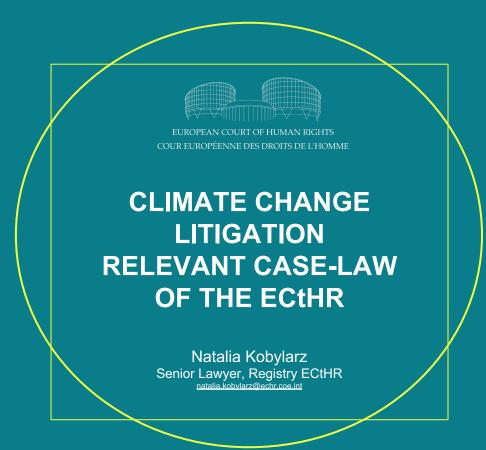
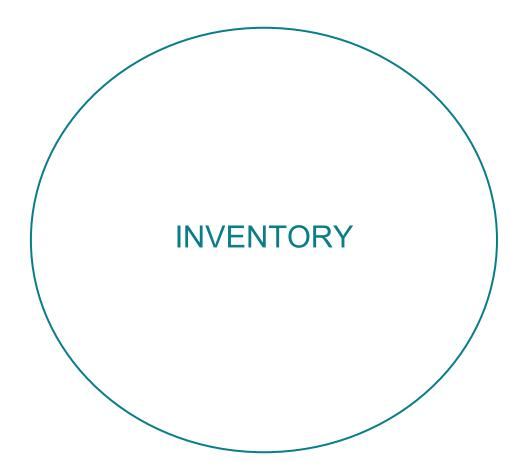
EUFJE Annual Conference Climate Change and Litigation, Conseil d'État, Paris, 24-25 October 2022



The views expressed in this presentation are those of the speaker and do not represent the official position of the European Court of Human Rights or the Council of Europe.





Duarte Agostinho & Others v. Portugal and 32 other States



Verein KlimaSeniorinnen & Others v. Switzerland

Carême v. France

Müllner v. Austria

**Greenpeace Nordic & Others** v. Norway



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Verein KlimaSeniorinnen & Others v. Switzerland

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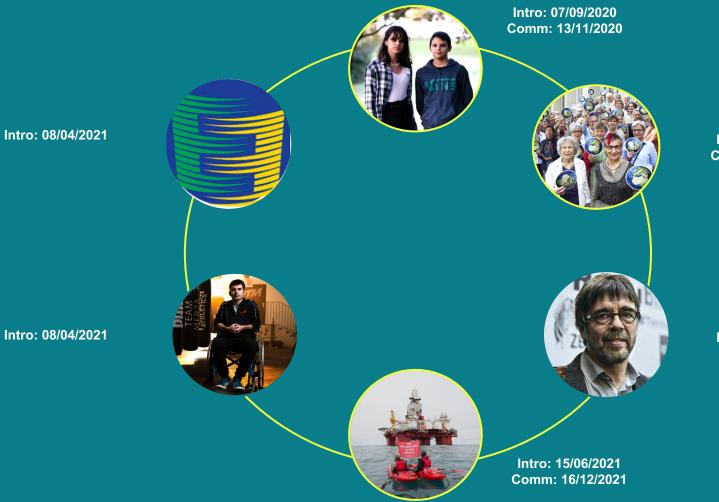


Intro: 26/11/2020

Intro: 28/01/2021

Intro: 08/04/2021

Intro: 08/04/2021

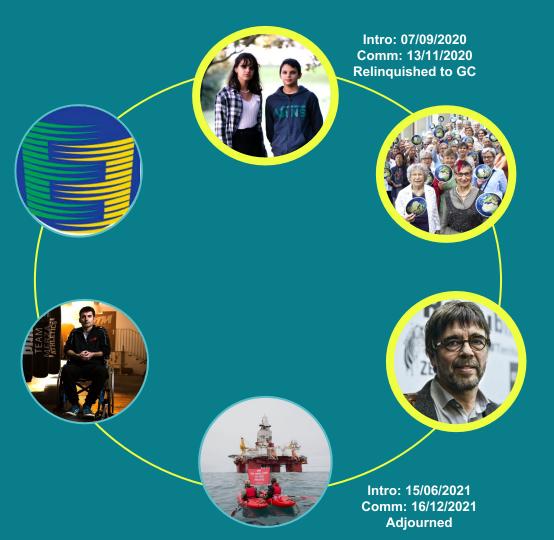


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Intro: 28/01/2021

Intro: 08/04/2021

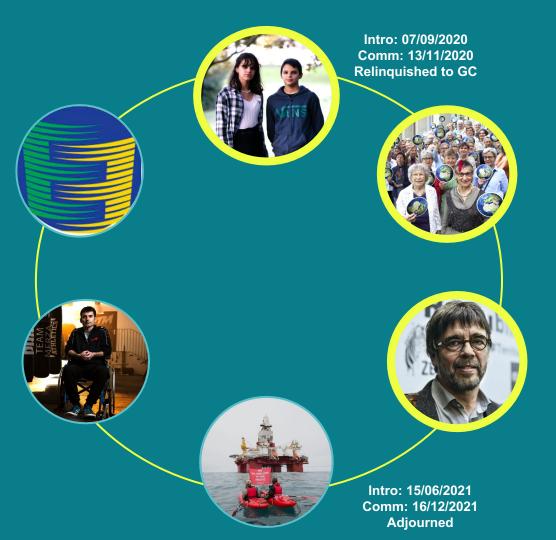
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Intro: 26/11/2020 Comm: 17/03/2021 Relinquished to GC

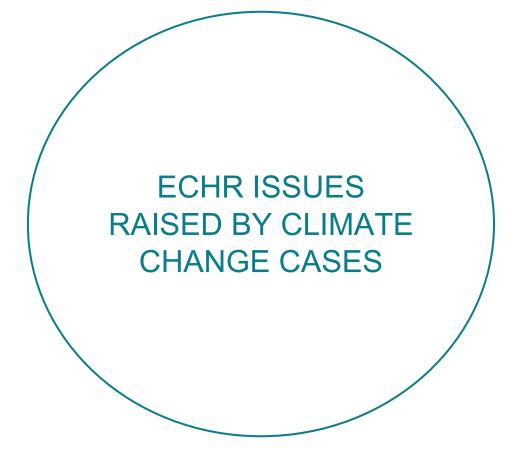
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Intro: 08/04/2021 Adjourned



Intro: 26/11/2020 Comm: 17/03/2021 Relinquished to GC

Intro: 28/01/2021 Relinquished to GC



### Relinquishment to the Grand Chamber

Art 43 ECHR Explanatory Report to Protocol No. 11

A case must raise a serious question affecting the interpretation (i) or application (ii) of the Convention or the Protocols, or a serious issue of general importance (iii).

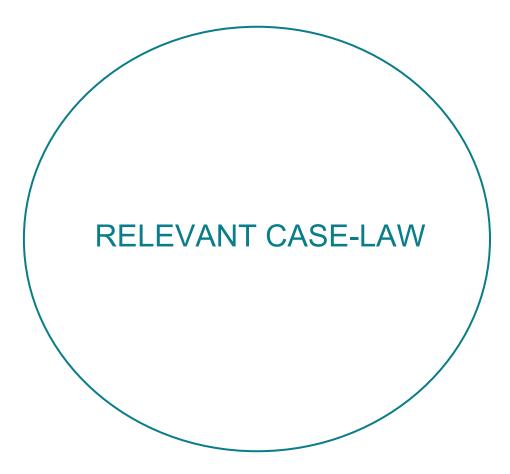
> (i) where the case raises new issues, not yet decided by the Court or it is of importance for the development of the Court's case-law

(goes beyond the scope of existing case-law / reflects a change in the society and calls for an update of case-law in the light of present-day conditions / offers opportunity for clarification of existing principles)

(ii) where a judgment necessitates a substantial change to national law or administrative practice

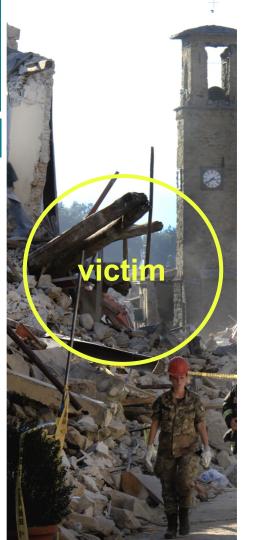
(iii) where the case involves substantial political issues or an important issue of policy

Direct victim (past or ongoing harm)				
Potential victim (risk assessment)				
NGO as victim				
Cause-and-effect extraterritoriality				
Attribution of State responsibility				
Exhaustion of domestic remedies				
Material causality	(wild fires/ droughts/ heatwaves)	(heatwaves)	(petrol licences)	(rising sea)
Access to a court				
Severity of HR impact				
Discrimination & Intergenerational equity				
Right to a safe and healthy environment				
General measures				

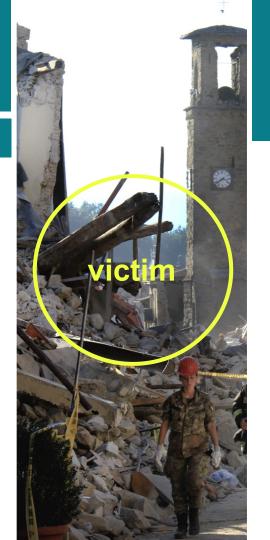




No actio popularis



No actio popularis

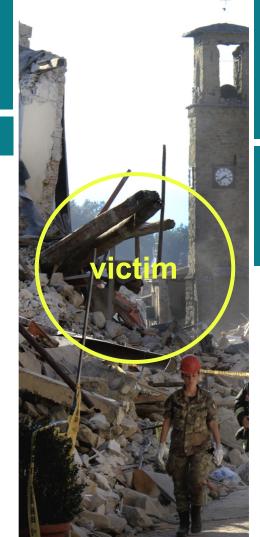


A legal entity (NGO) cannot rely on rights that are inherently attributable to natural persons only

### - right to life, private life, dignity

Yusufeli Ilcesini Guzellestirme Yasatma Kultur Varliklarini Koruma Dernegi v. Turkey (dec.), no. 37857/14, § 43, 2021; Greenpeace e. V. and Others v. Germany (dec.), 2009

No actio popularis



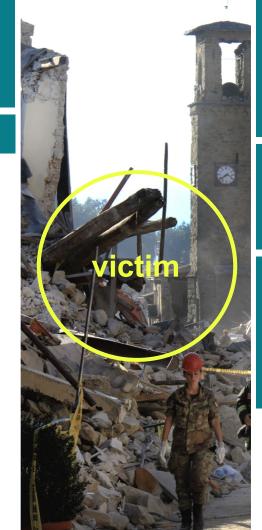
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An eNGO can in principle rely on Art 10 that prohibits restrictions on access to information where it is instrumental for the NGO's exercise of its right to freedom impart information BureStop 55 and Others v. France, 2021

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- right to life, private life, dignity Yusufeli Ilcesini Guzellestirme Yasatma Kultur Varliklarini

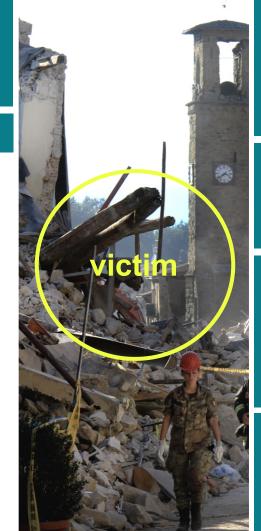
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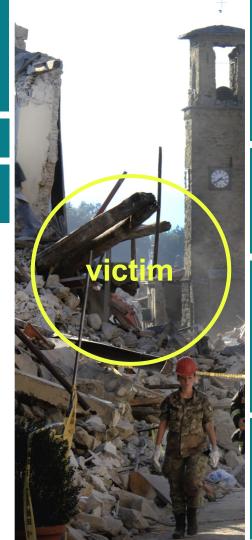
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Direct victim Affected by past or ongoing harm



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Potential victim (1) having a valid and personal interest in seeing the situation brought to an end [modification of conduct at risk of being directly affected by legislation]

Potential victim (2) where substantial grounds have been shown for believing that the person would face a real risk of being subjected to human rights harm [e.g. non-refoulement]

ENVIR TEST: exposure to a serious specific and **imminent** danger



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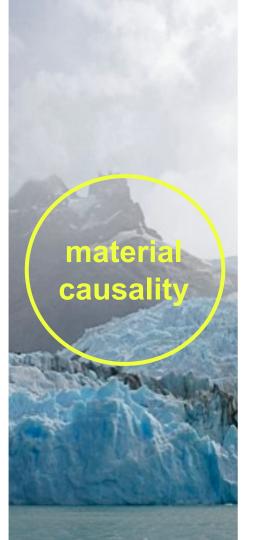
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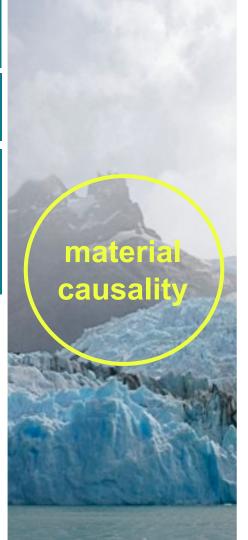


Risk of future harm Athanassoglou v. Switzerland [GC], 2000, § 51; Balmer-Schafroth e.a v. Switzerland [GC], 1997, § 40



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# material causality

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### General health vulnerability

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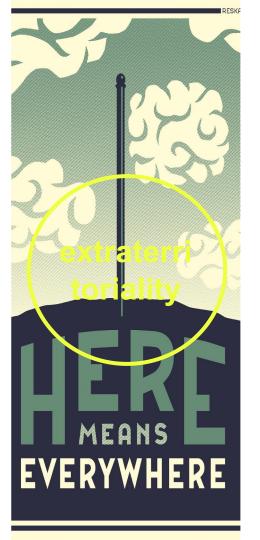
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Well-being & quality of private life (nuisance) Hatton and Others v. UK, 2003, § 96; Di Sarno and Others v. Italy, 2012, § 108; Dubetska and Others v. Ukraine, 2011, §§ 106 and 112; Deés v. Hungary, 2010, § 22, Ivan Atanasov v. Bulgaria, 2010, § 76; López Ostra, 1994; § 51



While a State's jurisdictional competence under Article 1 is primarily territorial, the Court in its case-law has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries.

In each case, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts

M.N. and Others v. Belgium (dec.) [GC], 2020, §§ 97-98 and 101-02; Hirsi Jamaa and Others v. Italy [GC], 2012, §§ 130-32; Al-Skeini and Others, 2011, § 132

The two main criteria governing the exercise of extraterritorial jurisdiction are that of "effective control" by the State over an area outside its territory (**spatial concept of jurisdiction**) and that of "State agent authority and control" over individuals (personal concept of jurisdiction)

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A test of "specific act involving an element of proximity" was relied on by the Court to accept extraterritorial jurisdiction (death by exposure to lethal substance at the hands of foreign agents without the applicant or the territory being under the agents' effective control).

> Carter v. Russia, 2021, § 130; Georgia v. Russia (II)[GC], 2021, §§ 130-31

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> Carter v. Russia, 2021, § 130; Georgia v. Russia (II)[GC], 2021, §§ 130-31

Important issues of extraterritorial jurisdiction, albeit in a different context (armed conflict), are being decided by a Grand Chamber in the cases of Ukraine and the Netherlands v. Russia, nos. 8019/16, 43800/14 and 28525/20

(human rights harm caused in Ukraine by shelling from a separatist-held territory w/changing borders).

