation of a selection of pending climate change cases before the ECtHR. This will include consideration of the hypothetical outcome of the Court's decisions, taking into account similar judgments and opinions of other tribunals and pointing out possible challenges which the Court must overcome. In doing so, arguments will be provided for how the rights of children and future generations in the Arctic to a healthy environment can be secured. Chapter 6 will summarise the main findings of the analysis.

2 Climate change and its consequences for children and future generations in the Arctic

The impact of climate change affects cultures, lifestyles and economies across the Arctic. According to ACIA, 'the arctic regions share common characteristics such as sparse population, harsh climate, similar geographic features, high latitude, and typical seasonal extremes of daylight hours and temperatures'.[31] Furthermore, 'many arctic residents live in very small, isolated communities, with a fragile system of economic support, dependence on subsistence hunting and fishing, and little or no economic infrastructure'.[32] Especially those people living in rural areas in close association with the land, in particular the indigenous communities, have a solid relationship with the nature and environment in which they live. Their well-being is tied to the well-being of their environment. The changes of the environment and its degradation are therefore very significant for the Arctic people's way of life. Members of the urban population have lives that are to some extent the same as those of other people living in Europe, although the arctic climate still determines much of their daily life. Therefore, the lifestyle of children within the urban population will be affected by climate change as well.[33]

Among all the people living in the Arctic the children and the yet unborn generations, which will live in the Arctic in the future, are the most vulnerable to the implications of climate change. This Chapter will deal with the concrete consequences of climate change for children and future generations in the Arctic in several aspects of life.

2.1 Life and health

According to ACIA, health conditions 'in many arctic regions have changed significantly over the past years and the climate, weather, and environment have played, and will continue to play a significant role in the health of children in these regions'.[34] According to WHO, 'health includes aspects of physical,

[31] ACIA (n 3) 864.
[32] ACIA (n 3) 865.
[33] Ibid.
[34] ACIA (n 3) 864.

mental, and social well-being and is not simply the absence of disease'[35]. Therefore, all the mentioned aspects must be assessed when analysing health conditions of children living in the Arctic. Climate change can become a source of illness, injury, and mortality for arctic communities[36], especially for children as the most vulnerable group.

Direct health impacts of climate change 'may result from changes in the incidence of extreme events such as avalanches, storms, floods or rockslides, which have the potential to increase the number of deaths and injuries'.[37] For instance, the reduction in sea-ice thickness, which is one of the implications of climate change, might cause death and injuries as traveling for fishing, hunting or recreation activities through the thin ice becomes increasingly dangerous.

Furthermore, there are also indirect impacts of climate change. This type of impacts 'may include increased mental and social stress related to changes in the environment and lifestyle, potential changes in bacterial and viral proliferation and changes in access to good quality drinking water sources'[38]. Also impacts on sanitation infrastructure in some regions may cause illnesses. Increased exposure to ultraviolet radiation among children living in the Arctic affects their health as well. Another health aspect is a food security. 'Climate change can have dramatic effects on the numbers and distribution of species in an ecosystem and these changes may have significant health effects on indigenous populations'.[39] For instance, the reduction of sea-ice caused by climate change has a major influence on marine productivity of species such as fish and seals, which affects indigenous food security.[40] Impacts on food security through changes in animal distribution and accessibility might affect the health of children significantly, 'as shifts from the traditional diet to a more "western" diet are known to be associated with increased risk of cancers, diabetes, and cardiovascular disease'[41].

[35] ACIA (n 3) 865.
[36] Ibid.
[37] ACIA (n 3) 864.
[38] Ibid.
[39] ACIA (n 3) 879.
[40] ACIA (n 3) 882.
[41] Ibid.

2.2 Socio – cultural conditions and home

There are significant socio-cultural implications of climate change in the Arctic. It is because 'climate change has the potential to influence rapid changes ongoing in communities today by challenging individuals' and communities' relationship with their local environment, which has for thousands of years been the basis of their identity, culture, and well-being'.[42] The reason for such grave implications is among other factors the fact that 'culture is often critical to community'[43]. It may be affected by climate change through mechanisms such as 'loss of a traditional subsistence food source, which can result in a grief response and severe stress'.[44] Speaking about children as a vulnerable group, such grief and stress might be even more serious. Furthermore, 'many indigenous peoples rely on food that they hunt and harvest from the land and a sea, which is, moreover, a component of their cultural identity, and in many cases, their local informal economy'[45]. Children can easily lose their ties to their cultural identity when particular components of their culture will cease to exist. The loss of cultural identity presents a severe threat to the mental health of children from indigenous communities.

Indigenous peoples in the Arctic are 'dependent on and adapted to their environment. Their knowledge of their surroundings is a vital resource for their well-being. Their knowledge is also a rich source of information for others wishing to understand the arctic system'.[46] However, the traditional knowledge of how the world works, passed down from generation to generation, is less accurate than it was. The changes in lifestyle due to climate change might cause indigenous knowledge to be disrupted when children and future generations will not gain it from their predecessors.

Arctic infrastructure and housing can also be affected by the implications of climate change, which include 'river and coastal flooding and erosion, drought, and degradation of permafrost'[47]. 'Water sources may be subjected to saltwater intrusion and increased contaminant levels, which may overwhelm

[42] ACIA (n 3) 898.
[43] ACIA (n 3) 865.
[44] Ibid.
[45] Ibid.
[46] ACIA (n 3) 62.
[47] ACIA (n 3) 889.

treatment processes and jeopardize the safety of drinking water supplies'.[48] Such events are not only dangerous for one's health, but they might cause community disruption and the relocation of families, resulting in a violation of the children's right to enjoy their home and family life. Due to climate change, situations in which communities will be obliged to abandon their homes and resettle will become more frequent.

From the long-term perspective, 'the circumpolar Arctic may well become a region of considerable geopolitical and strategic importance'.[49] There are some predictions of mass population movements towards the Arctic as a result of climate change[50]. Such a massive movement will affect the way of life of the future generations in the Arctic.

2.3 The human activities

As was already mentioned, the climate warming scenarios project changes in sea-ice distribution and ice thickness in the Arctic.[51] Furthermore, permafrost is very sensitive to temperature fluctuations and warming can cause the permafrost in some regions to disappear completely. These changes might increase particular human activity in the Arctic.

In particular, the changes promote and accelerate industrial development in a unique, fragile and vulnerable region.[52] For instance, maritime traffic during ice-free periods is increasing as the ice-free periods are being prolonged. The shipping will most likely link Europe, Asia and North America, cutting off thousands of kilometres of global sea routes, which will further impact the sensitive region.[53] Such human activity relates to the 'sudden catastrophic release of hazardous materials into the local, regional and eventually

[48] Ibid.
[49] Duane Smith, 'Climate Change In the Arctic: An Inuit Reality' <https://www.un.org/en/chronicle/article/climate-change-arctic-inuit-reality> accsessed 25 July 2022.
[50] Ibid.
[51] ACIA (n 3) 882.
[52] Duane Smith, 'Climate Change In the Arctic: An Inuit Reality' <https://www.un.org/en/chronicle/article/climate-change-arctic-inuit-reality> accsessed 25 July 2022.
[53] Ibid.

circumpolar environment. The possible increase in extreme weather events could increase the likelihood of such an event'[54].

Far easier access will be available to the Arctic's natural resources, such as oil and gas, minerals and hydrocarbons. The Arctic communities are already experiencing the consequences of the extraction industry; however, the thawing sea-ice and permafrost will open new possibilities in this field. Such activities present a considerable threat to the environment in which the children and future generation of the Arctic live or will be living.

[54] ACIA (n 3) 892.

3 The rights of children and future generations to a healthy environment

One of the approaches to the combat with the consequences of climate change and with environmental degradation in general is the usage of the human rights system. Even though no independent right to a healthy environment has been enacted by the international law, the so called 'human rights-based approach' is being evolved. There is also another new phenomenon in this relation being the climate change litigation, which is frequently used by children and young people all over the world in the recent time. One of the tools used in the climate change litigation is the human rights argumentation. All of these concepts are therefore interrelated, and this Chapter will introduce them.

On the following pages the brief history of the relationship between human rights and environmental protection will be presented, the basic concepts of this relationship will be mentioned, and the question how the combat with climate change is related will be considered. Subsequently, the concepts of the climate change litigation and intergenerational equity will be explained. The Chapter will also show the explanation why children need a particular treatment and the special rights for their protection.

3.1 The relevance of human rights for environmental protection in general and in relation to climate change in particular

UN's former Special Rapporteur on Human Rights and the Environment, Mr. John Knox, stated in the Framework Principles on Human Rights and the Environment presented to the session of the Human Rights Council in Geneva in March 2018 the basic premise that 'human rights and environmental protection are interdependent'[55]. Even though the relationship between environmental protection and human rights is very complicated topic vividly discussed, it is evident that a safe, clean, healthy and sustainable environment

[55] John H. Knox, UN Special Rapporteur on Human Rights and the environment, *Framework Principles on Human Rights and the Environment,* (UN Doc. A/HRC/37/59, 2018), 6.

is necessary for the full enjoyment of human rights and, at the same time, the exercise of human rights is vital to the protection of the environment.[56]

Development of the relationship between human rights and environmental protection in international treaties

The important acknowledgement that 'the enjoyment of freedom and equality among human beings is inseparable from the preservation of an environmental quality which permits human dignity and human welfare'[57] was recognized in the Stockholm Declaration on the Human Environment (1972)[58], which provides the bases for the link between human rights and protection of environment.[59] The states participating in the first major conference on the environment proclaimed in the concluding Stockholm Declaration that 'the protection and improvement of the human environment is a major issue which affects the well-being of peoples.'[60] Significant is Principle 1 which stresses that 'Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.'[61]According to Francesco Francioni this statement contained in its simplicity all the elements for the combination of ecological and human rights approaches to the question of environmental protection.[62]

Despite this progressive approach of UN introducing the concept of inter-generation responsibility to protect and improve environment[63] already 47 years ago, the further development did not follow direction towards deepening the relationship between human rights and environment. It was not repeated at

[56] Ibid.
[57] Francesco Francioni, 'International Human Rights in an Environmental Horizon' (The European Journal of International Law Vol. 21 No. 1, 2010), [41 – 55], 44.
[58] Declaration of the United Nations Conference on the Human Environment (Stockholm, 1972).
[59] Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment*, 3rd ed. (Oxford University Press 2009), 271.
[60] Donald K. Anton, Dinah L. Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, 2011), 118.
[61] Stockholm Declaration, Principle 1.
[62] Francioni (n 57) 44.
[63] Ibid.

the second global conference on the environment in 1992 in Rio de Janeiro.[64] The Rio Declaration[65] focused on concept of sustainable development, which integrates economic development and environmental protection.[66] This emphasis was understandable, as the economic system in which we are living presents challenges to environmental protection.[67] Rio Declaration returned to the issue of connection between human rights and environmental protection only by making a rhetorical claim in the Principle 1 stating that 'Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.'[68] However, this rhetorical claim is even less pronounced than the one in the previous Stockholm formulation.[69]

Further international environmental instruments did not advance in deepening the relationship between human rights and environmental protection. In general, states are considerably reluctant to extent binding human rights law coverage.[70] The Paris Agreement (2015) contains no substantive provision making the link between climate change and human rights. In fact, the only mention of human rights in the Paris Agreement is in its Preamble, 'acknowledging' that 'Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children'.[71] With exception of two regional treaties[72] no legally binding instrument on international or regional level providing the right to a healthy environment evolved. Therefore, it is not

[64] Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment*, 3rd ed. (Oxford University Press 2009), 271.
[65] Rio Declaration on Environment and Development, the UN Conference on Environment and Development (Rio de Janeiro, 1992).
[66] Donald K. Anton, Dinah L. Shelton, *Environmental Protection and Human Rights* (Cambridge University Press, 2011), 74.
[67] Ibid.
[68] Karen Morrow, 'Human rights and the environment: substantive rights' in *Research Handbook on International Environmental Law*, edited by Malgosia Fitzmaurice, et al., (Edward Elgar Publishing Limited, 2021), 346.
[69] Ibid.
[70] Morrow (n 68) 345.
[71] Eicke (n 16) para 13.
[72] African Charter on Human Peoples' Rights (1981), Inter-American Protocol of San Salvador (1988), *in* Ulrich Beyerlin and Thilo Marauhn, *International Environmental Law* (Hart, C.H. Beck, Nomos, 2011), 392.

possible to talk about the right to a healthy environment as part of a valid international environmental hard law.[73] The only development can be seen in the procedural aspects of the right to environment and, at national level, the establishment of substantive law in constitutions of many states[74].

The relationship between human rights and environmental protection in the academic debate, the basic concepts and initial problems

Over the last few decades, the relationship between the environment and human rights has received increasing attention in the academic debate. The so called 'rights-based approach' tries to find the way how to involve the individual affected by the environmental degradation in solving the problem. It is based on the premise that the quality of the environment of the individual is related with his enjoyment of the human rights. The links between the environment and the human rights are in the theory described and analysed with respect to the potential of mutual coherence – whether the two areas are inherently contradictory or whether they can be consistent under certain conditions.[75]

Professor Rachael Lorna Johnstone summarised questions: 'if human rights are about freedom from state interference on the one hand or about rights to the basic provisions necessary for a dignified life on the other, does this not give people a right to take what they need from nature? On the other hand, without a healthy environment, how can the dignity of human life be ensured?'[76] Even though there are no simple answers, it is important to acknowledge that the human rights approach to a healthy environment is beneficial in terms of protection of the environment as it can use the existing human rights protection mechanisms in international law for which there may be no equivalent under environmental treaties. However, human rights law cannot preserve the environment alone 'as it only recognises environmental values when they have a recognisable and fairly direct impact on human

[73] Hana Müllerová, 'Right to Environment: Theoretical Aspects' (Praha: Ústav státu a práva AV ČR, 2015), 18.
[74] Ibid 13.
[75] Ibid 13.
[76] Rachael Lorna Johnstone, *Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility* (Brill | Nijhoff, 2014), 58.

experience'[77]. This problem of anthropocentric nature of human rights is in academic debate used as criticism of the rights-based approach. Anthropocentrism sees the well-being of the people as the most important value and prefers the people over any other species in the natural world. Such approach contrasts with the concept of environmental protection that understands man as an integral part of a global ecosystem dependent on natural conditions.[78] In other words, in anthropocentric view the environment serves as an instrument: 'it can only be protected to the extent it is of some practical use to humans but has no recognised intrinsic value'[79].

Why should environmental protection be treated through the lens of the human rights? There are several possible answers. The reasons of this rights-based approach might be in insufficient instruments for protection of the environment on international and national levels which are unable to solve the emerging environmental issues.[80] At the same time, as Alan Boyle pointed out, 'a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual humans rather than on other states or the environment in general.'[81] Such relationship may serve to ensure higher standards of environmental quality, as the states are obliged to regulate and control pollution activities affecting health and private life. The rule of law is promoting when governments become directly accountable if they fail to control environmental nuisances and when the access to justice and enforcement of environmental laws is guaranteed.[82]

The intentions to interconnect protection of the environment with the human rights are manifested in three ways:

- Extension of the traditional human rights (eg. right to life, right to private and family life and home, right to property) with the

[77] Ibid 59.

[78] Hana Müllerová, 'Right to Environment: Theoretical Aspects' (Praha: Ústav státu a práva AV ČR, 2015), 17.

[79] Rachael Lorna Johnstone, *Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility* (Brill | Nijhoff, 2014), 59.

[80] Hana Müllerová, 'Human Right to Environment: a Critical Perspective' (Právník, 3/2012), 228.

[81] Alan Boyle, 'Human Rights and the Environment: Where Next?' (The European Journal of International Law Vol. 23 No. 3, 2012), [613 - 642], 613.

[82] Ibid.

environmental dimension by way of their new interpretation in the case-law of the international courts;
- Establishing of the new procedural environmental rights;
- Intention to formulate the new substantive human right to descent environment.[83]

This thesis elaborates the first approach, the extension of the traditional human rights, in the context of the jurisprudence of the ECtHR, which supervise the enjoyment of human rights in the European Arctic (except of Russia). This approach is called in the literature as 'greening of existing human rights'[84] and can be explained as deriving of the environmental rights from other existing human rights guaranteed in human rights treaties, in particular the right to life, private and family life, property and access to justice.[85] Such an approach is made by the international bodies (courts and commissions), which are responsible for overseeing compliance with the international human rights treaties, by means of their extensive interpretation of the legal instruments. The interpretation of the rights is not fixed, it can consider the social context and changes in society. For instance, the ECtHR adopts an evolutive approach and often refers to the ECHR as a 'living instrument' which must be interpreted in the light of present-day conditions and in a way that ensures that all of the rights it guarantee are not theoretical but practical and effective.[86] Thanks to the evolving interpretation the Court can handle new challenges such as infringement of the human rights by means of the environmental degradation and possibly by means of the climate change.

Climate change as human rights issue

Until this point, the basic introduction to the topic of the relation between human rights and environmental protection was presented. The question how climate change is related to this relationship will now be considered. Climate change has become one of the most discussed topics of environmental politics

[83] Hana Müllerová, 'Human Right to Environment: a Critical Perspective' (Právník, 3/2012), 228.
[84] Ibid.
[85] Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment*, 3rd ed. (Oxford University Press 2009), 282.
[86] Manual on Human Rights and the Environment (n 20) 135.

dealt with on the international level.[87] Its seriousness is caused by its global nature and by the impossibility of isolated solutions that could be made without broad international cooperation. Climate change is not only a problem of the future anymore, even though it is still often presented as such.[88] Its consequences are visible nowadays in our lives. For instance, in the Arctic regions the melting of icebergs affects the indigenous peoples whose way of life is dependent on certain natural conditions.[89] The implications of climate change are presented in various forms depending on the part of the world – for example changes in standard temperatures, extreme weather events, fires, floods, etc.[90] These implications have direct impacts on people. Climate change consequences affect the enjoyment of one's human rights and we can therefore characterize climate change as a human rights issue.[91]

The international protection of the climate is based on UNFCCC and the Paris Agreement. These international treaties deal with the obligations of states as regards reducing GHG, international cooperation as regards protection of the climate and support of the development of relevant technologies. They do not contain any provisions from which it would be possible to deduce the direct human rights obligations of states, even though the Paris Agreement underlines the link between climate change and human rights in its preamble.[92] Thus, climate protection is based on the traditional structure of international environmental law characterized by the obligations of states.[93] These international instruments are also evaluated as too weak to ensure effective prevention of the increase of the global temperature in the near future.[94] For

[87] Hana Müllerová, 'Climate Change: Trying to extend Human Rights in Time and Space' [7/2021] Právník, 549 – 564, 549.
[88] Ibid.
[89] See Chapter 2.
[90] Detailed data on the causes, impacts and projections of climate change are reported in IPCC reports available at <https://www.ipcc.ch/assessment-report/ar6/>.
[91] Müllerová (n 87) 550.
[92] Preamble of the Paris Agreement: 'Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity'.
[93] Müllerová (n 87) 551.
[94] Ibid.

instance, the Paris Agreement is criticized for its vagueness, nonbinding character of some important provisions and for the fact that it leaves states free to settle their obligations as far as the reduction of GHG.[95] The current state of international climate law is thus quite ineffective.

Such weaknesses of international climate law along with the present impacts of climate change on the enjoyment of human rights have motivated many authors to develop a rights-based approach in dealing with climate change using international human rights instruments, i.e. on instruments existing out of the scope of international climate law.[96] It is a very similar trend to the connection between human rights and environmental protection in general described above in this Chapter. The argumentation supporting such an approach is also similar. Namely, there are arguments that climate change causes impacts on human rights and that these impacts shall get even worse according to estimates; the present regime of climate protection is not effective and as such is not able to avoid the consequences of climate change; and that the human rights instruments are strong and effective, and they are supported by the established legal regime.[97]

The aim of such approach is to apply pressure on states as the authors of international law to reassess the current human rights instruments and their extension to environmental and climatic issues. But first, the main aim is to achieve the recognition of the connection between human rights and the impacts of climate change in the courts.[98] In this regard, the increasing attention to the relation between human rights and climate change serves also as a basis for climate litigation. Climate litigation has become very popular in recent years, and it serves as a tool for affecting governments and corporations to search for approaches to climate change.[99]

[95] D. Bodansky, 'The Legal Character of the Paris Agreement.' *Review of European, Comparative & International Environmental Law.* 2016, p. 142–1
[96] Müllerová (n 87) 552.
[97] Ibid.
[98] Ibid.
[99] J. Peel, H. M. Osofsky, 'Why climate change litigation matters'. In: J. Peel, H. M. Osofsky *Climate Change Litigation: Regulatory Pathways to Cleaner Energy* (Cambridge University Press: 2015), 1–27.

Limits of the human rights approach to climate change

The rights-based approach to protection of the climate has been discussed in the academic field in recent years; however, the theory has not been significantly put into the practice so far. There are also certain concerns whether this topic can be handled from the legal point of view at all.[100] The explicit background for the application of human rights to the consequences of climate change is missing in the international human rights instruments as well as in the international instruments concerning protection of the climate. Furthermore, the climate crisis has some specifics, described below, which cannot be easily handled by human rights law.

Climate change is a very complex matter. Global warming is caused by many different activities, such as energetics, traffic, exploitation of natural resources, agriculture, by the huge number of actors, and its consequences are present in several parts of the world in different ways.[101] Due to its specifics, there are some difficulties for the application of a rights-based approach to the protection of the climate.

For instance, there is a sort of injustice, as some states are more affected by the negative impacts of climate change than others without being the main contributors to climate change.[102] Those affected are often less developed countries.[103] But the individuals living in the affected states cannot enforce the fulfilment of their human rights by other states who might be the bigger contributors to GHG. Therefore, there is a discussion whether the states emitting higher amounts of GHG have a duty to limit the environmental degradation of the global climate caused by their GHG emissions apart from their own citizens, and protect the human rights of citizens of other states.[104] Due to the cumulation of GHG from many actors it is in fact impossible to identify a direct causal link between the emission of GHG by a particular subject and the concrete damage caused by climate change.[105] The further issue is the time aspect of the matter, the time lag between the cause and effect raises

[100] Müllerová (n 87) 554.
[101] Ibid.
[102] O. Quirico, M. Boumghar, *Climate Change and Human Rights: An International and Comparative Law Perspective* (Routlegde, 2016), 40.
[103] Ibid.
[104] Müllerová (n 87) 554.
[105] Ibid.

question regarding how to deal not only with the damage already caused by climate change, but also with those predicted to be caused, which are so serious that it does not make sense to wait until they happen.[106]

As far as the subjects of the rights, it is pointed out that future generations will be significantly more affected by climate change that the present generation.[107] While the individuals of present generations are protected by human rights law and they can stand before the courts, there is no tool how to defend people not yet born, because they do not have a legal personality. Therefore, the question of how to extend human rights to the individuals of future generations is being raised.[108]

3.2 Climate change litigation

The increasing interest in searching theoretical links between human rights and climate change serves also as the basis for the climate litigation which is on its growth in the last few years and is used as a legal tool towards the governments and corporations in searching responses to climate change. Respectively, 'the creative climate change litigation has raised awareness of the human rights dimensions of climate change impacts and pointed on the deficiencies of the current regulatory regimes dealing with climate change'.[109] The beginning of this movement relates to the Arctic, because it is related to the submission of the *Inuit petition* to the Inter-American Commission on Human Rights (IACHR) in 2005 mentioned below.[110] Subsequently, the huge amount of the suits were submitted to domestic, regional and international courts. Nowadays, there are almost 2000 instances of climate change litigation around the world, with most of them in the United States.[111] Many of the petitions are submitted by children or young claimants as the group of people the most affected by the climate change impacts. This trend will be further discussed in the next

[106] Ibid.
[107] See text to n 14.
[108] Müllerová (n 87) 555.
[109] Abate (n 14) 17.
[110] Ibid.
[111] Marlies Hesselman, 'Domestic climate litigation's turn to human rights and international climate law', in *Research Handbook on International Environmental Law*, edited by Malgosia Fitzmaurice, et al., (Edward Elgar Publishing Limited, 2021), 366.

chapters. The following analysis explains what the climate cases have in common, what argumentation the applicants use and what they want to achieve.

The climate change suits seek 'to hold public and private actors accountable for their contributions to climate change consequences and their failure to act (or at least to act adequately) to address the problem'.[112] At first, the cases sought injunctive relief for climate change mitigation, but subsequently sought also damages from private companies for their GHG emissions.[113]

In particular, the applicants often complain about states' individual GHG emission reductions ambitions, which they see as too low. Here is a description of this problem and its implementation in the legal instruments in a nutshell. It is well known that the climate change effects are caused by the human activity, more precisely, by emitting the GHGs to the atmosphere.[114] The states have committed themselves to reduce the GHGs emissions in the given period by means of international instruments such as the UNFCCC and the Paris Agreement.[115] Such commitments of the states are based on the individual steps towards achieving a collective objective of 'stabilising global concentrations of GHG in the atmosphere' at a level which ensures that 'dangerous anthropogenic interference in the climate system can be prevented'.[116] According to scientific findings it is now widely understood that 'preventing dangerous climate change' implies holding the global average temperature increase well below 2ºC above pre-industrial levels, and preferably below 1,5ºC; and stabilising carbon dioxide CO_2 in the atmosphere at sufficiently safe levels[117]. In pursuit of these objectives, all states have their own individual responsibilities to reduce GHGs in light of equity and the principle of common but differentiated responsibilities and respective capabilities (CBDR-RC), as well as a responsibility for developed states to take a lead on climate action.[118] According to Paris Agreement the states are obliged

[112] Abate (n 14) 17.
[113] Ibid.
[114] Eg. IPCC reports available at <https://www.ipcc.ch/assessment-report/ar6/>
[115] Hesselman (n 111) 369.
[116] Article 2 UNFCCC.
[117] Eg. IPCC reports available at <https://www.ipcc.ch/assessment-report/ar6/>
[118] Hesselman (n 111) 369.

to prepare and maintain their own nationally determined contributions which must reflect their 'highest possible ambition'[119] over time.[120]

However, the UNFCCC and the Paris Agreement are criticised in the literature for its vagueness and softness.[121] An important common characteristic of the climate change litigation cases is that the argumentation based on the international climate law can be supported or improved when invoked along with other legal grounds, such as national law and other international legal instruments including human rights treaties.[122] Hesselman describes this trend of the climate change litigation as usage of ' "aggregate" mix of domestic and international legal grounds and arguments, including as derived from domestic tort law, constitutional law, public trust doctrines, the UNFCCC, the Paris Agreement, human rights law or (international) environmental law principles'.[123] The climate change litigation cases focusing on national aggregate GHG emissions are typically based on the legal question to what extent are the states free to reduce their GHG emissions considering all the aggregate legal grounds and whether the states can be legally compelled to 'do more'.[124]

As an example of climate change litigation, here is the brief description of the Inuit petition from the American Arctic perspective.

The Inuit petition

The Inuit petition is the leading example of a human rights petition filed against a governmental entity. It was submitted to IACHR in 2005 by the chair of the Inuit Circumpolar Conference on behalf of herself, sixty-two other petitioners and all other Inuit of the arctic regions of the United States and Canada who have been affected by the climate change impacts.[125] The Inuit are a large indigenous community based throughout the Arctic in the United States, Canada, Greenland and Russia. Their culture, lifestyle and spirituality are connected to the cold Arctic environment which is changing at alarming

[119] Article 4(3) of the Paris Agreement.
[120] Hesselman (n 111) 370.
[121] See text to n 95.
[122] Hesselman (n 111) 368.
[123] Ibid.
[124] Ibid 370.
[125] Abate (n 14) 32.

rates.[126] [127] The filed petition had a title 'Violations Resulting from Global Warming Caused by the United States'[128] which is self-explanatory. The petition claimed that the IACHR must address climate change regulation issues because global warming directly impedes human rights by disrupting a culture.[129] The petition alleged a violation of multiple human rights guaranteed under the Inter-American Human Rights System such as the right to enjoy the benefits of the culture, the right to use and enjoy lands, the right to use and enjoy the personal property, the right to the preservation of health, the right to life, physical integrity and security, the right to own means of subsistence, and the right to residence, movement, and inviolability of the home.[130] According to plaintiffs, the violation of the listed rights amounted to a violation of the Inuit's 'right to be cold'.[131]

The petition was dismissed by the IACHR because there was not enough information to find a violation of the human rights. However, the Inuit petition still has its significance in advancing the awareness of the connection between climate change consequences and human rights violations.[132] The hearing with the aim to discuss connection between climate change and human rights violations occurred by request of the Inuit. Thanks to that the case enjoyed an attention and therefore this petition represents the beginning of the movement to pursue legal protection for these human rights concerns in courts and tribunals.[133]

3.3 Specific rights of children

One of the strengths of the rights-based approach to combat with climate change might be the fact that this approach focuses attention on the groups of

[126] Abate (n 14) 31.
[127] The consequences of climate change to the Arctic environment are described in Chapter 2 of this thesis.
[128] Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations Resulting from Global Warming Caused by Acts and Omissions of the United States (7 December 2005).
[129] Abate (n 14) 32.
[130] Ibid.
[131] Ibid.
[132] Ibid.
[133] Ibid.

people who are the most affected by and the most vulnerable towards the climate change impacts.[134] Children are one of such groups because they are disproportionally impacted by climate change due to their unique metabolism, physiology and developmental needs. 'They are more susceptible than adults to risks from the higher incidence of disease, malnutrition, fires, floods and displacement that may result from climate change'.[135] At the same time, they are the least equipped to protect themselves, especially at the early age they are dependent on the adults, and they are unable to rise voice against injustice. Another reason of their special status in this perspective is that 'climate change will progressively worsen over time, affecting children and the succeeding generations with increasing severity'.[136]

Nowadays, the states are aware of the children's vulnerability. On the platform of the UN there are initiatives and structures recognizing the need for special treatment for them.[137] For instance, in terms of the healthy environment, the WHO published reports dealing with the impacts of the environment on children's health.[138] In more general terms, UNICEF is a permanent part of the UN running a global campaign to protect the children's interests. Its work is guided by the Convention on the Rights of the Child (CRC).

From the human rights perspective, the OHCHR prepared an analytical study on the relationship between climate change and the full enjoyment of the rights of the child.[139] The study of the OHCHR examines the impacts of the climate change on children and the related human rights obligations and responsibilities of the states, including the elements of a child rights-based approach to climate action.[140] Some of the key recommendations are the following. States should empower children to participate in climate

[134] Müllerová (n 87) 555.
[135] See text to n 13.
[136] Abate (n 14) 48.
[137] UNESCO (focus on education), ILO (for purpose to abolish child labour), WFP (school feeding and health initiatives), WHO (disease-eradication campaigns).
[138] Inheriting a sustainable world? Atlas on children's health and the environment; Don't pollute my future! The impact of the environment on children's health.
[139] United Nations Human Rights Office of the High Commissioner: Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13) 2017, <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/RightsChild/ChilrenOnePager.pdf> accessed 25 July 2022.
[140] Ibid.

policymaking; guarantee that children have access to effective remedies when they suffer harm from climate actions and inactions including by business; improve understanding of the relationship between climate change and children's rights by collecting data and conducting impact assessment and establishing consultative and reporting mechanisms focussed on the rights of children.[141]

The Convention on the Rights of the Child and relevant case law

The CRC (1989) is the first internationally binding treaty which gave full recognition to the individual rights of children, furthermore, it is the most rapidly and widely ratified international human rights treaty in history.[142] The CRC changed the way children are viewed and treated, more specifically they are viewed as human beings with a set of rights instead of passive objects of care and charity.[143] The CRC is very comprehensive legal instrument, it contains standards applicable to all areas of the child's life including school, family as well as in specific settings of alternative care and youth justice and detention.[144] The CRC contains rights of general relevance, rights of special importance to children and general human rights adapted to the specific needs of children.[145] The body monitoring the CRC's implementation is the United Nations Committee on the Rights of the Child (Committee). According to the Optional Protocol to the CRC on a Complaints Procedure (OPIC) it is possible to submit individual complaints before the Committee.

The 16 children from all over the world used this opportunity and in September 2019 they brought the complaint concerning the impacts of climate change on children's rights against five states (Argentina, Brazil, France, Germany and Turkey).[146] The case is known as the *Sacchi v Argentina* and it

[141] Ibid.
[142] Ursula Kilkelly, 'Protecting Children's Rights under the ECHR: the Role of Positive Obligations' (NILQ 61(3)), 245-61, 246.
[143] <https://www.un.org/en/global-issues/children> accessed 25 July 2022.
[144] Kilkelly (n 142) 246.
[145] Ibid.
[146] Aoife Nolan, 'Children's Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in Sacchi v Argentina' Blog of the European Journal of International Law, (20 October 2021), <https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-

attracted a lot of attention as the first climate change litigation case before the Committee. It illustrates how the CRC can be interpreted when seeking the right to healthy environment of children. The petitioners, including the famous child (or youth) environmental activist Greta Thunberg, alleged that the respondent states failed to take necessary preventive and precautionary measures to respect, protect and fulfil the petitioners' rights to life (Article 6), the highest attainable standard of health (Article 24), and to enjoy culture (Article 30) under the CRC.[147] They requested the Committee to make a several findings: '(a) that climate change is a children's rights crisis; (b) that the states have caused and are perpetuating the climate crisis by knowingly acting in disregard of the available scientific evidence regarding the measures needed to prevent and mitigate climate change; and (c) that, by perpetuating life-threatening climate change, the states are violating the authors' rights to life, health and the prioritization of the best interests of the child, as well as the cultural rights of the authors from indigenous communities'.[148] The authors argued that the respondent states have failed to uphold its obligations under the CRC to: '(a) prevent foreseeable domestic and extraterritorial human rights violations resulting from climate change; (b) cooperate internationally in the face of the global climate emergency; (c) apply the precautionary principle to protect life in the face of uncertainty; and (d) ensure intergenerational justice for children and posterity'.[149] As a result the authors sought a Committee's recommendation that the states review and amend its laws and policies to ensure that mitigation and adaptation efforts are accelerated to the maximum extent of available resources; that the states initiate cooperative international action to establish binding and enforceable measures to mitigate the climate crisis; and that the states ensure the child's right to be heard and to express his or her views freely, in all efforts to mitigate or adapt to the climate crisis.[150] The complaint provided extensive list of climate change impacts on the authors

on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/> accessed 25 July 2022.

[147] Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, n CRC/C/88/D/104/2019 <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ARG/CRC_C_88_D_104_2019_33020_S.pdf> accessed 25 July 2022, para 3.1.

[148] Decision of the Committee (n 147) para 3.8.

[149] Decision of the Committee (n 147) para 3.3.

[150] Decision of the Committee (n 147) para 3.8.

as well as on the environments they live in.[151] It is evident that the argumentation relies on the human rights, authors also argue that mitigating climate change is a human rights imperative.[152]

However, from the beginning there was a big question regarding admissibility of the complaint, because the authors did not exhaust the domestic remedies before coming to the Committee as required by the CRC.[153] They argued that seeking justice in this matter in domestic courts would be unduly burdensome, unlikely to bring effective relief and unreasonably prolonged.[154]

Even though the Committee found the complaint as inadmissible; the case has its significance. First of all, the Committee showed that it understands the importance of the matter in terms of international child rights law, it made an effort to explore some of the complexities of the case, for instance by holding the oral hearings and so respecting the child's right to be heard, i.e. the Committee did not focus only on a procedural side being the question of admissibility. Second of all, the Committee made a series of ground-breaking findings.[155] The most interesting is one regarding the jurisdiction. The Committee ruled that the CRC give rise to extraterritorial obligations to address climate change. The Committee noted the authors' argument that they are within the states' jurisdiction as victims of the foreseeable consequences of the states' domestic and cross-border contributions to climate change and the carbon pollution knowingly emitted, permitted or promoted by the states from within its territory.[156] The Committee said that the author's communication raises novel jurisdictional issues of transboundary harm related to climate change. Noting the Advisory Opinion of the Inter-American Court of Human Rights on the environment and human rights, the Committee concluded that 'when transboundary harm occurs, children are under the jurisdiction of the state on whose territory the emissions originated for the purposes of Article 5 (1) [jurisdiction] of the Optional Protocol if there is a causal link between the acts or omissions of the state in question and the negative impact on the rights of children located outside its territory, when the

[151] Nolan (n 146).
[152] Decision of the Committee (n 147) para 3.3.
[153] Nolan (n 146).
[154] Decision of the Committee (n 147) para 10.18.
[155] Nolan (n 146).
[156] Decision of the Committee (n 147) para 10.2.

state of origin exercises effective control over the sources of the emissions in question'[157]. The Committee added that while establishing the responsibility of the state, the alleged harm suffered by the victims 'needs to have been reasonably foreseeable to the state at the time of its acts or omissions even for the purpose of establishing jurisdiction'[158]. In doing so, the Committee made clear the importance of 'effective control' and reasonable foreseeability for the purposes of jurisdiction. The Committee concluded that the plaintiffs 'had justified for the purposes of establishing jurisdiction that the potential harm in terms of their rights of the state's acts or omissions regarding the carbon emissions originating in its territory was "reasonably foreseeable" to the state'.[159] The Committee then addressed the causal link between state acts/omissions and the harm experienced by the plaintiffs, concluding their victim status is justified.[160]

3.4 The rights of future generations

The law of human rights does not recognize the future generations as the subject of rights.[161] The persons who have not yet born do not have their identity, dignity, interests nor rights.[162] Even though it is generally acknowledged that humankind has a responsibility to take account of its action for the future, it is very complicated task to see the future people as the subjects of rights. Many unanswered questions come when debating about future generation's rights: How can we find legal relationship between the existing obliged person towards the future subject of right? If we admit that the future generations have rights, how it would be possible to enforce them towards the existing generations? Who is entitled to represent future generations and how do we know what the future people really want? How would the rights of future generations look like, what would be their content? And finally, how to balance the obligations towards the future people and the fulfilment of the obligations

[157] Decision of the Committee (n 147) para 10.7.
[158] Ibid.
[159] Nolan (n 146).
[160] Ibid.
[161] Müllerová (n 87) 555.
[162] Ibid.

towards the existing generations?[163] These questions are not answered yet and therefore there is no biding law covering the rights of future generations. Until present days they are mentioned in some environmental instruments and international climate law. Furthermore, some theories try to find ways how to protect the future generations now.

Recognition of the rights of future generations in legal instruments

The rights of future generations are recognized in law only in a very limited way. The intergenerational equity has been reflected in the *soft law* international environmental documents such as the Stockholm Declaration[164] or the Rio Declaration[165]. The direct mentioning of the future generations is also found in the environmental conventions such as the UN Convention on Biological Diversity or Aarhus Convention; however, only in their preambles, not in the operative text of the conventions. The indirect involvement of future generation's interest is encompassed in the principle of the sustainable development.[166] However, all the named examples of involvement of future generations interests are rather proclamations with the interpretative significance.[167] There are no legally binding international law instruments specifically committing states to the protection of future generations.

As far as the international climate law is concerned, the Paris Agreement supports the idea of the rights of future generations only as a moral imperative. There is a mentioning of the intergenerational equity in its preamble, but the legally binding provisions lacks the rights of future generations. The preamble of the Paris Agreement reads: 'Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on … intergenerational equity,' Furthermore, the preamble mentions the principle of climate justice: '… noting the importance for some of the concept of climate justice, when taking action to address climate change,', which means that burden coming from climate change should be bared proportionally and with the consideration of the interests of the vulnerable groups. The implicit recognition of the principle of intergenerational equity by the Paris Agreement

[163] Ibid.
[164] Principle 1 and Principle 2 of the Stockholm Declaration.
[165] Principle 3 of the Rio Declaration.
[166] Müllerová (n 87) 556.
[167] Ibid.

can be seen also in the fact that the agreement is directed to the future and it seeks long term solutions.[168]

Theoretical approaches to the rights of future generations

There are several theories dealing with the rights of future generations, among others: the already mentioned principle of intergenerational equity, the interest theory of rights, the concept of future rights of future generations, the principle of non-discrimination and the precautionary principle.[169]

The principle of intergenerational equity means that people living today have obligations to people who will live in the future to care for the planet and the environment.[170] The purpose of implementing this principle is not only to ensure the survival of the human species, which depends on the state of the planet, but to ensure that the options available to future generations to meet their own needs are not unduly restricted, which depends to a large extent on the behaviour and choices of people today. Current generations have an obligation to leave the planet in no worse shape than they received it, so that future generations can have equal access to its resources; therefore, each generation is obliged to protect the legacy of past generations and to set aside (in the sense of not using for themselves) an appropriate share of the resources.[171] Professor Edith Brown Weiss has proposed three basic principles of intergenerational equity: 1) Conservation of Options (each generation shall conserve the diversity of natural and cultural resources); 2) Conservation of Quality (each generation shall maintain the quality of the planet so that subsequent generations are entitled to a comparable level of that enjoyed by previous generations); and 3) Conservation of Access (each generation shall provide its members with equitable rights of access to the legacy of past generations and conserve such access for future generations).[172]

---

[168] Ibid.
[169] Ibid 557.
[170] Ibid.
[171] E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity.* Transnational Pub., 1989, s. 616. Cit. in: B. LEWIS, *The Rights of Future Generations within the Post-Paris Climate Regime*, Transnational Environmental Law. 2018, 16.
[172] E. Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity.* in: Abate (n 14) 44.

From the perspective of the interest-based theory of rights, it can be stated that future generations have highly valued interests (in health, livelihood, adequate standard of living) that could be substantially affected by the negative impacts of climate change and therefore have human rights in these respects, to which correspond the obligations of today's generations to take action against climate change. This implies, at the very least, an obligation on current generations not to act in a way that would adversely affect the interests of future generations, even if we do not know their exact identity.[173]

The essence of the concept of future rights of future generations is that the right and the obligation do not occur simultaneously and that the right will be conditional on the existence of its holder. This means that a person will have rights only if he exists.[174] This concept is based on the so-called transitive concept of justice. According to it, rights and duties can only be established between 'adjacent' generations, i.e., those that are likely to overlap in time. Between distant generations, which cannot overlap, mutual rights and obligations do not appear as defensible.[175] The argument of overlapping generations makes sense with respect to situations where there is still a person making a damage but already an injured party. However, if it were a case where the harm will manifest itself in the future, at a time when the person making a damage is no longer likely to exist, and there are no present victims, it is more complicated. The solution could perhaps be such an interpretation of the right to a healthy environment of the present holders that includes an environment healthy enough to be passed on to the next generation without the need for excessive costs to them. In addition to limiting the concept of the rights of future generations to neighbouring generations, there are other ways of interpreting it, such as narrowing it down to only 'own' communities. Communities experience a strong sense of belonging in the transmission of goods from present to future generations, including the environment, so it can be argued that to imply mutual rights and obligations is only within one's own community, not across different cultures and communities.[176]

[173] Müllerová (n 87) 557.
[174] Richard P. Hiskes, 'The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice.' Human Rights Quarterly, vol. 27, no. 4, 2005, 13, 17, 67, 72 in Müllerová (n 87) 557.
[175] Ibid.
[176] Ibid.

Using the principles of non-discrimination and precautionary principle, we conclude that, to the extent that states have the ability to influence the future generations by means of the states' climate change mitigation, then there must be respective obligations of those states towards the future generations[177]. Similarly, decisions that would cause irreversible damage to ecosystems should not be implemented at this time, even if they would bring great benefits to present generations. Small benefits for current generations should not be implemented if they would bring significant disadvantages for future generations. For example, it can be argued that rights relating to the basic subsistence of future generations should take precedence over the 'luxury rights' of present generations. According to this approach, current generations should be obliged to endure certain reduction in their standard of living if this is found to be necessary to meet the basic needs of people in the future.[178]

Climate litigation and future generations

There are currently running several climate cases before courts and tribunals argued in the interests of future generations. They repeat a similar pattern of claimants: the claimant group includes young people and children, and the complaint also argues for the interests of the plaintiffs' future children or future generations in general.[179] In doing so, the plaintiffs seek to represent future generations through individuals from the upcoming generations, in effect implicitly using the concept of adjacent or nearby (future) generations. However, the basis of the claims rests on the harm that is and will be inflicted on persons already living, and the argument of future generations is rather complementary.[180] In other words, plaintiffs remain on the defensive regarding future generations and do not, for example, seek to establish standing to represent unborn individuals. Rather, they are using tactics to engage children and young people in plaintiff groups and point to the higher degree of prejudice to their rights compared to current adults. The trend in the climate change litigation is thus rather conservative, without an ambition to evolve the legal standing for the future generations.[181]

[177] Müllerová (n 87) 558.
[178] Ibid.
[179] Müllerová (n 87) 558.
[180] Ibid.
[181] Ibid 564.

4 Greening of the European Convention on Human Rights

4.1 General comments

The ECHR is an international treaty in force since 1953 under which the member states of the Council of Europe guarantee fundamental civil and political rights within their jurisdictions.[182] The international body with mandate to control the compliance with the ECHR is the ECtHR based in Strasbourg and established in 1959. Its role is to review alleged violations of the civil and political rights set out in the ECHR. Since 1998, individuals can apply to the Court directly.[183] The strength of the ECHR is its effective control system in relation to the rights and freedoms which it guarantees to individuals.[184] Any individual who considers himself or herself to be a victim of a violation of one of the guaranteed rights may submit a complaint to the ECtHR if the admissibility criteria have been met.[185] The ECtHR can find that the state violated the ECHR and can award compensation to the victims and obliges the state to take certain measures.[186]

As far as the Arctic is concerned, five European Arctic countries are party to the ECHR: Finland, Sweden, Norway, Denmark and Iceland. Russia withdrew from the jurisdiction of the court upon its invasion to Ukraine. At the same time, the Committee of Ministers of the Council of Europe decided to exclude Russia from the organisation, of which the ECtHR is part, with the date of 15 March 2022, in response to the war in Ukraine.[187] Thus, the ECtHR has jurisdiction over five Arctic countries, which means that children living in those states can seek protection of their rights guaranteed by the ECHR by submitting their individual complaints to the ECtHR.

The ECtHR has delivered thousands of judgements binding on the concerned countries which have led the governments to alter their legislation

[182] Council of Europe: The Court in brief <https://echr.coe.int/Documents/Court_in_brief_ENG.pdf> accessed 25 July 2022
[183] Ibid.
[184] Manual on Human Rights and the Environment (n 20) 19.
[185] Ibid.
[186] Ibid.
[187] <https://www.reuters.com/world/europe/russian-parliament-votes-exit-european-court-human-rights-2022-06-07/> accessed 25 July 2022

and administrative practice in many areas. The ECtHR itself says that its case-law makes the ECHR a powerful 'living instrument' for meeting new challenges and consolidating the rule of law and democracy in Europe[188]. The topic of environmental rights is a good example of the fact that the changing social values can be reflected in the ECtHR's jurisprudence.

Despite the ECHR lacks any specific guarantee for a healthy environment, the ECtHR has evolved the extensive environmental jurisprudence based on interpretation the rights guaranteed by the ECHR.[189] In particular, the ECtHR has addressed environmental issues by interpreting the right to life (Article 2), the right not to be subjected to inhuman or degrading treatment (Article 3), the right to respect for private and family life as well as the home (Article 8), the right to a fair trial and to have access to a court (Article 6), the right to receive and impart information and ideas (Article 10), the right to respect of freedom of peaceful assembly and freedom of association (Article 11), the right to an effective remedy (Article 13) and the right to the peaceful enjoyment of one's possession (Article 1 of Protocol no. 1).[190] The ECHR thus indirectly provides a certain degree of protection regarding environmental matters.[191] The rich case law brought the Council of Europe to the adoption of the Manual on Human Rights and the Environment, the document summarising the ECtHR's conclusions in this matter and setting out some general principles.

However, from the beginning of this analysis it must be stressed out that the ECHR is not designed to provide a general protection of the environment as such and does not expressly guarantee a right to a safe, clean, healthy and sustainable environment.[192] Thus the ECHR does not provide a protection of the environment *per se*. 'Despite the fact that, since about 1999, the Parliamentary Assembly of the Council of Europe has repeatedly recommended that an amendment or an additional protocol to the ECHR providing for the right of individuals to a healthy and viable environment should be made, this recommendation has consistently been rejected by the Committee of Ministers, on the basis that "the Convention system already indirectly contributes to the protection of the environment

[188] Manual on Human Rights and the Environment (n 20) 135.
[189] Ibid 7.
[190] Ibid 8.
[191] Ibid 8.
[192] Ibid 7.

through existing Convention rights and their interpretation in the evolving case law of the European Court of Human Rights" '.[193]

If the applicants are claiming unfavourable environmental conditions, they must at the same time demonstrate the interference with a subjective right guaranteed by the ECHR and they must personally be victims, i.e. they have to prove a personal impact from environmental damage.[194] This condition makes the legal position of the Arctic children quite harder, but their access to the Court is still guaranteed. On the other hand, the legal standing of the future generations is not recognized by the ECtHR, as they do not have the legal personality.

The ECtHR also emphasizes that it is not primarily upon the ECtHR to determine which measures are needed to protect the environment. This is the task for the national authorities which are according to the ECtHR best placed to make decisions on environmental issues characterized often by the difficult social and technical aspects.[195] Therefore, according to ECtHR case law the 'national authorities enjoy a wide discretion – in the language of the ECtHR a wide "margin of appreciation" – in their decision-making in this sphere. This is the practical implementation of the principle of subsidiarity'.[196] 'According to this principle, violations of ECHR should be prevented or remedied on national level and the ECtHR should intervene only as a last resort after the domestic remedies have been exhausted'.[197]

As well as the environmental jurisprudence of the ECtHR evolved, the children's interests are reflected in the court's case law as well. The ECHR itself makes only two references to children[198] and thus its potential to protect children's rights is not immediately apparent from its text. However, other provisions which makes no reference to children have provided them with greater potential to have their rights protected.[199] The most litigated provision from the children's perspective is, just like in the case of environmental case

[193] Eicke (n 16) para 14.
[194] Rachael Lorna Johnstone, *Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility* (Brill | Nijhoff, 2014), 56.
[195] Manual on Human Rights and the Environment (n 20) 20.
[196] Ibid.
[197] Ibid.
[198] Article 6, the right to a fair trial, makes provision for the press and public to be excluded from all or part of a trial 'where the interest of juveniles. . . require', whereas Article 5(1)(d) makes provision for the detention of a 'minor for the purpose of educational supervision and to bring a minor before the competent legal authority'
[199] Kilkelly (n 142) 248.

law, the Article 8 of the ECHR, the right to respect for private and family life and home.[200] 'Its case law has touched on many areas of family law including adoption, child abduction, alternative care, custody and access, guardianship and identity issues'[201]. The Court has also relied on other children's rights instruments, notably the CRC, in order to ensure that its judgments reflect current standards in children's rights.[202] The interconnection between children's rights and the 'right to a healthy environment' is now seen in the pending case before the ECtHR, *Duarte Agostinho et al v Portugal and 32 other States*, which will be analysed in the Chapter 5 of this thesis.

The following analysis in the Chapter 4 will discuss the ECtHR's environmental case law concerning substantive rights being the right to life (Article 2 of the ECHR) and the right to respect for private and family life, and home (Article 8 of the ECHR). These two rights are the most relevant for deriving the guarantee for a healthy environment of the children living in the Arctic. Even though there have been only few environmental cases related to Article 2 of the ECHR, the extensive environmental case law has been developed based on Article 8 of the ECHR. In several cases the ECtHR has found that severe environmental pollution can affect people's well-being and prevent them from enjoying their homes.[203] At the same time, these two substantive rights are important for the subsequent analysis of the expected new case law regarding climate change, because they are claimed to be violated when the applicants search relief from the climate change impacts.[204] Subsequently, the ECtHR's jurisprudence built on some of the procedural rights will be discussed, because it is argued in theory that the strongest argument for specifically environmental rights focuses on procedural rights.[205] Therefore, it will be analysed whether this field might be beneficial for the Arctic children's interests. The end of the Chapter will deal with the question whether the ECtHR guarantees indigenous rights, as many children from Arctic belong to the indigenous communities.

[200] Ibid.
[201] Ibid.
[202] Ibid.
[203] See below section 4.3.
[204] See below section 5.1.
[205] See below at pp 47.

4.2 The right to life and the environment

Article 2(1) of the ECHR reads:

> *'Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.'*

At the first side, the provision has a negative character, its primary purpose is to prevent the state from deliberately taking life[206]. However, the ECtHR has developed in its case law the 'doctrine of positive obligations' meaning that in some situations the state has a duty to take measures to protect the right to life when it is endangered by persons or activities not directly connected with the state. In other words, the state has a positive obligation to take appropriate steps to safeguard the lives of those within its jurisdiction.[207] Due to the fundamental importance of the right to life and the fact that most infringements are irreversible, the positive obligation of protection can apply in situations where life is at risk. Speaking about the environment, when certain activities make threat to the environment and to the human life at the same time, the Article 2 of the ECHR can be applied even though loss of life has not occurred.[208] The Manual stresses that cases in which issues under Article 2 of the ECHR have arisen are rather exceptional, only in few cases the ECtHR has considered environmental issues under Article 2 of the ECHR. These cases concerned either dangerous activities or natural disasters.[209] One important case from each type will be presented. Relating to the environmental interests of the children living in the Arctic who face the natural disasters because of the climate change effects, this type of cases has a particular significance.

An example of the case concerning dangerous activities is *Öneryıldız v Turkey*[210]. In this case, an explosion occurred on a municipal rubbish tip in Istanbul in 1993, in the area where the illegal dwellings were built. Thirty-nine people living in such dwellings were killed by the explosion. The applicant's

[206] Manual on Human Rights and the Environment (n 20) 22.
[207] Ibid.
[208] Ibid.
[209] Ibid.
[210] *Öneryıldız v Turkey* [GC], App no 48939/99 ECHR, 30 November 2004.

family members were among the victims.[211] The ECtHR specifically mentioned industrial activities to be situations when positive obligations could be invoked.[212] An important fact is that an expert report had been made and had drawn the attention of the municipal authorities to the danger of a methane explosion two years before the accident.[213] Despite of this fact the authorities had taken no action. Therefore, the ECtHR found that since the authorities knew (or ought to have known) that there was a real and immediate risk to the lives of people living around the rubbish tip, they had a positive obligation to take preventive measures to protect lives of those people under Article 2 of the ECHR.[214] Furthermore, the regulatory framework was also considered as defective.[215] Consequently, the ECtHR found violation of Article 2 of the ECHR.

In *Budayeva and Others v Russia*[216] the ECtHR found that the state has a positive obligation to prevent the loss of life also in cases of natural disasters, even though they are beyond human control.[217] The case concerned the loss of lives after severe mudslides after heavy rain falls in town of Tyrnauz in 2000. The inhabitants who managed to escape claimed that there had been no advance warning by the authorities. Furthermore, the rescue forces were lacking.[218] The ECtHR held that Russia had failed its positive obligation to warn the population, to implement evacuation and emergency policies and to carry out a judicial enquiry after the disaster. Moreover, there had been a causal link between the loss of life and serious administrative flaws.[219]

In the *Öneryıldız v Turkey* and *Budayeva and Others v Russia* judgments the ECtHR ruled that measures to prevent infringements of the right to life entails, the primary duty of a state to put in place a legislative and administrative framework[220] which includes making regulations which take into account the special features of a situation or an activity and the level of

[211] Manual on Human Rights and the Environment (n 20) 23.
[212] *Öneryıldız v Turkey* (n 210) para 71.
[213] Manual on Human Rights and the Environment (n 20) 23.
[214] Ibid.
[215] Ibid.
[216] *Budayeva and Others v Russia*, App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 ECHR, 22 March 2008.
[217] Ibid para 135.
[218] Manual on Human Rights and the Environment (n 20) 24.
[219] Ibid.
[220] *Öneryıldız v Turkey* (n 210) para 89; *Budayeva and Others v Russia* (n 216) para129.

potential risk to life[221]; placing emphasis on the public's right to information;[222] and providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible[223]. The main difference between cases is that the state enjoys broader margin of appreciation in case of natural disasters than in case of dangerous activities. The reason for such an approach is the unforeseeable nature of natural disasters which is beyond human control.[224]

Especially this branch of cases relating to natural disasters are of high relevance to children living in the Arctic, since climate change impacts may result in natural incidents occurring increasingly in the Arctic. A challenge that may arise in this context is proving a causal link between the natural disasters and the omissions of the state in question in mitigating climate change. Through a wide interpretation of the doctrine of positive obligations, the ECtHR could recognize such a causal link and thus rule in favour of respective claims.

4.3 The right to respect for private and family life, and the home and the environment

Article 8(1) of the ECHR reads:

> *'Everyone has the right to respect for his private and family life, his home and his correspondence.'*

In many cases the ECtHR has ruled that severe environmental pollution can affect people's well-being and prevent them from enjoying their homes to such an extent that their rights under Article 8 of the ECHR are violated.[225] This does not include only the physical area, but also the quiet enjoyment of such area within reasonable limits.[226] Therefore, this right might be breached not

[221] *Öneryıldız v Turkey* (n 210) para 90; *Budayeva and Others v Russia* (n 216) paras 129 and 132.
[222] Ibid.
[223] Ibid.
[224] *Budayeva and Others v Russia* (n 216) paras134 and 135.
[225] Manual on Human Rights and the Environment (n 20) 34.
[226] Ibid.

only by obvious interferences such as an unauthorised entry into one's home, but also by intangible sources such as emissions, noise, smells, etc.[227] Speaking about the issues connected to environmental degradation the ECtHR has interpreted the notions of private and family life and home as being closely interconnected. In this regard the ECtHR uses terms 'private sphere'[228] or 'living space'[229] which are protected under Article 8 of the ECHR. A 'home' is according to the ECtHR's broad interpretation place (physically defined area), where private and family life develops.[230]

Even though the environmental case law based on the Article 8 of the ECHR is quite developed, the application of this provision in environmental matters has its limits. The conditions that need to be met in order to engage the Article 8 of the ECHR are the following. First, there must be a direct harmful effect of the environmental factors on enjoyment of private and family life or home.[231] In *Kyrtatos v Greece*[232] this condition has not been met. The ECtHR made it clear that environmental degradation as such does not necessarily involve a violation of Article 8 of the ECHR as it does not include an express right to general environmental protection or nature conservation.[233] In this case the applicants claimed that urban development had led to the destruction of a swamp next to their property and that the area around their home had lost its scenic beauty.[234] The ECtHR emphasised that there are other instruments rather than ECHR which are more appropriate to deal with the general protection of the environment and that the purpose of the ECHR is to protect individual human rights rather than the general aspirations or needs of the community taken as a whole. Therefore, the ECtHR found no violation of Article 8 of the ECHR in this case.[235]

On the other hand, in one of the first environmental cases, *López Ostra v Spain*[236] the ECtHR found the direct harmful effect of the environmental

[227] Ibid.
[228] *Fadeyeva v Russia*, App no 55723/00 ECHR, 30 November 2005 paras 70, 82, 86.
[229] *Brânduşe v Romania*, judgment of 7 April 2009 para 64.
[230] Manual on Human Rights and the Environment (n 20) 34.
[231] eg. *Hatton and Others v. the United Kingdom* [GC], App no.: 36022/97 ECHR, 2003-VIII., para 96.
[232] *Kyrtatos v Greece*, App no 41666/98 ECHR, 22 August 2003.
[233] Ibid para 52.
[234] Manual on Human Rights and the Environment (n 20) 34.
[235] Ibid.
[236] *López Ostra v Spain*, App no 16798/90 ECHR, 9 December 1994.

factors on enjoyment of private and family life. The applicant complained that the fumes and noise from a waste treatment plant made her family's living conditions unbearable. After three years of interference the family moved from their home elsewhere, one of the reasons why they relocated was also an advice of their daughter's paediatrician.[237] The national authorities did not see the negative nuisances as a grave health risk breaching the applicant's fundamental rights.[238] However, the ECtHR found violation of Article 8 of the ECHR because the severe environmental pollution may affect individuals' well-being and prevent them from enjoying their homes in such a way as to affect adversely their private and family life, even though it does not seriously endanger their health.[239]

There are two issues which the ECtHR considers: 1) whether a causal link exists between the activity and the negative impact on the individual and 2) whether the adverse effects have attained a certain threshold of harm.[240] The assessment of the minimum threshold depends for instance on the intensity and duration of the nuisance, its physical or mental effects as well as on the general environmental context.[241] The above conditions have been met in *Fadeyeva v Russia*[242] case. The ECtHR ruled that over a long period of time the concentration of various toxic elements in the air coming from the industrial emissions of a steel plant near the applicant's house seriously exceeded safe levels and as a result the applicant's health had deteriorated. According to the ECtHR the certain level of severity was reached, and the Article 8 of the ECHR was violated.[243]

In *Tătar v Romania*[244] the ECtHR emphasised the importance of the precautionary principle, which is one of the principles of environmental law established by the Rio Declaration, whose purpose was to secure a high level of protection for the health and safety of consumers and the environment in all the activities of the community. The case concerned a gold ore extraction plant which caused risks to people living in its vicinity. Running of the plant also

[237] Manual on Human Rights and the Environment (n 20) 35.
[238] Ibid.
[239] Ibid.
[240] Eg. *Fadeyeva v Russia*, App no 55723/00 ECHR, 30 November 2005, para 69.
[241] Ibid.
[242] *Fadeyeva v Russia*, App no 55723/00 ECHR, 30 November 2005.
[243] Manual on Human Rights and the Environment (n 20) 36.
[244] *Tătar v Romania*, App no 67021/01 ECHR, 27 January 2009.

caused an accident with a grave water pollution affecting various rivers.[245] Even though the applicant was not successful in proving the causal link between the health problems and the claimed activity, the ECtHR found violation of Article 8 of the ECHR due to the passive approach of the national authorities in particular after the mentioned accident.[246]

Similarly to interpretation of Article 2 of the ECHR, the ECtHR also regarding Article 8 of the ECHR ruled that the states have the positive obligation to take measures to secure the rights enshrined in this article.[247] Such positive measure might be the duty to inform the public about environmental risks.[248] This obligation does not only apply in cases where environmental harm is caused directly by state but also when it results from private sector activities. For instance, in *Guerra and Others v Italy*[249] the ECtHR ruled that public authorities are expected to control emissions from industrial activities so that residents do not suffer smells, noise or fumes coming from nearby factories.[250] The applicants did not complain of the action of the public authorities but of their failure to act when chemical factory producing nuisances was classified as high-risk and caused several accidents resulting in hospitalization of many people living nearby.[251] The ECtHR concluded that the applicants had not received essential information from the public authorities and therefore they had not had the possibility to assess the risks which they and their families might run if they continued to live in the area.[252]

There might be situations when decisions of public authorities affecting the environment cause the interference with the right to respect for private and family life or the home.[253] In such case, the ECtHR requires that the decision must be provided for by law and follow a legitimate aim, such as the economic well-being of the country or the protection of the rights of others. Furthermore, they must be proportionate to the legitimate aim pursued and a fair balance must be struck between the interest of the individual and the interest of the

[245] Manual on Human Rights and the Environment (n 20) 37.
[246] Ibid.
[247] *Guerra and Others v Italy*, App no 14967/89 ECHR, 19 February 1998, para 58.
[248] Ibid para 60.
[249] *Guerra and Others v Italy*, App no 14967/89 ECHR, 19 February 1998.
[250] Ibid para 60.
[251] Ibid.
[252] Ibid.
[253] *Hatton and Others v. the United Kingdom* [GC], App no.: 36022/97 ECHR, 2003-VIII., para 98.

community as a whole.[254] In this regard the ECtHR grants a wide margin of appreciation to the national authorities in determining how the balance should be struck, because they are best placed to determine what might be the best policy.

The overview of the main Court's findings regarding interpretation of the Article 8 of the ECHR proves that there is a certain level of the protection of the right to healthy environment and children of the Arctic can claim such right towards the Court. This is relevant considering that the consequences of climate change present in the Arctic[255] are very likely to impact people's health, Arctic infrastructure and housing. As such they would not only be dangerous for one's health, but they might also cause community disruption and relocation of families and, thus, result in a violation of children's right to enjoy their home and family life. Respective situations, where Arctic communities would be forced to abandon their homes and resettle somewhere else, will become likely to become more frequent.

4.4 Procedural human rights and environment

The development of the human right to environment is so far rather atypical, as the procedural rights were developed before the substantive right to a healthy environment.[256] In the history of human rights law, the development of procedural rights follows typically the evolution of substantive rights legal history. This might be different in the given case. According to Patricia Birnie, Alan Boyle and Catherine Redgwell, the strongest argument for specifically environmental rights indeed focuses on procedural rights, such as access to environmental information, access to justice and participation in environmental decision-making, rather than on environmental quality.[257] The authors states that 'this approach rests on the view that environmental protection and sustainable development cannot be left to governments alone but require and benefit from notions of civic participation in public affairs

[254] *López Ostra v Spain*, App no 16798/90 ECHR, 9 December 1994, para 51.
[255] See above section 2.2.
[256] Hana Müllerová, 'Human Right to Environment: a Critical Perspective' (Právník, 3/2012), 231.
[257] Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment*, 3rd ed. (Oxford University Press 2009), 288.

already reflected in existing civil and political rights.'[258] Such participation of civil society in public matters improves quality and transparency of the governance both in decision-making process and in enforcement of laws. The open and accountable government is more likely to promote environmental justice.[259] Enjoyment of procedural human rights is thus an example how the human rights can contribute to environmental protection and sustainable development. Considering the research question, the advanced procedural environmental rights can encourage children living in the Arctic to accept an active role in participation in environmental matters and thus to contribute to maintain and protect healthy environment.

Some of the environmental procedural rights were codified on regional level in Aarhus Convention on Access to information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998) adopted by the UN Economic Commission for Europe. The signatories are mainly European States including European Union and some of the former Soviet states. Across the Arctic the Arctic European States are parties to the Aarhus convention except of Russia and Greenland. Aarhus convention takes inspiration from Principle 10 of the Rio Declaration. As was already mentioned, the Rio Declaration focused on the sustainable development and the human rights-based approach was not stressed herein; however, as Alan Boyle pointed out 'public participation is a central element in sustainable development and the incorporation of Aarhus-style procedural rights into general human rights law significantly advances this objective'[260].

Even though the Aarhus Convention is an environmental treaty, it bares characteristics typical for traditional human rights treaties.[261] It is built on the human right of access to justice on procedural elements that serve to protect the rights to life, health and family life; it confers rights directly on individuals and not only to states; and most importantly, the essential elements of the Aarhus Convention, being the access to information, public participation in environmental decision-making and access to justice have been incorporated into the ECtHR case-law[262]. Some findings of the ECtHR in the field of

[258] Ibid.
[259] Ibid.
[260] Alan Boyle, 'Human Rights and the Environment: Where Next?' (The European Journal of International Law Vol. 23 No. 3, 2012), 622.
[261] Ibid 623.
[262] Ibid 623.

participatory rights in environmental matters will be summarized in the following section.

However, there are some differences between the Aarhus Convention and the ECHR, because in the Aarhus Convention there are some features which are not presented in traditional human rights treaties such as ECHR.[263] For instance, the Aarhus Convention recognizes the right to environmental information to be more generally accessible, while the ECHR requires the access to information only insofar it is necessary to protect the other rights – to life, private life, etc.[264] What is more important, the Aarhus Convention does not require the status of victim as it is needed under ECHR. Under Article 4 of the Aarhus Convention the access to environmental information is not dependent on being personally affected and NGO's promoting environmental protection are entitled to information even though they have no particular right or interest in the matter.[265]

Information and communication on environmental matters

The freedom of expression is guaranteed by the ECHR in its Article 10. This right shall include freedom to receive and impart information and ideas without interference by public authority.

The ECtHR set limits to this provision in its interpretation and held that the freedom to receive information under Article 10 of the ECHR is not construed to impose on public authorities a general obligation to collect information relating to the environment of their own motion.[266] In the case *Guerra and Others v Italy* the applicants complained that the authorities did not inform the public about the risky activities of the chemical factory and about the procedures to be followed in case of an accident violated their right to freedom of information under Article 10 of the ECHR.[267] In this case the Court found that states do not have an obligation to collect, process and disseminate environmental information because such an obligation would prove hard for public authorities to implement rules how and when the information should be

[263] Patricia Birnie, Alan Boyle, Catherine Redgwell, *International Law & the Environment*, 3rd ed. (Oxford University Press 2009), 290.
[264] Ibid.
[265] Ibid.

[266] Manual on Human Rights and the Environment (n 20), 73.
[267] See above text from n 249 – 252.

disclosed and who shall receive it.[268] Nevertheless, in the same case the Court found that Article 8 of the ECHR (right to private life) was infringed because the relevant information about possible risks had not been made available and the applicants were not able to reach the information and to assess the risks they might be exposed if they continued to live near the factory.[269] The Court thus emphasized the importance of public access to the relevant information.

The similar requirements as those found under Article 8 of the ECHR in *Guerra and Others v Italy* apply also according to Article 2 of the ECHR. In *Öneryildiz v Turkey*[270] the Court repeated that the emphasis had to be placed on the public's right to information and extended the duty to inform derived from *Guerra and Others v Italy*. The Court held that even though the applicant was able to assess some of the risks, the public authorities have duty to proactively act and to inform the applicant if there is a situation of real and imminent danger to the applicant's physical integrity.[271] Therefore, the Court found a violation of Article 2 of the ECHR and concluded that the authorities knew or should know that the inhabitants of the particular area were faced with a real and immediate risk and by not remedying the situation, the authorities failed to comply with their duty to inform the inhabitants of potential health and environmental risks. If the authorities would duly inform the inhabitants, they might have been able to assess the danger.[272] The Court reaffirmed this position in *Budayeva and Others v Russia*[273], concerning the devastation of the town of Tyrnauz by the mudslide, when the authorities failed to inform the public about the life-threatening emergency.[274]

Direct influence of Aarhus Convention can be seen in *Tătar v Romania.* In this case concerning the operation of the gold mine the Court referred to international environmental standards and pointed out that 'the rights of access to information in environmental matters were enshrined in the Aarhus Convention and that one of the effects of the Council of Europe's Parliamentary Assembly Resolution 1430 (2005) on industrial hazards was to extend the duty of States to improve dissemination of information in this sphere.'[275]

---

[268] *Guerra and Others v Italy*, App no 14967/89 ECHR, 19 February 1998, para 51.
[269] Ibid para 60.
[270] See above text from n 210 – 215.
[271] Manual on Human Rights and the Environment (n 20), 73.
[272] Manual on Human Rights and the Environment (n 20), 73.
[273] See text above from n 216 – 219.
[274] Manual on Human Rights and the Environment (n 20), 73.
[275] Ibid 77.

Decision-making process in environmental matters and public participation

The Court has recognized the importance of the involvement of individuals in the decision-making process related to issues that could affect the environment and where the rights under the Convention are at stake.[276] The Court summarized principles in the case *Hatton and Others v the United Kingdom*[277], which were subsequently applied throughout the Court's case law. In this case applicants complaint about the noise pollution produced by the air traffic at an international airport and related policy which governed the air traffic.[278] The Court had to consider the question of public participation in the decision-making process in the context of enjoyment of the right to private life and home under Article 8 of the ECHR.[279] The Court examined two aspects: the substantive merits of the government's decision to review its compliance with Article 8 of the ECHR and then the procedural question, i.e. whether the interest of the individual has been taken into account in the decision-making process.[280] Particularly in *Hatton and Others v the United Kingdom* the Court did not find the violation of the Convention, among other reasons because the decision-making process was open for the applicants to make representations and they had possibility to challenge the adopted decisions before the court.[281] Nevertheless, the Court stated that the public authorities, when making decisions related to the environment, must consider the interests of individuals who may be affected and stressed the importance of the ability of the public to make representations to the public authorities.[282]

The case of *Taşkin and Others v Turkey*[283], concerning the granting of permits to operate a goldmine, is of great importance. The Court found a violation of right to private and family life and home and explicitly recognized that even though Article 8 of the ECHR does not contain a procedural requirement, the decision-making process must be fair and afford due respect

[276] Ibid 79.
[277] *Hatton and Others v. the United Kingdom* [GC], App no.: 36022/97 ECHR, 2003-VIII.
[278] Manual on Human Rights and the Environment (n 20), 79.
[279] Ibid.
[280] Ibid 80.
[281] Ibid.
[282] Ibid.
[283] *Taşkin and Others v Turkey*, App no 46117/99 ECHR, 30 March 2005.

to the interests of the individual.[284] The fact that Turkey is not a party to the Aarhus Convention did not stop the Court from reading Aarhus rights into the Convention in a particularly extensive form. 'The interests of those affected must be taken into account and given appropriate weight when balancing them against the benefits of economic development.'[285]

Furthermore, the Court in *Taşkin* held that 'where a State must determine complex issues of environmental and economic policy, the decision-making process must firstly involve appropriate investigations and studies in order to allow them to predict and evaluate in advance the effects of those activities which might damage the environment and infringe individuals' rights and to enable them to strike a fair balance between the various conflicting interests at stake.'[286] Even though it is not stated expressly, this ruling aims to necessity of the environmental impact assessment.

Alan Boyle concludes that from *Taşkin* evolves that 'the most important contribution existing human rights law has to offer with regard to environmental protection and sustainable development is the empowerment of individuals and groups affected by environmental problems, and for whom the opportunity to participate in decisions is the most useful and direct means of influencing the balance of environmental, social, and economic interests.'[287] Such empowerment of individuals and groups means that the Arctic children can use the advantage of the participatory rights and contribute to the environmental protection by their activism. Thanks to the CRC are their participatory rights even stronger, because the CRC guarantees the child's right to be heard[288], or the obligation that any decision concerning them should be based on the primary consideration of the best interests of the child.[289]

The influence of the human rights instrument on the environmental protection is therefore undisputable; however, the Court reminds that only those specifically affected have a right to participate in the decision-making process, as the Court does not recognize an *actio popularis* to protect the environment. In other words, applications brought to the Court evolving from

[284] Ibid para 118.
[285] Alan Boyle, 'Human Rights and the Environment: Where Next?' (The European Journal of International Law Vol. 23 No. 3, 2012), 624.
[286] Ibid.
[287] Ibid, 625.
[288] Article 12.2 of the CRC.
[289] Article 3.1 of the CRC.

the mere activism of individuals or NGOs cannot be reviewed and in such case environmental matters cannot be considered by the Court.[290]

4.5 The rights of indigenous peoples

The Arctic is home to many children belonging to indigenous peoples. When we speak about the environmental rights of children living in the Arctic, the indigenous peoples cannot be omitted as their lives are very affected by the climate change and environmental degradation. Apart from the traditional individual human rights the indigenous peoples enjoy also the indigenous rights. It is because the individual human rights common for all the people are not sufficient for protection of certain values associated with the indigenous status. There are several aspects which distinguish the indigenous rights from the traditional human rights. While general human rights protect individuals within the dominant culture of the state, the indigenous rights aim to ensure that the community can exist outside of the dominant culture.[291] The content of the indigenous rights is therefore different and serve to protect values such as self-determination of the individual, cultural ways of life like traditional economic activities, property rights relating to land and natural resources, language and education. The important indigenous rights are the right to self-determination and political participation which relate to the right to autonomy or self-government in matters relating to internal and local affairs of indigenous peoples.[292] The typical characteristic of the indigenous rights is that they are often collective rights, while the general human rights are rather individual. As the indigenous peoples are also minorities within the states, they also enjoy minority rights which shall ensure equality of the minority groups with the rest of the population. The historical experience demonstrates that the existence of the indigenous rights within general human rights is important and desirable, as their aim is to ensure that the indigenous community can exist at all, while well-being of its members and sustainable development of such community shall be guaranteed.

[290] Ibid.
[291] Durfee, Johnstone (n 11) 172.
[292] Ibid.

As was described in the Chapter 2, many of the indigenous rights are endangered by climate change and the environmental degradation in general. Due to the changing natural conditions some cultural ways of life like traditional economic activities (hunting, fishing) are becoming more difficult and even impossible.[293] Future of some communities is uncertain and possible relocation of the communities might violate the indigenous children's right to self-determination or property rights relating to land and natural resources. The indigenous children are somehow even more vulnerable to climate change impacts than other children, it is because the indigenous peoples regard their environment as an integral part of their way of life.[294] Children can easily lose their ties to the cultural identity when particular components of their culture will cease to exist. The loss of the cultural identity presents a severe threat to a mental health of children from indigenous communities.[295]

The question to be answered in this section is, whether the indigenous rights of children living in the Arctic are guaranteed and protected under the ECHR, as the enjoyment of such rights is inseparably connected with the enjoyment of healthy environment by the indigenous children.

In general, it should be reminded that the ECHR is based on the individualistic approach in protecting of the human rights. The applicants seeking environmental protection under ECHR must be personally victims, i.e. they have to prove a personal impact from environmental damage.[296] Furthermore, the environmental case law is built on the individualistic rights of the Convention. These facts do not fit to the concept of the indigenous rights which are often collective.

Indeed, the ECtHR's case law relating to indigenous rights proves that the interpretation of the ECHR in this field was not very beneficial for indigenous peoples so far. In this regard, relevant is the case *Handölsdalen Sami Village and Others v Sweden*[297], which concerned the rights of four villages of Sami

[293] See above section 2.2.
[294] Morrow (n 68) 347.
[295] See above section 2.2.
[296] Rachael Lorna Johnstone, *Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility* (Brill | Nijhoff, 2014), 56.
[297] *Handölsdalen Sami Village and Others v Sweden* App no 39013/04 ECHR, 17 February 2009.

people[298] to land use for themselves and their reindeer herds.[299] In particular, the land used for winter grazing was in question, as these areas were not used as regularly as the grazing mountains throughout the rest of the year. In 1990, over 500 landowners initiated proceedings against five Sami villages (including the four applicants). They disputed the Sami villages' claim that they had those grazing rights if not through law, then through prescription from time immemorial.[300] The Swedish Courts agreed with the landowners that the Sami villages would need contracts to establish specific grazing rights. Although the villages got standing and qualified as victims before the ECtHR, the Court did not acknowledge their claim to land use.[301] The Court found that the villages' claim to a right to winter grazing was not sufficiently established to qualify for protection under the right to property and found this part of the application inadmissible.[302] The Sami villages contended that the extensive burden of proof imposed on them to provide evidence on the specific locations they had been on with their herds during the last 200 years was unreasonable and made it significantly harder for them to prove their claim to the grazing areas than for the opposing landowners to question it.[303] Another case, *Chagos Islanders v United Kingdom*[304] on the forced eviction of the Chagossians in the 1960s was declared manifestly ill-founded and did not include any substantive consideration of their rights.[305] There is a branch of the case law in which the ECtHR interpreted the Article 8 of the ECHR in such a way that the right to lead one's life in accordance with a cultural identity and the right to choose freely a cultural identity evolved.[306] This cases often concern the individuals belonging to Roma and Travellers. In *Chapman v The United Kingdom*[307] the

[298] Sami people are a Finno-Ugric-speaking people inhabiting the region of Sápmi (Lapland), which today encompasses large northern parts of Norway, Sweden, Finland, and of the Murmansk Oblast, Russia.
[299] Cornelia Klocker, 'Empowerment of indigenous and ethnic groups: Comparing cases on land use under the ACHPR and ECHR' (Völkerrechtsblog, 2019), 1.
[300] Ibid.
[301] Ibid.
[302] *Handölsdalen Sami Village and Others v Sweden* App no 39013/04 ECHR, 17 February 2009, para 56.
[303] Ibid para 41.
[304] *Chagos Islanders v United Kingdom* App no 35622/04 ECHR, 20 December 2012.
[305] Klocker (n 299) 2.
[306] Council of Europe, *Cultural rights in the case-law of the European Court of Human Rights*, January 2011 (updated 17 January 2017), para 32.
[307] *Chapman v The United Kingdom* App no 27238/95 ECHR 18 January 2001.

Court examined the question of the lifestyle of gypsy families.[308] The Court observed that 'there may be said to be an emerging international consensus amongst the Contracting States of the Council of Europe recognising the special needs of minorities and an obligation to protect their security, identity and lifestyle…, not only for the purpose of safeguarding the interests of the minorities themselves but to preserve a cultural diversity of value to the whole community'[309]. The Court recognised that Article 8 of the ECHR entails positive obligations for the state to facilitate the Gypsy way of life, particularly by considering their needs and their different lifestyle both in the relevant regulatory planning framework and in reaching decisions in particular cases.[310] Furthermore, the Court ruled that 'that the applicant's occupation of her caravan is an integral part of her ethnic identity as a Gypsy, reflecting the long tradition of that minority of following a travelling lifestyle'[311]. The case *Yordanova and Others v Bulgaria*[312] concerned a group of Roma who were facing eviction from the land where some of them lived for over forty years.[313] The Court found that enforcing the eviction order would amount to a violation of the right to private and family life (Article 8 of the ECHR). However, the Court held that it was 'not necessary to examine separately' whether there would be a violation of the right to property even though they would lose their property once evicted and become homeless.[314]

To sum up, the ECHR does not contain any specific indigenous rights and its approach to rights protection is very individualistic. The Article 8 of the ECHR served as the basis for certain protection of the cultural identity, on the other hand, the indigenous rights to land were not recognised under the right to property guaranteed by the ECtHR. It can be concluded that the ECHR is not a proper forum for protection of the indigenous rights.

[308] Council of Europe, *Cultural rights in the case-law of the European Court of Human Rights*, January 2011 (updated 17 January 2017), para 34.
[309] *Chapman v The United Kingdom* App no 27238/95 ECHR 18 January 2001, para 93.
[310] Ibid para 96.
[311] Ibid para 73.
[312] *Yordanova and Others v Bulgaria* App no 25446/06 ECHR 24 September 2012.
[313] Klocker (n 299) 2.
[314] Ibid.

5 Climate change litigation before the European Court of Human Rights

In the present days when the climate change litigation is on its growth all over the world, it is not surprising that the ECtHR have been called upon to interpret the application of the ECHR in the light of rules and principles developed in the course of international climate change law.[315] Hence there are few undecided climate litigation cases before ECtHR and more are coming. The applicants seek to challenge various aspects of domestic climate change regulations in the various respondent states alleging that the states violate their human rights. Some of these cases will be discussed in this Chapter, being: *Duarte Agostinho et. Al v Portugal and 32 other States*[316] (referred in this thesis as *Duarte Agostinho*)*; Uricchio v. Italy and 32 other States*[317] and *De Conto v. Italy and 32 other States*[318](referred in this thesis as Italian cases)*; Greenpeace Nordic and Others v Norway*[319]; and *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*[320] all cases referred in this thesis as the 'pending cases'. As the Court's decisions in such cases are still pending, it is not possible to evaluate the ECtHR's approach to the climate change litigation yet. The following analysis is therefore limited to the pointing on some legal aspects of the pending cases and their possible outcomes based on existing environmental case law of the ECtHR (discussed in Chapter 4) and on similar cases decided in other jurisdictions. In this regard, the Netherland's domestic case

[315] Ole W Pedersen, 'The European Convention of Human Rights and Climate Change – Finally!', Blog of the European Journal of International Law, (22 September, 2020), https://www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/ accessed 25 July 2022.
[316] *Duarte Agostinho et. Al v Portugal and 32 other States,* App no 39371/20, ECHR, app submitted on 7 September 2020.
[317] *Uricchio v Italy and 32 other States,* App no 14615/21, ECHR, app submitted on 3 March 2021.
[318] *De Conto v Italy and 32 other States,* App no 14620/21, ECHR, app submitted on 3 March 2021.
[319] *Greenpeace Nordic and Others v Norway,* App no 34068/21, ECHR, app submitted on 15 June 2021.
[320] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* App no 53600/20, ECHR, app submitted on 26 November 2020.

Urgenda[321] with a successful outcome for the claimants is of special relevance. In this case, the Netherland's supreme court based its decision among other arguments also on the ECtHR's environmental case law. As of June 2022 the relevant chambers of the ECtHR relinquished their jurisdiction concerning some of the pending cases in favour of the Grand Chamber of the ECtHR. Under Article 30 of the ECHR 'Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber.' Such an approach of the ECtHR suggests that the Court acknowledges the importance of the climate change cases and is probably ready to offer its interpretation of the ECHR in this regard.

5.1 Pending climate change cases before ECtHR

The following climate change litigation cases pending before the ECtHR were selected based on its special relevance for children and future generations of the Arctic. *Duarte Agostinho* and similar Italian cases concern the applications filed by children and young adults and their allegations are relevant for future generations as well. Furthermore, the question of extraterritorial jurisdiction is of particular relevance in these cases, and the importance of this question towards Arctic children and future generations will be explained. The case *Greenpeace Nordic and Others v Norway* has been filed by young adults as well and furthermore it comes directly from the Arctic environment. The last case *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* concerns another vulnerable group being seniors, thus the question of vulnerability is common with the subject matter of this thesis. Domestic proceedings in this case show that the question of victim status might not be answered in favour of vulnerable group in some jurisdictions. This problem might apply to

[321] *Urgenda and Others v The State of the Netherlands*, Distric Court, case no.: C/09/456689 / HA ZA 13-1396, judgement of 24 June 2015; *The State of the Netherlands v Stichting Urgenda*, 2018, Court of Appeal, case no.: 200.178.245/01, jedgement of 9 October 2018; *The State of the Netherlands v Stichting Urgenda*, 2019, Supreme Court, case no.: 19/00135, judgement of 20 December 2019.

children and future generations of the Arctic as another vulnerable group; therefore, this case will be considered as well.

Duarte Agostinho and similar Italian cases

Arctic children might be specifically interested in the outcome of a case of their mates from Portugal. The case *Duarte Agostinho*, which was a few days ago as of this writing (on 30 June 2022) referred to Grand Chamber of the ECtHR, has received a lot of attention. The case relates to GHG emissions emanating from 33 states which, allegedly, would participate in global warming and manifesting themselves in heat waves which would impact the applicants' living conditions and health.[322] The applicants are Portuguese children and young adults aged between 8 and 21[323], thus, qualifying the case as an example of climate change litigation leaded by children and young people who seek protection of vulnerable children and future generations (as discussed in general in Chapter 3).

The applicants assert that the forest fires which Portugal has experienced for several years in a row, and particularly since 2017, are the direct result of global warming.[324] The applicants allege being at risk of contracting health problems owing to these fires and having already experienced, following or during the forest fires, trouble sleeping, allergies and breathing difficulties all exacerbated by the very high temperatures during the hot season. During the forest fires, which sometimes occur several times a year, they have found it impossible to spend time outside, to play or practise a physical activity and schools have temporarily been closed.[325] They also allege that climate change causes very powerful storms in winter which might endanger the home of some of them. The applicants also claim that they feel anxious when faced with natural catastrophes, which have already occurred in their neighbourhoods and which they have sometimes witnessed. Moreover, their anxiety is related to the perspective of living in ever hotter climate throughout their lives which would adversely impact on them and the families which they may have in the

[322] Court communication of case *Duarte Agostinho et. Al v Portugal and 32 other States*, App no 39371/20, ECHR, app submitted on 7 September 2020, communication published on 30 November 2020, pp 1.
[323] Ibid.
[324] Ibid.
[325] Ibid.

future.[326] With the reference on their future families[327] the applicants indirectly point to the future generations as another victims of climate change impacts.

The applicants are complaining about the non-compliance on behalf of the 33 states with their positive obligations pursuant to Articles 2 of the ECHR (right to life) and Article 8 of the ECHR (right to private and family life and home), read in the light of the commitments made by these states within the context of the Paris Agreement.[328] The applicants refer more specifically to the commitment that is retaining the increase of the average temperature of the planet significantly below 2°C in comparison with pre-industrial levels and to pursue the action taken to limit temperature rise to 1.5°C in comparison with pre-industrial levels, it being understood that this would significantly reduce the risks and effects of climate change.[329] The applicants also allege a violation of Article 14 of the ECHR which reads: 'The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status' , in other words, it concerns the right to enjoy ECHR rights without being discriminated. The applicants allege its violation combined with Articles 2 and/or 8 of the ECHR, arguing that global warming affects their generation more specifically and that, given their ages, the mismanagement of some of their rights are more pronounced than those of the rights of preceding generations, given the deterioration in climate conditions which will continue over time. Thus, the applicants claim the discrimination on grounds of age.[330]

As four of the applicants are children, they assert that the aforementioned provisions of the ECHR must be read in the light of the Article 3 of the CRC, which requires that any decision concerning them should be based on the primary consideration of the best interests of the child.[331] They also rely on the principle of inter-generational equity featuring in several international instruments, including the Rio Declaration, the Preamble to the Paris Agreement and the UNFCCC, according to which the right to development

[326] Ibid 2.
[327] Ibid.
[328] Ibid.
[329] Ibid.
[330] Ibid.
[331] Ibid.

must be realised in such a way as it equitably satisfies the relative needs of development and the environment of present and future generations.[332] They feel that there is no objective and reasonable justification for the burden of climate change to be placed on the younger generations owing to the adoption of inadequate measures to reduce global warming.[333]

The applicants consider that the states in question have not fulfilled the obligations incumbent on them pursuant to the provisions of the ECHR, particularly when read in the light of the international climate treaties.[334] The latter charge states with the obligation of adopting measures to regulate their contributions to climate change in an appropriate way: by decreasing the emissions on their territory and on the other territories over which they have jurisdiction; by prohibiting the export of fossil fuels; by compensating for their emissions arising from the import of goods; and by limiting the release of emissions abroad.[335] According to the applicants, the absence of appropriate measures to limit global emissions constitutes *per se* a violation of the states' obligations. The applicants feel that the states share the presumed responsibility regarding climate change and that the uncertainty as to the 'equitable share' of this contribution between the states can only work in favour of the applicants.[336]

Duarte Agostinho case has kicked off the submissions of similar applications to ECtHR seeking relief from climate change impacts. The two of them were submitted by Italian young people in 2021: *Uricchio v. Italy and 32 other States* and *De Conto v. Italy and 32 other States*. As the names of the cases suggests, young people again try to bring a higher number of states before ECtHR without exhausting of domestic remedies (this issue will be described below in section 5.3). In *Uricchio v. Italy and 32 other States* the applicant is an 18-year old lady living in the flood zone in Italy.[337] She claims several health issues physical and psychological caused by the global warming

[332] Ibid.
[333] Ibid.
[334] Ibid 3.
[335] Ibid.
[336] Ibid.
[337] *Uricchio v. Italy and 32 other States* - Climate Change Litigation <http://climatecasechart.com/non-us-case/uricchio-v-italy-and-32-other-states/> accessed on 25 July 2022.

presented by the high temperatures in summer and severe flooding.[338] The applicant relies on Articles 2, 8, and 14 of the ECHR which is one of the similarities with the case *Duarte Agostinho* including the discrimination based on the age, since the harmful effects of climate change would hit the younger generations harder. Furthermore, she alleges the violation of the Article 13 of the ECHR because the domestic remedies are not effective, forcing her to file a complaint in 33 jurisdictions which is a burden impossible for her to bear because of her young age and limited financial resources.[339] *De Conto v. Italy and 32 other States* follow the same path as the previous cases. The 20-year-old applicant from Italy alleges that she suffered from psychological disorders caused by the natural events that happened in the are where she lives.[340] She also relies on the Articles 2, 8, 13 and 14 of the ECHR and claims that the respondent states which are also parties to the Paris Agreement have failed to take sufficient measures to implement their obligations from the Paris Agreement, in other words, the states have not taken an appropriate action on climate change.[341]

Greenpeace Nordic and Others v. Norway

This case concerns directly young people living in the Arctic. The applicants are six young climate activists and two NGOs (Greenpeace and Young friends of the Earth) from Norway, who brought before ECtHR the issue of Arctic oil drilling.[342] Climate change litigation, in general, deals with several aspects of the climate change impacts and the applicants of related claims seek very often a change of regulations concerning the reduction of GHG emissions. However, this case is the first that exclusively focuses on new oil and gas exploration licences in the Arctic (Barents Sea), which distinguish it from the other climate change cases before ECtHR. The applicants believe that by allowing new oil drilling during a climate crisis, Norway is in breach of fundamental human

[338] Ibid.
[339] Ibid.
[340] *De Conto v. Italy and 32 other States* - Climate Change Litigation <http://climatecasechart.com/non-us-case/de-conto-v-italy-and-32-other-states/> accessed 25 July 2022.
[341] Ibid.
[342] *Greenpeace Nordic and Others v Norway*, App no 34068/21, (ECHR, 15 June 2021), para 58.

rights guaranteed by the ECHR, affecting especially young people. Referring to the ECtHR's extensive environmental jurisdiction based on the Articles 2 and 8 of the ECHR, the applicants are of the opinion that the Court's interpretation of the Articles 2 and 8 of the ECHR also includes a right to a healthy environment free from damages due to climate change.[343]

Compared to the previous mentioned cases, the Norwegians exhausted the domestic remedies by means of the three rounds in Norway judicial system[344] which increases the chance of admission by the ECtHR. Domestic courts did not find the violation of the Norwegian Constitution which guarantees the right to a healthy environment and oblige the state to implement measures to secure this right. In particular, the applicants claimed at national level that the licences granted for deep-sea extraction from sites in Barents Sea would allow access to yet undeveloped fossil fuel deposits and such development is inconsistent with the climate change mitigation required to avert global warming of 1,5 ºC and possibly 2 ºC in excess of pre-industrial levels. The area made accessible by the licences would be the northernmost yet developed and would be right about the ice zone, thus tankers would be exposed to unprecedented risks of damage and spills, and their operation would deliver emissions of black carbon to the highly sensitive Arctic. Apart from the Norwegian constitution the applicants referred to precautionary principle, the no harm principle and human rights. All the domestic instances rejected the case. For instance, the district court declared that emissions of CO2 abroad from oil and gas exported from Norway are irrelevant when assessing whether the licencing decision entails a violation of Article 112.[345] The Norwegian Supreme Court was of the opinion that the granting of oil permits was not contrary to the ECHR because it did not represent 'a real and immediate risk' to life and physical integrity.[346] The

[343] Ibid para 62.

[344] *Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v Arctic Oil*, Oslo District Court case no.: 16-166674TVI-OTIR/06, judgement of 4 January 2018, Borgarting Court of Appeal case no.: 18-060499ASD-BORG/03, judgement of 23 January 2020, Supreme Court of Norway case no.: 20-051052SIV-HRET, judgement of 22 December 2020.

[345] *Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v Arctic Oil*, Oslo District Court case no.: 16-166674TVI-OTIR/06, judgement pronounced on 4 January 2018, 45.

[346] *Greenpeace Nordic Ass'n v. Ministry of Petroleum and Energy (People v Arctic Oil*, Supreme Court of Norway case no.: 20-051052SIV-HRET, judgement pronounced on 22 December 2020, para 168.

Supreme Court reasoned that when the opening decision was made, the climate effects of petroleum extraction in the Barents Sea were highly uncertain because it was not possible to know if oil and gas would be found at all.[347] Furthermore, the Supreme Court reasoned that there will be no significant global environmental consequences of the opening or the exploration and that the effects will not occur until profitable discoveries have been made.[348] And the authorities will have a right and obligation to disprove the licences if the general consideration for the climate and environment at the time so indicates.[349]

After unsuccessful domestic proceedings, the applicants went to ECtHR claiming that by issuing oil and gas drilling licences the Norwegian government violates their rights under Article 2 and 8 of the ECHR.[350] They also allege that the government has failed to adopt necessary and appropriate measures to address the risk of the climate crisis.[351] Moreover, they argue that the state has further failed to declare, describe and assess total climate effects, including exported emissions, of the continued and expanded extraction, thereby also infringing the applicants' rights.[352] In addition, they argue that the Norwegian courts failed to adequately assess their claims and thus failed to provide plaintiffs access to an effective domestic remedy under Article 13 of the ECHR.[353]

One of the applicants, belonging to the indigenous Sami people[354], argued that the exploration licences would violate his right to be protected against decisions endangering his life and wellbeing. He claims that the Sami culture is closely related to the use of nature and that fisheries are essential to this culture and way of life.[355] Another applicant argued that the climate crisis would depriving her of belief in the future and leading to depression.[356]

---

[347] Ibid para 216.
[348] Ibid para 217.
[349] Ibid para 223.
[350] *Greenpeace Nordic and Others v Norway*, App no 34068/21, (ECHR, 15 June 2021), para 61.
[351] Ibid para 58.
[352] Ibid para 58.
[353] Ibid para 58.
[354] See definition in n 296.
[355] *Greenpeace Nordic and Others v Norway*, App no 34068/21, (ECHR, 15 June 2021), para 62.
[356] Ibid.

The ECtHR characterised the case as a potential 'impact case', which indicates that a judgment may have a significant impact on the Norwegian legal system, the European legal system, or the application of ECHR.[357] Norway asked the Court to dismiss the case or to find that there has been no violation. In its reply, the Norwegian state argued that the complaint should be declared inadmissible and claimed that Russia's 2022 invasion of Ukraine justifies the search for more oil and gas today, thus increasing GHG emissions for another 30 years or more.[358] The author of this thesis opines that the respondent state's argument cannot be relevant in the present case, as the oil and gas drilling licences were issued several years before the Russian invasion to Ukraine and the applicants questioned their legitimacy from the climatic point of view before domestic courts also much sooner. It is going to be seen how the ECtHR will assess such argumentation.

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

Another example of the climate change litigation before ECtHR concerns other special vulnerable group being the senior women from Switzerland. Even though this case does not concern children or future generations, it can be considered in the same 'group' of cases, as elderly people represent another special vulnerable group towards climate change impacts and; therefore, the case assessment bares similarities with children's and future generations' litigation. Reasons why elderly people are vulnerable group includes more frequent heat-related deaths which occur much more frequently in older persons, and especially in older women[359]. Furthermore, older persons are

[357] <https://www.greenpeace.org/norway/arctic-oil-case-takes-big-steps-towards-the-european-court-of-human-rights/> accessed 25 July 2022

[358] <https://www.greenpeace.org/norway/pressemelding/50828/calls-for-rejection/> accessed 25 July 2022

[359] ROBINE et al., Report on excess mortality in Europe during summer 2003, February 2007, Figure 5 (doc. 30 p. 741); ROBINE et al., Death toll exceeded 70,000 in Europe during the summer of 2003, C. R. Biologies 331 (2008) 171–178, p. 174 (doc. 31 p. 743); WHO, Gender, Climate Change and Health, Geneva 2010, p. 9 (doc. 32 p. 746); DOMBOIS et al., Gesundheitliche Auswirkungen der Klimaänderung mit Relevanz für die Schweiz, Nov. 2004, p. 33 (doc. 33 p. 750) in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* App no 53600/20, (ECHR, 26 November 2020), para 4.

significantly affected due to impaired thermoregulation[360]. Against this background, the senior women claim as children in *Duarte Agostinho* and similar Italian cases, that they are more vulnerable towards the consequences of global warming. The applicants are, on the one hand, an association under Swiss law for the prevention of climate change whose members are women with an average age of 73 and, on the other, four elderly women (between 78 and 89) who complain of health problems, worsening during heatwaves, which undermine their living conditions and health.[361] The applicants already exhausted the domestic remedies.[362] They also called on the authorities to take the necessary measures to meet the 2030 goal set by the Paris Agreement on climate change. The domestic authorities dismissed their request as inadmissible arguing that the applicants are not individually affected in terms of their rights and could not be regarded as victims.[363] The Swiss court pointed out that women of over 75 were not the only population group affected by climate change.[364] After exhausting the domestic remedies the applicants directed their claim to the ECtHR. Also in this case, the chamber to which the case had been allocated originally relinquished jurisdiction in favour of the Grand Chamber of the ECtHR. This reinforces the potential of the case to become a landmark ruling determining the ECtHR's approach to climate change.[365]

The applicants argued that the respondent state has failed to fulfil its positive obligations to protect life effectively (Article 2 of the ECHR) and to

[360] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App no 53600/20, (ECHR, 26 November 2020), para 4.
[361] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App no 53600/20, (ECHR, 26 November 2020), para 58.
[362] *Verein KlimaSeniorinnen Schweiz et al. v Federal Department of the Environment, Transport, Energy and Communications (DETEC)*, Federal Administrative Court of Switzerland, judgement A-2992/2017 of 27 November 2018, Federal Supreme Court of Switzerland, judgement 1C_37/2019 of 5 May 2020.
[363] *Verein KlimaSeniorinnen Schweiz et al. v Federal Department of the Environment, Transport, Energy and Communications (DETEC)*, Federal Supreme Court of Switzerland, judgement 1C_37/2019 of 5 May 2020, para 5.4.
[364] Johannes Reich, Flora Hausammann; Nina Victoria Boss: 'Climate Change Litigation Before the ECtHR: How Senior Women from Switzerland Might Advance Human Rights Law', *VerfBlog*, 16 May 2022, <https://verfassungsblog.de/climate-change-litigation-before-the-ecthr/>, DOI: 10.17176/20220516-182357-0 accessed 25 July 2022.
[365] Ibid.

ensure respect for their private and family life, including their home (Article 8 of the ECHR).[366] They allege in particular that the positive obligations under the ECHR provisions should be considered in the light of the principles of precaution and intergenerational fairness contained in international environmental law.[367] In this context they complain that the responding state has failed to introduce suitable legislation and to put appropriate and sufficient measures in place to attain the targets for combating climate change. They further complain that they have not had access to a court within the meaning of Article 6 of the ECHR, alleging that the domestic courts have not properly responded to their requests and have given arbitrary decisions affecting their civil rights, in particular totally rejecting their specific situation of vulnerability in relation to heatwaves.[368] Lastly, the applicants complain of a violation of Article 13 of the ECHR (right to an effective remedy), arguing that no effective domestic remedy is available to them for the purpose of submitting their complaints under Articles 2 and 8 of the ECHR.[369]

5.2 Succesful *Urgenda*

We do not know how the ECtHR will decide the pending cases, but we can search a clue in the Dutch climate change case *Urgenda*[370], which might serve as an inspiration for the ECtHR. It is because the applicants in this case, labelled as a landmark for future climate change litigation[371], successfully argued before the domestic courts also with the ECtHR's environmental interpretation of Articles 2 and 8 of the ECHR.

The claimant in this case was a Dutch NGO called Urgenda (the name is an abbreviation of 'urgent agenda') with a mission to contribute to

[366] *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* App no 53600/20, (ECHR, 26 November 2020), para 61.
[367] Ibid.
[368] Ibid.
[369] Ibid para 62.
[370] See definition under n 321.
[371] André Nollkaemper, Laura Burges, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022.

sustainability.[372] In 2013, Urgenda launched the lawsuit against the state of Netherlands with the request to order the state to reduce GHG emissions by 40% (or at least by 25%) at the end of the year 2020 in comparison the year 1990.[373] The issue was that Netherland had committed to achieve the target according to the 2007 Fourth Assessment Report of the IPCC, stating that it aimed to reduce Dutch emissions with 30% by 2020. However, in 2011 the government changed this target to 14-17% with no explanation.[374]

In the Dutch judicial system Urgenda went through three instances and each time prevailed. The District Court ordered the state to 'limit the joint volume of Dutch annual GHG emissions, or have them limited, such that this volume will have been reduced by at least 25% at the end of 2020 compared to the level of the year 1990'[375]. Differently to Urgenda's claim, the District Court did not ground its conclusion directly on human rights law.[376] It held that Urgenda as a legal person could not invoke human rights provisions stemming from the ECHR in a similar manner as natural persons (eg. the right to life).[377] As a result, the District Court based its decision on domestic civil tort law.[378] This argumentation was however revised in the upper court instances, where the Court of Appeal and later the Supreme Court followed Urgenda's argumentation to invoke violations of Articles 2 and 8 of the ECHR directly and claim the violation of respective human rights.[379] This reasoning provides a clear evidence that the protection from climate change consequences may qualify as a human right and thus an exemplification of the intersection between human rights and environmental law, as presented in Chapter 3. In general, throughout the procedure, international law played an important role. The Supreme Court reiterated the ECtHR's findings according to which the

[372] Ibid.
[373] Ibid.
[374] Ibid.
[375] *Urgenda and Others v The State of the Netherlands*, Distric Court, case no.: C/09/456689 / HA ZA 13-1396, judgement of 24 June 2015, para 5.1.
[376] André Nollkaemper, Laura Burges, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022.
[377] *Urgenda and Others v The State of the Netherlands*, Distric Court, case no.: C/09/456689 / HA ZA 13-1396, judgement of 24 June 2015, para 4.45.
[378] Hesselman (n 111) 372.
[379] Ibid 372.

ECHR must also take into account the relevant rules of international law and the consensus emerging from specialised international instruments.[380] Also, principles of environmental law were relied upon for interpretative purposes or to support conclusions, such as the obligation to exercise due diligence in preventing significant transboundary harm, and the precautionary principle.

The Dutch state did not agree with application of ECHR. It had rather argued that even though recognizing the risks of climate change, Articles 2 and 8 of the ECHR would not contain legal obligations to offer protection against risks of climate change. The state alleged that the risks would not be sufficiently specific; that they would be of a global nature, and in any case that the environment as such would not be protected by the ECHR.[381] The Supreme Court rejected these arguments and confirmed that the risks of climate change were within the scope of the ECHR.[382] The Supreme Court noted that Articles 2 and 8 of the ECHR have generally been found to apply in relation to environmental threats. Moreover, it concluded that environmental threats may also affect larger groups or the population as a whole or materialise over a longer period of time. The Supreme Court relied on the ECtHR's case law on Article 2 of the ECHR (eg *Öneryildiz v Turkey*)[383] and Article 8 of the ECHR (eg *Tătar v Romania*)[384] and it held that according to these provisions the state has the positive obligation to take measures against the risk of dangerous climate change.[385]

An important outcome of this ruling is that the risks caused by climate change are sufficiently real and immediate to bring them within the scope of Articles 2 and 8 of the ECHR. The Supreme Court noted that these risks may take a wide variety of forms, including sea level rise, deteriorated air quality, increasing spread of infectious diseases, and disruption of food production and

[380] *Urgenda* Supreme Court judgement, para 5.4.2.
[381] André Nollkaemper, Laura Burges, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022.
[382] Ibid.
[383] See above n 210.
[384] See above n 244.
[385] *Urgenda* Supreme Court judgement, para 5.2.2-5.2.3, 5.31-5.3.2 and 5.6.2. in Hesselman (n 111) 373.

drinking water supply.[386] We may not know what risks will materialize when. However, the Supreme Court found that without adequate climate policy, the combined effect of such risks may lead to hundreds of thousands of victims in Western Europe in the second half of this century alone.[387] The fact that these risks would only become apparent in a few decades did not mean that Articles 2 and 8 of the ECHR would not offer protection against this threat. The Court found that a 'real and immediate risk' to human rights existed due to the absence of sufficient emissions reductions, especially when considering the very rapidly depleting global carbon budgets and the extremely small windows of opportunity to credibly address risks, as well as the clearly anticipated very serious effects of dangerous climate change. In this context, the Court also relied on the precautionary principle following from the case law such as *Tătar v Romania*.[388]

Another question in the case was whether the positive obligations according to Articles 2 and 8 of the ECHR contained a specific obligation at the expense of the Dutch government to reduce GHG emissions by 25% in 2020, as had been claimed by Urgenda. The approach of the Dutch courts to this question is perhaps the most remarkable aspect of the judgments.[389] The Supreme Court followed the interpretative doctrine of 'common ground' or 'European consensus' as developed by the ECtHR cases such as *Demir and Baykara v Turkey,* and which states as follows: In the interpretation of the ECHR, courts can rely on international instruments, whether binding or not, as long as these "denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies."[390] In other judgments, the ECtHR had, in the interpretation and application of the ECHR, also given weight to scientific insights and generally accepted standards that did not take the form of binding

[386] André Nollkaemper, Laura Burges, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022.
[387] Ibid.
[388] Ibid.
[389] Ibid.
[390] *Urgenda* Supreme Court judgement, para 5.4.2.

obligations; see eg *Öneryildiz v Turkey*[391], where the Court considered a variety of non-binding texts of the Council of Europe in the field of the environment and industrial activities. On this basis, it was still quite a step for the Supreme Court to conclude that a target as specific as 25% reduction by 2020 was 'common ground'. In the *Urgenda* case, the Court relied specifically to the fact that the 25% target had been endorsed in various forms by the yearly Conferences of the Parties to the UNFCCC and that the EU had taken this scenario as its point of reference.[392] The Supreme Court found that these resolutions and statements established a high degree of consensus on the urgent need for developed countries to reduce GHG emissions by at least 25-40% by 2020, and that this consensus gives concrete meaning to the positive obligations under Articles 2 and 8 of the ECHR.[393]

The Supreme Court referred in its reasoning also to the 'margin of appreciation' concept.[394] In reference to this concept, the Supreme Court conceded that states parties to the ECHR generally enjoy a considerable margin of appreciation in such complex technical and social spheres, in other words, they are free to decide on the most appropriate measures to ensure effective protection of human rights, and this may include choices related to mitigation or adaptation.[395] In other words, an impossible or disproportionate burden cannot be placed on the state.[396] However, states' margin of appreciation can be effectively curbed by developing international scientific and legal consensus about what constitutes dangerous climate change, or what may constitute necessary emissions reductions pathways towards preventing it.[397] If the Netherlands wants to successfully argue that an unreasonable or impossible burden for the protection of human rights is placed on it, it will

[391] See above n 210.
[392] André Nollkaemper, Laura Burges, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022.
[393] Ibid.
[394] See section 4.1
[395] *Urgenda* Supreme Court judgement, paras 2.3.1, 5.3.2-5.3.4 and 7.5.3 in Hesselman (n 111) 373.
[396] Ibid
[397] *Urgenda* Supreme Court judgement, paras 2.3.1, 5.2.1,5.3.4 and 5.5.3 in Hesselman (n 111) 373.

have to provide clear scientific, economic or technical justifications as to why it cannot do more at this time, i.e. why it is scientifically, technologically or economically unreasonable or unfeasible to reduce more emissions now.[398] The state did not provide such evidence; and moreover, did not explain how it might credibly make up for insufficient reductions now, in an adequate, timely enough, safe enough, and practically feasible manner later.[399] In fact, the Supreme Court generally observed that the overall rationale stemming from the current global climate change consensus is that more must be done, rather than less, while taking action now is not only better in terms of managing risks, but also more cost-effective.[400]

Another argument, invoked by the Dutch government, was that the 25% reduction target applied to developed nations of a group, not to the Netherlands individually. The Dutch courts rejected this argument and found that the UNFCCC and the Paris Agreement, along with human rights law, confer on the Netherlands an individual obligation to contribute to the prevention of dangerous climate change.[401] In their ruling, they particularly stated that the state had not substantiated why a lower percentage should be applicable to the Netherlands. Here it was relevant that the Netherlands belong to the states with the highest per capita emissions in the world. Moreover, the state has failed to substantiate that 25% reduction by the end of 2020 would be an unreasonable or unbearable burden in the sense of the ECtHR's case-law. An important outcome of the Dutch judgment is that each state should contribute to the GHG reduction and take responsibility for its own share. The courts stressed that the government cannot hide behind arguments that others may not be doing their share. The Appeals Court stated on this point that while climate change 'is a global problem and the state cannot solve this problem on its own', this does not release individual states from taking measures on their own territory within their respective capabilities and in light of their historical responsibilities as developed countries; it will be the measures that the Dutch state takes 'in concert with the efforts of other states that will provide protection from the

[398] Hesselman (n 111) 373.
[399] *Urgenda* Supreme Court judgement, paras 2.3.2, 7.4.6 and 8.3.6 in Hesselman (n 111), 373.
[400] *Urgenda* Supreme Court judgement, paras 2.1(22), 4.6, 5.7.6, 7.3.3-7.3.4 and 7.2.10 in Hesselman (n 111) 373.
[401] Hesselman (n 111) 374.

hazards of dangerous climate change'[402]. And the Supreme Court added that: 'every reduction of GHG emissions has a positive effect on combatting dangerous climate change; every reduction implies that more space remains left in the carbon budget'. Thus, 'no reduction effort is negligible', including towards the effort of guaranteeing protection of citizens' human rights.[403] This important premise might be relevant also in other climate change litigation cases, also those brought by children living in the Arctic, as it is very likely that responding states will use the argument that they are only minor contributor to climate crisis.

In conclusion, the judgment of the Supreme Court is likely to have influence on future climate change litigation. Its conclusions that climate change was covered by the rights to life and to respect for private and family life; that the state in relation to both has a due diligence obligation to take preventative measures, in line with the precautionary principle, and that these obligations can be connected to the targets negotiated in relation to GHG emissions will be important points of reference for future litigation.[404]

5.3 Consideration towards a possible outcome

After familiarisation with relevant pending climate change cases awaiting the decision of the ECtHR and with the Dutch judgment in the *Urgenda* case, considerations towards the prospective ECtHR's judgement will be made. If the ruling in the pending cases will be positive for the applicants, like the Dutch judgement in the *Urgenda* case, that would mean a big milestone in climate change mitigation in general, and with relevance to children living in the Arctic too. Even though the ECtHR's judgement is binding only on the respondent state in the relevant case, its importance is indisputable considering the number of contracting state parties to the ECHR and their obligation to comply with the ECtHR's jurisprudence. Furthermore, *Duarte Agostinho* and similar Italian

[402] *Urgenda* Court of Appeal judgement, paras 62, 64 and 66 in Hesselman (n 111) 374.
[403] *Urgenda* Supreme Court judgement, paras 5.7.8-5.8 in Hesselman (n 111) 375.
[404] André Nollkaemper, Laura Burges, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022.

cases brought 33 states before the ECtHR. If the Court will rule against those states, such decision would be of the high significance. The opinion of the ECtHR regarding the climate change mitigation might influence the future policies and regulations of the state parties. As Professor Pedersen pointed out, 'under the ECHR, the human rights and climate change interplay specifically arises by virtue of the ECtHR's case law on environmental risks developed over decades. In short, this case law sets out minimum requirements expected of states when responding to environmental risks.'[405]

Even though the *Urgenda* case, in the light of its implications, increased the applicants' expectations towards a positive outcome, the ECtHR's interpretation in the pending cases does not have to be the same. There are several aspects which must be considered and challenges to overcome.

Exhaustion of the domestic remedies

The admissibility rules of the ECtHR are quite strict; therefore, a lot of applications submitted to the Court are dismissed at an early procedural stage. First of all, the applicant has to exhaust all domestic remedies an application can be successfully submitted to the ECtHR.[406]

The ECHR includes in Article 35 that the ECtHR 'may deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken'. However, the applicants in the three mentioned pending cases *Duarte Agostinho, Uricchio* and *De Conto* decided, similarly as in *Sacchi v Argentina* case before UN Committee, to file an application without exhaustion of the domestic remedies. The applicants claim that it is not feasible for them to pursue claims against the 33 countries in the domestic jurisdictions, because it presents a high burden impossible to bear by such young people and also because of limited financing, and that the remedies presently available in domestic courts are not adequate to resolve the claimed violations.[407] The ECHR recognizes an exception to the admissibility rule, which applies where there is no adequate domestic remedy that is

[405] Pedersen (n 315).
[406] ECHR, Article 35 para 1.
[407] *Duarte Agostinho et. Al v Portugal and 32 other States*, App no 39371/20, (ECHR, 7 September 2020), para 63.

reasonably available.[408] The applicants seek to rely on this exception. In *Duarte Agostinho* they argue that it would not be practically possible for a group of children and young adults to bring cases in 33 different countries and pursue them all the way to their highest courts. Furthermore, they argue that from domestic decisions handed down in Europe so far, it is clear that domestic courts can and must do more.[409] This is made clear, for instance, from the *Greenpeace Nordic* case where the court refused to order the government to 'do more'.

According to the Court's practice, it is very likely to expect dismissal of the cases because of not fulfilment of this criteria. This might be particularly relevant considering the dozens of climate change cases that are making their way through the domestic courts in Europe, including in some of the 33 countries addressed in the claims.[410] However, the case Duarte Agostinho is pending since September 2020 and until the time of this writing (August 2022) it was not considered as inadmissible. Furthermore, several important procedural steps were taken by the court. The case was fast-tracked and communicated to the responding states requiring them to respond to the claim. The Court also granted third parties interventions which were made for instance by Amnesty International and European Commission in support of the applicants; and on June 30, 2022 the ECtHR's chamber relinquished jurisdiction in favour of the 17-judge Grand Chamber, as the case raises a serious question affecting the interpretation of the ECHR. All these steps hint that the case will not be dismissed on the basis of the procedural non-compliance with the admissibility criteria. On the contrary, it seems that the Court will consider the merits of the case. It is worth to mention that according to the Court's Practical Guide on Admissibility Criteria, the Court have frequently underlined the need to apply the rule of exhaustion of domestic remedies with some degree of flexibility and without excessive formalism.[411]

---

[408] e.g. *McFarlane v Ireland*; App no 31333/06, ECtHR GC 10 September 2010, para 124; *Gaglione & ors. v Italy*; App nos 45867/07, ECtHR 21 December 2012, para 22 *in* Application to the Court in the case *Duarte Agostinho et. Al v Portugal and 32 other States*, App no 39371/20, (ECHR, 7 September 2020).

[409] *Duarte Agostinho et. Al v Portugal and 32 other States*, App no 39371/20, (ECHR, 7 September 2020), para 63.

[410] Pedersen (n 315).

[411] Council of Europe, *Practical Guide on Admissibility Criteria*, (updated on 30 April 2022), 27.

One of the possible outcomes is that the Court will proceed similarly as the UN Commission in *Sacchi v Argentina* discussed earlier, i.e. it will dismiss the cases due to their inadmissibility, but at the same time it will give its opinion on the raised questions. Such an approach would not mean a victory *per se* for the applicants in terms of a binding decision, but it would show the Court's approach in mitigating the climate change via the ECHR's interpretation with its possible relevance in other climate change cases before ECtHR. Furthermore, the effect of raising the attention to the matter would be accomplished even without a binding decision.

Another possible outcome could be that the Court will recognize a place for the exception from the admissibility criteria, as requested by the applicants. One of their arguments was that the remedies presently available in domestic courts are not adequate. According to Clark, Liston and Kalpouzos this, 'together with the exceptionally urgent need for the provision of adequate remedies in respect to the consequences of climate change throughout Europe, further justifies their filing of an application directly with the ECtHR'[412]. Furthermore, this argument is entirely consistent with the principle of subsidiarity which has always co-existed next to the established exceptions to the exhaustion of domestic remedies rule.[413] The principle of subsidiarity means that the ECHR and the procedure before ECtHR comes to place only when the domestic remedies did not solve the problem.[414] In this regard, it is also worth noting that the remedy that the applicants sought at the ECtHR constitutes a declaration that the respondent states are in breach of the ECHR, rather than an order, requiring them to take specific measures to reduce their GHG emissions by certain amounts (as made in *Urgenda*).[415] This means that the ECtHR is not invited to order a specific measure or change of particular regulation. Crucially, however, the judgment that is sought from the ECtHR will encourage domestic courts to make *Urgenda*-type orders, ensuring collectively that Europe's contribution to the global mitigation effort is

[412] Paul Clark, Gerry Liston, Ioannis Kalpouzos, 'Climate Change and the European Court of Human Rights: The Portuguese Youth Case', Blog of the European Journal of International Law, (6 October, 2020), https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-portuguese-youth-case/ accessed 25 July 2022.
[413] Ibid.
[414] For definition of the principle of subsidiarity see also section 4.1.
[415] Clark, Liston, Kalpouzos (n 412).

consistent with the goal of the Paris Agreement. Such a decision would be a clear expression of the subsidiarity principle.[416].

Even if the cases would be finally dismissed due to the procedural reasons, they raised a lot of attention nevertheless, both, in relation to climate change litigation in general and in respect of children's rights to be protected against the negative impacts of climate change in particular.

Victim status

Another admissibility criteria of the ECHR is that the applicant must prove his or her status of victim, which means that the applicant must allege violation of his or her right guaranteed by the ECHR which personally affects him or her.[417] The recognition of the victim status in each of the pending cases might pose another challenge. Insofar the ECtHR follows an individualistic approach stating that the applicants must be personally and directly affected by the alleged violation in question.[418] The recognition of the victim status was already questioned in the domestic case of *Verein KlimaSeniorinnen Schweiz and Others v Switzerland*. For instance, the domestic court reasoned that climate change would affect all human beings alike. Therefore, the court argued, the 'group of women older than 75 years' failed to be 'particularly affected by the impacts of climate change' and would thus not be affected 'in a specific and distinct manner' when compared with the general public as required by the rules on standing governing the case.[419]

However, the discussed applications to the ECtHR are based on the direct effects of global warming on applicants' lives, i.e. they claim to be victims in terms of admissibility criteria of ECHR. For instance, in *Duarte Agostinho* the applicants allege being at risk of contracting health problems owing to the forest fires, which are direct consequences of climate change.[420] In *Greenpeace*

[416] Ibid.
[417] Article 34 ECHR reads as follows: 'The Court may receive applications from any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.'
[418] Rachael Lorna Johnstone, *Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility* (Brill | Nijhoff, 2014), 56.
[419] Reich, Hausammann, Boss (n 364).
[420] See text to n 325.

Nordic the applicants claim that they 'experience climate anxiety, emotional distress and worry greatly about the current and imminent risk of serious climate effects in Norway, and how this will impact their lives, life-choices, and the lives of future generations'.[421] Thus, the applicants do not claim to represent society as a whole, but rather argue that the licences constitute a breach of their individual rights. Such strategy is very important, because the admissibility requirements of the ECHR do not provide for the type of *actio popularis* claims. Such claim may be defined as litigation in the interest of and for the protection of the public in general. According to Clark, Liston and Kalpouzos the fact that countless others stand to endure similar effects as the applicants in the pending cases, and therefore to benefit from the decision they seek, does nothing to undermine their status as 'victims' for the purpose of admissibility criteria according to ECHR.[422]

The judge Eicke said that the *actio popularis* vs. individual victim dilemma confronting the Court has also troubled the domestic courts without a clear consensus becoming apparent and highlighted the *Urgenda* judgment in which the Dutch Supreme Court overcame this difficulty by concluding that the NGO in question, which '… represents the interests of the residents of the Netherlands with respect to whom the [positive obligation under Articles 2 and 8 of the ECHR] applies, can invoke this obligation. After all, the interests of those residents are sufficiently similar and therefore lend themselves to being pooled, so as to promote efficient and effective legal protection for their benefit'.[423] The approach of the Dutch Supreme Court seems to be very reasonable. Considering the global nature of climate change, the overcoming of the individualistic approach of the Court, and the human rights courts in general, might bring more efficiency to human rights-based approach to climate change mitigation. After all, the humanity itself is a victim of the climate change impacts. However, it remains to be seen whether the ECtHR will interpret the notion of 'directly concerned' in broader terms than the domestic courts.

[421] *Greenpeace Nordic and Others v Norway,* App no 34068/21, ECHR, app submitted on 15 June 2021, para 5.
[422] Clark, Liston, Kalpouzos (n 412).
[423] Eicke (n 16) para 42.

Interpretation of Articles 2 and 8 of the ECHR

When deciding on climate change litigation cases, the ECtHR can certainly build on its rich environmental case law developed based on Articles 2 and 8 of the ECHR. As it was summarized in the previous Chapter 4, several important principles evolved from the Court's interpretation of these two articles.

The most relevant principle in this context is the doctrine of positive obligations.[424] Following this doctrine in respect of the right to life (Article 2 of the ECHR), member states are obliged to take measures to protect the right to life when this right is endangered. The ECtHR's judge Tim Eike said that: '…perhaps most relevant to any potential climate change litigation, one can see that in these cases the court has not limited itself to analysing the complaint in terms of an "interference by a public authority", i.e. a negative obligation but has frequently analysed such complaints by reference to a positive obligation on the state to take reasonable and appropriate measures to secure the applicant's rights.'[425] Especially cases related to natural disasters (*Budayeva and Others v Russia*[426]) are relevant for the climate change litigation, as natural disasters are increasingly to happen as consequence of climate change. In its case law, the Court hold that states must put in place a legislative and administrative framework which includes making regulations which take into account the special features of a situation or an activity and the level of potential risk to life.[427] In the context of Article 8 of the ECHR, in *Tătar v Romania*, the ECtHR held that governments are under a positive obligation to put in place regulatory initiatives, regulating the licensing, start-up, operation, and control of hazardous activities and that these administrative and regulatory regimes must include appropriate provisions allowing the public to assess the risks.[428] The violation of the Article 2 of the ECHR in *Budayeva and Others v Russia* was related to the state's failure to warn the population about the risk of natural disaster (severe mudslides after heavy rain falls), to implement evacuation and emergency policies and administrative flaws, i.e. failures related directly to the particular natural disaster. If the

[424] See text on pp 41.
[425] Eicke (n 16) para 21.
[426] See above n 216.
[427] *Öneryıldız v Turkey* [GC], App no 48939/99 ECHR, 30 November 2004, para 89.
[428] Pedersen (n 315).

Court's existing interpretation of Articles 2 and 8 of the ECHR shall be applied in the pending cases, then a causal link between the state's reluctance to fulfil its obligations deriving from the international climate law and the specific climate change impacts on the claimants must be substantiated. In the Portuguese case, for instance, this would mean that the failed and/or inadequate measures of Portugal, in accordance with the state's obligations derived from international climate law, would be causal, or at least contribute to the forest fires by which the claimants were affected.

Another important outcome from the Court's environmental case law is the Court's recognition of the precautionary principle (*Tătar v Romania*)[429] which is very relevant in the cases concerning the climate change. The states should have an active role in climate change mitigation before harmful effects occur. The precautionary principle was reiterated also in the *Urgenda* case when the Dutch court relied on the ECtHR's case law. It is very likely that the Court will repeat its findings regarding the precautionary principle if it comes to merits of the pending cases.

In *Hatton v United Kingdom*, the ECtHR held, by majority, that, in adopting its policy on night flights at Heathrow, the Government had not 'overstepped their [wide] margin of appreciation by failing to strike a fair balance between the right of the individuals affected … and of the community as a whole'[430]. Therefore, the majority ruling did not attest a violation of the rights according to Article 8 of the ECHR. However, in their Dissenting Opinion, five judges disagreed. Relying on the 'living instrument' doctrine[431] they considered that: 'These recommendations show clearly that the member States of the European Union want a high level of protection and better protection, and expect … policies aimed at those objectives. On a broader plane the Kyoto Protocol makes it patent that the question of environmental pollution is a supra-national one, as it knows no respect for the boundaries of national sovereignty. This makes it an issue par excellence for international law – and *a fortiori* for international jurisdiction. In the meanwhile, many supreme and constitutional courts have invoked constitutional vindication of various aspects of environmental protection – on these precise grounds. We believe that this concern for environmental protection shares common ground with the general

[429] See text to n 244.
[430] Eicke (n 16) para 19.
[431] For definition see section 3.1.

concern for human rights.'[432] From the Dissenting Opinion it is clear that these judges saw the question of the environmental pollution as supra-national one which should be dealt with on the international level. This approach can address the fact that the climate change is the global issue. Such dissenting opinions might also in the given pending cases expand the Court's interpretation towards environmental considerations and provide a pathway towards climate change litigation on the platform of the ECtHR.

To achieve this goal, the ECtHR would have to interpret the ECHR in the light of international climate instruments, in particular, UNFCCC and Paris Agreement. Concretely, the ECtHR could follow the applicants' argument in *Duarte Agostinho* according which the obligations arising from Articles 2 and 8 of the ECHR should be read along with the various international instruments.[433] These include, for example: Article 2 of the Paris Agreement and its aspiration of limiting increases in global average temperatures to 1.5ºC; the objectives of the UNFCCC[434]; as well as provisions in the CRC. This approach would be reasonable since, the ECHR would not have to judge on the environmental risks itself, but rather refer to the environmental principles reflected in related international environmental treaty law. Also, such an approach would not be new to the ECtHR. Over the years, the Court has extensively relied on international environmental law instruments when responding to environmental claims.[435] Thus, for instance, there is a remarkable influence of the Aarhus Convention on the Court's interpretation of the participatory environmental rights.[436] This reflects the fact that the ECtHR has elsewhere accepted 'the existence of a joint European and international stance on the need to protect access to the cultural heritage'[437], on the basis that

'... the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law, and, in particular,

[432] Eicke (n 16) para 19.
[433] Pedersen (n 315).
[434] Pedersen (n 315).
[435] Ibid.
[436] See above section 4.4.
[437] Eicke (n 16) para 32.

in the light of the Vienna Convention on the Law of Treaties of 23 May 1969 … Thus the Court has never considered the provisions of the Convention to be the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, account should be taken, as indicated in Article 31§3(c) of the Vienna Convention, of "any relevant rules of international law applicable in the relations between the parties", and in particular the rules concerning the international protection of human rights."[438]

In terms of the pending cases, this implies that based on this legal background and the Court's practice the ECtHR should be comfortable with considering international legal instruments dealing with climate change and international instruments serving to protection of children when interpreting Articles 2 and 8 of the ECHR.

Some scholars see an important limitation in this approach, in particular considering *Duarte Agostinho* case. According to Professor Pedersen, for example, this is because of the applicants' argument that none of the 33 responding states have enacted adequate administrative and legislative regimes that take into account the emissions generated *outside* those states' territories even if these can be linked to the responding state, e.g. because it imports goods from overseas.[439] The argument attributes emissions to carbon imports, which is one of the particularities of the climate change issues. The problem with this argument is that the international legal framework of the UNFCCC and the Paris Agreement does not attribute emissions from imports as inventories are based on emissions generated from inside a state's territory.[440] Professor Pedersen concludes that in effect the applicants would ask the ECtHR to supplement the provisions of the UNFCCC and the Paris Agreement by expanding its environmental rights case law.[441] That is, to develop rules of the international climate change regime through the ECHR. According to Professor Pedersen, 'this invites the ECtHR to take its environmental case law

[438] *Ahunbay and Others v Turkey*, No 6080/06, January 2019, para 23, 29 in Eicke (n 16) para 32.
[439] Pedersen (n 315).
[440] Ibid.
[441] Ibid.

in a different direction from what has been so far the case'.[442] Up to this point, the Court has relied on international environmental law only insofar as to fill perceived gaps in the ECHR upon which domestic and international lawmakers can build more elaborate and precise standards. There are cases where the Court dealt with the issue of public participation in environmental matters. In the case *Taşkin et al v Turkey*, for example, the Court developed lower standards than those set by the Aarhus Convention. According to Professor Pedersen, the present claim effectively turns this dynamic on its head, inviting the ECtHR to forge new ground by developing new environmental standards.[443]

Other scholars; however, oppose this limitation. Thus, for example, Clark, Liston and Kalpouzos argue with the ECtHR's expansive interpretation of positive obligations, which may render issues of attribution redundant.[444] They reiterate, for example, *Budayeva v Russia* and the conclusion of this case stating that Article 2 of the ECHR imposes a 'duty to do everything within the authorities' power' to protect human life in that sphere'[445]. According to these authors, there is; furthermore, nothing in the UNFCCC to suggest that states' mitigation efforts should be confined to reducing their *territorial* emissions.[446] This argumentation could be, for example, applied to the Greenpeace Nordic case, where the question of overseas emissions was at stake. The Norwegian District Court refused to consider the GHG emissions abroad from oil and gas exported from Norway when assessing whether there is a violation of Norwegian Constitution or not. Subsequently, the Court of Appeal parted company with the District Court in holding that Norwegian Constitution applies to the alleged environmental damages, including emissions of GHG from the combustion of oil and gas after export, and that emissions resulting from the relevant decision cannot be considered in isolation. Even though the threshold for the violation was according to the Court of Appeal high and thus it concluded that there had been no violation, the question of exported emissions was considered.

---

[442] Ibid.
[443] Ibid.
[444] Clark, Liston, Kalpouzos (n 412).
[445] *Budayeva and Others v Russia*, App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 ECHR, 22 March 2008, para 175.
[446] Clark, Liston, Kalpouzos (n 412).

In the pending cases, we will see how far the ECtHR will go, in other words, to what extent the Court will take international climate instruments and environmental principles established thereunder into consideration. Also the question of 'extending or expanding' environmental standards will be possibly addressed. In this regard the Dutch judgment in the *Urgenda* case should be reminded. The Dutch Supreme Court proved that the interpretation of Articles 2 and 8 of the ECHR in the light of climate instruments can lead to direct state obligations. The Paris Agreement and the UNFCCC contain also straightforward obligations towards their member states whose fulfilment can be overseen and guaranteed by the ECtHR as the body supervising the enjoyment of the human rights. Coming back to the Dissenting Opinion in *Hatton v United Kingdom,* it is important that the Court will recognize the climate change as the general concern for the humankind and will be willing to stand as the international court which is ready to promulgate its opinion and decision in this regard.

Extraterritorial Jurisdiction

Another problem possibly addressed by the ECtHR is a question of the jurisdiction. The environmental jurisprudence of human rights tribunals has been developed in the context of environmental harm, which, in contrast to the harm itself, does not cross borders of the state jurisdiction.[447] It is rather based on the premise that the benefits of economic development and environmental damage take place within the state and that it is therefore the state's responsibility to strike the right balance between the two. However, climate change does not take place within a single state; it is inherently a transboundary global problem.[448] The applicants in *Duarte Agostinho* case point on this problem by alleging that all the 33 European states are responsible for violation of their rights. Human rights instruments generally require states to fulfil their human rights obligations to everyone within their territory or jurisdiction. For example, under Article 1 of the ECHR 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.' Extraterritorial application of human rights occurs only when a state exercises jurisdiction or control over persons in

[447] Müllerová (n 87) 560.
[448] Ibid.

foreign territory.[449] In the context of climate change, an important question is whether GHG emitting states have a responsibility to protect people in other states from the harmful effects of their own (excessive) emissions on the global climate. For the purpose of making human rights as a meaningful response to climate change, states would have to allow for an extraterritorial application of these rights. Insofar, territorial limitations of human rights can be seen as a primary factor that causes difficulties to position affected persons in cases with of transboundary aspects. However, there are no direct human rights obligations regarding extraterritorial jurisprudence arising from human rights or climate change conventions. Thus, there is no applicable rule of international law that allows or mandates the extension of state jurisdiction in this regard.

The problem of extraterritorial jurisdiction has been raised before courts for many times. In this regard, the Advisory Opinion of the IACHR on the 'Application of Human Rights Obligations in the Context of the Protection of Environment'[450] could be considered as a potentially significant milestone. The IACHR had concluded that when transboundary harm or damage occurs, a person is under the jurisdiction of the state of origin if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory.[451] The IACHR effectively established a new basis for the exercise of jurisdiction, namely, a causal link between the conduct within a state's territory and a violation of a human right in another state. The basis for this establishment rests on the principle of effective control over territory and persons; the condition of effective control is satisfied if the state exercises control over the activities that caused the harm.[452] The state is obliged to ensure that its territory is not exploited in a manner that leads to serious environmental damage in third states or on territories outside its jurisdiction. It also has this obligation in relation to the use of territory by non-state actors, such as private companies. This takes us back to the decision of the United Nations Committee on the Rights of the

[449] Ibid 561.
[450] Inter-American Court of Human Rights, Advisory Opinion OC-23/17 (15 November 2017), Requested by the Republic of Colombia.
[451] Ibid para 101.
[452] Müllerová (n 87) 562.

Child in *Sacchi v Argentina*.[453] As already mentioned[454], the Committee built its findings on the IACHR Advisory Opinion concluding that 'when transboundary harm occurs, children are under the jurisdiction of the state on whose territory the emissions originated ... if there is a causal link between the acts or omissions of the state in question and the negative impact on the rights of children located outside its territory, when the state of origin exercises effective control over the sources of the emissions in question'.[455] In that case, the Committee concluded that the plaintiffs had justified that the potential harm of carbon emissions originated from another state's territory was 'reasonably foreseeable' to that state.[456]

The ECtHR has not yet been interpreted the conditions for the extraterritorial application of the ECHR in environmental cases, but examples of case law, found in other substantive areas, indicate that states are generally responsible for acts of their authorities producing effects outside the state's territory, irrespective effects within their territory.[457] However, this jurisprudence is exceptional and applies only to cases, where the contracting state exercises effective control over the area or has at least a decisive influence there.[458]

What would this mean to the pending cases? In *Duarte Agostinho*, Portuguese children are suing 32 other European countries in addition to their own state, arguing that the responding states would fall under the ECHR obligation, interpreted in light of international climate obligations, to take measures to reduce their contribution to global warming, and that this obligation would even exists if their contribution to global warming materializes outside their territory.[459] The situation in the Italian cases is the same. For the ECtHR is thus the question of the extraterritorial jurisdiction inevitable if the merits of these three cases will be considered.

---

[453] See above section 3.3.
[454] Ibid.
[455] Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019, n CRC/C/88/D/104/2019 <https://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/ARG/CRC_C_88_D_104_2019_33020_S.pdf> accessed 25 July 2022, para 10.5.
[456] Ibid.
[457] Müllerová (n 87) 562.
[458] *Loizidou v. Turkey* App no 40/1993/435/514 ECHR 28 July 1998.
[459] Müllerová (n 87) 562.

Insofar, the ECtHR is faced with the question of extraterritorial liability of states for damage caused by inadequate action on the impacts of climate change. It would also have to consider a new line of interpretation that extends the state's jurisdiction over individuals of another state, provided that a causal link between the conduct of the originated state and the harm in other state has been proven. It is going to be seen how the ECtHR will deal with these questions.

In any case, the consideration of these questions is highly relevant to children living in the Arctic, as they are affected by climate change impacts more than other people, who are living in southern states, which are often responsible for these extraterritorial impacts.

Margin of appreciation

Under the ECtHR's existing case-law, the 'margin of appreciation', which is given to states in the sphere of environmental protection, is generally widely interpreted. Insofar, the Court considers only whether there has been a manifest error of appreciation by the national authorities in striking a fair balance between the competing interests of different private actors. Due to the complexity of the issues involved, the Court has seen its role primarily as subsidiary. Only in exceptional circumstances, the ECtHR goes beyond this line and revises the substantive conclusions of domestic authorities.

In this regard, Professor Pedersen argues that, due to this wide margin of appreciation, climate change cases referring to human rights are better served by domestic courts, pointing for example to the *Urgenda* case.[460] Professor Pedersen has further added that the ECtHR's role as an international tribunal, is one of exercising supervisory jurisdiction over states' compliance with the Convention, and not one of revising national jurisdiction on grounds.[461] This can indeed be seen as another limitation of the Court when dealing with environmental law questions. The limitation stems from the fact that the primary obligation to put in place administrative and regulatory regimes is in principle an obligation of due diligence. Consequently, where responding states have put in place administrative and regulatory regimes aimed at minimizing environmental risks, the Court often finds itself deferring to the

[460] Pedersen (n 315).
[461] Ibid.

state when it comes to the finer details of these regimes (e.g. *Hardy and Maile v United Kingdom*).[462] It implies also concerns towards the central role of the 'margin of appreciation' doctrine. Taken together, according to Professor Pedersen it is hard to imagine that the ECtHR will make similar findings as the Dutch Supreme Court in *Urgenda* case when it comes to the specific details of emission reduction obligations.[463]

However, authors Clark, Liston and Kalpozos also oppose to Professor Pedersen in this question. They claim that the 'margin of appreciation' doctrine should not be read as allowing states broad discretion in the area of climate change mitigation.[464] The ECHR would have to be read in light of the temperature target prescribed by the Paris Agreement and the 'best available science' is entirely clear as to the extent of the emissions reductions that are required, at a global level, to meet the goal of the Paris Agreement.[465] Thus, there is nothing difficult or overly technical about this question because the specific details of emission reduction obligations are already settled by the Paris Agreement.[466]

The author of the thesis agrees with the second approach argued by Clark, Liston and Kalpozos. The targets prescribed by the Paris Agreement are quite certain and thus the ECtHR does not have to invent anything new when it comes to specific details of emission reduction obligations. After all, climate change is a global issue and accordingly, international or regional tribunals should be authorized to rule on related issues. Such an argumentation seems to be also supported by judge Tim Eike who referred in relation to a recent judgment (*Cordella and Others v Italy*), that the Court did not describe the 'margin of appreciation' as being 'wide' but stating instead that the state enjoys a 'certain' margin of appreciation.[467] Whether this signifies a greater willingness of the Court to engage with national policy remains however still to be seen.

[462] Pedersen (n 315).
[463] Ibid.
[464] Clark, Liston, Kalpouzos (n 412).
[465] Ibid.
[466] Ibid.
[467] Eicke (n 16) para 22.

Concluding thoughts

The President of the ECtHR, in his speech highlighted that 'the environmental emergency is such that the Court cannot act alone and that we must all share responsibility'[468]. In this regard, he stressed the *Urgenda* case as an important example. According to him, 'by relying directly on the Convention, the Dutch judges highlighted the fact that the ECHR really has become our shared language and that this instrument can provide genuine responses to the problems of our time'[469]. Such words suggest willingness of the Court to give its opinion on the problem of climate change and to contribute to its mitigation. If the right to a healthy environment of children living in the Arctic shall be guaranteed, the Court should take strong position in matter of climate change and answer the open questions, which have not been decided yet. If the ECtHR will successfully establish an interpretative link between international climate law[470] and children's human rights legally, and not merely as moral rights, such a decision would also have significant influence to the jurisdictions of ECHR member states[471], encouraging them to receive similar cases, and stimulate decision-makers to take the problem of the climate change more seriously.

[468] Speech of the President of the ECtHR Linos-Alexandre Sicilianos on the occasion of the opening of the judicial year given on 31 January 2020.
[469] Ibid.
[470] Reich, Hausammann, Boss (n 364).
[471] Ibid.

6 Conclusion

This thesis has dealt with the question of to what extent is the right to a healthy environment for children living in the European Arctic and for future Arctic generations considered in the jurisprudence of the European Court of Human Rights, in particular, in relation to the consequences of climate change. To answer this question several international legal instruments, the ECtHR's case law and secondary sources were analysed. The outcome is more open than expected at the beginning, since the ECtHR may shift its decisions concerning pending climate change litigation cases in different directions. In this concluding Chapter the main findings of the research will be summarised.

The fact that the children living in the Arctic face the consequences of climate change, such as environmental degradation and destruction, more drastically, and will be more seriously affected by these consequences, is undeniable.[472] However, their right to a heathy environment is not constituted under the ECHR yet, nor is it part of present international law. This situation does not mean, however, that such a right can't be successfully claimed. The intersection between environmental protection and human rights has been constituted for many years between the lines of international environmental instruments, both in the theory and jurisprudence of international tribunals. In this context, the ECtHR takes a leading role, since it deals with many environmental cases. Human rights law and international environmental law are interdependent, exemplified by the fact that human rights can be fully enjoyed only in a healthy and sustainable environment. In addition, people's needs for the protection of their human rights contribute to achieving higher standards of environmental quality. Even though there are opinions that due to the anthropocentric and individualistic nature of human rights it is not possible to connect these two areas with each other, there are legitimate reasons to claim the opposite. The application of a human rights perspective to environmental problems may deal directly with the environmental impacts on life, health and other aspects of an individual person. People's access to justice and environmental activism may stimulate states to take adequate measures towards environmental protection and managment. Domestic court decisions from all over the world are proving that a person seeking protection of his or

[472] See above Chapter 2.

her human rights can contribute to raising the standard of environmental protection by using a human rights-based approach.

The global character of climate change and its seriousness along with the weakness of international climate instruments were factors stimulating the application of a human rights-based approach to climate change issues. The aim of such an approach is to put pressure on states, as they are the authors of international law and have a responsibility to reassess and adapt established human rights instruments towards environmental and climatic issues. Climate change litigation cases have grown significantly in the last few years. An important common characteristic of climate change litigation cases is that the argumentation based on international climate law, which is considered as too vague, can be supported or improved when invoked along with other legal grounds, such as national law and other international legal instruments, including human rights treaties.[473] Many of the petitions are submitted by children or young people. Moreover, the plaintiffs seek to represent future generations as well. However, the basis of the claims rests on the harm that is and will be inflicted on persons already living, and the argument of future generations is rather complementary. The trend in climate change litigation is thus rather conservative, without the ambition to evolve the legal standing for future generations.

The above background means that children living in the Arctic in general possess the tools necessary to protect their right to a healthy environment. Moreover, the trend to seek relief from the impacts of change via litigation led by children might encourage children from the Arctic to seek protection of their right to a healthy environment and contribute to resolving the environmental problems which affect them. Furthermore, they can try to protect the rights of future Arctic generations as well.

Considering the ECHR in particular, the analysis proved that the Convention is not designed to provide for protecting the environment as such; however, the ECtHR considers its case law as a powerful 'living instrument' able to meet new challenges in society, such as the topic of environmental rights. This doctrine enabled the Court to produce a rich environmental jurisprudence. There are several rules applicable to the protection of the rights under the ECHR.[474] If applicants to the ECtHR claim unfavourable environmental conditions, they must at the same time, for reasons of

[473] Hesselman (n 111) 368.
[474] See above sections 4.2 and 4.3.

admissibility, demonstrate the interference with a substantive right guaranteed by the ECHR. For the same reasons, they must be personally affected by the alleged violation and prove the notion of 'victim', i.e. they have to prove a personal impact from environmental damage. The Court explicitly holds that the Convention does not recognize an *actio popularis* to protect the environment. These conditions make the legal position of children living in the Arctic often difficult; however, they enjoy in principle access rights to the Court. This situation differs in respect of future generations, whose legal standing is not recognized by the ECtHR, as they do not have a legal personality. Another principle governing the Court's decision-making is the principle of subsidiarity, which means that violations of ECHR provisions should be prevented or remedied primarily on the national level and the ECtHR should intervene only as a last resort after the domestic remedies have been exhausted. This might pose a further challenge for children living in the Arctic, since they would have to exhaust domestic remedies first before approaching the ECtHR. Furthermore, according to the ECtHR case law, national authorities enjoy wide discretion – in the language of the ECtHR a wide 'margin of appreciation' – in their decision-making. This means that it is not primarily up to the Court to determine which measures are needed to protect the environment. It is important to take into consideration all these principles when assessing the guarantee of the Arctic children's (and/or future generations) right to a healthy environment. De facto, they can represent numerous limitations. One such example is provided by the *Duarte Agostinho* case, the child climate change case pending before the ECtHR, elaborated in Chapter 5, where it remains to be seen whether the Court is willing to change its position regarding some of these principles.

The children's rights are also reflected in the Court's jurisprudence. In this regard, the Court has also relied on other children's rights instruments, notably the CRC, in order to ensure that its judgments reflect current standards in international children's human rights. The interconnection between children's human rights, on the one hand, and their 'right to a healthy environment', on the other, will also be addressed in the pending cases before the ECtHR.

From a substantive perspective, the merits of the case, the ECHR's rights to life (Article 2 of the ECHR) and to respect for private and family life, and home (Article 8 of the ECHR) are the most relevant for children living in the Arctic to derive a guarantee for a healthy environment. At the same time, these two substantive rights are important in terms of the expected new case law regarding climate change, because they are claimed to be violated when the

applicants search for relief from the impacts of climate change. In this regard, the ECtHR has developed important principles through the interpretation of these articles. One such principle is the 'doctrine of positive obligations' meaning that in some situations the state has a duty to take measures to protect the right to life when it is endangered by persons or activities not directly connected with the state. Such measures entail the primary duty of a state to put in place a legislative and administrative framework, which includes the making of regulations that take into account the special features of a situation or an activity and the level of potential risk to life; placing emphasis on the public's right to information; and providing for appropriate procedures for identifying shortcomings in the technical processes concerned and errors committed by those responsible. The state enjoys a broader 'margin of appreciation' in cases of natural disasters because of the unforeseeable nature of these events beyond human control. Especially this branch of cases relating to natural disasters are of high relevance to children living in the Arctic, since climate change impacts may result in natural incidents occurring increasingly in the Arctic.[475] A challenge that may arise in this context is proving a causal link between the natural disasters and the omissions of the state in question in mitigating climate change. Through a wide interpretation of the doctrine of positive obligations, the ECtHR could recognize such a causal link and thus rule in favour of respective claims. In light of this, the pending climate change cases at the ECtHR, discussed in this thesis, might push forward the interpretation of Article 2 of the ECHR in respect of considering environmental matters.

A wider interpretation also applies to Article 8 of the ECHR. Accordingly, the right to respect for private and family life, and home does not only include the physical area, but also the 'quiet enjoyment' of such area within reasonable limits. Therefore, this right might be breached not only by obvious interferences such as an unauthorised entry into one's home, but also by intangible sources such as emissions, noise, smells.[476] The overview of the main Court's findings regarding interpretation of the Article 8 of the ECHR proves that there is a certain level of the protection of the right to healthy environment and children of the Arctic can claim such right towards the Court. Situations falling under Article 8 of the ECHR are very likely to happen to children living in the Arctic. As elaborated in Chapter 2, the potential effects

[475] See above Chapter 2.
[476] Manual on Human Rights and the Environment (n 20) 34.

of climate change include increased variability in precipitation, reductions in the extent of sea ice, and climate warming and cooling. This is relevant considering that the consequences of climate change present in the Arctic are very likely to impact people's health, Arctic infrastructure and housing. Respective situations, where Arctic communities would be forced to abandon their homes and resettle somewhere else, will become likely to become more frequent.[477] Also in the case of Article 8 of the ECHR, a causal link between the state's activity or omission to act and the adverse impact on children would have to be affirmed by the ECtHR. In addition, adverse impacts on affected children have to meet a certain threshold, which would have to be confirmed by the Court.

The application of a human rights approach to environmental issues is insofar rather atypical as procedural rights were developed before the emergence of a substantive right to a healthy environment. In the history of human rights law, the development of procedural rights follows typically the evolution of substantive rights legal history. This might be different in the given case. According to some scholars, the strongest argument for specific environmental rights indeed focuses on procedural rights, such as access to environmental information, access to justice and participation in environmental decision-making, rather than on environmental quality.[478] The Aarhus Convention, acknowledged as an international environment agreement with the characteristics of human rights law, extends participatory rights and their influence on the ECtHR's case law. This was explicitly confirmed in the cases concerning participatory rights in an environmental context, analysed in section 4.5. Participation in decision-making processes, especially by those likely to be affected by environmental nuisances, is essential for compliance with the ECHR and the Aarhus Convention. Children living in the European Arctic can particularly take advantage of the participatory rights of these conventions, provided that the states, whose nationality they share, are member states to these conventions. Based on the CRC, their participatory rights might be even stronger, because the CRC guarantees the child's right to be heard, or the obligation that any decision concerning them should be based on the primary consideration of the best interests of the child.[479]

[477] See above Chapter 2.
[478] See above text to n 257.
[479] See above text to n 288, 289.

Specific challenges may exist in relation to indigenous children living in the Arctic. Many indigenous peoples are especially affected by climate change. This applies especially to indigenous peoples living in the Arctic and their children.[480] Due to drastically changing natural conditions their ways of life, like traditional economic activities (hunting, fishing), are becoming threatened or even impossible. In this regard, the future of affected communities is uncertain and relocation might become a possible scenario. Such a scenario would violate the indigenous children's right to self-determination or affect their property rights relating to land and natural resources. Indigenous children would be even more vulnerable to climate change impacts than other children, because of their strong connections to the environment and perceiving the environment as an integral part of their way of life. Children can easily lose their ties to cultural identity, in particular when components of their culture will cease to exist. From the ECHR perspective, however, it has to be stated that the Convention does not contain specific indigenous rights and its approach to rights protection is very individualistic, contrary to indigenous peoples' rights perspectives, which stress collective approaches. Even though Article 8 of the ECHR may serve as a basis for certain protection of cultural identity, indigenous rights to land; however, are not yet recognised under the right to property guaranteed by the ECtHR.[481] In this relation, it can thus be concluded the ECHR does not provide an appropriate legal forum for protecting indigenous rights.

There are few climate change litigation cases as of this writing awaiting the Court's decision. The relevant chambers of the ECtHR relinquished the jurisdiction over some of them in favour of the Grand Chamber of the ECtHR, which suggests that the Court acknowledges the 'importance' of these cases. The ECtHR's ruling in such cases would be crucial for answering the question of whether the right to a healthy environment of the children and future generations of the Arctic is guaranteed. However, several challenges must be taken if fundamental outcomes will arise. The Court can take inspiration from the successful *Urgenda* case decided by the Dutch courts, in which argumentation with the ECtHR's environmental interpretation of Articles 2 and 8 of the ECHR was applied.

The admissibility rules of the ECtHR, which are quite strict, might pose a first problem in consideration of the pending cases. First of all, the applicant

[480] See above Chapter 2.
[481] See above section 4.5.

has to exhaust all domestic remedies before he or she submits its application to the ECtHR. This requirement is not fulfilled in *Duarte Agostinho* and similar Italian cases. It is going to be seen if the Court will recognize a place for the exception from the admissibility criteria, as requested by the applicants. Even if the case will be unsuccessful due to the procedural requirements, it still brought a lot of attention to the fact that climate change is a children's issue similar to *Sacchi v Argentina* and after all, bringing attention to the problem is one of the aims of climate change litigation. In terms of admissibility, another challenge might be the recognition of the victim's status in each of the pending cases. The individualistic approach of the ECtHR as the human rights body requires that the applicants are personally and directly affected by the alleged violation in question and it is to be seen if a group of vulnerable people can qualify as a victim. To avoid discussion in this regard, the applicants in pending cases claim they are personally victims, and they allege a specific violation of their rights. Such strategy is very important, because the admissibility requirements of the ECHR do not provide for the type of actio popularis claims. The *Urgenda* case may serve as an example of new and more effective approach, where the Dutch Supreme Court allowed an NGO to represent the interests of the residents of the Netherlands, concluding that after all, the interests of those residents are sufficiently similar and therefore lend themselves to being pooled, so as to promote efficient and effective legal protection for their benefit. The Court's response to the admissibility questions in pending cases will show the Arctic children's procedural position in their possible future claims and it is; therefore, a part of the answer to the research question. The guarantee of the right to a healthy environment cannot be assessed only from the substantive perspective, the procedural side is very important too. If the ECtHR will recognize room for an exception for the admissibility in terms of exhaustion of the domestic remedies and will recognize the victim status of the vulnerable groups, it will rise the chances of children and future generations of the Arctic to seek a guarantee of the right to a healthy environment in the Court's jurisprudence.

The Articles 2 and 8 of the ECHR shall be interpreted in light of the international climate instruments (Paris Agreement, UNFCCC) and the CRC if the pending cases will be successful. Such approach is reasonable, because the ECHR itself does not contain any provisions regarding environmental risks, furthermore, this approach is not new to the ECtHR. The Court has over the years relied extensively on international environmental law instruments when responding to environmental claims, for instance, there is a remarkable

influence of the Aarhus Convention on the Court's interpretation of the participatory environmental rights as was proven in section 4.5. Relying on the 'living instrument' doctrine, the Court can prove its ability to meet new challenges when interpreting the ECHR regarding the question of climate change impacts. If the interpretation based on the international climate instruments will be rather extensive, the guarantee of the right to a healthy environment of the children and future Arctic generations will be increased.

There are several questions related to the global nature of climate change that are new to the Court. Scholars point out the question of attribution of the emissions, which must be resolved by the Court when interpreting the ECHR. This is because the applicants in *Duarte Agostinho* argue that none of the responding states have enacted adequate administrative and legislative regimes that take into account the emissions generated *outside* those states' territories even if these can be linked to the responding state. Some argue that such limit cannot be overcome by the Court, others point to the doctrine of positive obligations, which should resolve this problem. From the perspective of children living in the Arctic, it would be a crucial finding, considering that the emissions generated *outside* the Arctic affect the environment in the Arctic and thus its quality.

Another global problem is the question of jurisdiction. The environmental jurisprudence of human rights tribunals has been developed in the context of environmental harm that does not usually cross state borders. However, climate change does not take place within a single community; it is inherently a transboundary global problem. The problem of extraterritorial jurisdiction was already raised before the courts. The Advisory Opinion of the IACHR on the Application of Human Rights Obligations in the Context of the Protection of the Environment could be considered as a potentially significant milestone. The IACHR had concluded that when transboundary harm or damage occurs, a person is under the jurisdiction of the state of origin if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory. The basis for this establishment rests on the principle of effective control over territory and persons - the condition of effective control is satisfied if the state exercises control over the activities that caused the harm. This principle was also applied in *Sacchi v Argentina* by the UN Committee. The ECtHR has not yet interpreted the conditions for the extraterritorial application of the ECHR in environmental cases, but examples of case law can be found in other

substantive areas in which it has held that states are generally responsible for acts of their authorities, whether or not occurring within their territory, which produce effects outside their territory. Resolving of the question of extraterritorial jurisdiction is very important from the Arctic children's perspective, as they are affected by climate change impacts more than people living in other places of the world, even though such impacts are caused by other states.

Also the question of the margin of appreciation should be reassessed when deciding climate change cases. The judge Tim Eike referred in his speech to the recent judgment in *Cordella and Others v Italy*, in which the Court did not describe the margin of appreciation as being 'wide'; instead, it referred to the state enjoying a 'certain' margin of appreciation. Whether this signifies a greater willingness on the part of the Court to engage with national policy remains to be seen.

The right to a healthy environment of the children living in the European Arctic and of future Arctic generations is somehow protected by the ECtHR; however, only in a limited way. The environmental jurisprudence of the ECtHR is quite advanced, and the children of the Arctic can reach the Court with their environmental concerns, but the environment is not protected by the Convention *per se*. The individualistic approach of human rights law requires that the individual is personally affected by the environmental harm, thus the global character of climate change impacts is not reflected in the Court's case law so far. The direction to advanced human rights jurisprudence which would recognize the collective dimension of the right to a healthy environment as a condition of human security and human welfare might be a solution. Such an approach might bring a broader interpretation of the Article 8 of the ECHR, also to the benefit of indigenous rights. It seems that the Court is willing to give its opinion on the problem of climate change and to contribute to its mitigation. If the right to a healthy environment of the children and future Arctic generations will be guaranteed by the ECtHR in its widest form, the Court should show its strong position in the matter of climate change and answer the open questions which are related to the global nature of climate change and which have not yet been decided by the Court. If the ECtHR will successfully establish an interpretative link between international climate law, children's law and human rights as legal, not merely moral rights, such a decision could influence the domestic jurisdictions of ECHR member states,

encouraging them to receive similar cases, and furthermore it might influence the decision-makers to take the problem of climate change seriously.

References

Books

Abate, Randall S, *Climate Change and the Voiceless: Protecting Future Generations, Wildlife, and Natural Resources* (Cambridge University Press, 2020)

Anton, Donald K.; Shelton, Dinah L., *Environmental Protection and Human Rights* (Cambridge University Press, 2011)

Beyerlin, Ulrich; Marauhn, Thilo, *International Environmental Law* (Hart, C.H. Beck, Nomos, 2011)

Birnie, Patricia, Boyle, Alan, Redgwell, Catherine, *International Law & the Environment* (3rd ed. Oxford University Press, 2009)

Brown Weiss, E. In Fairness to Future Generations: *International Law, Common Patrimony, and Intergenerational Equity* (Transnational Pub., 1989)

Durfee, Mary; Johnstone, Rachael Lorna, *Arctic governance in a changing world* (Rowman & Littlefield 2019) (344)

Johnstone, Rachael Lorna, *Offshore Oil and Gas Development in the Arctic under International Law. Risk and Responsibility* (Brill | Nijhoff, 2014)

Quirico Q., Boumghar M., *Climate Change and Human Rights: An International and Comparative Law Perspective* (Routlegde, 2016)

Articles

Boyle, Alan, 'Climate Change, Sustainable Development, and Human Rights', (2020) In: Kaltenborn, M., Krajewski, M., Kuhn, H. (eds) *Sustainable Development Goals and Human Rights. Interdisciplinary Studies in Human Rights*, vol 5. Springer, Cham., DOI: https://doi.org/10.1007/978-3-030-30469-0_10

Boyle, Alan 'Human Rights and the Environment: Where Next?' (The European Journal of International Law Vol. 23 No. 3, 2012), [613 - 642]

Bodansky, D., ‘The Legal Character of the Paris Agreement.’ Review of European, Comparative & International Environmental Law. 2016

Francioni, Francesco, ‘International Human Rights in an Environmental Horizon’ (2010) The European Journal of International Law Vol. 21 No. 1, 41 – 55

Hesselman, Marlies, ‘Domestic climate litigation’s turn to human rights and international climate law’, in Research Handbook on International Environmental Law, edited by Malgosia Fitzmaurice, et al., (Edward Elgar Publishing Limited, 2021)

Hiskes, Richard P. ‘The Right to a Green Future: Human Rights, Environmentalism, and Intergenerational Justice.’ Human Rights Quarterly, vol. 27, no. 4, 2005

Kilkelly, Ursula, ‘Protecting Children’s Rights under the ECHR: the Role of Positive Obligations’ (NILQ 61(3)), 245-61

Klocker, Cornelia, ‘Empowerment of indigenous and ethnic groups: Comparing cases on land use under the ACHPR and ECHR’ (Völkerrechtsblog, 2019)

Lewis, Bridget, ‘The Rights of Future Generations within the Post-Paris Climate Regime’ (2018) 7 Transnational Environmental Law 69, DOI: https://doi.org/10.1017/S2047102517000243

Morrow, Karen, ‘Human rights and the environment: substantive rights’ in Research Handbook on International Environmental Law, edited by Malgosia Fitzmaurice, et al., (Edward Elgar Publishing Limited, 2021)

Müllerová, Hana, ‘Climate Change: Trying to extend Human Rights in Time and Space’[7/2021] Právník, 549 - 564

Müllerová, Hana ‘Right to Environment: Theoretical Aspects’ (Praha: Ústav státu a práva AV ČR, 2015)

Müllerová, Hana ‘Human Right to Environment: a Critical Perspective’ (Právník, 3/2012)

Peel J., Osofsky H. M., ‘Why climate change litigation matters’. In: J. Peel, H. M. Osofsky Climate Change Litigation: Regulatory Pathways to Cleaner Energy (Cambridge University Press: 2015)

Internet sources

Chylek, Petr; Folland, Chris; Klett, James D.; Wang, Muyin; Hengartner, Nick; Lesins, Glen and Dubey, Manvendra K., ‘Annual Mean Arctic Amplification 1970-2020: Observed and simulated by CMIP6 climate models’ in Geophysical Research Letters. https://doi.org/10.1029/2022GL099371

Clark Paul, Liston Gerry, Kalpouzos Ioannis, ‘Climate Change and the European Court of Human Rights: The Portuguese Youth Case’, Blog of the European Journal of International Law, (6 October, 2020), <https://www.ejiltalk.org/climate-change-and-the-european-court-of-human-rights-the-portuguese-youth-case/> accessed 25 July 2022

Council of Europe: The Court in brief <https://echr.coe.int/Documents/Court_in_brief_ENG.pdf> accessed 25 July 2022

De Conto v. Italy and 32 other States - Climate Change Litigation <http://climatecasechart.com/non-us-case/de-conto-v-italy-and-32-other-states/> accessed 25 July 2022

Eicke Tim, ‘Human Rights and Climate Change: What Role for the European Court of Human Rights’ (Inaugural Annual Human Rights Lecture at Goldsmith University, 2 March 2021), <https://rm.coe.int/human-rights-and-climate-change-judge-eicke-speech/1680a195d4> accessed 25 July 2022

Nolan, Aoife ‘Children’s Rights and Climate Change at the UN Committee on the Rights of the Child: Pragmatism and Principle in Sacchi v Argentina’ Blog of the European Journal of International Law, (20 October 2021), <https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/> accessed 25 July 2022

Nollkaemper André, Burges Laura, 'A New Classic in Climate Change Litigation: The Dutch Supreme Court Decision in the Urgenda Case', Blog of the European Journal of International Law, (6 January 2020), <https://www.ejiltalk.org/a-new-classic-in-climate-change-litigation-the-dutch-supreme-court-decision-in-the-urgenda-case/> accessed 25 July 2022

Pedersen, Ole W, 'The European Convention of Human Rights and Climate Change – Finally!', Blog of the European Journal of International Law, (22 September, 2020), <https://www.ejiltalk.org/the-european-convention-of-human-rights-and-climate-change-finally/> accessed 25 July 2022

Reich, Johannes, Hausammann, Flora; Boss, Nina Victoria: *Climate Change Litigation Before the ECtHR: How Senior Women from Switzerland Might Advance Human Rights Law, VerfBlog,* 16 May 2022, <https://verfassungsblog.de/climate-change-litigation-before-the-ecthr/>,DOI: 10.17176/20220516-182357-0 accessed 25 July 2022

Smith, Duane 'Climate Change In The Arctic: An Inuit Reality' Vol. XLIV, No. 2, "Green Our World!", 2007 <https://www.un.org/en/chronicle/article/climate-change-arctic-inuit-reality> accessed 25 July 2022

Uricchio v. Italy and 32 other States - Climate Change Litigation <http://climatecasechart.com/non-us-case/uricchio-v-italy-and-32-other-states/> accessed on 25 July 2022

WWF Arctic Programme, 'Climate Change: Why are we concerned?' <https://www.arcticwwf.org/threats/climate-change/> accessed 25 July 2022

<https://www.reuters.com/world/europe/russian-parliament-votes-exit-european-court-human-rights-2022-06-07/> accessed 25 July 2022

<https://www.ohchr.org/en/special-procedures/sr-environment> accessed 25 July 2022

<https://www.un.org/en/global-issues/children> accessed 25 July 2022

<https://www.greenpeace.org/norway/arctic-oil-case-takes-big-steps-towards-the-european-court-of-human-rights/> accessed 25 July 2022

<https://www.greenpeace.org/norway/pressemelding/50828/calls-for-rejection/> accessed 25 July 2022

Reports

ACIA, 2005. Arctic Climate Impact Assessment. Cambridge University Press, 1042p.

Council of Europe, Manual on Human Rights and the Environment, 3rd edition, (Council of Europe Publishing, 2022)

Council of Europe, Cultural rights in the case-law of the European Court of Human Rights, January 2011 (updated 17 January 2017)

Council of Europe, Practical Guide on Admissibility Criteria, (updated on 30 April 2022)

Court communication of case Duarte Agostinho et. Al v Portugal and 32 other States, App no 39371/20, ECHR, app submitted on 7 September 2020, communication published on 30 November 2020

Knox, John H., UN Special Rapporteur on Human Rights and the environment, Framework Principles on Human Rights and the Environment, (UN Doc. A/HRC/37/59, 2018)

IPCC, Sixth Assessment Report (AR6), Climate Change 2022: Impacts, Adaptation and Vulnerability

OHCHR, Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13) 2017