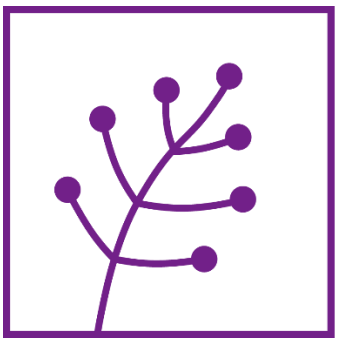

Climate Litigation Network

Successful climate litigation in Belgium: *VZW Klimaatzaak v. Kingdom of Belgium & Others*

May 2024

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VZW Klimaatzaak v. Kingdom of Belgium & Others

This report summarises the decision of the Brussels Court of Appeal in the case of *VZW Klimaatzaak v. Kingdom of Belgium & Others*, issued in November 2023.

The Court upheld a challenge to the adequacy of the 2020 and 2030 greenhouse gas emission reduction targets of the Belgian Federal Government and two regional governments (but did not in relation to a third regional government). The Court issued a mandatory order that the authorities' 2030 target be increased to at least a 55% reduction (compared to 1990 levels), informed by scientific and political consensus. The decision of the Court of the Appeal is significant for several reasons:

1. Globally, this is the **third national court to find that the ambition of a government's climate targets falls short of scientific and political consensus**, and is thus unlawful under domestic law (following decisions by courts in Germany and the Netherlands). Like the Dutch Supreme Court in *Urgenda v Netherlands* (2019), the Belgian court identified the minimum emission reduction needed by a given date, in order for the Belgian authorities to comply with their legal obligations, under both civil law and the **European Convention on Human Rights** (ECHR). The recent decision of the Grand Chamber of the European Court of Human Rights in *KlimaSeniorinnen v Switzerland* (April 2024) affirms the important role of national courts in adjudicating the legality of governments' emissions reduction efforts in light of the ECHR.

2. **1.5˚C was identified as the relevant benchmark for assessing the adequacy of the Government's climate targets**. This was used as the benchmark to assess the Government's compliance with its legal duties. Significantly, the Court recognised that the scientific consensus has changed since Paris Agreement was signed.

3. **The Court made numerous findings about the Government's legal duty to address climate change, and the role of courts in adjudicating such claims**. The Court made significant findings on: the human rights impacts of climate change; rejection of the Government's claim that its contribution to climate change is minimal (a 'drop in the ocean'); and affirmation of the appropriate role of the courts in adjudicating climate cases.

All references are based on an unofficial, automated English translation.

1. Introduction and summary of claim

The case of *VZW Klimaatzaak v. Kingdom of Belgium & Others* was filed in 2015 by Klimaatzaak, a non-profit organisation, and 58,000 Belgian citizens against the Belgian Federal Government, the Walloon Region, the Flemish Region and the Brussels-Capital Region.

The plaintiffs alleged that the defendant government authorities were in breach of their obligations under Articles 2 (the right to life) and 8 (the right to private and family life) of the European Convention on Human Rights (**ECHR**) and under the Belgian Civil Code (Articles 1382 and 1383, which concern tortious / extra-contractual liability) by failing to adopt adequate emissions reduction measures. Originally, the plaintiffs requested that the Court order the relevant government bodies to adopt emissions reduction targets of 40% (or last least 25%) by 2020 (more than had been ordered in the Dutch *Urgenda* case[1]), 55% (or at least 40%) by 2030 and 87.5% by 2050 (compared to 1990 levels).

In 2021, the Brussels Court of First Instance (**First Instance Court**) issued its judgment. It confirmed that Klimaatzaak and the individual co-plaintiffs have standing to bring the claim. The First Instance Court found that the Belgian Federal Government and the three regional governments were jointly and individually in breach of their duty of care under the Civil Code. Despite being aware of the risks of dangerous climate change to the country's population, the authorities failed to take necessary action, meaning that they failed to act with prudence and diligence under Article 1382 of the Belgian Civil Code. Further, and by failing to take sufficient climate action to protect the life and privacy of the plaintiffs, the defendants were in breach of their obligations under Articles 2 and 8 of the ECHR.

However, the First Instance Court declined to issue an injunction ordering the government authorities to set the specific emissions reduction targets requested by the plaintiffs. The First Instance Court found that the separation of powers doctrine limited its ability to do so. The Court also found that neither European nor international law required the specific reduction targets requested by the plaintiffs, and that the scientific report that they relied on was not legally binding.

In 2023, the Court of Appeal of Brussels (**the Court of Appeal** or **the Court**) issued its judgment. The Court of Appeal confirmed many of the First Instance Court's findings, finding violations of Articles 1382 and 1383 of the Belgian Civil Code and Articles 2 and 8 of the ECHR by the Belgian Federal Government, the Flemish Region and the Brussels-Capital Region (but not the regional government of Walloon).[2]

However, the Court of Appeal went further than the First Instance Court and ordered the relevant authorities to reduce their greenhouse gas (**GHG**) emissions by 2030 by a defined minimum amount, informed by scientific and political consensus. The Court of Appeal considered that using its power of injunction against public authorities does not necessarily infringe the principle of separation of powers, provided that the judge does not take the place of the authorities in choosing the means to remedy violations. As such, the Court of Appeal ordered the relevant authorities to reduce their GHG emissions by at least 55% by 2030 (compared to 1990 levels).

2. Key findings

The Court of Appeal assessed whether the government authorities had complied with their duties in respect of the ECHR, as well as the Belgian Civil Code. The Court found that the Belgian Federal Government, the Flemish Region and the Brussels-Capital Region had *not* complied with their duties in respect of both legal bases.[3]

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[1] *State of the Netherlands (Ministry of Economic Affairs and Climate Policy) v Stichting Urgenda* (2019) ECLI:NL:HR:2019:2007 (official translation) (Supreme Court of the Netherlands, Civil Division) (***Urgenda***).
[2] The Court of Appeal considered that, based on an analysis of the facts presented, the Walloon Region had taken sufficient action in respect of its climate policies to fulfil its obligations under the relevant sections of the Belgian Civil Code and the ECHR.
[3] The Court considered that the Walloon Region had done a sufficient amount in respect of its climate policy to have complied with its legal obligations under the ECHR and Article 1382 and 1383 of the Belgian Civil Code.

In relation to the ECHR, the Court found that the relevant government authorities breached Articles 2 and 8. The key basis of the Court's findings was that the authorities' emissions reduction targets for 2020 and 2030, and their actions to date to achieve their targets, were not consistent with minimum thresholds evident from scientific and political consensus. In this regard, the Court found it to be significant that:

- In respect of the 2013 to 2020 period, the relevant authorities did *not* revise their 2020 emissions reduction targets up to 30% (compared to 1990 levels) in line with scientific and political consensus at the time, and failed to achieve an emissions reduction of 30% by 2020;[4] and
- In respect of the 2021 to 2030 period, the Court concluded that a 55% reduction target by 2030 (compared to 1990 levels) at the Belgian State level is the "*the minimum accepted by the best available science, if the Belgian State is to do "its part" to prevent the dangerous threshold in terms of global warming from being crossed*",[5] to comply with Articles 2 and 8 of the ECHR.[6]

This is a globally significant finding, as this is only the second time, after the Dutch Court's decisions in *Urgenda v Netherlands*, where a national court has issued an injunctive order that included a specified minimum emissions reduction target. The Court came to many of the same conclusions as the Dutch Supreme Court in respect of why human rights and tortious/extracontractual liability duties required the relevant State to achieve a minimum level of emissions reductions. We outline the Court's engagement with the scientific evidence in part 6.2, below.

The Court then went on to assess whether the government authorities complied with their duties under the Belgian Civil Code, cross-referring to its analysis and findings from its assessment of the ECHR. The Court found that the Belgian Federal Government, the Flemish Region and the Brussels-Capital Region breached Articles 1382 and 1383:

- In the 2013 – 2020 period, for the same reasons outlined in its assessment of the ECHR.[7]
- In the 2021 – 2030 period, insofar as the upward revision of Belgium's climate ambitions for this period was late and, to date, the policies being actually implemented are not likely to achieve the target of reducing GHG emissions by 55% by 2030 (compared to 1990 levels).[8]

The Court also confirmed that the authorities' positive obligations under Articles 2 and 8 of the ECHR acquired a "*sufficiently definite content*", which meant that their breach alone constitutes a fault within the meaning of Articles 1382 and 1383 of the Belgian Civil Code.[9]

3. Legal foundations of the claim and relevant legal tests

3.1. European Convention on Human Rights

The Court of Appeal underscored that the European Court of Human Rights (**ECtHR**) favours an evolutionary approach to the interpretation of the ECHR, as it follows the "*living instrument principle*". As such, the ECtHR has developed a significant body of case law concerning rights that may be violated as a result of environmental damage.[10] In this regard, the Court stated that the ECHR must be interpreted in light of current conditions, which may involve taking into account non-binding sources of law, or even factual elements such as scientific studies on which there is unanimous agreement, or political consensus at the international, European or national level.[11]

[4] Paras [176] – [183] and [213] – [216].
[5] The Court outlined this test at para [190].
[6] The Court reached its conclusion at paras [176] – [183] and [213] – [216].
[7] Paras [178] – [179], [182] – [183] and [249].
[8] Para [244].
[9] Para [246].
[10] Para [138].
[11] Para [154].

In respect of Article 2, the Court emphasized that ECtHR case law has established a positive duty on the part of governments in situations where it is established that the "*authorities knew or ought to have known at the time that one or more individuals were under real and immediate threat to their lives, and that they did not take, within the scope of their powers, the necessary and sufficient measures to mitigate that risk*".[12]

In the context of environmental harm, the Court breaks down its analysis of whether the defendant government authorities were in breach of their duties under Article 2 into the following stages:

(i) the existence of a real and immediate risk to life,
(ii) knowledge of the risk;
(iii) failure to adopt reasonable measures;[13] **and**
(iv) no "disproportionate burden".

In respect of Article 8, the Court states that "*an arguable grievance*" in respect of environmental issues may exist "*if an environmental risk reaches a level of seriousness that significantly diminishes the applicant's ability to enjoy his home or his private and family life*". The assessment of this level is relative and dependent on all of the facts of the case, in particular the duration of the nuisance and its physical or psychological consequences on the health or quality of life of the person concerned.[14]

The Court acknowledged that Article 8 can be applied where there is direct environmental damage by the State, or if the there is an absence of adequate regulation of private industry. The Court also noted that, with regard to dangerous environmental activities, the principles applied in the context of positive obligations deriving from Article 8 also apply to Article 2.

In respect of both Articles 2 and 8, the Court emphasized that the existence of a serious and imminent risk is not excluded by the fact that feared impacts are remote in time,[15] which is particularly relevant in the context of climate change.

3.2. Civil Code

Under Articles 1382 and 1383 of the Belgian Civil Code, the Court confirmed that three conditions must be met in order to find a violation on the part of the defendants:

(i) **The existence of fault**. The Court described fault as "*any violation of a legal or regulatory norm imposing or prohibiting a certain behaviour*" or "*breach of the standard of care*".[16]

(ii) **The existence of damage**. The Court described damage as "*the impairment of any interest or the loss of any legitimate advantage*". Such damage must be "*certain and personal to the person claiming compensation*".[17]

(iii) **The existence of a causal link between the fault and the damage**. The Court described causation as "*the condition without which the damage would not have occurred as it did* in concreto". The Court also noted that, "*if the damage suffered has been caused by several concurrent faults, each of the authors is liable for the reparation of the entire damage*".[18] To exclude a causal link, the judge must, "*be able to say that, without the fault, the damage would nevertheless have occurred as it did [...] all other conditions of damage being identical.*"[19] The burden of proof lies with the plaintiffs, where the relevant standard is "*a reasonable degree of certainty*".[20]

Under Belgian case law, the State can incur liability under Articles 1382 and 1383 in the exercise of its executive function if (i) it adopts a course of conduct which amounts to an error of conduct,

[12] Para [139], quoting the ECtHR decision in *Oneryildiz v Turkey*.
[13] Para [139].
[14] Para [141], by reference to the ECtHR decision in *Cordella v Italy*.
[15] Para [142], by reference to the ECtHR decision in *Taskin and others v Turkey*.
[16] Para [220].
[17] Para [221].
[18] Para [222].
[19] Ibid.
[20] Para [223].

assessed according to the standard of a "*normally careful and prudent authority*" placed in the same conditions, or (ii) it violates a norm of national or an international treaty which requires this authority to abstain or to act in a specific manner.[21]

4. Assessment of the unlawful conduct of the State

4.1. ECHR Article 2

The Court begins its assessment by emphasizing that, "*the question is [...] whether, because of this global warming (and not because of the Belgian climate policy), there is a real and immediate risk that requires the public authorities to act, admittedly within their powers and capability, to prevent this danger or to put a stop to an infringement that has already begun. In other words,* ***it must be ascertained whether the respondent parties have done and continue to do their part in the fight against global warming, in order to prevent a dangerous threshold from being crossed***" (emphasis added).[22]

The Court first addressed whether there was a **real and immediate risk to life**.[23] It found that this requirement was satisfied. The Court highlighted that there have been numerous warnings issued by the most eminent climate experts and that governments globally, including Belgium, have acknowledged these risks. The Court also found that, even if the threshold of dangerous global warming is not expected to be crossed for several decades (i.e., when, for example, warming exceeds 1.5˚C), the "immediate" nature of the risk is clear from reports of the Intergovernmental Panel on Climate Change (**IPCC**). Based on the IPCC reports, the Court also determined that global warming has already been underway for several decades, that people are already suffering negative consequences and that it is imperative to take action immediately. Finally, the Court noted that the respondents did not contest the real and immediate nature of the consequences of global warming.

The Court then went on to consider whether the State had **knowledge of the risk**. The Court made clear that since at least 1988 – when the IPCC was established – "*it has been accepted that climate change is a 'common concern of mankind'* that will require "*timely action to address climate change within a global framework*"".[24] The Court then made reference to the establishment of the UN Framework Convention on Climate Change (**UNFCCC**) (to which Belgium is a party), and Belgium's international commitments to reduce its emissions under the Kyoto Protocol.[25]

The Court went on to assess knowledge regarding the emissions reductions expected of countries to prevent dangerous climate change in respect of the following time periods:

- **The 2013 – 2020 period**: The Court referred to the fact that, in 2007, the IPCC determined in its Fourth Assessment Report (**AR4**) that developed country governments (known as Annex I countries under the UNFCCC), which included Belgium, needed to reduce their GHG emissions by 25 – 40% by 2020 compared to 1990 levels in order to have a likely chance (66%) to stay below 2˚C (the relevant temperature goal considered 'safe' at the time). It went on to note decisions and reports of the UNFCCC Working Group and the annual Conference of the Parties (**COP**) meetings (which Belgium attended) that took place from 2007, which made specific and recurring reference to the 25 – 40% emissions reduction range from AR4.[26] The Court also referred to statements by the Walloon Parliament, which acknowledged the findings of AR4 and the need to increase the ambition of emissions reductions efforts in Europe. As such, the Court found that Belgium must have been aware, since 2007 or 2009 at the latest, that its 2020 emissions reduction target of 20% (compared to 1990 levels) was

[21] Para [225].
[22] Para [159].
[23] Para [164].
[24] Para [166]. Here the Court makes reference to the UN General Assembly Resolution 43.53 on the Protection of Global Climate for Present and Future Generations.
[25] Ibid.
[26] Specifically, the Court makes reference to decisions adopted at COP13, COP 15, COP16, COP18, Cop 19, COP20 and COP21.

insufficient, in light of the 25 – 40% range in the IPCC's AR4.[27] In respect of these timelines, the Court also noted that in 2009, other European States increased their 2020 targets in line with the AR4 recommendations.[28]

- **The 2021 – 2030 period**: The Court found that there is now an international scientific and political consensus that the threshold for dangerous warming should be 1.5˚C – based on the IPCC's Special Report on Global Warming of 1.5˚C published in 2018, and the decisions adopted by States at the annual COPs in 2021 (Glasgow) and 2022 (Sharm El-Sheik).[29] The Court also found that, since at least 2021, there has been an EU consensus that it must reduce its emissions by at least 55% by 2030, with a view to limiting temperature rise to 1.5˚C.[30]

Finally, the Court considered whether the State had **failed to adopt reasonable measures** to protect the rights in Articles 2 and 8 ECHR from the harms posed by climate change. The Court specifically established that courts have the power to assess – on the basis of "*best scientific knowledge*" – whether public authorities' climate action is compatible with human rights protection under the ECHR:

> "*It infers from the foregoing that, in matters of climate change, the judiciary can only find a violation of Articles 2 and 8 of the ECHR if it can be shown that the public authorities failed to take appropriate and reasonable measures, at least in the light of the best scientific knowledge at the time (and therefore without any discretionary power), to enable them to prevent it, to the extent of their powers, the crossing of a threshold dangerous to life and likely to seriously undermine respect for the private and family life of natural persons under their jurisdiction.*"[31]

On this basis, the Court came to the following conclusions (which it adopted in its Article 8 ECHR analysis, as outlined below):

- **The 2013 - 2020 period**: The Court found that from 2018 there was a shift in scientific and political consensus on the threshold for dangerous warming from 2˚C to 1.5˚C. Thus, from 2018, the Court found that it would not have been sufficient for the Belgian authorities to adopt a 2020 target that mirrored the lower end of the 25 – 40% emission reduction range from the IPCC's AR4 report, because this range was premised on a temperature increase of 2˚C (rather than 1.5˚C). As such, to reflect what is necessary to limit temperature rise to 1.5˚C, the Court found that minimum emissions reductions would have had to be higher than 25%. The plaintiffs submitted that the authorities should have revised their 2020 target to 40% – the upper end of the range in AR4. However, the Court was not able to determine with certainty that this shift from 2˚C to 1.5˚C could be translated into a 40% reduction by 2020.[32] Ultimately, the Court considered that an emissions reduction of 30% by 2020 (compared to 1990 levels) was the minimum threshold necessary under Article 2. We note that this extends beyond the analysis of the Dutch courts in *Urgenda* which found that a reduction of at least 25% by 2020 (on 1990 levels) was sufficient to discharge the Dutch Government's duties under Articles 2 and 8 ECHR (even though it also acknowledged the shift in scientific consensus towards 1.5˚C by 2018).

  The Court took into account the following factors: (i) by this time, the European Commission had adopted an objective of reducing emissions by 30% by 2020 (on 1990 levels), acknowledging that it considered this "*necessary to limit the rise in global temperatures to 2 degrees Celsius*"[33] and (ii) in 2008, the European Parliament adopted a resolution stating

[27] [Para 168].
[28] Paras [167] – [175].
[29] Para [191].
[30] Para [198]. Here, the Court references the adoption of the EU Climate Law. The Court also noted that, "*It remains to be seen whether, in the light of Article 2 of the ECHR, this 55% target is compatible with a threshold of 1.5˚C in a scenario with a 50% chance of success, or whether it is insufficient.*"
[31] Para [156].
[32] Ibid.
[33] Ibid.

that a 30% reduction target by 2020 was "*scientifically necessary to void dangerous climate change*".[34]

The Court found that the Walloon Region was *not* in violation of its duties, as it had adopted a reduction target of 30% by 2020 and claims to have exceeded this target. However, **the Court found that the Belgian Federal Government, the Flemish Region and the Brussels-Capital Region had all failed to revise their 2020 emissions reduction targets up to 30%[35] and failed to actually achieve an emissions reduction of 30% by 2020. As such, the Court found that they violated Article 2 of the ECHR**.[36]

- **The 2021 – 2030 period**: In order for the Court to find a violation of Article 2, the plaintiffs needed to show that the respondent parties, "*failed to take appropriate and reasonable measures to prevent the right to life of the natural persons involved [...] from being endangered in the long term*". The Court concluded that **a 55% reduction target by 2030 (compared with 1990 levels) at the Belgian State level is the minimum threshold to comply with Article 2 of the ECHR, based on best available science** (see section **Error! R eference source not found.**, below, for further commentary on how the Court established this minimum threshold).[37] This finding formed the basis of the injunctive relief granted.

  The Court found that the **Belgian State, the Flemish Region and the Brussels-Capital Region are all currently in violation of Article 2 due to insufficient targets for 2030 and insufficient climate policies to achieve this minimum level of emissions reduction**.[38] However, the Court noted that the violation regarding the 2030 target was based on the government authorities' conduct at the time of the judgment and was not forward looking. This is because the Court could not "pre-judge" whether the actual emission reductions by 2030 would fall short of best available science, and be in violation of Article 2, not least because the respondents are in the process of updating their climate policies.[39]

The Court of Appeal recalled that, in the context of the positive obligations to protect the right to life under Article 2 of the ECHR (as well as under Article 8), "*an impossible or **disproportionate burden** cannot be imposed on States without taking into account the operational choices they have to make in terms of priorities and resources*".[40] However, similarly to the Dutch Supreme Court's findings in *Urgenda* (2021) it established that – in the present case – the defendants *had not established* how a reduction of 30% by 2020 and a reduction of 55% by 2030 (i.e., the mitigation targets identified as the "minimum threshold" by the Court) would constitute a "disproportionate burden":

> "*However, neither the Belgian State, nor the Flemish Region, nor the Brussels-Capital Region have established that a target of -30% (and, a fortiori, any target in the 25-30% range) would have constituted an excessive burden, so that it can be concluded that these parties did not take appropriate and reasonable measures to ensure that the Belgian State did its part to prevent the threshold*

[34] Ibid.
[35] In this regard, the Court notes that, "*the -30% target should only have appeared necessary over the period 2013-2020, so that slightly lower reductions could have been accepted in view of obligations imposed by Article 2 of the ECHR* [...] *However, neither the Belgian State nor the Flemish Region, not the Brussels-Capital Region have established that a target of -30% (and, a fortiori, any target in the 25-30% range) would have constituted an excessive burden, so that it can be concluded that these parties did not take appropriate and reasonable measures to ensure that the Belgian State did its part to prevent the threshold deemed dangerous by the scientific community, as this threshold resulted from the IPCC reports at the time, from being crossed.*" See para [183].
[36] Paras [177] – [183].
[37] Para [199].
[38] Note that the Court found that the Walloon region was not in violation of its duties, as it has adopted adequate policies.
[39] Para [204] – [212].
[40] Para [139].

deemed dangerous by the scientific community, as this threshold resulted from the IPCC reports at the time, from being crossed."[41]

"*The Court concludes that the violation of Article 2 of the ECHR continues* [to be perpetrated by] *these three parties, none of which explicitly asserts - or in any case establishes - that a reduction of - 55 % would constitute an excessive burden. The mere fact that measures taken to combat global warming are liable to be challenged by private individuals (cf. the conclusions of the Brussels-Capital Region, p. 106) cannot suffice to conclude that such a burden exists.*"[42]

4.2. ECHR Article 8

The Court began its assessment by underscoring that, "*the natural persons involved in the proceedings must demonstrate a causal link between global warming and the negative impact of their living environment, and that the threshold of severity has been breached.*"[43]

The Court found that IPCC reports had demonstrated that the location and living conditions of all individuals, including those involved in the proceedings, are and will be impacted by global warming and that these impacts will be significant. These risks are "*likely to seriously impair the ability of natural persons present at the case to enjoy their home and their private and family life*".[44]

The Court also found that the findings in relation to Article 2 could be transposed to the analysis concerning Article 8:

- **The Court concluded that for the 2013-2020 period and the 2021 "commitment period to date" (meaning the conduct regarding the 2030 target, as at the time of judgment), the Belgian State, the Flemish Region and the Brussels-Capital Region are all currently in violation of Article 8**.

- The Court did not find that any of the respondents were violating rights on an ongoing basis through the application of existing climate policy to 2030 (i.e., because the Court cannot "pre-judge" what actual emission reductions in 2030 will be achieved and whether these will be in violation of the ECHR).[45]

4.3. Belgian Civil Code

In respect of **fault**, the Court determined that it must examine compliance with the relevant standard of behaviour. It concluded that it is possible to identify a minimum national emissions reduction contribution on the basis of the IPCC reports and the international political and scientific consensus that existed at the time that that the authorities had made relevant decisions about their 2020 and 2030 emissions reduction targets. It found that this minimum contribution constitutes the exact measure of the behaviour to be expected from a normally prudent and diligent authority.

On the facts, the Court referred to its analysis under the ECHR, examining the targets adopted for 2020 and for 2030.

The Court made the following findings (which differed slightly to its findings with respect to the ECHR):

- **The 2013 – 2020 period**: The Court found that the Belgian State, the Flemish Region and the Brussel-Capital Region were at fault insofar as "*the thresholds for their contribution to the reduction of GHG emissions, as designed and implemented, were clearly insufficient in the light of the achievements of climate science at the time, to meet the risks of dangerous global*

[41] Para [183].
[42] Para [209].
[43] Para [213].
[44] Ibid.
[45] Para [214].

warming".[46] The Court cross-referred to its findings from its ECHR assessment, noting that the State had known about the existence of a risk of damage linked to global warming since the IPCC's AR4 in 2007 (or at least 2009).[47] As such, a prudent and diligent authority should have (i) considered, at the minimum, the lower end of the 25 – 40% emission reduction range set out for Annex I countries in AR4 and (ii) once a consensus on 1.5˚C was reached in 2018, this should have been revised upwards, given the risks involved.[48]

- **The 2021 – 2030 period**: The Court found that the Belgian State, the Flemish Region and the Brussel-Capital Region were at fault in respect of their emissions reduction targets for 2030. The Court ultimately determined that a prudent and diligent authority should have, "*as early as 2019, in light of the latest scientific findings and the commitments made under the UNFCCC and the Paris Agreement, to define and take the appropriate measures to implement, by 2030, a GHG emissions reduction threshold well in excess of 40% compared with 1990*".[49] As in its ECHR assessment, the Court identified a 55% reduction in GHG emissions as the relevant minimum threshold.

In respect of **damage**, the Court made clear that the individual claimants are already suffering damages as a result of the global phenomenon of climate change, and that they will continue to suffer damage in the future:

> "*The damages claimed by the appellants in the main proceedings - individuals - concern their person and/or their private assets. They are real and both present and future. Heatwaves and droughts are already occurring, particularly in Belgium. It is a certainty that these episodes will multiply and worsen as the climate warms. The same applies to extreme rainfall accompanied by flooding. The same applies to the phenomenon of climate-related anxiety and the economic cost of climate disruption [...] It has been reasonably established that these damages are - and will be - suffered individually by each of the parties as natural persons. None of the appellants in the main proceedings can escape the negative effects of climate change mentioned above, which in one way or another are being felt throughout Belgium. Even if their relative impact is minimal, on the scale of a country such as Belgium, compared to the rest of the world, the harmful effects of each additional GHG emission compared to what would have been required by non-infringing climate governance are certain and are already being felt today. The consequences of the reduction in the residual carbon budget still available to limit climate disruption, and the cost of excessively postponing the burden of reducing GHG emissions over time, are certain to be felt by each of the appellants involved.*"[50]

In respect of damages suffered by the non-profit organisation Klimaatzaak, the Court found that it is "*a scientific fact*" that the interests which the organisation is committed to protect under its constitution "*are harmed by the risk of global warming in excess of 1.5˚C*."[51]

In relation to the 2021 – 2030 period, the Court stated that the minimum threshold it identified (i.e., emissions of 55% by 2030, compared to 1990 levels) is reasonably necessary to avoid two forms of climate harms. The first relates to the impact of "climate disruptions" themselves, while the second relates to the impact of measures to rapidly reduce emissions in a short period (which is similar to the reasoning of the German Constitutional Court in the *Neubauer* case (2021)[52]):

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[46] Para [237].
[47] Para [237].
[48] Para [238] and [241].
[49] Para [244].
[50] Para [257].
[51] Para [568].
[52] *Neubauer and Others v Germany* [2021] German Federal Constitutional Court 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (official translation) (***Neubauer***).

> "[...] *exposing future generations to the risk of major climate disruptions rendering part of our territory uninhabitable [...] [and] to impose a very sharp reduction in GHG emissions in the future, over a 20-year period between 2030 and 2050.*"[53]

In respect of the **causal link between the fault and the damage**, the Court referred to damage from three periods of time:

(i) GHG emissions from between 1750 – 1980 (**first stage**). The Court found that the first stage is *not* causally linked to the shortcomings or faults identified in the proceedings.[54]

(ii) GHG emissions from 1980 to present (**second stage**). The Court noted that damage caused by climate change, which was contributed to by inadequate emission reductions over this period, is already present. The Court found that inadequate emission reduction measures by the Belgian government authorities between 2013 and 2020 are causally linked to "[...] *at most the loss of a chance to avoid the effects of global warming as they are already appearing in Europe.*"[55]

The Court found that the harmful effects of emissions from this period are causally linked to certain specific forms of harm, which are present today, namely: eco-anxiety, non-material damage[56] and harm to the interests of Klimaatzaak (the NGO). It also found that postponement of necessary emission reduction measures has led to detrimental consequences in both socio-economic terms and fundamental rights.

Finally, the Court acknowledged a further form of harm, namely the risk of undermining the human rights of future generations, who may be faced with the need to rapidly reduce their GHG emissions without adequate transition, as a result of past failures to adequately reduce emissions. This form of harm (to constitutional freedoms) was the basis of the decision of the German Constitutional Court in the *Neubauer* case (2021).

(iii) GHG emissions produced from now on, especially prior to 2030 (**third stage**). The Court found that "*the consequences of GHG emissions produced today, is future damage that can still be prevented or, at the very least, the risk of occurrence limited. In this respect, the most recent scientific data confirms the existence of a window of opportunity by 2030 to combat dangerous global warming.*"[57]

The Court determined that there was a causal link between these future emissions and eco-anxiety, moral prejudice,[58] the loss of chance to avoid the effects of global warming, the excessive reduction in the residual carbon budget and harm to the interests of Klimaatzaak (the NGO).

We provide more detail on the Court's analysis of causation in Part 6.4 below.

Overall, the Court found that the Belgian State, the Flemish Region and the Brussel-Capital Region[59] breached Articles 1382 and 1383 of the Belgian Civil Code:

- In the 2013 – 2020 period, in respect of both its 2020 emission reduction targets and the levels of emissions reductions achieved.[60]

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[53] Para [244].
[54] Para [265].
[55] Para [266].
[56] I.e., from the appellants' awareness of the inadequacy of the means used by the relevant Government authorities to protect the interests of future generations.
[57] Para [267].
[58] I.e., from awareness of the inadequacy of the means adopted by the relevant Government authorities.
[59] As in the Court's ECHR assessment, the Court considered that the Walloon Region had done a sufficient amount in respect of its climate policy to have complied with its legal obligations under Article 1382 and 1383 of the Belgian Civil Code.
[60] Paras [178] – [179], [182] – [183] and [249].

- In the 2021 – 2030 period insofar as the upward revision of Belgium's climate ambitions for this period was late and, to date, the policies being actually implemented are not likely to achieve the target of reducing GHG emissions by 55% by 2030.[61]

The Court also confirmed that Belgium's positive obligations under Articles 2 and 8 of the ECHR acquired a sufficiently definite content so that their breach alone constitutes a fault within the meaning of Articles 1382 and 1383 of the Belgian Civil Code.[62]

5. Separation of powers and remedy

5.1. The possibility of scrutinising the Government's conduct in the area of climate change

The Court of Appeal considered whether "*the principle of separation of powers*"[63] prevents courts from assessing whether Belgian public authorities engaged in unlawful conduct by not pursuing adequate climate mitigation efforts.

First, the Court of Appeal noted that the principle of separation of powers does not exempt the State from liability deriving from its unlawful conduct.[64] On the basis of statutory law and domestic precedents, it found that Belgian courts have the power to scrutinise public authorities' conduct and assess whether the State acted unlawfully in the exercise of its legislative or executive functions (whether in light of "*of a norm imposing a specific behavior*" or, in the absence of such a norm, by checking "*whether the legislator behaved like a normally prudent and diligent legislator in the same circumstances*", or in light of the ECHR).[65]

Second, the Court of Appeal acknowledged that defining domestic climate policy is a prerogative of the political branches of the Government. However, it found that, in the context of climate action, courts can assess whether public authorities have complied with: (i) minimum requirements under international law; and/or (ii) minimum requirements as determined by scientific and political consensus, for the purpose of assessing compliance with domestic law:

> "*As already indicated, there is no doubt that the formulation of climate policy is the prerogative of the legislature, which has wide discretionary powers in this area. Nor is it disputable that the "*judge cannot substitute his subjective assessment for that of the democratically elected bodies*" or that "*climate policy cannot be pursued in disregard of any other consideration of social cohesion, economic development or other aspects of the environment, for example*" (conclusions of the Belgian State, p. 164). As indicated above (paragraph 156), however, the court does not violate the principle of the separation of powers if it confines itself to respecting the minimum requirements laid down by norms of international law which, given their context (in the sense referred to above), have direct effect in the case submitted to it or, in the absence of such norms, if it confines itself to determining, on the basis of data on which there is scientific and political consensus, the minimum requirements.*"[66]

5.2. The possibility of issuing a remedy to order the Government to increase its ambition

First, the Court of Appeal relied on domestic precedents to find that Belgian courts *can* order public authorities to adopt measures aimed at remedying an unlawful conduct (i.e. mandatory orders or injunctions). However, such an order *cannot* undermine the public authorities' discretion in the choice of the measures aimed at complying with the order:

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[61] Para [244].
[62] Para [246].
[63] As referred to by the Court at para [225].
[64] Para [225] – [226].
[65] Ibid.
[66] Para [227].

> "[...] *it has been widely accepted that the courts of the judiciary, which, as indicated above, have the power both to prevent and to remedy any unlawful infringement of subjective rights by public authorities, may, without violating the principle of separation of powers, order the administration to take measures to put an end to such infringement [...] However, [t]he measures thus ordered cannot in fact deprive the public authority of the choice of measures to be implemented to achieve the ordered result.*"[67]

Second, the Court considered whether these findings could also apply to an order (on the basis of the Civil Code and the ECHR) requiring Belgian public authorities to (further) reduce GHG emissions and thus increase its mitigation ambition. The Court concluded that an order to (further) reduce GHG emissions would *not* undermine public authorities' discretion in the context of climate action since: (i) the order entails "*an absolutely essential measure*" to help achieve the objective of tackling global warming; (ii) the order only requires the achievement of a "*minimum threshold of reduction*" of GHG emissions over the long-term; and (iii) it leaves public authorities with the power to choose from a "*wide range*" of measures to implement in the achievement of such an objective:[68]

> "*Imposing such a reduction in order to prevent global warming does not, as the Brussels-Capital Region has argued, deprive the public authority of the choice of measures to adopt in order to achieve the objective of limiting global warming, nor does it "petrify" public action, as the Walloon Region maintains (its conclusions on page 84), since it is indisputable (and moreover not seriously contested) that this is an absolutely essential measure (even if not necessarily sufficient) to achieve it, that the Court limits itself to defining a minimum threshold of reduction to be achieved in several years' time, below which there is fault or negligence (a threshold which the respondents in the main proceedings are therefore free to raise), and that there is a wide range of concrete measures available to these authorities to enable them to achieve this objective (as illustrated by the extensive discussion of measures already taken in the respondents' submissions in the main proceedings).*"[69]

5.2.1. *Injunctive relief on the basis of human rights protection*

When addressing human rights protection in the context of climate change, the Court assessed whether it would be appropriate to seek an injunctive relief to ensure compliance with Article 2 and 8 ECHR. The Court answered in the affirmative, finding that Article 13 of the ECHR (the right to an effective remedy) provides the legal basis for an injunction aimed at "*preventing or putting an end*" to a human rights violation (or to "*obtain compensation*" for the damage caused by the violation).[70] As such, it found that:

> "*It is therefore perfectly possible for an injunction to be the best, if not the only, remedy for a violation of Articles 2 and 8 of the ECHR, particularly in environmental litigation.*"[71]

In particular, the Court concluded that "*there is no more adequate remedy*" than the pursuing of a mitigation objective that is aligned with "*prudence and the preservation of human rights*":

> "[...] *the injunction to take sufficient and appropriate measures to achieve a certain objective of reducing GHG emissions from Belgian territory is perfectly*

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[67] Para [271].
[68] Para [271].
[69] Ibid.
[70] Para [277]: "*while it is true that Articles 2 and 8 of the ECHR do not explicitly provide for a sanction in the event of a breach of the obligations enshrined therein, such a sanction may nevertheless be inferred from the right to an effective remedy enshrined in Article 13 of the ECHR.*"
[71] Ibid.

> *consistent with the breaches of articles 2 and 8 of the ECHR noted above. The pursuit and practical implementation of this objective will make it possible to limit as far as possible the risk of dangerous global warming, will put an end to the breaches identified above and is the only way to ensure effective protection of the fundamental rights guaranteed at international level* [...]."[72]

5.2.2. *Injunctive relief on the basis of tort law to prevent future damages*

The Court of Appeal also assessed whether – in particular under tort law – it would be appropriate to seek an injunctive relief to prevent "*damage (so-called dangerous global warming and excessive damage to the residual carbon budget) [that] has not yet occurred*".[73] The Court found in the affirmative, concluding that "*in the current state of positive law, an action to prevent future damage is admissible when the fault has already been committed and the damage is sufficiently serious.*"[74]

The Court recalled that each State, including Belgium, must do "*its part to combat global warming*"[75] and that States' individual efforts "*are the world's main tool preventing and mitigating the risk of dangerous global warming.*"[76] As such, the Court of Appeal found that "*there is no more appropriate measure*" than an injunction to reduce GHG emissions.[77]

In its conclusions, the Court of Appeal confirmed that granting an injunction to reduce emissions – on the basis of *both* human rights protection under the ECHR and the extracontractual liability provisions of the Civil Code – is the "*only*" way to correct the current climate mitigation shortcomings:

> "*In view of the shortcomings noted in the past and which continue to this day, which can only be corrected by reductions to be planned for the future, in view of the threat posed to the right to life, private life and family life of the appellants, natural persons, by ongoing global warming, in view of the urgency of the measures to be taken during the present decade, in view of the importance of maintaining, at international level, the mutual trust of the States parties to the UNFCCC in the fact that each State will effectively contribute to the global fight against global warming, in view of the absence of any concrete sanction to date for failure to meet the European objectives, it is justified, both in terms of the violation of articles 2 and 8 of the ECHR and of articles 1382 and 1383 of the former Civil Code, to issue an express injunction to the Belgian State, the Brussels-Capital Region and the Flemish Region to take, in consultation with the Walloon Region, the appropriate measures to ensure that Belgium achieves by 2030 the target of a 55% reduction in GHG emissions from its territory compared with 1990.*"[78]

The plaintiffs also asked the Court to set up penalty payments aimed at (i) ensuring that the defendants comply with the judgment; and (ii) that they deliver a "*GHG emissions report for the year 2030*".[79] However, the Court decided to postpone its decision on this request. The Court stated that it will hold hearings on penalty payments once it will receive communication of (i) official figures of Belgium's GHG emissions for the years 2022 to 2024; and (ii) "*the latest updated NECP available at that time*".[80]

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[72] Para [282].
[73] Para [278].
[74] Para [281].
[75] Para [278].
[76] Para [283].
[77] Ibid.
[78] Para [285].
[79] P. 159-160.
[80] Ibid.

6. Detailed review of aspects of the judgment

6.1. Standing and overall admissibility of the claim

As established by the First Instance Court of Brussels in *Klimaatzaak* (2021), the Court of Appeal confirmed that the admissibility of claims is governed by rules on standing under domestic law and not by standards set by the ECHR or the Treaty on the Functioning of the European Union (**TFEU**). It thus dismissed the relevance of the precedent set in the climate case *Carvalho and Others v. The European Parliament and the Council* (which was dismissed by the Court of Justice of the European Union (**CJEU**) for lack of standing). It found as follows:

> "[...] *it should be remembered from the outset that the admissibility of the legal action must be assessed in the light of the legal requirements of Belgian law, and not in the light of those governing actions for annulment brought by individuals before the Court of Justice within the meaning of Article 263(4) of the Treaty on the Functioning of the European Union. The Flemish Region's reference to the European Court of First Instance's Carvalho case (T-330/18) is therefore irrelevant (its conclusions, pp. 69 et seq.), as is the Belgian State's reference, in its pleadings, to the concept of victim within the meaning of Article 34 of the ECHR and to the European Court of Human Rights' decision in Le Mailloux v. France (application no. 18108/20).*"[81]

6.1.1. *Standing of NGOs*

As established by the First Instance Court, the Court of Appeal confirmed the relevance of the Aarhus Convention (notably, Article 3.4 and 9.3)[82] in determining standing in climate-related claims, recalling that the State has accepted to "*guarantee associations whose aim is to protect the environment access to justice when they wish to challenge acts contrary to the provisions of national environmental law and negligence on the part of private individuals and public bodies*",[83] and that the "*judge may therefore interpret the criteria laid down by national law in accordance with the objectives of article 9.3 of the Aarhus Convention (even if this provision has no direct effect) and, in any event, may not interpret them in a way that would deprive the aforementioned associations of access to justice*".[84]

As such, the Court confirmed the standing of the NGO Klimaatzaak to challenge "*the inaction of the public authorities with regard to global warming*", finding that:

> "[...] *insofar as Klimaatzaak invokes, on the one hand, the violation of articles 2 and 8 of the ECHR in that the rights enshrined in these provisions would be affected by the inaction of the public authorities with regard to global warming and, on the other hand, articles 1382 and 1383 of the former Civil Code, in that this inaction would be wrongful and would have caused it or would be likely to cause it damage, it has an interest within the meaning of articles 17 and 18 of the Judicial Code (examination of the existence and scope of the rights thus invoked is not a matter of admissibility but of the basis of the claim).*"[85]

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[81] Para [118].
[82] Article 3.4 states, "*Each Party shall provide for appropriate recognition of and support to associations, organizations or groups promoting environmental protection and ensure that its national legal system is consistent with this obligation.*" Article 9.3 states, "*In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.*"
[83] Para [123].
[84] Ibid.
[85] Para [125].

The Court confirmed the NGO's interest to *also* bring a claim for a damage that has not materialised yet (i.e., worsening global warming), noting that:

> "*Klimaatzaak is claiming damage that has already begun to occur, and that the action was brought to prevent global warming deemed dangerous (art. 18, para. 2 of the Judicial Code). The fact that the dangerous threshold is not expected to be crossed for several decades is irrelevant, since there is a scientific consensus that, in the absence of appropriate action, this crossing would be the almost inevitable consequence of an accumulation of GHGs in the atmosphere, already underway, caused or at least aggravated by human activities, and that it can only be prevented by the taking of significant and immediate measures by the public authorities.*"[86]

6.1.2. *Standing of individuals*

As established by the First Instance Court, the Court of Appeal confirmed that individual plaintiffs also have standing in the proceedings. In particular, the Court rejected the '*injury to all, injury to none*' argument, finding that the fact that people other than the plaintiffs may also be affected by worsening climate change does not diminish their interest in this litigation:

> "*The potential impact of global warming on the lives and private and family lives of every individual on the planet has been sufficiently demonstrated. The first judges also rightly noted the direct consequences of global warming already observed in Belgium, as well as the climate projections for Belgium by 2100 [...] As pointed out by the first judges, the fact that persons other than those who brought the present proceedings may suffer the same damage or violations of their fundamental rights is not sufficient to transform the interest of each individual appellant into a general interest, which is not simply the sum of individual interests.*"[87]

The Court dismissed the defendants' argument that the plaintiffs did not provide specific information on how climate change would *individually* affect them, and only relied on "*general and abstract considerations, valid for all and even valid for everyone*".[88] Specifically, the Court found that proof of particularised injury is not needed in light of the existing knowledge of the risks associated with global warming:

> "[...] *the extent of the consequences of global warming and the scale of the risks it entails mean that it can be considered, with sufficient judicial certainty, that each of the natural persons who are validly involved in the case has an interest of their own in obtaining the convictions that are sought against the public authorities.*"[89]

The Court further confirmed that the fact that *part* of the claimed damage has not materialised yet (i.e., worsening global warming) does not diminish the interest of individual plaintiffs in these proceedings:

> "[...] *the fact that the dangerous threshold is not expected to be crossed for several decades is irrelevant as long as there is a consensus that this will be the almost inevitable consequence (with unchanged policies) of an accumulation of GHGs in the atmosphere, caused or at least aggravated by human activities, and*

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[86] Para [128]. However, the Court did not accept a breach of art. 2 and 8 ECHR for the NGO *Klimaatzaak*, finding that the plaintiffs did not "*invoke*" or "*demonstrate*" that *Klimaatzaak* is a "*holder of the rights*" enshrined in the Convention. (see para 158). The Court of Appeal thus reformed the first instance judgment on this point.
[87] Para [131].
[88] Para [133].
[89] Ibid.

that it can only be prevented by significant and immediate action on the part of public authorities."[90]

6.2. Assessment of breach based on scientific and political consensus

In this section, we outline the Court of Appeal's engagement with scientific evidence and political developments in its assessment of whether the defendants' emissions reduction efforts were lawful.

The Court formulated the test for compliance with ECHR obligations as follows: whether the Belgian State had adopted a GHG emissions reduction target for 2030 that reflected "*the minimum accepted by the best available science, if the Belgian State is to do "its part" to prevent the dangerous threshold in terms of global warming from being crossed.*"[91]

6.2.1. *Relevance of 1.5˚C and role of IPCC's best available science*

The Court first considered the relevant long-term temperature limit that should be taken into account in establishing the lawfulness of the authorities' conduct.

The Court assessed the content of international scientific reports (in particular, reports from the IPCC and the United Nations Environment Programme) and the outcome of international and regional political agreements (in particular, the annual Conferences of the Parties (**COP**) to the UNFCCC and the Paris Agreement, and the development of EU legislation on climate change).

The Court recalled the long-term temperature goal in Article 2(1) of the Paris Agreement, noting that it is aimed at "*holding the increase in the global average temperature to well below 2˚C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5˚C above pre-industrial levels*".[92]

Ultimately, the Court adopted a narrower interpretation of this long-term temperature limit, and decided to consider 1.5˚C as the relevant threshold, as follows:

- The Court noted that scientific and political consensus indicate that the *impacts of climate change* will be less severe below 1.5˚C (rather than 2˚C):

  > "[...] *each new IPCC report showed that the situation was worsening more significantly and more rapidly than expected, and that the efforts proposed by each State were manifestly insufficient to limit global warming, which, by 2018 at the latest, it appeared should be limited to 1.5˚C.*"[93]
  >
  > "*The "Glasgow Climate Pact" recognizes that the consequences of climate change will be much more moderate at 1.5˚C than at 2˚C - thus explicitly relying on the conclusions of the recent IPCC report - and calls for continued efforts to keep temperatures below this low target. All parties were called upon to raise the level of ambition of their nationally determined contributions and to present long-term strategies, in both cases in line with the 1.5˚C target.*"[94]

- The Court found that scientific and political consensus has shifted since the adoption of the Paris Agreement, and concluded that the *threshold for dangerous warming* should be set at 1.5˚C (rather than 2˚C):

[90] Para [134].
[91] Para [190].
[92] Article 2(a) Paris Agreement.
[93] Para [203].
[94] Para [60].

> "*Since 2009, there has been a growing awareness at international level of the need to move away from the objective of limiting global warming to 2˚C towards one of limiting it to 1.5˚C.*"[95]
>
> "[...] *the 2018 special report confirmed that the 2˚C target should now be abandoned for that of 1.5˚C.*"[96]
>
> "[...] *there is currently a scientific and political consensus (at least internationally), notably following the 2018 IPCC Special Report and the Glasgow and Sharm El-Sheik COPs, that the threshold for dangerous warming should be set at 1.5˚C rather than 2 ˚C, albeit with some tolerance ("with no or limited overshoot", according to AR6).*"[97]

- Overall, the Court concluded that 1.5˚C is the only threshold of dangerous global warming that should be taken into account. As such, it found that a "*normally prudent and diligent*" public authority – once aware of the shift to 1.5˚C as the relevant long-term temperature limit (rather than 2˚C) from 2018 – should have increased its mitigation ambition accordingly:

> "*It is now accepted that, in order to reduce the risks associated with climate change, average global warming should be kept below 1.5˚C (with no or limited overshoot). Limiting global warming means limiting total cumulative anthropogenic CO2 emissions since pre-industrial times, i.e. staying within a total carbon budget.*"[98]
>
> "[...] *it was incumbent on the Belgian State (and the federated entities), as normally prudent and diligent authorities, to take into consideration at least the lower range to determine the efforts to be made initially and, once a consensus had been reached on the 1.5˚C target, to be more ambitious (as the Walloon Region has done, but also, as already mentioned, many other states which have gone so far as to set themselves targets of -40% for 2020), given the high risks involved.*"[99]

On the basis of this assessment, the Court of Appeal chose to only assess scientific evidence regarding the emissions reduction efforts needed to hold global warming to below 1.5˚C (with a 50% chance, as discussed further below).

6.2.2. *Treatment of evidence on emissions reductions efforts*

The Court then took into account a range of evidence regarding the emissions reduction efforts that are necessary to hold global temperature increase to below 1.5˚C.

The Court summarised the evidence filed by the plaintiffs:

- The plaintiffs' case regarding the inadequacy of the government authorities' emissions reduction targets for 2030 was premised on an expert report by an internationally recognised climate scientist, Professor J. Rogelj.[100] This report was entitled *Belgium's national emission pathway in the context of the global remaining carbon budget*, and was carried out in March 2023.

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[95] Para [15].
[96] Para [176].
[97] Para [191].
[98] Para [2].
[99] Para [238].
[100] Professor of Climate Science and Policy at Imperial College London, co-author of IPCC reports and UNEP's annual Emission Gap Reports, and a member of the European Union's Scientific Advisory Board on Climate Change.

- The report outlines a range of methods for calculating the *individual* emissions reduction contribution of Belgium to hold global temperature increase to below 1.5˚C. Specifically, the report identifies two alternative economy-wide GHG emission reductions goals that would allow Belgium to "*do its part*"[101] to keep the 1.5˚C long-term temperature limit within reach with a **67% probability** (i.e. a **2/3 chance** to stay within the residual global carbon budget of **400 $GtCO_2$**, as noted by the IPCC's AR6):
    1) a GHG reduction of **81% by 2030** compared to 1990 levels (based on "equal per capita emissions"[102]); and
    2) a GHG reduction of **61% by 2030** compared to 1990 levels (based on "grandfathering"[103]).

- The same expert report also concluded that Belgium would need to reduce its emissions by **55% by 2030**, if it were to comply with a 1.5˚C budget with a 50% probability (i.e. a **1/2 chance** to stay within the residual global carbon budget of **500 $GtCO_2$**), using the grandfathering approach.

The Court outlined these alternatives and assessed whether one of them could be deemed as the "*only*"[104] scenario compatible with the fulfilment of the defendants' positive obligations under the ECHR. The Court made several findings:

- First, in light of the principle of the separation of powers, that it was not able to determine a rate of GHG reductions that it deems "*desirable or equitable in view of Belgium's historical responsibility*".[105] The Court declined to take into account the emission reduction targets proposed by the plaintiffs that were informed by "*the principle of equity*",[106] noting the "*absence of political consensus on this point*".[107]

    > "[...] *in order to avoid interfering with the prerogatives of the legislative and executive powers, the judge can only take into account the distribution key which is* ***the least restrictive for the State****, in the absence of political consensus on this point.*"[108] (emphasis added)

- Secondly, for similar reasons, the Court declined to take into account the emission reduction targets that were premised on a 67% probability to stay within 1.5˚C (i.e. more demanding emissions reduction scenarios). Instead, it took into account mitigation scenarios with a **50% probability** of "*meeting the threshold of a dangerous global warming of 1.5˚C*"[109] (i.e. less demanding emissions reduction scenarios).

  While recognising that "*it might seem more prudent to opt for a higher probability*",[110] the Court recalled the objections raised by the defendants,[111] and established that the choice of the relevant "*residual carbon budget*" is a political prerogative:

  > "*However, in view of the above-mentioned factors, such a choice would be a political decision involving the consideration of numerous factors and falling – at least for the time being – outside the scope of Article 2 of the*

[101] Para [190].
[102] Under this methodology, the remaining global carbon budget is allocated to each country based on the size of its population, assuming each individual has an equal share of the remaining budget.
[103] Broadly, grandfathering methodologies maintain the current distribution of emissions and allocates greater shares to countries with high emissions today.
[104] Para [195].
[105] Para [190].
[106] See para [188].
[107] Para [192].
[108] Ibid.
[109] Para [195].
[110] Ibid.
[111] Para [193].

ECHR as interpreted in the light of the principle of the separation of powers."[112]

Further, the Court noted that the choice of a 50% probability scenario of keeping 1.5˚C within reach "*is not unreasonable*",[113] as such a scenario is also retained by the IPCC and the European Scientific Advisory Board on Climate Change (**ESABCC**) in their reports on climate mitigation.[114] The Court found that reliance on a budget with a higher probability of success would be a political decision.

Finally, on these bases, the Court determined that a **55% reduction target by 2030** (compared with 1990 levels) at the Belgian State level is the minimum threshold to comply with Article 2 of the ECHR,[115] as well as Article 8 ECHR, and Articles 1381 and 1392 of the Belgian Civil Code.

The Court referred to the following evidence in making this finding:

- **Plaintiffs' expert report**: The Court notes that, while not the preferred approach of the plaintiffs, their expert report found that a 55% reduction by 2030 is aligned with holding warming to 1.5˚C with a 50% chance of success (albeit under a grandfathering approach, which the plaintiffs stated was not consistent with international law principles of equity and common but differentiated responsibilities).[116]
- **Political consensus in Belgium**: On 30 September 2020, the Belgian Federal and Regional Governments adopted a government agreement, which expressly set out that the Federal Government "*sets itself the target of a 55% reduction in GHG emissions by 2030 and takes measures within its sphere of competence in this direction*" and "*undertakes to adapt its contribution to the National Energy and Climate Plan (PNEC) in this direction through an action plan*".[117]
- **Political consensus at EU level**: The European Union's adoption of the Climate Law means that, since at least 2021, there has been a European consensus that the EU's GHG emissions need to fall by at least 55% by 2030 (even though individual Member States have their own 2030 targets, which collectively contribute to this, but in differing amounts).[118]
- **European Scientific Advisory Board on Climate Change report (ESABCC) (2023)**: The ESABCC is an expert advisory board for the EU, established under the European Climate Law. A 2023 report by the ESABCC contained recommendations regarding the development of the EU's 2040 target. The ESABCC assessed the actions necessary at EU level to limit warming to 1.5˚C with no or limited overshoot. One of the report's key findings is that the EU's 2030 target of -55% is compatible with a 1.5˚C budget, if emissions are reduced by 90 to 95% by 2040 (compared with 1990).[119]
- **IPCC Special Report on Global Warming of 1.5˚C (2018)**: In the context of its assessment of Article 1382 and 1383 of the Belgian Civil Code, the Court also referred to the findings of the IPCC in its Special Report (2018) regarding global average emissions reductions for 1.5˚C. The Court summarised the IPCC findings as follows: "*limiting global warming to 1.5˚C implies reducing global GHG emissions by around 45% (between 40% and 60%) in 2030 compared with 2010 and achieving net zero emissions by 2050* [...]*".* The Court applied this *global* emissions reduction range to Belgium as follows: "*in the Belgian context* [this means] *a greater reduction effort than a 40% reduction in emissions by 2030 compared with 1990.*"[120]

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[112] Para [195].
[113] Ibid.
[114] This decision was based on that fact that, for example, (i) the IPCC Assessment Reports include 1.5˚C budgets with a 50% chance of success and (ii) scenarios with a 50% chance of limiting warming to 1.5˚C are retained in the opinion issued in 2023 by the European Scientific Advisory Board on Climate Change, which was issued with the agreement of all parties. See paras [194] – [195].
[115] Paras [199] – [202].
[116] Para [199].
[117] Para [65]. Also see *Accord de gouvernement* dated 30 September 2020, section 3.1.1, available here: https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf
[118] Para [198].
[119] Para [199].
[120] Para [244].

The Court concluded that "[t]*he only way to limit the risk [...] is to set a threshold for reducing GHG emissions to well over 40% below 1990 levels by 2030 - in this case, the -55% threshold validated at European and federal level.*"[121]

6.3. Relevance of EU law

The Court of Appeal endorsed the approach established by the Dutch Supreme Court in *Urgenda* (2019) and by the German Constitutional Court in *Neubauer* (2021), finding that mere compliance with EU law on GHG emissions reduction is not enough to shield EU Member State governments from liability under domestic law.

Moreover, the Court highlighted Belgium's shortcomings and failures to adequately comply with legal requirements in the process aimed at adopting and implementing Belgium's National Energy and Climate Plan, as required under EU law.

6.3.1. *European targets as minimum requirements*

The Court of Appeal established that the emission reduction targets assigned to Belgium by EU climate legislation are only "*minimum requirements*",[122] and that compliance with human rights obligations may require government authorities to pursue more ambitious mitigation measures:

> "*Nor can the fact that there is a binding framework at European Union level allow the Belgian State and the Regions to hide behind the provisions it sets out: indeed, these are minimum requirements, and it cannot in theory be ruled out that the ECHR would impose more ambitious GHG reductions. It is therefore not correct to assert that the Belgian State's mere compliance with the obligations imposed on it by the European Union would lead to the conclusion that Articles 2 and 8 of the ECHR have been complied with [...] For the same reasons, no conclusion can be drawn from the fact that no action for failure to fulfil obligations has been brought against the Belgian State by the European Commission.*"[123]

Furthermore, the Court refused to recognise that compliance with EU law would entail "*equivalent protection*" of the rights enshrined in the ECHR:

> "*As these are minimum requirements which do not prevent EU Member States from pursuing a more ambitious objective, the question raised by the Flemish Region and the Belgian State as to whether European climate legislation complies with the right to life and the right to respect for family life as enshrined in the Charter of Fundamental Rights of the European Union does not arise in the present case. It arises all the less because the European Union is not, to date, a party to the ECHR, even though it follows from Articles 2 and 8 of the Treaty on European Union, from the Court of Justice's recognition of fundamental rights as general principles of law, and from the Charter of Fundamental Rights, that the right to life is protected within this legal order.*"[124]

6.3.2. *The State's shortcomings in the NECP process*

The Court of Appeal highlighted failures and shortcomings in the process of approval and implementation of Belgium's National Energy and Climate Plan (**NECP**), which covers emissions reductions up to 2030, and is required under EU law, noting that:

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[121] Ibid.
[122] Para [161].
[123] Ibid.
[124] Ibid.

- Belgium did not submit the draft of its new NECP to the European Commission by June 2023 (the deadline) "*despite the urgent request to this effect sent in February 2023 by the country's various strategic councils*";[125]
- this delay aggravated the fact that the implementation of the existing NECP – "*criticized by both the European Commission and all the country's strategic councils*" – is expected to fall short of existing mitigation commitments;[126] and that while Belgium has committed to revise its NECP to reflect the EU mitigation goal of a 55% reduction by 2030, "*this was still not the case*".[127]

Moreover, the Court emphasised that the defendants did not diligently cooperate in the process aimed at adopting the NECP:

> "*The NECPs that have been negotiated are no more than the sum of the policies pursued individually by each entity, and lack a cross-cutting, integrated vision of the measures to be implemented at national level, illustrating the shortcomings of cooperation between the federal state and the various regions.*[128]

Overall, the Court found that these NECP-related shortcomings are incompatible with the need to achieve adequate GHG emissions reductions:

> "*Without a new direction soon, and without updating the NECP to take account of the new European objectives, the policies currently being implemented are clearly not likely to achieve a sufficient reduction in GHG emissions by 2030 to meet the climate emergency that has become increasingly urgent.*"[129]

Ultimately, the Court took some of these findings as evidence of the defendant's fault:

> "*At this stage, the Court confines itself to identifying a fault insofar as the upward revision of Belgium's climate ambitions for the 2021-2030 commitment period was late and, to date, the policies actually implemented are clearly not likely to achieve the target of reducing GHG emissions by minus 55% by 2030.*"[130]

6.4. Further detail on causation

Overall, the Court of Appeal made very clear in its assessment of the government authorities' duties under the ECHR and the Belgian Civil Code that causation was established (for further commentary, see section 4). In these assessments, the Court also provided commentary on the 'drop in the ocean argument', as well as the link between government actions and climate impacts on future generations. These issues have been considered further in the sub-sections below.

6.4.1. *The 'drop in the ocean' argument*

The Court of Appeal dismissed the '*drop in the ocean'* argument, notably by recalling the reasoning of the Dutch Supreme Court in *Urgenda* (2019) and the German Constitutional Court in *Neubauer* (2021). In particular, it stated that:

> "[...] *the fact that the measures adopted by the respondent parties would not suffice, taken in isolation, to prevent dangerous global warming, cannot relieve them of their positive obligations.*"[131]

[125] Para [206].
[126] Ibid.
[127] Ibid.
[128] Para [248].
[129] Para [244].
[130] Ibid.
[131] Para [160].

The Court highlighted that each State's contribution is crucial to enhance global cooperation and help prevent dangerous global warming:

> "*The national contributions of each of the States party to the UNFCCC, including Belgium, to reducing GHG emissions are the world's main tool for preventing and mitigating the risk of dangerous global warming. These international agreements are based on the mutual trust of the States that are party to them in the fact that each will contribute to the effort required to achieve the desired result, and it is in this way that the contribution of each State, including a "small" State like Belgium (on a global scale), plays a decisive role in the fight against global warming.*"[132]

The Court emphasised that these findings also apply *individually* to all public authorities involved (in this case, including the Federal Government and two Regions). The Court found that they all bear an individual responsibility to mitigate climate change, and that they cannot hide behind "*the absence of a cooperation agreement or of sufficiently integrated cooperation at national level*"[133] to be shielded from liability:

> "*This does not, however, allow the Belgian State, the Flemish Region and the Brussels- Capital Region to evade their individual responsibility for the climate policy they have pursued to date, which, given its lack of ambition and results, constitutes a fault for each of them. As emphasized in the Neubauer judgment of March 24, 2021 [...] the fact that climate and global warming are global phenomena, and that the problems caused by climate change cannot be solved by the action of a single state, does not preclude the obligation formulated at national level to protect the climate. Likewise, each federated entity is, in principle, individually responsible, at its own level, for any shortcomings in climate governance that prevent Belgium from achieving the levels of GHG emissions reduction required, as a minimum, by the general duty of care and the protection of human rights.*"[134]

6.4.2. *Impacts on future generations*

The Court of Appeal followed the German Constitutional Court's approach in *Neubauer* (2021) and highlighted that current insufficient mitigation efforts will *also* cause future damages, notably undermining future generations' enjoyment of fundamental rights, as they may be forced to face a disproportionate climate mitigation burden:

> "*The excessive reduction in the residual carbon budget, which is the consequence of both past and current misconduct, means that efforts to avoid dangerous global warming will be postponed. This will necessarily have detrimental consequences for the parties to the main proceedings, not only in socio-economic terms, but also in terms of their fundamental rights, which will be more limited than they would be if the necessary measures had been taken in good time (the "price of procrastination", in the words of the appellants in the main proceedings). This damage exists in its entirety today, as GHG emissions are released into the atmosphere beyond what prudence and respect for human rights require. Finally, the court points to the risk of undermining the human rights of future generations, who may also be faced with the need to reduce their GHG emissions more rapidly and without adequate transition. The awareness of the risk, without adequate climate governance, of leaving one's descendants with an irremediably destroyed environment or significantly less favorable living conditions constitutes reparable*

[132] Para [283].
[133] Para [248].
[134] Ibid.

moral damage suffered personally by the appellants in the main proceedings in their individual capacity."[135]

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[135] Para [266].