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2023 / 8411

Date of pronouncement

30/11/2023

Role number

2021/AR/15gs
2022/AR/737
2022/AR/891

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6 court of appeal Brussels

Verdict

2^"e room F
civil affairs

Presented on

Not recordable

Because of

"The original plaintiffs", in the sense agreed between the parties in their conclusions of October 18, 2023, referred to below;

with advice from

1. [redacted] whose offices are at [redacted] and
2. [redacted]

all electing domicile in this cause at [redacted]

represented at the pleadings by [redacted]

Counter

"The original defendants" in the sense agreed between the parties in their submissions of October 18, 2023, referred to below, namely:

The BELGIAN STATE, represented by its Government, represented by the Minister of Energy, Environment and Sustainable Development, whose offices are located at 1060 BRUSSELS, avenue de la Toison d'Or, 87, bte 1,

respondent in cause 2021/AR/1589, appellant in cause 2022/AR/737,

represented by [redacted]

LA REGION WALLONE, represented by its Government, pursued and diligences of Mr Philippe HENRY, Vice-President and Minister of Climate, Energy, Mobility and Infrastructures and Mobility, whose offices are established at 5000 NAMUR, rue d'Harscamp, 22,

respondent in cause 2021/AR/1589, appellant in cause 2022/AR/891,

represented by [redacted]

THE FLEMISH REGION, represented by the Flemish Government, in the person of the Flemish Minister of Justice and Maintenance, Environment, Energy and Tourism, whose offices are located at 1210 BRUSSELS, Boulevard du Roi Albert ll 7,

respondent in case 2021/AR/1589,

represented by [redacted]

THE BRUSSELS-CAPITAL REGION, represented by its Government, represented by Mr Alain Maron, Minister of the Brussels-Capital Region Government, responsible for Climate Transition, Environment, Energy and Participatory Democracy, whose office is located at 1210 BRUSSELS, Boulevard Saint-Lazare, 10 (11th floor),

respondent in case 2021/AR/1589,

represented [redacted]

Having regard to the documents relating to the proceedings, and in particular

the judgment under appeal, delivered by the French-speaking Court of First Instance of Brussels on June 17, 2021, of which no writ of service has been produced;
the appeal petitions filed with the court clerk's office on November 17, 2021 for the ASBL Klimaatzaak (hereinafter "Klimaatzaak") and the persons mentioned in Appendix A to said petition (cause 2021/AR/1589), on May 30, 2022 for the Belgian State (cause 2022/AR/737) and on June 30, 2022 for the Walloon Region (cause 2022/AR/891); the order issued under article *1o9bis* of the Judicial Code on November 24, 2021, assigning the case to a chamber composed of three councillors;
the minutes of the hearing of January 13, 2022 in case 2021/AR/1589, which contain a pre-trial order based on article 747, § 2 of the Judicial Code;
the application for voluntary intervention filed on January 10, 2022 in the cause 2021/AR/1589 ;

the judgment delivered by the court on September 22, 2022, joining the cases entered on the general roll under numbers 2021/AR/1589, 2022/AR/737 and 2022/AR/891 and setting the schedule for preparation;
the rectifying judgment of September 22, 2022 delivered on September 29, 2022;
the summary submissions filed with the court clerk's office on March 31, 2023 for Klimaatzaak and all the persons listed i n Appendix A (hereinafter "the appellants in the main proceedings"), on March 31, 2023 for [redacted] on May 30, 2023 for the Belgian State, on June 29, 2023 for the Flemish Region, on June 30, 2023 for the Walloon Region and on June 30, 2023 for the Brussels-Capital Region. Patteuw, on May 30, 2023 for the Belgian State, on June 29, 2023 for the Flemish Region, on June 30, 2023 for the Walloon Region and on June 30, 2023 for the Brussels-Capital Region;
the parties' exhibit files.

TABLE OF CONTENTS

I. FACTS AND BACKGROUND!

A. Global warming climate:brief reminder ofbasic datacurrently known

1. Human activities disrupt the climate through the emission of greenhouse gases (hereinafter referred to as "GHGs").
"GHGs come mainly from the combustion of fossil fuels (coal, oil, natural gas).

These GHGs accumulate in the atmosphere and re-emit the infrared radiation they emit towards the earth's surface, resulting in global warming, i.e. a gradual increase in the average annual temperature at the earth's surface.

The emissions of all GHGs are converted into CO2 equivalents according to their radiative effect and lifetime, so that they can be compared. For example, the warming power of methane is around 80 times greater than that of CO , over twenty years, but only 30 times greater over a hundred years, because it degrades more rapidly (its lifetime is around 12 years, whereas CO2 takes hundreds of years to dissipate).

[1] The court established this part on the basis of the exhibits filed by the parties and, where applicable, the translations proposed by them and not contested by the others.

The ocean, soils and vegetation absorb almost half of anthropogenic CO emissions, and these "carbon sinks" limit the greenhouse effect and global warming.

2. The link between GHG emissions and global average temperature warming and climate change has been gradually established by the Intergovernmental Panel on Climate Change (hereinafter "IPCC", see *below).*

   There is a linear relationship between the level of COM concentration in the atmosphere and the increase in temperature on Earth. The concentration of COM in the atmosphere is indicated by the abbreviation "ppm" (particles per million). COM concentration in the atmosphere has risen from 280 ppm in the 1950s to a current level of 419.47 ppm.

   This makes it possible to determine what is known as the *global* carbon budget*,* i.e. the total quantity of CO2 that can be present in the atmosphere in order not to exceed a certain global temperature threshold.

   The *residual* carbon budget takes into account the quantity of CO2 already present in the atmosphere and corresponds to the quantity of CO2 that can still be emitted to avoid exceeding a certain warming threshold.

   At present, average global warming has reached 1.1°C. This current warming is due to past GHG accumulations. The effects of current GHG emissions will be felt several decades from now.

   Beyond a certain threshold of warming, said to be dangerous, ecosystems can no longer adapt, food security disappears and sustainable economic development is no longer possible.

   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.

   The IPCC's special report on warming limited to 1.5°C (discussed below, point 30) estimates the residual carbon budget at 420 GtCO/ (billion tonnes of COM, for a 2 in 3 chance of staying below 1.5°C) or 580 GtCO2 (for a 1 in 2 chance of staying below 1.5°C). In the latest IPCC report (AR6), this budget is revised downwards to 500 GtCOt for a 1-in-2 chance of staying below 1.5°C. In a scenario with two chances out of three, this budget would be, according to the appellants in the main proceedings, who are not disputed on this point, 400 GtCOt[2] .

3. Global warming is having an impact on the climate that varies from region to region. While average global warming is currently 1.1°C, it is around 1.9°C in Europe.

The court did not find this assessment in the AR6 synthesis, nor in the summary intended for political decision-makers.

In Europe, for example, we are already seeing an intensification of fires, droughts, heatwaves, extreme rainfall, storms (and floods), melting glaciers and rising sea levels.

Every rise in temperature presents aggravated risks and potential cascading effects. A warmer atmosphere may contain more water vapour, which also increases the greenhouse effect; similarly, fires destroy forests, which no longer play their role as carbon sinks.

Beyond a certain level of warming, tipping points may occur, i.e. phenomena involving abrupt and irreversible upheavals, themselves triggering cascading reactions that reinforce warming. Among the tipping points identified by the IPCC are the following:

the disappearance of the Greenland ice cap,
the disruption of major ocean currents, including the shutdown of the North Atlantic subpolar current that guarantees our temperate climate;
the disappearance of Arctic summer ice;

- the thawing of the permafrost layer at the bottom of tundra zones and the melting of permafrost layers on the seabed, where large quantities of methane (GHG) are stored, which will thus be released into the atmosphere;
the death of Arctic and warm-water coral reefs;
the desiccation of the Amazon region, which implies that the tropical forests of this area will be able to absorb less CO2and may even become a source of CO2 emissions.

As climate science progresses, it is becoming clear that the changes are faster and more severe than previously thought.

B. Scientific reports used in the international fight against global warming

4. On December 6, 1988, the United Nations General Assembly adopted Resolution 43/53 on the protection of global climate for present and future generations. In this resolution, the United Nations considered climate change to be a "*common concern of mankind",* and agreed that "*timely action* should *be taken to address climate change within a global framework*".

At the same time, the World Meteorological Organization (hereinafter "WMO") and the United Nations Environment Programme (hereinafter "UNEP") set up the Intergovernmental Panel on Climate Change (IPCC), a scientific intergovernmental body open to all members of the United Nations (hereinafter "UN") and WMO.

5. At regular intervals (every five to seven years), the IPCC produces reports assessing the state of knowledge on climate change. They are the main scientific input to the international climate negotiations taking place under the aegis of the United Nations Framework Convention on Climate Change (hereinafter "UNFCCC", discussed below in point 9).

The IPCC's mission is to examine and evaluate the most recent scientific, technical and socio-economic data published worldwide and useful for understanding climate change, with a view to making them available to policy-makers. According to the undisputed data provided by the Belgian State and the parties appealing in the main proceedings, the IPCC currently has 195 member states, including Belgium.

According to the parties' joint explanations, the preparation of each report begins with a so-called "scoping" meeting, during which the appointed experts prepare a work plan, which is then submitted to a "Panel" that decides, among other things, on the appointment of the experts who will be the authors of the report. These experts draw up a first version, which is then submitted to government representatives and other experts for review, as a report requires several readings before its final adoption.

Since 1990, the IPCC has published six assessment reports, each with three basic components (a component devoted to the physical principles of climate change, a component studying the impacts, vulnerability and adaptation to climate change of both socio-economic and natural systems, and a component dealing with ways of mitigating climate change).

These six reports are referred to by the following acronyms

- FAR *(First Assessment Report)* for the first report of 1990;
- SAR *(Second Assessment Report)* for the second report in 1995 ;
- TAR *(Third Assessment Peport)* for the third report in 2001;
- AR4 *\4th Assessment Report)* for the fourth report of 2007 ;
- AR5 *(Sth Assessment Report)* for the fifth report of 2013-2014 ;
- AR6 *(6th Assessment Report)* for the sixth report from 2021-2023.

The synthesis of the 6 "e evaluation cycle, with a summary for policy-makers, was recently published on March 20, 2023.

In addition to these reports, the IPCC also published special reports (SRs) in 2018 and 2019. On October g, 2018, the IPCC published a special report on the consequences of global warming of 1.5°C, to which the Court will return (see point 30 below).

6. For its part, UNEP has been tasked with drawing up annual reports on the gap between needs and prospects for reducing GHG emissions.

7. The WMO also publishes annual reports on the state of GHGs in the atmosphere.

C. Developments in international commitments and in the European and Belgian domestic order in line with the state of the art

1. Introduction

8. In addition to the UNFCCC, global climate governance is essentially based on the

1997 Kyoto Protocol;
Doha Amendment to the Kyoto Protocol (2012); Paris Agreement (2015).

In view of the timeframes set out in these texts, Belgium's international commitments can be divided into three chronological periods: from 2008 to 2012, from 2013 to 2020, and from 2021 to 2050.

For each of these commitment periods, the Court will successively examine the state of scientific knowledge on global warming, the contributions of the various Conferences of the Parties (hereinafter, "COPs") - i.e. the international *political* community's consideration of the climate problem, the *legal* (but not necessarily binding) commitments binding on Belgium at international and European level, and, finally, their implementation in our legal system and the results obtained, insofar as they are available.

First of all, we should briefly mention the convention that forms the basis of this climate governance, namely the UNFCCC.

9. The UNFCCC was signed at the Rio Earth Summit on May 9, 1992. It came into force on March 21, 1994 and, according to the appellants in the main proceedings, 197 States (196 countries and the European Union) are currently party to it. Belgium signed on June 4, 1992 and ratified on January 16, 1996.

The objective of the Convention is "to *stabilize, in accordance with the relevant provisions of the Convention, concentrations of GHGs in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*" (Article 2).

Article 3 of the UNFCCC lays down the guiding principles for the measures to be taken by each Party to achieve the objective of the Convention, and in particular :

- the principle of common but differentiated responsibilities (PRCD), which takes into account the respective capacities of the Parties, and places developed countries in a position to
It is "*at the forefront of the fight against climate change and its harmful effects*" (article 3.1.);

- the precautionary principle, whereby lack of full scientific certainty is no excuse for postponing preventive measures (article 3.3).

This convention also establishes the publication of national inventories of anthropogenic emissions by sources and removals by sinks of all GHGs (article 4).

Under Article 4, the UNFCCC also sets out the commitments of the Parties, distinguishing between the obligations of States listed in Annexes I and II and those of States not listed. Annex I to the Convention groups together the "*developed countries*", i.e. the industrialized countries that were members of the OECD in 1992, as well as countries whose economies are in transition towards a market economy, notably Russia and several Eastern European countries. Belgium is included in this Annex I, as well as in Annex II, which groups together some of the members of Annex I, i.e. OECD members only.

Finally, Article 7 of the UNFCCC establishes the Conference of the Parties or "COP" as the supreme body of the Convention. Its role is to monitor the implementation of the UNFCCC, to determine whether the measures taken are sufficient to achieve the ultimate objective of the Convention, namely the prevention of dangerous climate change, and, within its mandate, to take the necessary decisions to promote the effective implementation of the Convention. For decision-making within the COPs, the consensus rule is applied as a matter of priority (article 15.3).

2. Commitment period from 2008 to 2012

a) <u>State of scientific knowledge at that time</u>

10. The IPCC reports of 1990 and 1995 revealed that there was still some uncertainty about the precise links between GHG emissions from human activities and the rise in global mean surface temperature.

In its 1990 report, the IPCC noted that emissions from human activities were significantly increasing the atmospheric concentration of GHGs: carbon dioxide (CO2), methane (CH4), chlorofluorocarbons (CFCs) and nitrous oxide (N20), but that, due to insufficient knowledge, its forecasts were subject to many uncertainties, particularly as regards the pace, scale and regional configuration of the predicted changes.

On page 5 of its 1995 (synthesis) report, the IPCC stated that, having noted clear signs of regional changes in certain extreme conditions and indicators of climate variability, it had not yet been possible to establish an unambiguous link between these changes and human activities.

11. Since 2001, the link between climate change and human activity has been clearly established.

In its 2001 synthesis report, the IPCC noted that, since the time of the

In the pre-industrial era, human activities increased atmospheric GHG concentrations, and most of the warming observed over the last fifty years is due to human activities (p. 4).

12. The 4th[e] IPCC report of 2007 marks a turning point in the evolution of knowledge on climate change. On page 5 et seq. of its synthesis report, the IPCC concluded that :

"Most of the rise in global average temperature observed since the middle of the 20th century is very probably attributable to the increase in anthropogenic GHG concentrations. It is likely that all continents, with the exception of Antarctica, have generally experienced marked anthropogenic warming over the past fifty years".

In particular, it is noted that human activities have *"very probably contributed to sea level rise in the second half of the 20th century", and* that "the rise in sea level in the second half of the 20th century is very probably due to human activities".
"These changes have "*led to an increase in the temperature of extremely hot and cold nights and extremely cold days",* have *"undoubtedly increased the risk of heat waves, the progression of drought since the 1970s and the frequency of episodes of heavy precipitation",* and that *"it is likely that anthropogenic warming over the last thirty years has played a significant role on a global scale in the observed evolution of many physical and biological systems*".

The report also stated that "*GHG emissions must peak and then decline for atmospheric concentrations of these gases to stabilize. The lower the stabilization level targeted, the faster the peak must be reached*" (p. 20: table).

This fourth report also set out scenarios for limiting the global rise in temperature, and in particular that, to limit warming to between 2°C and 2.4°C, the concentration of GHGs in the atmosphere must stabilize at a level of between 445 and 490 ppm CO2-eq, assuming that emissions peak between 2000 and 2015.

Finally, in the section on mitigating climate change, it is stated that, in order to limit GHG concentrations to 450 ppm CO2-eq., Annex I countries (including Belgium) should reduce their GHG emissions by 25 to 40% by 2020 (ch. 13, p. 776).

b) COP contributions between 2007 and 2012

13. As explained above, the COPs meet periodically and are responsible for monitoring the founding international treaty, the UNFCCC, by bringing together the States and the European Union that have ratified it (see V. LEFEBVE, "L'Affaire climat (Klimaatzaak). LEFEBVE, "L'Affaire climat (Klimaatzaak). Une mobilisation sociale en droit, science et politique", *Courrier Hebdomadaire,* CRISP, n° 2553-2554, 2022, p. 16).

14. At COP 13 in Bali in December 2007, the States Parties to the UNFCCC adopted the Bali Action Plan, whose preamble explicitly recognizes the need to reduce greenhouse gas emissions.

emissions to meet the UNFCCC's ultimate objective, and stresses the urgency with which this should be done, with reference to the conclusions of the IPCC's 4th"e assessment report "*that warming of the climate system is unquestionable, and that any delay in reducing emissions significantly reduces the chances of stabilizing emissions at lower levels and increases the risk of more severe climate change inCidences".*

The Bali Action Plan also refers, in a footnote, to ch. 13, p. 776, of the 4th"e IPCC report (i.e. that of 2007) which, in order to maintain a GHG concentration of 450 ppm CO2 eq. in the atmosphere, necessary to prevent warming of more than 2°C, prescribes a GHG emissions reduction of 25 to 40% by 2020 for Annex I countries.

In this respect, the Court notes that, in its earlier report of September 17, 2007, the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on the work of its fourth session, held in Vienna from August 27 to 31, 2007, had already stressed that, "*to achieve the lowest stabilization level assessed under the work of the Intergovernmental Panel on Climate Change to date, and to limit potential damage accordingly, Annex I Parties should, by 2020, collectively reduce their emissions to between 25% and 40% below 1990 levels by the means that may be available to them to achieve these targets".*

15. 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 2º C towards one of limiting it to 1.5°.

16. In December 2009, at COP 15, the States Parties signed the Copenhagen Accord, which confirms that, *"in view of the scientific view that the global temperature increase should* be *limited to 2°C, we* need to *strengthen our long-term concerted action to combat climate change, on the basis of equity and with a view to sustainable development*".

This agreement refers to the recommendations of the 4th"e IPCC assessment report, updated in 2009, and calls for *"the implementation of this agreement to be subject to an assessment by ÎCÎ Ô 2015, particularly in the light of the ultimate objective of the Convention"*, thereby
"This would mean considering strengthening the long-term objective, taking into account the various elements provided by scientific research, particularly with regard to a temperature rise of 1.5°C".

17. In 2010, at COP 16, the member states adopted the Cancûn Agreements in which, with reference to the scientific conclusions of the IPCC, the Bali Action Plan and the Copenhagen Accord, the parties to the COP agreed that

- climate change has an impact on the effective exercise of human rights, particularly for the most vulnerable groups;

- According to scientific data, a sharp reduction in global GHG emissions is essential to keep the rise in average global temperature below 2°C compared with pre-industrial levels;
- it is necessary to consider reinforcing the global long-term objective in line with the most reliable scientific knowledge, particularly with regard to a global average temperature rise of 1.5°C.

In the same decision, the parties to the Kyoto Protocol recognized that the contribution of Working Group III of the 4th"e IPCC Assessment Report indicated that achieving the minimum levels determined by the International Panel on Climate Change required Annex 1 countries as a group to achieve GHG emission reductions of -25-40% by 2020 compared to 1990 (Preamble to Decision 1/CMP.6, p. 3).

18. COP 17 in Durban in 2011 noted *the "serious concern"* of States over "the *significant gap between the combined effect of the Parties' mitigation commitments for annual global GHG emissions by 2020 and the global emissions profiles that provide a reasonable prospect of containing the rise in global average temperature to below 2°C or 1.5°C above pre-industrial levels".*

The preamble to this COP expressly states that the objective of Annex I countries is to reduce their total emissions by at least 25-40% below 1990 levels by 2020 (Preamble to decision 1/CMP.7, p. 2).

At the end of this COP, it was decided to launch a process to develop a protocol, other legal instrument or mutually agreed text with legal force under the UNFCCC, to be carried out within the framework of a subsidiary body under the Convention known as the Ad Hoc Working Group of the Durban Platform for Enhanced Action.

c) The commitments made at international and European level since UNFCCC

- *The Kyoto Protocol (1997)*

19. At the first meeting of the Conference of the Parties in Berlin in 1995, the representatives of over 120 countries that had already ratified the UNFCCC felt that the commitments set out in Article 4.2a and b were not sufficient to achieve the objectives set by the UNFCCC. A negotiation process was therefore set in motion, culminating in the adoption in 1997 of the Kyoto Protocol, which was signed at COP 3 on December 11, 1997, but did not come into force until February 16, 2005.

In it, the Annex I countries, including Belgium, committed to reducing their GHG emissions over a five-year period, from 2008 to 2012.

Article 3.1 of the Protocol provides that

"The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the GHGs listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their total emissions of these GHGs by at least 5% below 1990 levels in the commitment period 2008 to 2012.

Article 4 of the Protocol provides for the possibility of the Parties jointly fulfilling the commitments set out in Article 3.

To ensure a degree of flexibility, so-called flexibility mechanisms have been introduced, including the possibility for countries with reduction targets to participate in emissions trading to meet their commitments under Article 3 (Article 17).

20. Belgium has been a party to the Kyoto Protocol since April 29, 1998, as has the European Union.

    On the domestic front, the Kyoto Protocol has been the subject of assent legislation at both federal and regional level[3] .

    Annex B of the Protocol set the Belgian target at -8% GHG emissions by 2012, compared with the 1990 reference year. Annex B set the same target for the European Union at -8% below 1990 levels by 2012.

21. The European Union, making use of the option provided for in Articles 3.1 and 4 of the Kyoto Protocol, adopted Decision 2002/358/EC, which set a global GHG emissions reduction target of 8% below 1990 levels by 2012, while Belgium's target for the 2008-2012 period was reduced to -7.5%. This target has replaced, for Belgium, the 8% target set out in the Kyoto Protocol, as stated in article 4.5 of the said Protocol. In accordance with article 4.6 of the Protocol, only if the European Union's joint target is not reached does Belgium again become responsible for the level of its emissions set by the Protocol.

22. On October 13, 2003, Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the European Union was adopted.

Cf. the Law of September 26, 2001 assenting to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and Annexes A and B, done at Kyoto on December 11, 1997; the Ordinance of the Brussels-Capital Region of July 19, 2001 assenting to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and Annexes A and B, done at Kyoto on December 11, 1997; the decree of the Flemish Region of February 22, 2002 assenting to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, a n d to Annexes A and B, done at Kyoto on December 11, 1997; the decree of the Walloon Region of March 21, 2002 assenting to the Kyoto Protocol to the United Nations Framework Convention on Climate Change, and to Annexes A and B, done at Kyoto on December 11, 1997.

Unlike international mechanisms, the European system distinguishes between the management of GHG emissions by sector of activity.

For example, the European Union has set up a GHG emissions trading scheme, known as the Emission Trading System (ETS), under which companies are allocated emission rights (or allowances) that they can trade with each other. The aim of this system is to reward the environmental efforts of these companies, which can sell their unused allowances.

In the sectors not included in this trading system, or "non-ETS" sectors (transport, construction, agriculture and part of the energy and industry sectors), each member state has an emissions quota which it cannot exceed.

In its communication of January 10, 2007, the European Commission proposed that "*the EU* should *set itself the objective, within the framework of international negotiations, of reducing greenhouse gas (GHG) emissions from developed countries by 30% (compared with their 1990 levels) by 2020",* such an effort being considered "*necessary to limit the rise in global temperatures to 2 degrees Celsius "*.*

In 2007, the European Union made a commitment to reduce its GHG emissions by 20% below 1990 levels by 2020 (Presidency conclusions of the Brussels European Council of March 8-9, 2007, point 32). The European Union also proposed a 30% reduction in GHG emissions from 1990 levels by 2020, "*provided that other developed countries commit themselves to comparable emission reductions and that economically more advanced developing countries contribute adequately according to their responsibilities and respective capabilities" (Ibid.,* point 31).

On January 31, 2008, the European Parliament adopted a resolution which "*recalls that industrialized countries, including those which have not yet ratified the K y o t o Protocol, have a leading role to play in the global fight against climate change and must commit to reducing their emissions by at least 30% by 2020 and between 60% and 80% by 2050 compared to 1990*" (Resolution of January 31, 2008 on the outcome of the Bali Conference on Climate Change (COP 13 and COP/MOP 3, OJ C 68 E of 21.3.2009, p. 13).

On December 17, 2008, the European Parliament adopted the 2013-2020 Climate and Energy Package, which aims to enable the European Union[5] to reduce its GHG emissions by 20% compared to 1990 levels by 2020 (this reduction could rise to 30% in the event of an international agreement).

4 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Limiting Global Climate Change to 2 degrees Celsius. The way ahead for 2020 and beyond, COM(2007) 2 final, Brussels, January 10, 2007.

As was the case for the first commitment period, the European Union and the Member States have chosen to jointly meet their quantified GHG emission limitation or reduction commitments for the second commitment period.

To this end, the European Union has adopted .

- Directive 2009/29/EC amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community, setting the European Union's effort at a -21%[6] reduction in its greenhouse gas emissions in 2020 compared with 2005, for the ETS sector; paragraph 6 of the preamble to this Directive reads as follows: "*In order to increase the degree of certainty and predictability of the Community scheme, it is appropriate to adopt provisions aimed at increasing the contribution of the Community scheme to the achievement of an overall reduction of more than 20%, in particular with a view to the target of 30% by 2020 set by the European Council, this level of reduction being the one considered scientifically necessary to avoid dangerous climate change*";
- the decision on effort sharing between member states (non-ETS) (decision 406/2009/EC); this decision defines national targets for 2020 for reducing GHG emissions in non-ETS sectors; for Belgium, the target is -15%.
  % in 2020 compared to 2005 levels.

d) Internal translation of commitments and results achieved

23. In Belgium's internal legal system, the distribution of climatic competencies is apprehended through multiple exclusive competencies, under the responsibility of different authorities.

    In order to guarantee compliance with Belgium's climate commitments and to articulate cooperation between the federated authorities, multiple forms of cooperation have been organized, notably through cooperation agreements, whether mandatory or concluded on an optional basis, or through concertation and cooperation bodies in climate matters (see C. ROMAINVILLE, "Le fédéralisme coopératif belge et sa pratique en matière climatique", *Revue belge de droit constitutionnel*, 2022/1-2, spec. p. 91).

24. Article 92bis §§2 to 4undecies of the Special Act on Institutional Reform sets out the areas (some of which are climate-related) in which a cooperation agreement must be concluded. However, the Special Act contains no specific obligation to cooperate in the fight against climate change. However, in a ruling dated June 14, 2012 (no. 76/2012), the Constitutional Court completed this list of mandatory cooperation agreements by adding cooperation on greenhouse gas emissions linked to air navigation. A number of structures have been set up to promote practical cooperation between the various levels of government.

[6] Recital 5) states that: "*In order for the Community to meet its commitment to reduce GHG emissions by at least 20% below 1990 levels in economically acceptable conditions, the emission allowances allocated to these installations should be 21% below their 2005 emission levels by 2020".*

Pursuant to article 141 of the Constitution, article 31 of the Ordinary Act of August 9, 1980 on institutional reforms established a Consultation Committee, responsible for consultation between the various levels of government. Pursuant to article 31b/s of the same Act, this Committee has set up a number of interministerial conferences, each dealing with a specific policy area, including the Conférence Interministérielle pour l'Environnement (CIE), to promote consultation and cooperation between the State, the Communities and the Regions.

On the climate front, the National Climate Commission (CNC) was set up to ensure that Belgium's commitments to reduce GHG emissions at European and international level are met. Organized by the cooperation agreement of November 14, 2002 between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region, supplemented by a cooperation agreement of February 19, 2007 between the federal authority and the Regions on the implementation of certain provisions of the Kyoto Protocol, the CNC's mission includes preparing a National Climate Plan (NCP), submitting it to the CIE (see *above)* and monitoring its implementation.

25. During the first commitment period, climate policy was the subject of several cooperation agreements, including that of November 14, 2002 between the Federal State, the Flemish Region, the Walloon Region and the Brussels-Capital Region concerning the establishment, implementation and monitoring of a National Climate Plan, as well as the preparation of reports, within the framework of the UNFCCC and the Kyoto Protocol.

26. In December 2008, following the work of the CNC, a National Climate Plan 2009-2012 was drawn up. This Plan is based on policies and measures developed by each of the four decision-making bodies.

The National Climate Plan has been the subject of fierce criticism. In its opinion of February 19, 2009, Minaraad (the Flemish Council for the Environment and Nature) stressed the limited and unclear nature of the National Climate Plan, and insisted on the need for a more coordinated and concerted Belgian strategy between the federal and federated entities (Exhibit F.11 of the appellants in the main proceedings).

In a report adopted on May 20, 2009 and transmitted to the House of Representatives in June 2009, the Court of Audit noted that the National Climate Plan "does *not meet the standards of a plan, is not a political tool"* and that "[i]*t is a rod//icor/on of regional climate plans, COmplëtëe par des mesures fédérales*", adding that "*no guiding character emanates from the plan"* (Exhibit C.4 of the appellants in the main proceedings; on the criticism of this report, see also F. VANRYKEL, "La politique belge en matière de climat, entre autonomie et coopération. Quelle place pour une vision commune à l'échelle nationale", *R.B.D.C.,* 2017, p. 238).

27. Subsequently, the Belgian federal and regional authorities declared that they would take more ambitious binding measures than those resulting from the Kyoto Protocol.

In its declaration of Walloon regional policy on July 16, 2009, the Walloon Parliament stated that "*the objectives set by the European Union to reduce greenhouse gas emissions by 20% by 2020 (or by 30% in the event of an international agreement) compared with 1990 levels are commendable but insufficient;* that Europe *'must look further ahead, and so must Belgium and Wallonia' ;* that, "*in the event of an international agreement, the Government will ask Belgium to advocate that the European target be raised to 40%*"; and that the Walloon Government *"undertakes to pursue, in the dynamic initiated by the Air-Climate Plan and the Plan for Sustainable Energy Management, a strategy that will enable us to reduce our emissions by 30% by 2020 and by 80-95% by 2050. This must be part of a concerted Belgian and European approach.*

At federal level, on December 3, 2009, the House of Representatives passed a resolution in the run-up to the Copenhagen COP, calling on the federal government to support, at international and European level, the fact that the targets to be adopted must take account of the recommendations of the 4th IPCC report, namely that industrialized countries should collectively reduce their GHG emissions by 25-40% by 2020 and by 80% by 2050, and that the European Union could decide to move from 20% to 30% if the efforts of other developed countries were comparable and the contributions of developing countries were adequate.

On December 9, 2009, the Flemish Parliament passed a resolution stating that "*the precautionary principle implies that for the group of developed countries, reduction targets of 25-40% by 2020 compared to 1990 and at least 80-95% by 2050 compared to 1990 are necessary*".

28. As explained above, the Belgian target for the period 2008-2012 was to reduce GHG emissions by 7.5% compared to 1990 levels. This commitment was to reduce GHG emissions from 145.729 Mt CO2 eq. in 1990 to 134.799 MT as an annual average for the period 2008-2012.

However, it is undisputed that, taking into account data for the five years of the commitment period (2008 to 2012), Belgium has reduced its emissions by an average of 14% (on an annual basis) compared with the 1990 baseline[7] , so that its targets, as defined at European level and in application of the Kyoto Protocol, have been met.

3. Commitment period from 2013 to 2020

a) <u>State of scientific knowledge at that time</u>

[7] The GHG emission reduction figures cited by the Belgian government can be found on p. 13 of Belgium's Greenhouse Gas Inventory (1990-2012) dated April 1S, 2014.

29. In its fifth report of 2013-2014 (p. 17 and 20 of the Summary for Policymakers), the IPCC noted that "*the influence of human activities has been detected in the warming of the atmosphere and ocean, changes in the global water cycle, the retreat of snow and ice, the rise in global mean sea level, and changes in certain climate extremes";* that there was *"greater certainty on this subject since the Fourth Assessment Report", and* that it was "*extremely likely that human influence is the main cause of the warming observed since the middle of the 20th century*". According to the IPCC, by the end of the 21st century, global surface temperatures will probably have risen by more than 1.5°C compared with the period between 1850 and 1900 in most scenarios, and by more than 2°C in some scenarios.

    He concludes: *'Most of the characteristics of climate change will persist for many centuries even if CO2 emissions are stopped. The inertia of climate change is considerable, on the order of several centuries, and is due to past, present and future Co2 emissions".*

30. As mentioned above, on October 8, 2018, the IPCC published a special report on global warming limited to 1.5 ° C, whose conclusions are essentially as follows:
    - Human activities have already caused global warming of approximately 1º C above pre-industrial levels;
    - Anthropogenic global warming is currently increasing by 0.2° C per decade due to past and current emissions;
    - At current rates, global warming is likely to reach 1.5°C between 2030 and 2052;
    - the warming caused by anthropogenic emissions from the pre-industrial period to the present day will persist for centuries, if not millennia;
    - Anthropogenic emissions to date are unlikely to cause global warming of 1.5°C on their own;
    - climate-related risks are greater for global warming of 1.5°C than for current warming, but less than for global warming of 2°C.

    The 2018 special report concludes that limiting global warming to 1.5°C (with no or minimal overshoot) implies reducing global GHG emissions by around 45% (between 40% and 60%) by 2030 compared with 2010, and reaching net zero emissions around 2050. It also concludes that, to limit warming to 2º C, global GHG emissions need to fall by around 25% (between 10 and 30%) by 2030 and reach net zero emissions by 2070.

    The IPCC also points out in its special report that meeting the commitments made under the Paris Agreement will not be enough to limit global warming to 1.5°C. Thus, it points out, to avoid overruns and dependence on future large-scale deployment of atmospheric CO2 absorption, global CO2 emissions must begin to decline well before 2030.

The IPCC has also published a special report on land use and another on the ocean, cryosphere and climate change in 2019.

31. During the period under review, UNEP also produced a number of reports examining the gap between needs and prospects for reducing GHG emissions.

In its 2018 report (executive summary, p. 1), UNEP noted that the current commitments expressed in the NDCs (Nationally Determined Contributions) are insufficient ; that, if the ambitions of the NDCs are not raised before 2030, it will become impossible to meet the 1.5°C target and that, for the countries of the world to be able to limit global warming to 2º C and 1.5° C by following a least-cost evolution profile, global GHG emissions in 2030 must be around 25 and 55 percent lower respectively than in 2017.

In its 2019 report, UNEP noted that "*GHG emissions continue to rise despite warnings from the scientific community and commitments from governments*" (p. 4); that "*it is necessary to significantly strengthen the NDCs in 2020. Countries need to triple the level of ambition of their NDCs to reach the target of well below 2°C, and they need to more than quintuple this level to reach the target of 1.5°C*", and that *"strengthened action by G20 members will be essential t o the global effort to reduce emissions"* (p. 10).

32. In its 2020 report, UNEP also noted that, "*although the COVID- 19 pandemic will lead to a drop in emissions in 2020, this will not bring the world closer to the Paris Agreement target of limiting global warming to well below 2º C* and *continuing to aim for a 1.5° C increase over the course of this century*".

33. The WMO also issued several reports during this period. Its reports indicate a continuing rise in the concentration of CO2 in the atmosphere (the higher the concentration, the greater the risks associated with climate change, see point 2 above): from a level of 405.5 +- 0.1 ppm in 2017, we have moved on to a level, in 2020, of 413.2 +- 0.2 ppm.

b) <u>COP contributions between 2013 and 2020</u>

34. At the COP in Doha in 2012 (COP 18), the Kyoto Protocol was amended: the new year B provided for GHG reductions for the EU of 20% by 2020 compared with 1990, with a commitment to increase this target to -30% if other developed countries commit to doing the same. It was also decided that each Annex I Party would revise upwards its commitments for the period 2013-2020 no later than 2014, it being specified that the Party concerned may lower the percentage listed in Annex B for its quantified emission limitation and reduction commitment, with a view to achieving an overall reduction in GHG emissions by Annex I Parties of at least 25% to 40% below 1990 levels by 2020 (Preamble to decision 1/CMP.8, p. 3, §7).

In Warsaw in 2013 (COP 19), it was noted that warming of the climate system was unequivocal and that, since the 1950s, many of the changes observed were unprecedented over decades, even millennia. The Parties warned that "*climate change represents an urgent and* potentially *irreversible threat to human societies, future generations and the planet, that continued GHG emissions will lead to further warming and changes in all components of the climate system, and that limiting global warming will require substantial and sustained reductions in GHG emissions*".

35. The need for a 25-40% reduction in GHG emissions by 2020 compared with 1990 was reiterated.

36. In Lima in 2014 (COP 20), the States once again expressed their "*deep concern*" about the significant gap between the cumulative effect of the Parties' GHG mitigation commitments for 2020 and a "*reasonable prospect of containing the rise in global average temperature to below 2°C or 1.5°C above pre-industrial levels*". The target of a 25-40% reduction in GHG emissions by 2020 compared with 1990 levels was again reiterated at[9] .

37. An expert dialogue process has also been launched in preparation for the Paris Climate Summit (or "COP-21") in 2015, called the Structured Expert Dialogue, or "SED".

In this regard, the SED report of May 4, 2015 stated in particular (according to the uncontested free translation of the appellants in the main proceedings; footnote 236; p. 83 of Iheir summary conclusions) that the threshold of 2º C was to be considered "*as an ultimate threshold*" ;
This is "a defensive line that must be rigorously defended, although less warming would be preferable", while limiting global warming to below 1.5°C *"would imply several benefits approaching a safer guardrail",* avoiding or reducing *"risks, notably to food production or to unique and threatened systems such as coral reefs or many parts of the cryosphere, including the risks of sea-level rise".*

38. The court will detail below the adoption, at the COP 21 held in Paris, of the Paris Agreement, which came into force on November 4, 2016. It should be noted, however, that the Bali Plan target (-25-40%) was ratified[10] . COP 21 also invited the IPCC to present the special report referred to above on the consequences of global warming in excess of 1.5°C above pre-industrial levels and related profiles.

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[8] Decision 1/CP.19, §4, c) which invites each country to the Kyoto Protocol to review its quantified emission limitation or reduction commitment for the second commitment period in accordance with §7 of decision 1/CMP.g, which itself refers to the -25-40% reduction of the Bali Plan.
Decision 1/CP.20, p. 4, §18, which refers to Doha Decision 1/CMP.8 by reference to §4 of Warsaw Decision 1/CP.19.
[1] Decision 1/CP.21, p. 17, no. 105, c), which refers to Doha Decision 1/CMP.8 by reference to § 4 of Warsaw Decision 1/CP.19.

39. Following the Paris AccoFd, at COP 24 in Katowice in December 2018, the Conference of the Parties adopted the "Paris Rulebook", i.e. the guide to practical implementation of the Paris Agreement.

40. On September 23, 2019, a climate summit was held in New York. On this occasion, 59 countries (out of the 195 signatories to the Paris Agreement) pledged to raise their GHG emissions reduction targets for 2020. In addition, 66 countries (including Belgium) pledged to achieve "net zero emissions" by 2050.

41. At COP 25 in Madrid (December 2019), the Parties recognized the role of the IPCC in providing scientific input to inform the Parties in strengthening the global response to the threat of climate change. There, they also reaffirmed "*the urgent need to close the significant gap between the global effect of Parties' mitigation efforts in terms of annual global GHG emissions by 2020 and aggregated emission pathways consistent with an increase in global average temperature well below 2º C above pre-industrial levels, and to continue efforts to limit temperature increase to 1.5° C above pre-industrial levels".*

c) International and European commitments

1) Doha Amendment

42. At the close of COP 18 in Doha on December 8, 2012, the Parties to the Kyoto Protocol adopted an amendment to the Protocol that sets a second commitment period from 2013 to 2020 to achieve a total reduction in GHG emissions from Annex I Parties of 18% below 1990 levels by 2020.

This amendment also sets Belgium's target at a 20% reduction in GHG emissions compared with 1990 by 2020. The federal state and the three regions gave their assent to this amendment and Belgium signed it on November 14, 2017. The European Union signed on December 21, 2017.

However, the amendment did not enter into force until December 31, 2020, unless the required number of ratifications was reached earlier.

2) Paris Agreement

43. During the second commitment period, COP 21 was held on December 12, 2015 in Paris. The member states of the UNFCCC adopted the Paris Agreement, which came into force on November 4, 2016. This text is not simply a supplement to the UNFCCC but a fully-fledged international treaty, which has profoundly renewed the terms of the international community's climate commitments (on this treaty, see.

V. LEFEBVE, "L'Affaire climat (Klimaatzaak). Une mobilisation sociale entre droit, science et politique", *op. cit.* p. 16; D. MISONNE, "L'ambition de l'Accord de Paris sur le changement climatique. Ou comment, par convention, réguler la température de l'atmosphère terrestre?", *Amén.,* 2018, liv. 4, pp.11 and 12).

This agreement was signed by Belgium and the European Union on April 22, 2016. As this is a mixed treaty, once the assent of the Community, Regional and Federal Parliaments had been obtained, Belgium was able to deposit its ratification with the UN on April 6, 2017 (see B. GORS, M. KAROLiNsKi and F. DE MUYNCK, "Title 2. L'atmosphère et le climat", in *Memento de l'environnement (Régions wallonne et bruxelloise),* 2023, p. 673).

Article 2 of the Paris Agreement includes measures "*to strengthen the global response to the threat of climate change"*, such as containing "*the increase in global average temperature to well below 2°C above pre-industrial levels, and continuing efforts to limit the increase in temperature to 1.5°C above pre-industrial levels, on the understanding that this would significantly reduce the risks and impacts of climate change".*

Under Article 4 of the Agreement, the Parties undertake, with a view to achieving the long-term temperature objective set out in Article 2, in particular to seek to reach the global cap on GHG emissions as soon as possible ; to rapidly reduce peak GHG emissions *'in accordance with the best available scientific information, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks of GHGs in the second half of the century, on the basis of equity, and in the context of sustainable development and poverty alleviation*', and to determine individually and voluntarily their Nationally Determined Contributions (NDCs).

The agreement does not therefore set any mandatory emission reduction quotas, and allows countries to define their own level of ambition. However, as noted by the first judges, decision 1/CP.21 annexed to the Paris Agreement (p. 4/40, § 17) stated that "*emission reduction efforts significantly beyond those associated with the projected nationally determined contributions will be required to contain the global temperature increase below 2°C compared to pre-industrial levels by reducing emissions to 40 gigatonnes, or below 1.5°C compared to pre-industrial levels by reducing emissions to a level to be defined in the special report referred to in paragraph 21 below".*

3) Translating these commitments at European level

44. In addition to the arrangements described above (points 21 to 22), the Court notes that in 2011, the European Commission produced two discussion papers which sought to develop a perspective for climate policy up to 2050 ("Roadmap to a competitive low-carbon economy by 2050" and "Energy roadmap to 2050"). The first document laid the groundwork for a

emissions from the European Union: by 2050, a reduction of 80 % compared to 1990 would be achieved by a reduction of 40% in 2030 and 60% in 2040.

On October 24, 2014, the Council of the European Union adopted an initial "Energy-Climate Package 2030" setting four general objectives for 2030, including in particular a binding reduction target for the European Union of at least 40% compared to 1990 for GHG emissions within the territory of the European Union. These targets have been translated into various legal instruments, as follows

- ETS sectors: -43% (versus 2005) ;
- non-ETS sectors: - 30% (compared to 2005).

In addition, to implement the "Clean Energy for All Europeans (2030)" package, the European Union has adopted the following measures

- Regulation (EU) 2018/842[11] , which concerns non-ETS sectors and imposes binding annual GHG emission reductions on member states, in principle linear, which must result in a set reduction amount by 2030; for Belgium, the reduction to be achieved by 2030 was -35% compared with 2005 levels (Annex I of the Regulation);
- Regulation (EU) 2018/1999[12] of the European Parliament and of the Council of December 11, 2018 on the governance of the energy union and climate action, which came into force on December 24, 2018 and requires each of the Union's member states to implement climate governance based on integrated national energy and climate plans (INECPs).

On December 31, 2018, Belgium sent the European Commission its draft National Energy-Climate Plan (2021-2030) (hereinafter, "the NECP") and submitted its final NECP on December 31, 2019 (see points 64-65 below). It follows from the judgment under review that this plan was the subject of a critical opinion issued by the European Commission on October 14, 2020.

d) <u>The translation of these commitments into Belgian domestic law and the results obtained</u>

45. The special law of January 16, 1989 on the financing of the Communities and Regions was amended in 2012 to provide that a Royal Decree deliberated by the Council of Ministers, after agreement by the governments of the Regions and on the basis of a proposal from the National Climate Commission, will define a multi-year trajectory of GHG emission reduction targets for buildings in the residential and tertiary sectors, regardless of whether they are

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Regulation (EU) 2018/842 of the European Parliament and of the Council of May 30, 2018 on binding annual reductions of GHG emissions by Member States from 2021 to 2030 contributing to climate action to meet their commitments under the Paris Agreement and amending Regulation (EU) No 525/2013, entered into force on July 9, 2018.

[12] Regulation (EU) 2018/1999 of the European Parliament and of the Council of December 11, 2018 on the governance of the energy union and climate action, which entered into force on December 24, 2018.

their size. In the absence of a royal decree setting the said trajectory, it was specified that the trajectories for the period from iejranvier 2015 to december 31, 2030 would be those set in accordance with
in the schedule to the Ioi (article 65qooter - inserted by an Ioi dated July 19, 2012 and repealed by an Ioi dated July 19, 2012 and repealed by an Ioi dated July 19, 2012).
Law of June 11, 2023[13] of the special law of January 16, 1989).

The aforementioned annex to the special law set the target for reducing GHG emissions in residential and tertiary sector buildings by 2030 at around 21% for the Flemish Region, 19% for the Walloon Region and 19% for the Brussels-Capital Region, compared with the 2015 reference year.

Article 65qUoter also introduces a bonus/malus system. A Region receives a bonus or pays a penalty depending on whether or not it achieves its target for the year in question. The bonuses are financed by the federal government's share of the proceeds from the auctioning of GHG quotas, while the malus collected will be used exclusively for any expenditure aimed at reducing GHG emissions (summary conclusions of the Belgian government, p. 102). However, the preparatory work for the Special Act of June 11, 2023, which repealed this mechanism, shows that, in view of a series of technical and legal obstacles, it was not possible to implement it. The ordinary Ioi of January 6, 2014[14] , which implemented this mechanism, was also repealed *[1]

46. On July 18, 2013, the Belgian state adopted the Royal Decree setting out the federal long-term strategic vision for sustainable development.

This Royal Decree sets out Belgium's long-term objectives, in particular that of achieving a healthy environment by 2050, after taking "*the necessary measures to prevent or, failing that, correct the environmental impacts caused by human activities: global warming will have been limited and will remain limited to 1.5 to 2°C in the long term, water and air pollution will be controlled and will no longer have a significant impact on health, biodiversity and ecosystems*". It is also expected that "*Belgian GHG emissions will be reduced domestically by at least 80% to 95% by 2050 compared to their 1990 level*".

47. The Special Law of January 6, 2014 on the Sixth Reform of the State also inserted a fourth paragraph into Article 16 of the Special Law of August 8, 1980 on institutional reforms. This provision authorizes the State to *' take the place of the community or region concerned for the adoption of measures that are necessary to put an end to the non-compliance with international obligations'* subscribed to in relation to climate change. Various conditions are laid down, including a finding of non-compliance by the body established by

[13] Special law of June 11, 2023 repealing article 65qUoter and the appendix to the special law of January 16, 1989 on the financing of the Communities and Regions.

[14]4Loi du 6 janvier 2014 relative au mécanisme de base responsabilisation climat.

[1]* Draft special law repealing article 6Squorer and the appendix to the special law of January 16, 1989 on the financing of Communities and Regions (I), *House of Representatives,* Doc. parl.n° S5 3139/001 and 55 3140/001,

sess.ord., 2022/2023, p. 6.

or under the UNFCCC or its protocols, or a reasoned opinion from the European Commission as part of a formal infringement procedure.

48. In 2014, and at the request of the Secretary of State for the Environment, Energy, Mobility and Institutional Reforms, eight advisory bodies belonging to both the federal state and the Regions, issued an "*opinion on Belgium's transition to a low-carbon soCiety by hOri on 2020*". This opinion emphasized the need for "strong interaction between the different levels of government and between the different areas of action", as well as the essential need for coordination between the various Belgian federal and regional bodies.

49. On December 4, 2015, the Belgian State and the three Regions reached a political agreement on the
"burden sharing" for the period 2013-2020. This agreement was formalized in the cooperation agreement of February 12, 2018 on the sharing of Belgian climate and energy targets for the period 2013-2020, which provided in particular for the setting of each contracting party's contribution to achieving the GHG emissions reduction target imposed on Belgium for the compliance period in accordance with Decision no. 406/2009/EC, including the use of the margins for maneuver provided for in Articles 3 and 5 of the said decision.

Article 3 of the cooperation agreement sets the Regions' GHG reduction targets for non-ETS sectors as follows:

- for the Flemish Region: -15.7%;
- for the Walloon Region: -14.7%;
- for the Brussels-Capital Region: -8.8%.

The cooperation agreement entered into force retroactively on December 4, 2015 (article 46).

50. Over the period 2013-2020, the following measures, without claiming to be exhaustive, have been taken by the Regions involved.

51. The Court thus notes that, on February 20, 2014, the Walloon Region adopted a "Climate" decree (see below point 68) providing for a GHG reduction target, all sectors combined, of 30% in 2020 compared with 1990 and 80% to 95% in 2050 compared with 1990.

On April 21, 2016, the Walloon Government adopted its Plan Air-Climat Energie (or PACE) for the period 2016-2022 containing around 100 measures to reduce GHG emissions.

On September 28, 2017, the Walloon Parliament adopted a resolution on the implementation of a Walloon climate policy, calling on the Walloon Government to pursue an ambitious policy and strategy for the development of renewable energies and

to meet the target of reducing GHG emissions to 95% below 1990 levels by 2050.

On November 7, 2018, the Walloon Parliament adopted an intra-parliamentary resolution on climate policy in Belgium, calling on the federal, regional and community governments, in particular, to "*subscribe to the recently reinforced European 2030 targets for renewable energies and energy efficiency, and voluntarily advocate a GHG reduction target more ambitious than the 40*
% by 2030", as well as *"to take into account the IPCC special report published in October 2018 and to consider a reassessment of Belgian ambitions based on the conclusions of this report".*

December 19, 2018, the Walloon Parliament adopted a resolution aimed at repositioning Belgium in the climate debate, in which it called on the Government, among other things, "*to advocate within the relevant international and European bodies and at the relevant meetings*" for Belgium to "*join the coalition of countries coalition of countries in favor of an immediate increase in European GHG reduction targets for 2030*" and to "*defend at European level a GHG emissions reduction target of at least 55% by 2030 and at least* 95% *by 2050, compared with 1990 emissions*".

In its September 2019 regional policy statement, the Walloon Region said it wanted to achieve the targets set by the European Union, i.e. a 55% reduction in GHGs by 2030. It also announced that it was aiming for carbon neutrality by 2050 at the latest.

52. As far as the Brussels-Capital Region is concerned, the Court notes the adoption of the ordinance of May 2, 2013 establishing the Code Bruxellois de l'Air, du Climat et de la Maîtrise de l'Energie (or COBRACE), known as the climate ordinance, which is intended to bring together all the provisions, formerly contained in separate ordinances, relating to energy efficiency, the development of renewable energy sources, transport, air quality and climate (see *below).* \\ *It does* not, however, contain any GHG reduction targets for 2020.

The court also noted that, on June 2, 2016, the Government of the Brussels-Capital Region approved the Regional Air-Climate-Energy Plan (or PRACE), at the end of which it undertook to reduce its GHG emissions by 30% by 2025 compared with 1990 emissions.

In its joint general policy statement for the 2019-2024 legislature (its Exhibit 5), it is stated that "*the Region will equip itself with a long-term strategy based on binding targets and an Evaluation Framework enCadré par une Ordonnance bruxelloise pour le Climat ', so that Brussels commits itself as a 'low-carbon' Region"* and that "*this will involve reinforcing the intermediate commitments and measures currently included in Brussels' contribution to the National Energy-Climate Plan (PNEC) to achieve, by 2030, at least a 40% reduction in GHG emissions compared with 2005, and to contribute as much as possible to raising the European Union's targets by this deadline*".

53. On June 28, 2013, the Flemish Region adopted the Flemish Climate Policy Plan 2013-2020 comprising, on the one hand, a GHG emissions reduction plan (or Vlaams Mitigatieplan) and, on the other, the climate change adaptation plan. The Mitigatieplan envisaged a 15% reduction in non-ETS GHG emissions, this scenario being provisional pending the conclusion of a sharing agreement with the other Regions and the Federal State.

On July 20, 2018, the Flemish Government approved a preliminary draft of the Flemish Climate and Energy Plan for 2021-2030 (Het Vlaams Energie- en Klimaatplan 2021-2030 or VEKP). Its final version was approved on December 9, 2019.

In particular, VEKP has set a target of reducing Flemish GHG emissions in non-ETS sectors by 35% by 2030, compared with 2005, and the Flemish Region emphasizes, in p. 40 of its summary conclusions, that during the evaluation of the National Energy and Climate Plan (in which the VEKP was included), the Commission declared that the said National Plan complied with the European obligation for Belgium.

On December 20, 2019, the Flemish Government approved the Flemish Climate Strategy 2050 (Vlaamse Klimaatstrategie 2050) (its Exhibit 12), which sets an 85% emissions reduction for non-ETS sectors by 2050 and the ambition to move closer to climate neutrality.

54. During the period 2013-2020, the European authorities issued a number of reminders to Belgium to comply with its commitments. These reminders are listed in the judgment under appeal, to which the Court refers.

What's more, concluding cooperation agreements between the federal state and the federated entities has proved extremely laborious, and has exposed Belgium to further criticism (notably the "Information report on the intra-Belgian decision-making process regarding compensation for climate effort with regard to climate objectives", pp. 28-30 of the judgment under appeal).

Be that as it may, Belgium ended up meeting the targets set by the European Union, a new element compared with the data known at the time the judgment under appeal was handed down. As a reminder, these targets included a 15% reduction in GHG emissions from the non-ETS sector.

Thus, the Belgian State asserts, without being contradicted on these points, that

> In 2019, the overall reduction in GHG emissions is 19.95% compared with 1990 or 20.89% compared with the reference year (including the LULUCF sector) *[6] or 18.81% compared with 1990 and 19.78% compared with the reference year (excluding the LULUCF sector);

[1]Land use, land-use change, and forestry (LULUCF), a category that groups together GHG emissions and removals resulting from human activities related to land use, land-use change and forestry.

The European Environment Agency has stated that Belgium has met its GHG emission reduction targets for 2016, 2017, 2018 and 2019;
in 2020, total GHG emissions in Belgium (excluding the LULUCF sector) amounted to 106.4 Mt Co2 eq., representing a 26.9% decrease compared with 1990

Belgium has achieved its GHG emission reduction targets in the non-ETS sector; both the Belgian State and the Regions have reached the target set by the cooperation agreement of February 12, 2018.

4. Commitment period after 2020 and up to 2050

a) State of scientific knowledge at that time

55. The most recent data are abundant and accurate. In addition to the IPCC's special report on global warming limited to 1.5°C (see point 30 above) and the UNEP reports mentioned above (points 31 and 32), the court points out the following elements:

1) The sixth IPCC report

56. In the first volume of the 6th"e report (published on August 9, 2021), the IPCC found, in essence, that many changes due to past and future GHG emissions are irreversible on the scale of centuries to millennia, in particular changes concerning the ocean, ice caps and sea levels on a global scale (p. 23 of the summary for policymakers).

The report also stated that :

"Equilibrium climate sensitivity is an important physical quantity, used to quantify climate response to radiative *forcing. Based on multiple lines of evidence, the very likely range of equilibrium climate sensitivity is between 2°C (high confidence) and 5°C (medium confidence). The best estimate resulting from the AR6 assessment is 3°C, with a likely range of 2.5°C to 4°C (degrë of*

high confidence), versus 1.5°C to 4.5°C in AR5, which provided no better estimate." (p. 12).

The 2nd"e volume of the 6th"e rappoFt, published on February 28, 2022, confirmed the accelerating consequences of climate change and reminded us that there are limits to the capacity of ecosystems and human societies to adapt.

The 3rd"e volume of the 6th"e report, published on April 4, 2022, examined solutions for reducing GHG emissions, sector by sector. In particular, it reiterates the need for rapid action to limit global warming to 1.5° or 2º C.

In its summary report of the 6th"e assessment cycle, published on March 20, 2023, the IPCC noted a global temperature increase of 1.1°C compared with the reference period of 1850 to 1900. It indicates that, without reinforcement of strategies, a global warming of 3.2 (2.2 to 3.5) ° C is estimated in 2100 (p. 11 of the summary for decision-makers). Furthermore, in order to limit warming to +1.5°C, a 48% reduction in CO2 emissions by 2030, compared with 2019 levels, is required.

2) UNEP reports

57. The 2021 report pointed out that, after an exceptional 5.4% drop in 2020, global carbon dioxide emissions have started to rise again, with the result that GHG concentrations in the atmosphere continue to increase. The report highlights the inadequacy of the commitments made by countries, and indicates that by the end of the century, global warming is likely to reach 2.7° C if all the unconditional commitments made by 2030 are fully implemented, or 2.6° C if all the conditional commitments are also implemented. If commitments to net zero emissions are also fully implemented, this estimate is reduced to around 2.2° C.

S8. The 2022 report also noted that, in order to embark on the least costly path to limiting global warming to 2°C and 1.5°C, GHG emission reduction percentages must reach 30% and 45% respectively by 2030.

3) WMO reports

59. The 2021 WMO report indicates that CO2 concentration in 2021 reached 415.7 +- 0.2 ppm. This compares with 280 ppm in the 1950s.

b) <u>Input from COP 26 and 27</u>

60. COP 26 , held in Glasgow from October 31 to November 13, 2021, resulted in the adoption of a final decision, entitled the "Glasgow Climate Pact", which reiterates the determination of all States to limit global warming to 1.5°C above pre-industrial levels and, in any case, well below 2°C. Glasgow is thus in direct continuity with the Paris Agreement - adopted on December 12, 2015 at the terms of COP 21 - by taking up the temperature mitigation objectives enshrined in its Article 2.

    The "Glasgow Climate Pact" recognizes that the consequences of climate change will be much more moderate at 1.5° C than at 2º 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. In order to limit global warming to 1.5° C, it proposes, among other things, to reduce carbon dioxide emissions by 45% by 2030 compared with 2010 levels, and to bring them down to zero by mid-century, suggests deep cuts in other GHGs, and stresses the need for accelerated action during this critical decade.

61. COP 27 took place in November 2022 in Sharm El-Sheik.

    At this conference, the focus was on compensation for losses and damage suffered by developing countries.

c) <u>The en a e e ents supported at European level</u>

62. As explained above (see points 21 to 22 and 44 above), the first strategies developed by the European Union to combat global warming predate the 2015 Paris Agreement. Subsequently, the European Commission proposed to revise its ambitions upwards.

63. On December 11, 2019, the European Commission presented its draft "European Green Deal" (or Green Pact for Europe) in which it proposes to raise the European Union's GHG reduction target to

    - by 2030, to at least 50% and aim for 55% of 1990 levels;
    - to carbon neutrality by 2050.

    On March 5, 2020, the Council of the European Union adopted the long-term low-GHG development strategy for the European Union and its member states, which takes up the objective of a climate-neutral Union by 2050. This long-term strategy has

has been transmitted to the UNFCCC and constitutes the European Union's new commitment under the Paris Agreement.

On September 17, 2020, the European Commission drew up an impact report from which it emerged that the goal of climate neutrality for 2050 implies revising the previous -40% GHG target for 2030 upwards, to a target of 50 or 55%.

The European Climate Act of June 30, 2021 (regulation no. 2021/1119 published on July 9, 2021 and effective as of July 21, 2021) provides for climate governance objectives set out in its articles 2.1 ("*The balance between emissions and removals of GHGs regulated in Union law at Union level shall be achieved in the Union by 2050 at the latest, thereby reducing net emissions to zero by that date, and the Union shall strive to achieve negative emissions thereafter. "*) and 4.1 ("*In order to achieve the objective of climate neutrality set out in Article 2(1), the Union's binding climate objective for 2030 shall be a reduction of net GHG emissions (emissions net of removals) in the Union of at least 55% by 2030 compared to 1990 levels.*

Articles 6 and 7 provide for an assessment by 30 September 2023 at the latest and every five years thereafter of the progress made collectively and at national level by the Member States towards achieving the objective of climate neutrality and adaptation to climate change, as well as of the consistency of the Union's measures with regard to the objective of climate neutrality and the ability of the Union's measures to ensure improved adaptation to climate change.

Following the adoption of the European Climate Law, the following breakdown now applies throughout the Union

> HTA sectors: -62% (vs. 2005)[17] Non-HTA sectors: -40% (vs. 2005)[1] .

Regulation 2023/857 of April 19, 2023 amended Regulation 2018/842 in order to set GHG emission reduction targets for Member States in line with the 2050 climate neutrality objective set out in Regulation 2021/1119.

In accordance with the new Annex 1 of Regulation 2018/842, Belgium's new GHG emissions reduction target (excluding ETS or SEQE) for 2030 is now set at -47%.

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[17] Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 on the establishment and operation of a market stability reserve for the scheme, JOL, 130/134.
[18] Article 1er ' of the European Climate Act.

On June 15, 2023, the European Union's Advisory Council issued a report (to which the Court will return at a later date) concluding that the EU's target of at least a 55% reduction in GHGs compared with 1990 makes it possible to achieve the recommended target for 2040 and keep post-2030 emissions within the recommended budget.

d) Translation of objectives into internal order and expected results

64. As mentioned above (point 44), Belgium has submitted its first definitive National Energy-Climate Plan, dated December 31, 2019. The NECP 2021-2030 sets out Belgium's objectives and has been designed in line with the EU's previous target of a 3S% GHG reduction by 2030 for non-ETS sectors.

This results in the following GHG emission reduction targets for non-ETS sectors in 2030 compared to 2005: 35% for the Flemish Region, 37% for the Walloon Region and -40% for the Brussels-Capital Region.

1) Measures taken at federal level

65. The government agreement of September 30, 2020 stipulates in particular 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*".

Article 14 of EU Regulation 2018/1999 stipulates that by June 30, 2023, each Member State must submit to the Commission a draft update of the latest notified version of the integrated national energy and climate plan, or provide the Commission with a justification that the plan does not require updating.

The current NECP contains projections to 2030 of the results expected from implementing the measures it contains, based on two assumptions: a scenario with existing policies (WEM scenario - With Existing Measures) and a scenario with additional policies, as described in the NECP (WAM scenario - With Additional Measures).
In the WAM scenario, total GHG emissions fall between 2005 and 2030, from 145.3 Mt CO eq to 112 Mt CO eq. This is equivalent to a 23% reduction compared to 2005. Emissions from the non-ETS sector would fall from 78.9 Mt CO eq to 52.7 Mt CO eq, representing a 34.4% reduction in GHG emissions from the non-ETS sector.

These assumptions therefore do not take into account the additional measures to be decided and implemented following the increase, since April 2023, of the target assigned to the

Belgium to -47% in non-ETS sectors (instead of -35%) and therefore confirm that this PNEC needs to be updated.

In its decisions of April 2, 2021 and October 8, 2021, the Council of Ministers undertook to implement federal policies and measures (PAMs) aimed at reducing GHG emissions as quickly as possible. Roadmaps have been drawn up by the various federal ministers, and it has been decided to monitor the implementation of the various measures. It also confirmed the commitment to revise the contribution to the NECP through an action plan in line with the target of reducing GHG emissions by 55% by 2030 compared with 1990.

At the same time, on December 17, 2021, the federal government decided to set up a Belgian Knowledge Center for Complex Climate Risks. In addition, climate roundtables have been set up to provide input for updating the PNEC.

On March 18, 2022, the government agreed to implement an energy transition plan that calls for around 30% of electricity consumption to come from renewable sources by 2030. A 15% reduction in current fossil fuel consumption is also sought. Various measures are envisaged in this context, including: a 6% VAT reduction on heat pumps and photovoltaic panels; the abolition of non-LED lighting in government and SNCB buildings; charging stations for electric vehicles in SNCB parking lots; and the installation of solar panels on the appropriate roofs of government and SNCB stations. The government is also aiming to quadruple electricity production from offshore wind power, and to create a platform for the exchange of wind-generated electricity in Europe.

In February 2023, all the country's strategic councils issued a joint opinion on the climate governance of the country's federated entities, the gist of which was that serious shortcomings remained in the form and content of the PNEC. These councils
We therefore explicitly call on the governments concerned at the different levels of power to achieve a coherent, joint and integrated NECP that respects the framework imposed and the new climate ambitions that are necessary, and that is also more readable", and call on the governments of the country's different levels of power to work together more effectively, in particular by setting up a concrete cooperation program and concrete agreements to achieve an integrated systemic vision and short-term cooperation projects*:* "*There is no objective reason why it should not be possible to achieve a solid PNEC, supported by the governments of the different levels of power, which can respond to the energy and climate challenges and is fully in line with the direCtrices drawn up by the Commission*".

On April 14, 2023, Belgium submitted its national GHG emissions inventory (2023, covering 1990-2021 emissions) to the European Commission, under Article 26 of Regulation (EU) no. 1999/2018. It is undisputed that, according to these data, Belgium

is 69,541 kt CO eq* for non-ETS sectors in 2021, i.e. below the non-binding intermediate target of 71,142 kt CO eq*. This target will remain unchanged after these allowances have been updated in line with the new -47% target for non-ETS sectors, with allowances being revised downwards from 2023 only.

On April 21, 2023, the Council of Ministers took note of the draft federal contribution to the draft Integrated National Energy and Climate Plan (2021-2030).

At the time of writing, however, the PNEC 2021-2030 had not yet been updated.

2) Measures taken in the Brussels-Capital Region

66. As a reminder, the PNEC 2021-2030 sets the Brussels-Capital Region's contribution to a 40% reduction in CO* emissions in 2030 compared to 2005.

The relevant provisions are contained in COBRACE, as amended by the Climate Ordinance of June 17, 2021, which sets out the following objectives

at least -40% GHG reduction compared to 2005 by 2030
- at least - 67% GHG emissions compared to 2005 by 2040
- at least -90% below 2005 levels by 2050.

COBRACE calls for the adoption of a regional Air-Climate-Energy plan (or PRACE) by March 30, 2023, September 30, 2027 and every five years thereafter. An increased target of 47% for 2030 has since been adopted by the Brussels government on May 5, 2022. The Brussels-Capital Region produced its recent Air-Climate-Energy plan for debate (plan dated April 27, 2023), which implements these objectives and forecasts a 47% reduction in GHG emissions by 2030 compared to 2005.

Among the measures set out in the plan, the Brussels-Capital Region cites the setting of what it considers to be an ambitious energy target (150 kWh/m2/year for renovation projects) for 2023, support for grouped renovation and the development of a dynamic for grouped renovation of buildings by district for 2024, the end of fossil fuel heating for new buildings for 2025, and a ban on diesel vehicles for 2030.

COBRACE also provides a methodological framework for reducing indirect GHG emissions (article 1.2.3).

It establishes a permanent "Committee of Climate Experts" responsible for drawing up an annual report, including an assessment of Brussels' climate policy and the formulation of recommendations in this area. The Committee's first report, entitled "Rapport préliminaire 2023 État des lieux 2023 et évaluation de l'apport des politiques publiques aux objectifs climatiques", has been submitted, and contains a series of recommendations for Brussels decision-makers[1] '.

In its conclusions, the Brussels-Capital Region details the measures taken with regard to energy performance requirements for buildings (points 237 to 242 of its conclusions) and the Good-Moove plan for the transport sector (points 245 to 248).

3) Measures taken in the Flemish Region

67. The Flemish Climate and Energy Plan 2021-2030 (VEKP) sets a GHG reduction target of - 35% by 2030 compared with 2005. VEKP is also the subject of an annual progress report. The most recent progress report is dated October 28, 2022*.

On May 12, 2023, the Flemish Government approved the draft update of the Flemish Energy and Climate Plan (VEKP) 2021-2030. In this plan, a target has been set to reduce Flemish non-ETS emissions by 40% by 2030 compared to 2005.

On pp. 40-42 of its conclusions, the Flemish Region describes the recent measures it has taken to meet its climate ambitions, as part of a policy it considers ambitious but also "realistic" (its conclusions, p. 123). It also describes the latest measures taken in the buildings, transport and industry sectors (pp. 43 and 44).

It also refers to the Flemish Government's Recovery Plan, de Vlaamse Veerkracht, presented in September 2022 by the Minister-President, which focuses in particular on climate and sustainability, with investments planned for Flemish ports in COM capture and recycling, the climate aspects of agriculture, transport, renovation incentives, the circular economy and green heat. Also mentioned are policies to stimulate solar energy (Vlaamse Zonneplan 2025), wind energy (Vlaamse Windplan 2025) and the transition to sustainable heating (Warmteplan 2025).

4) Measures taken in the Walloon Region

68. As a reminder, the Walloon climate decree of February 20, 2014 defined the following objectives:

[9] *Available on the BruPartners website: https://www.brupartners.brussels/fr/comite-dexperts-climat-bruxellois https://assets.vlaanderen.be/image/upload/v1667911S72/VEKP-voortgangsrapportering 2022 sriioI.pdf.

- 30% COC equivalents below 1990 levels by 2020 ;
- 80-95% CO2 equivalents below 1990 levels by 2050.

Article 8 of the decree provides for the adoption by the Government of emission b u d g e t s enabling GHG reduction targets to be planned every five years.

The decree also sets up a Committee of Experts to monitor compliance with emission budgets on an annual basis. Article 13 of the decree stipulates that the Government is to draw up an Air Climate Energy Plan in which it "*sets out the measures it intends to take to comply with emission budgets for the current and subsequent budget periods, including the one for which an emission budget is to be set, and to ensure compliance with energy and air quality objectives".*

The Plan Air Climat Energie 2030 was definitively adopted by the Walloon Government on March 21, 2023.

As part of the revision of the NECP, pending a decision on Belgian *burden sharing*, the Walloon Region considers the beige target of -47% (2005) as the Walloon target (instead of the current -37%). For the ETS sector, PACE adopts the European target of -62% by 2030 compared with 2005. It explains that the combination of these two objectives will enable the total GHG reduction target of -55% by 2030 compared with 1990 to be met (p. 20 of the PACE).

In addition, the Climate Decree is currently being updated; on March 30, 2023, the Government adopted on first reading a preliminary draft "carbon neutrality" decree, which was subsequently submitted to various bodies for their opinion. Article 5 of this decree notably sets a target of reducing GHG emissions by 55% by 2030 compared with 1990 "taking into account the objectives assigned to the European GHG emission allowance trading scheme by the European Union". According to counsel, the bill had been approved on second reading and was, at the time of the pleadings, being submitted to the Legislation Section of the Conseil d'Etat.

11. THE PROCEDURE

A. Retroactive effects of the procedure and requests to the first judge

69. By exploit dv ieF,uin 2015, Klimaatzaak and 8,422 individuals (listed in an Appendix A) summoned the Beige State, the Walloon Region, the Flemish Region and the Brussels-Capital Region before the French-speaking Court of First Instance in Brussels.

Klimaatzaak et al. requested that the parties be ordered to reduce the overall volume of annual Belgian GHG emissions in the following proportions:

by 2020: 40% or at least 25% compared to 1990 levels;

- in 2030: from 55% to at least 40%; in 2050: from 87.5% to at least 80%.

70. At a hearing on June 29, 2015, the Flemish Region requested that the case be referred to the Dutch-speaking Court of First Instance in Brussels. In submissions filed at the same hearing, the Flemish Region also claimed that the summons to institute proceedings was null and void.

By judgment of September 25, 2015, the French-speaking Court of First Instance of Brussels ruled that there was no reason to refer the case back to the Dutch-speaking Court of First Instance of Brussels, nor was there any reason to declare the summons to institute proceedings null and void pursuant to article 40 of the law of June 15, 1935.

Appealing against this decision on October 26, 2015, the Flemish Region sought to have the judgment reversed insofar as it dismissed its request for a change of language. In a judgment of February 8, 2016, the French- and Dutch-speaking District Court of Brussels (in a joint session) accepted the appeal, declared it unfounded and ordered the Flemish Region to pay the costs, which were not liquidated in the absence of a statement. In a ruling dated April 20, 2018, the Court of Cassation dismissed the appeal against this judgment.

71. By a deed dated August 29, 2018, the parties filed a joint motion to set procedural deadlines and schedule oral argument hearings on the basis of Article 747 of the Judicial Code. In an order dated January 11, 2019, the court set the pre-trial schedule.

72. On May 3, 2019, Mr. Schoukens and Mr. Vermeire filed a petition for voluntary intervention on behalf of a corded-leaf alder and 81 other trees (which will be listed in Appendix C of the judgment under appeal).

In a document dated July 3, 2019, Mrs De Vriendt and 50,164 persons listed in Appendix B also intervened voluntarily. They stated that they were referring to the conclusions of the plaintiffs and that they accepted in their entirety the statement of facts and the pleas in law developed therein.

73. In their summary submissions filed with the first judge on December 16, 2019, Klimaatzaak and the parties listed in Appendix A to the judgment under appeal requested that the following be heard

declare that the defendants had not, by 2020 at the latest, reduced the overall volume of annual GHG emissions from Belgian territory by 40%, or at least by 25%, compared with 1990 levels;

- rule that the defendants were in breach of articles 1382 and 1383 of the former Civil Code in that they had not behaved like good fathers in pursuing their climate policy and were thus harming the interests of Klimaatzaak and all the persons mentioned in appendix A;
- rule that, in pursuing their climate policy, the defendants violated the fundamental rights of Klimaatzaak and all the persons mentioned in Appendix A, and more specifically articles 2 and 8 of the ECHR and articles 6 and 24 of the International Convention on the Rights of the Child;
  order the defendants to take the necessary measures to induce Belgium to reduce or cause to be reduced the overall volume of annual GHG emissions from Belgian territory so as to achieve :
  - o by 2025, a reduction of 48%, or at least 42%, compared to 1990 levels;
  - o by 2030, a reduction of 65%, or at least 55%, compared to 1990 levels;
  - o in 2050, zero net emissions ;

  to continue the case in order to verify whether the defendants had met the targets imposed for the 2025 and 2030 timeframes and, to this end, to order the defendants to communicate the GHG emission reports for 2025 and 2030 communicated to the UNFCCC Secretariat in 2026 and 2031, and to have the case set after these communications;
  order the defendants, *in solidum* or one in default of the other, to pay a penalty of €10,000 per day of delay to Klimaatzaak in default of communicating the GHG emission report to the court and to the plaintiffs within ten days of April 15 of the year in which the report was filed;
- order the defendants *jointly and severally,* or in the absence of each other, to pay Klimaatzaak a penalty of €1,000,000 per month of delay to be reached
  the target set for 2025 and the target set for 2030, starting on the first day of the year. January of the year following the due date;
- record that Klimaatzaak undertook to allocate all accrued penalty payments in accordance with its corporate purpose;
- order the defendants to pay the costs, liquidated at €1,320 for a case that cannot be valued in money.

74. Before the first judge, the Belgian State claimed that the main action and the actions in intervention were inadmissible, and at the very least that the action brought by Klimaatzaak and the persons mentioned in Appendix A was unfounded. The Belgian State sought an order to pay all the costs, liquidated at €12,000.

    More specifically, the Belgian State concluded that the application for voluntary intervention by the trees was inadmissible and that the application for voluntary intervention by Mrs De Vriendt et al. was unfounded.

In the alternative, the Belgian State requested a preliminary ruling from the Constitutional Court and the Benelux Court of Justice.

In the further alternative, the Belgian State requested that it should not be *jointly and severally* condemned with the other defendants, that the condemnations against it should not be accompanied by a penalty payment, that the request for a continuation should not be granted, and that the request to impose a GHG emissions reduction target for 2025 on the defendants should not be granted.

The Belgian State also requested that the penalty attached to its sentence be limited to €1,000/month of delay both for the communication of GHG emission reports to the court and for the quantified GHG emission reduction targets determined by the court.

The Belgian State requested that it not be ordered *in solidum* with the other defendants to pay astreintes.

In any event, the Belgian State postulated that it would be reserved to rule on :

- the sharing of responsibilities;
- their contribution to the debt;
- the guarantee to be provided by the other defendants to the Belgian State against any monetary penalties (including any penalty payments) in excess of its own share of liability.

75. The Flemish Region, for its part, concluded that the action was inadmissible, or at the very least unfounded.

It was also seeking a declaration that its policy was in line with European regulations and that, consequently, it did not constitute a fault within the meaning of articles 1382 and 1383 of the former Civil Code, and that it could not be contrary to the right to life, the right to respect for private and family life and the rights of the child as guaranteed by articles 2 and 8 of the ECHR and articles 6 and 24 of the International Convention on the Rights of the Child.

In the alternative, insofar as the Court did not declare the action inadmissible or unfounded, the Flemish Region requested that the following question be referred to the European Court of Justice for a preliminary ruling:

> *"Is the "Directive 2003/87/EC of the European Parliament and of the Council of October 13, 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC" (ETS) and the "Regulation (EU) 2018/842 of the European Parliament and of the Council of May 30, 2018 on binding annual5 GHG emission rédUCtions by the States*

The Commission considers that the texts "amending Regulation (EU) No 525/2013", "amending Regulation (EU) No 525/2013", "amending Regulation (EU) No 525/2013" and "amending Regulation (EU) No 525/2013", violate Articles 2 (right to life), 8 (right to respect for private and family life) and 24 (rights of the child) of the Charter of Fundamental Rights of the European Union on the grounds that these texts contain insufficient GHG reduction targets".

The Flemish Region claimed that Klimaatzaak and all the persons mentioned in Appendix A should be ordered to pay costs and a procedural indemnity valued at 1,440C.

76. The Walloon Region argued, firstly, that the court had no jurisdiction and, secondly, that the actions were inadmissible or, at the very least, unfounded.

In the alternative, she asked that the following questions be referred to the Constitutional Court for a preliminary ruling:

"Does article 1382 of the Civil Code violate articles 10 and 11 of the Constitution in the interpretation according to which it precludes a more/e *person who has been created and acts with a view to defending a collective interest, such as the protection of the environment or certain elements thereof, from receiving, for the infringement of the collective interest for which it has been constituted, anything other than reparation by pecuniary equivalent, to the exclusion of reparation in kind of the actual ecological damage from which the said infringement of the collective interest proceeds?"*

"Does article 1382 of the Civil Code violate articles 10 and 11 of the Constitution if it is interpreted as allowing the condemnation of certain responsible parties who have contributed to the damage, to the exclusion of other responsible parties, with the consequence that the damage will not be repaired in any way, not even in part, and that the victim will therefore derive no benefit from it?".

Finally, the Walloon Region requested that, in any event, it be informed that it reserved all rights and actions in respect of the voluntary intervention of Mr. Schoukens and Mr. Vermeire on May 3, 2019, claiming to act on behalf of trees. Vermeire of May 3, 2019, claiming to act on behalf of arbres, and requested that Klimaatzaak, all the persons mentioned in Appendix A and the interveners be ordered to pay all costs, including procedural damages, jointly and *severally,* or in *solidum,* failing each other.

77. The Brussels-Capital Region asked the court to decline jurisdiction.

Failing this, the Brussels-Capital Region concluded that the claims of Klimaatzaak, all the persons mentioned in Appendix A and the interveners were inadmissible, and at the very least that Klimaatzaak's action was unfounded.

In the alternative, the Brussels-Capital Region requested that at the very least the request for a penalty payment be rejected and that Klimaatzaak and all the persons mentioned in Appendix A be ordered to pay the costs, liquidated at €1,440.

B. The decision

78. By judgment of June 17, 2021, the French-speaking Court of First Instance of Brussels :

- noted the withdrawal of the persons listed in appendix (D) and the death of Mr. Jozef Castermans, for whom no notice of withdrawal had been filed;
- declared the principal claim admissible;
- declared the voluntary intervention of the persons listed in Appendix (B) admissible;
- declared inadmissible the voluntary intervention formulated in the name and on behalf of the trees listed in the deed of May 3, 2019 (Appendix C);
- ruled that, in pursuing their climate policy, the Belgian State, the Flemish Region, the Walloon Region and the Brussels-Capital Region did not behave as normally prudent and diligent authorities, which constituted a fault within the meaning of article 1382 of the Civil Code;
- Declares that, in pursuing their climate policy, the defendants infringed the fundamental rights of the plaintiffs, and more specifically articles 2 and 8 of the ECHR, by failing to take all necessary measures to prevent the effects of climate change on the plaintiffs' life and privacy;
- dismissed the remainder of the plaintiffs' claim;
- pronounced full compensation of costs, so that each party would bear its own costs and neither party would owe any procedural indemnity to the other(s).

C. The requests for appeal, the interlocutory judgment of September 22, 2022 and the corrective judgment of September 29, 2022

79. On November 17, 2021, the appellants in the main proceedings filed an appeal. This appeal was registered under roll number 2021/AR/1589.

The Belgian State and the three Regions were summoned. In particular, they asked for an order that the respondents take the necessary measures to diminish

or reduce the overall volume of annual GHG emissions from the Belgian territory so as to achieve

- at least 48% by 2025;
- at least 65% by 2030.

80. In support of their summary submissions, the appellants in the main proceedings seek partial reversal of the judgment under appeal. They request
    - the inadmissibility of the "cross-appeal" lodged by the Belgian State insofar as it concludes that *"a main appeal lodged by the parties referred to in Appendix A to the application for appeal, who were not mentioned in Appendix A, lodged at first instance, is* inadmissible" and, for the remainder, concludes that the Belgian State's cross-appeal is unfounded,
    - the Brussels-Capital Region's cross-appeal is unfounded,
    - the lack of merit of the Flemish Region's cross-appeal,
    - that the "cross-appeal" lodged by the Walloon Region is inadmissible, or at the very least unfounded, insofar as it concerns "*the parties referred to in Appendix A attached to the appeal petition, which did not appear in Appendix A, attached to the judgment of June 17, 2021, appeared in Appendix C or D attached to the judgment under appeal lodged at first instance*" and for the remainder conclude that the cross-appeal lodged by the Walloon Region is unfounded.

The appellants in the main action seek confirmation of the judgment insofar as it held :

- the action is admissible on its own behalf and on behalf of the volunteers listed in Appendix B;

- that the Belgian State, the Flemish Region, the Walloon Region and the Brussels-Capital Region, in pursuing their climate policy

    - did not behave as normally prudent and diligent authorities, which constitutes a fault within the meaning of article 1382 of the Civil Code;
    - infringed the fundamental rights of the original plaintiffs, and more specifically articles 2 and 8 of the ECHR, by failing to take all necessary measures to prevent climate change affecting life and privacy.

The appellants in the main proceedings seek a declaration that, in pursuing their climate policy for 2020 and 2030, the respondents have violated and continue to violate articles 2 and 8 of the ECHR and have committed and continue to commit a fault within the meaning of articles 1382 and 1383 of the former Civil Code.

The appellants in the main proceedings ask the court to find that there are serious and unequivocal indications that, in pursuing their climate policy for 2030, the respondents will continue to violate articles 2 and 8 of the ECHR and commit a fault within the meaning of articles 1382 and 1383 of the former Civil Code.

They are asking the Court to order them to take sufficient measures to reduce by 2030 the overall volume of annual GHG emissions from Belgian territory so as to put an end to the infringement of their rights, and consequently to achieve a reduction in these emissions of at least 61% by 2030 compared with 1990, on pain of a penalty payment of €1,000,000 per month of delay in achieving the objective imposed for 2030, and this on pain of a penalty payment of €1,000,000 per month of delay in achieving the objective imposed for 2030, and this on pain of a penalty payment of €1,000,000 per month of delay in achieving the objective imposed for 2030.
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To this end, the appellants in the main proceedings request that the respondents be ordered to communicate to Klimaatzaak the GHG emissions report for 2030 on the same day that it is communicated to the European Commission in 2031, and to pay a penalty of €10,000 per day of delay in communicating the GHG emissions report for 2030.

In addition, the appellants in the main proceedings request that it be recorded that Klimaatzaak undertakes to fully allocate the astreintes due in accordance with its corporate purpose.

Lastly, the appellants requested the court to record the death of Mr. J. Clauwaert (Appendix A, no. 1030). At the hearing on September 21, 2023, the appellants in the main proceedings also asked the Court to record the deaths of Ms. Jeanne Okonsky (Appendix B, no. 427), Mr. Patrick Wechuyzen (Appendix B, no. 50138), Mr. Leo Van Riel (Appendix A, no. 7115) and Mr. Piet Hardeman (Appendix A, no. 3297).

Finally, the appellants in the main proceedings seek an order that the respondents pay all the costs.

81. On January 10, 2022, Mrs De Vriendt and the parties listed in Appendix B (numbering 50,164) to this petition filed a petition for voluntary intervention based on article 813 of the Judicial Code. These parties requested that their petition be declared admissible and well-founded and specified that, for the development of their arguments in greater detail, they were referring to the appeal petition of November 17, 2021 filed by the appellants in the main proceedings.

In their summary submissions, also filed on behalf of Ms Nicolas, Ms Haelvoet and Mr Patteeuw (parties who had intervened voluntarily before the first judge but who did not intervene voluntarily on appeal and were therefore not included in Appendix B to the application to intervene of January 10, 2022, and who have been summoned by the Belgian State and the Walloon Region), these parties ask the Court to declare admissible and well-founded the voluntary protective intervention of the parties referred to in Appendix B to the application to intervene of January 10, 2022, and who have been summoned by the Belgian State and the Walloon Region.

request of January 10, 2022 and to grant Klimaatzaak and the parties listed in Appendix A the benefit of their submissions. As regards the main appeals lodged by the Belgian State and the Walloon Region, they conclude that they are inadmissible (except in the case of Ms Nicolas, Ms Haelvoet and Mr Patteeuw) or at least unfounded.

82. On May 30, 2022 (registered under number 2022/AR/737), the Belgian State lodged an appeal. This appeal is directed against

- Mrs De Vriendt and all the persons mentioned in appendix B of the judgment under appeal, with the exception of those mentioned in appendix D of the same judgment and for whom a discontinuance of proceedings was recorded by the first judge, and with the exception of the person whose death was recorded by the first judge (i.e. Mr Castermans);
- the parties referred to in Appendix A as attached to the judgment under appeal and not included in Appendix A attached to the request for appeal (RG 2021/AR/1589).

83. In its summary submissions on appeal, the Belgian State concludes that the appeal lodged by the appellants in the main proceedings is unfounded. It also concludes, insofar as necessary, that the main appeal lodged by the parties referred to in appendix A to the request for appeal, who were not mentioned in appendix A, lodged at first instance, is inadmissible.

The Belgian State also concludes that the application for voluntary intervention lodged on January 10, 2022 by Mrs De Vriendt and all the persons mentioned in Appendix B to their application is inadmissible or at least unfounded.

In addition, the Belgian State seeks a declaration that its main appeal (case 2022/AR/737) and its cross-appeal (case 2021/AR/1589) are admissible and well-founded.

As its principal claim, the Belgian State seeks a declaration that it has not violated article 1382 of the former Civil Code, or articles 2 and 8 of the ECHR.

In the alternative, should the Court find that the Belgian State has violated article 1382 of the former Civil Code and/or articles 2 and 8 of the ECHR, it asks that the Court rule that these violations do not justify ordering the injunction sought by the appellants in the main proceedings and Mrs De Vriendt et al. for the year 2030.

In the infinitely alternative, should the Court find that the Belgian State has breached article 1382 of the Civil Code and/or articles 2 and 8 of the ECHR and order it to comply with the injunction sought by the appellants in the main proceedings, the Belgian State requests that this order not be accompanied by penalty payments.

In any event, the Belgian State requests that the appellants in the main proceedings and Mrs De Vriendt et al. be ordered to pay all the costs of the two sets of proceedings, liquidated as follows

as follows: indemnity for proceedings at first instance (€14,000), indemnity for proceedings on appeal (€15,000) and costs of scheduling the appeal (€22).

84. By a request for appeal dated June 30, 2022 (registered under roll number 2022/AR/891), the Walloon Region summoned

- Ms. De Vriendt et al, listed in Appendix B of the judgment under appeal (Appendix A.4 of her appeal petition; parties who withdrew before the first judge) except :
    - o the persons whose names appear in Appendix D attached to the judgment under appeal (Appendix A.6 to the motion for appeal; parties who withdrew before the first judge);
    - o Mr. Castermans, whose death is recorded *in* the o *quo* judgment, without a deed of resumption having been filed;
- the persons listed in appendix A attached to the judgment under appeal (appendix A.3 to his request for appeal); plaintiffs before the first judge, except for the persons listed in appendix A attached to the request for appeal of the appellants in the main proceedings (2021/AR/1589; appendix A.1 to his request for appeal).

In its appeal, the Walloon Region sought to join the cases registered under docket numbers 2021/AR/1589 and 2022/AR/737.

It sought to have the judgment set aside and, in particular, to have the original actions declared inadmissible or at least unfounded and, in the latter case, to rule that the Walloon Region had violated neither article 1382 of the former Civil Code nor articles 2 and 8 of the ECHR.

85. In its appeal summary conclusions, the Walloon Region concludes that the main appeal lodged by the parties listed in Appendix A attached to the appeal request is inadmissible.

- would not appear in the ring attached to the judgment under appeal;
- are shown in Appendix C attached to the same judgment;
- are shown in Appendix D attached to the same judgment.

The Walloon Region concludes, insofar as it is admissible, that the appeal lodged by the other appellants in the main proceedings referred to in Appendix A to the request for appeal is unfounded.

The Walloon Region also concludes that the application for voluntary intervention lodged on January 10, 2022 by Mrs De Vriendt and all the persons mentioned in Appendix B to their application is inadmissible, or at least unfounded.

As its principal claim, and as a cross-appeal, the Walloon Region requests that the Court decline jurisdiction or declare the original actions inadmissible or at least unfounded and, in the latter case, rule that the Walloon Region has violated neither article 1382 of the former Civil Code nor articles 2 and 8 of the ECHR.

In the alternative, with regard to the interest of Klimaatzaak, the Walloon Region requests that the following question be put to the Constitutional Court

> *"Article 17 of the Judicial Code, as it applies to the present case, read alone or in conjunction with article 1382 of the Civil Code, does or does not* violate *articles 10 and 11 of the Constitution in the interpretation according to which a legal person which has been constituted and acts to defend a collective interest, such as the protection of the environment or certain elements thereof, is without interest or standing to claim anything other than for the infringement of the collective interest for which it has been constituted, such as the protection of the environment or some of its components,* is *without interest or standing to claim anything other than pecuniary compensation for any non-material damage it may suffer as a result of the infringement of the collective interest for which it was formed?"*

In the further alternative, should the Court find that the Walloon Region has violated Article 1382 of the former Civil Code or Articles 2 and 8 of the ECHR, the Walloon Region requests that the following questions be referred to the Constitutional Court for a preliminary ruling:

> *"Does OrtiCle 1382 of the Civil Code violate Articles 10 and 11 of the Constitution in the interpretation according to which it allows the COndemnation of certain responsible parties who have contributed to the damage, to the exclusion of other responsible parties, with the consequence that the damage will not be repaired in any way, not even in part, and that the victim will therefore derive no benefit?"*
> *"Does article 1382 of the French Civil Code violate articles 10 and 11 of the French Constitution insofar as it is interpreted to mean that a legal entity that has been set up and acts to defend a collective interest, such as the protection of the environment or of certain elements of the environment, cannot in principle claim anything other than pecuniary compensation for* any *moral prejudice it* may *suffer as a result of the infringement of the collective interest for which it has been set up?*

In the further alternative, the Walloon Region seeks a declaration that there are no grounds for condemning it together with the Belgian State, the Flemish Region and the Brussels-Capital Region or for ordering any injunction whatsoever and, confirming the judgment *a quo* on this point*, to* dismiss the remainder of the claim of Klimaatzaak et al. and Mrs Devriendt et al.

Finally, the Walloon Region requests that the following question be referred to the Constitutional Court for a preliminary ruling, should the Court consider condemning it together with the Belgian State, the Flemish Region or the Brussels-Capital Region:

"Does article 1382 of the Civil Code, if interpreted as permitting the joint condemnation, in solidum or in any other way, of the federal State and one or more regions for fault or faulty default in the exercise of their respective competences, violate the Constitution or the provisions adopted pursuant thereto which determine the respective competences of the federal State, the communities and the regions, or articles 10 and 11 of the Constitution in that it treats debtors in different situations in the same way?
incomparable?"

Should the Court consider ordering an injunction, the Walloon Region asks that the request for a penalty payment be rejected or, failing that, that the following question be referred for a preliminary ruling

"Does article 1385bis of the Judicial Code, interpreted as meaning that an order to pay astreintes together, in solidum or by other means, may be made against debtors without regard to their power and competence, as defined by the Constitution and the laws enacted in implementation thereof, violate articles 10, 11 and 134 of the Constitution in that it treats debtors in incomparable situations in an identical manner?"

In addition, the Walloon Region is calling for the amount of penalty payments to be reduced to a strict minimum, and either capped at a maximum total amount, or limited in time.

The Walloon Region requests that the Belgian State be acknowledged as having withdrawn its recourse action.

The Court already notes that it can only observe that the Belgian State, in the context of the present proceedings, is no longer asking the Court to record reservations on the question of the sharing of liability and the warranty claims that it could bring (cf. point 74 above), and that in point 69 of its conclusions, the Belgian State expressly waives its warranty claim, which should indeed be acknowledged.

Finally, the Walloon Region requests that Klimaatzaak et al. and Mrs De Vriendt et al. be ordered to pay all the costs of both sets of proceedings.

86. In its summary opinion, the Flemish Region concludes that the appeal lodged by the appellants in the main proceedings is inadmissible, or at least unfounded.

The Flemish Region requests that its cross-appeal against the judgment be noted, that it be declared admissible and well-founded, and that it be declared that its policy falls within the framework of European regulations and that, consequently, it is not subject to the provisions of European law.

does not constitute a fault within the meaning of articles 1382 and 1383 of the former Civil Code, and cannot be contrary to the right to life and the right to privacy.

In the alternative, insofar as the Court should not declare the appellants' action inadmissible or unfounded, the Flemish Region requests that the following question be referred to the European Court of Justice for a preliminary ruling.

> *"Is thethat "Directive 2003/87/EC of the European Parliament and of the Council of October 13, 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC))) (EU ETS) and "Regulation (EU) 2018/842 of the European Parliament and of the Council of May 30, 2018 on binding annual reductions of GHG emissions by Member States from 2021 to 2030 contributing to climate action to meet their commitments under the Paris Agreement and amending Regulation (EU) No 525/2013", violates articles 2 (right to life), 8 (right to respect for private and family life) and 24 (rights of the child) of the Charter of Fundamental Rights of the European Union on the grounds that these texts contain insufficient GHG reduction targets? ".*

Lastly, the Flemish Region seeks an order that the appellants pay all costs and expenses of both sets of proceedings, including procedural damages of 2 x €1,800.

87. The Brussels-Capital Region concludes that the appeal lodged by Klimaatzaak and the persons referred to in Appendix A to the request for appeal and also in Appendix A filed at first instance is unfounded and concludes, insofar as necessary, that the main appeal lodged by the parties referred to in Appendix A to the request for appeal, who were not mentioned in Appendix A filed at first instance, is inadmissible.

The Brussels-Capital Region concludes that the application for voluntary intervention lodged on January 10, 2022 by Mrs. De Vriendt and all the persons mentioned in Appendix B of their application is inadmissible or at least unfounded.

The Brussels-Capital Region lodged a cross-appeal in which it sought a declaration that it had not violated articles 1382 and 1383 of the former Civil Code, or articles 2 and 8 of the ECHR, and to dismiss all the claims of Klimaatzaak et al. and Mrs. De Vriendt et al.

In the alternative, should the Court consider that the Brussels-Capital Region has violated articles 1382 and 1383 of the former Civil Code and/or articles 2 and 8 of the ECHR, it requests that the requests for an injunction and a penalty payment made by the appellants in the main proceedings be dismissed.

Lastly, the Brussels-Capital Region seeks an order that Klimaatzaak et al. and Mrs De Vriendt et al. pay all the costs of both sets of proceedings, which have not yet been settled.

88. In an interlocutory judgment of September 22, 2022, the court joined the cases entered in the general roll under numbers 2021/AR/1589, 2022/AR/737 and 2022/AR/891.

In a ruling dated September 29, 2022, the court, on the basis of articles 794/1 to 801 of the Judicial Code, rectified its ruling of September 22, 2022 and corrected a clerical error concerning the setting of the hearing for October 6, 2023 (and not October 6, 2022).

89. On October 18, 2023, the parties to the case filed consented pleadings relating to the issue of facilitating the identification of all parties on appeal due to the difficulty of harvesting the appendices attached to the June 17, 2021 judgment from the appendices of the various pleadings filed in the present appeal proceedings.

The Court addresses this issue in paragraphs 91 et seq. below.

The parties' agreement reads as follows:

"Article F . Mai "tres Carole BILLIET, Audrey BAEYENS, Roger H.J.COX and fin/i *PAN-VAN DE MEULEBROEKE, ayyrment represent:*

1. ASBL KLIMAATZAAK,

2. the persons listed i n Appendix A to the judgment of June 17, 2021 (RG n°2015/4585/A)

3. Mrs Inge DE VRIENDT,

4. all persons mentioned i n appendix B to the judgment of June 17, 2021 (RG n°2015/4585/A),

5. with the exception of :

a) the persons listed i n appendix D of the same judgment whose action has been withdrawn,

b) of the person whose death is recorded in the same judgment,

6. the persons listed i n Appendix A attached to the appeal i n case 2021/AR/1589,

7. the persons listed i n Appendix B attached to the motion to intervene dated January 10, 2022,

8. the respondents to the Belgian State's appeal of May 30, 2022 in the case of 2022/AR/737,

9. the respondents to the Walloon Region's appeal of June 30, 2022 in case 2022/AR/891.

Article 2. In view of the difficulty of collecting the appendices attached to the judgment of June 17, 2021 and to the various pleadings referred to in Article 1, and in order to ensure the regularity of the proceedings, the parties agree that, in one way or another, all the parties will

present in the first instance are present in the appeal proceedings, thus assuming the status of parties to these appeal proceedings, with the exception, however, of the persons referred to in article 1, 5º, and with the exception of parties whose death the Court may record without resumption of proceedings.
This agreement on the status of the parties to the appeal proceedings does not extend to, and is without prejudice to, objections to the inadmissibility of the action, particularly with regard to the parties' interest in bringing the action.
Article 3. The persons referred to in Article 2 are conventionally referred to as the "original plaintiffs". The Belgian State, the Walloon Region, the Flemish Region and the Brussels-Capital Region are conventionally referred to as 'original defendants'."

III. DISCUSSION AND DECISION OF THE COURT

90. After identifying the parties to the case on appeal (A), the court will successively examine questions of admissibility and jurisdiction (B), the basis of the pleas (C), requests for injunctions (D) and penalty payments (E) and costs (F).

A. Identifying the parties involved

91. With regard to the natural persons who were at issue before the first judge, the judgment under appeal identifies them by reference to an appendix for the original plaintiffs, i.e. 8,422 persons, and for the intervening parties other than Mrs De Vriendt, to an appendix B comprising 50,164 persons.

The judgment under appeal takes note of the death of one of the parties, Mr Jozef Castermans, for whom no notice of resumption of proceedings had been filed.

92. The notice of appeal registered under roll number 2021/AR/1589 identifies the natural persons who are appellants in the main proceedings by reference to appendix A attached to the summons to institute proceedings, it being specified in a footnote that "*several Se persons have withdrawn or are decided. There were also a few duplicates. This was communicated to the Court of First Instance for the pleadings hearings. We have reproduced the updated Appendix A, for which reason numbers go1, 1755, 2086, 2798, 2849, 4489, 4652 and 7716 have been deleted. We have taken this approach in order to facilitate comparison of the appendices filed at first i n s t a n c e and on appeal*".

An appendix A attached to the appeal petition of November 17, 2021 was indeed updated as announced (numbers 901, namely Mr. Castermans, 1755, 2086, 2798, 2849, 4489, 4652 and 7716, i.e. the 7 duplicates have been removed).

The application for voluntary intervention was filed on January 10, 2022 for Mrs De Vriendt and all the persons mentioned in Appendix B, which was attached to the said application. The persons are numbered from 1 to 50.164.

The judgment of September 22, 2022 joining the appeals entered in the general roll under numbers 2021/AR/1589, 2022/AR/737 and 2022/AR/891 refers to these same annexes.

93. On September 8, 2023, the appellants in the main proceedings and the interveners filed documents updating the data concerning the natural persons involved in the appeal proceedings, namely :

- a document listing 4 deaths (with extracts from the national register);

- a list of minors who have reached the age of majority - Appendix AU; a list of changes of address for individuals - Appendix A; a list of changes of address for individuals - Appendix B.

94. In their pleadings filed on October 18, 2023, the parties expressly agreed that the Belgian State, the Walloon Region, the Flemish Region and the Brussels-Capital Region should be referred to as the "original defendants" and that the persons referred to in article 2 of the pleadings should be referred to as the "original plaintiffs" (including in the present judgment):

- Klimaatzaak,
- the persons mentioned in appendix A to the judgment of June 17, 2021 (RG n°2015/4585/A), Mrs De Vriendt and all the persons mentioned in appendix B to the judgment of June 17, 2021 (RG n°2015/4585/A),
- with the exception of the persons mentioned in appendix D of the same judgment whose withdrawal from the proceedings has been recorded and the person whose death is recorded by the same judgment,
- the persons listed in Appendix A attached to the appeal in case 2021/AR/1589,
- the persons listed in Appendix B attached to the motion to intervene dated January 10, 2022,
- the respondents to the Belgian State's appeal of May 30, 2022 in case 2022/AR/737,
- the respondents to the Walloon Region's appeal of June 30, 2022 in case 2022/AR/891.

Article 2 of the agreement specifies that it "*does not extend to and is without prejudice to objections to the inadmissibility of the action, in particular with regard to the parties' interest in bringing the action".*

The parties hereby acknowledge their agreement to this.

95. In the absence of certainty as to the scope to be given to the terms "objections to admissibility", the court will examine all objections to admissibility raised by the parties.

96. The appellants in the main proceedings and the interveners further request the Court to record the deaths of Mr. Julius Clauwaert (Appendix A, no. 1030), Ms. Jeanne Okonsky (Appendix B, no. 427), Mr. Patrick Wechuyzen (Appendix B, no. 50138), Mr. Leo Van Riel (Appendix A, no. 7115) and Mr. Piet Hardeman (Appendix A, no. 3297) (minutes of the hearing of September 21, 2023 and appendix).

[2]*In this respect, the court points out that the fact that a minor has reached the age of majority does not call for the resumption of proceedings (A. FETTWEIS, *Manuel de procédure civile,* 2e"[e] éd., Liège, Faculté de droit, d'économie et de sciences sociales de Liège, 1985, 453).

The question of the impact of these deaths on the present proceedings was put to the parties, and their counsel spoke on this point at the hearing on October 19, 2023. Counsel for the original plaintiffs take the view that, in the absence of proper notification of these deaths, the proceedings are not interrupted. The other parties refer the matter to the courts.

In accordance with article 815 of the French Judicial Code, in cases where the closure of debates has not been pronounced, the death of a party remains without effect until notification has been made, this notification being made by the deposit and communication of a written document emanating from a successor in title. A declaration by the deceased's lawyer that he is no longer involved does not interrupt the proceedings (D. MOUGENOT, *La jurisprudence du Code judiciaire commentée*
L instanCe, Tome ll a, Brugge, La Charte, 2013, p. 273), nor a notification made by an heir of the deceased party who has renounced the succession (Cass., November 8, 2013, *Pas.,* I, n°2193).

In the present case, the above-mentioned deaths have not been notified by the filing and communication of a writing from a successor in title, and counsel for the original plaintiffs do not claim to have a mandate from the successors in title of the deceased parties, so that the proceedings have not been interrupted, which does not prevent the deaths from being recorded as requested.

Assuming that the notification of the deaths is in order, the Court considers that, since no deed of resumption of proceedings has been filed by the heirs of the deceased before the close of the debates, nor have they been summoned by the original defendants for the resumption of forced proceedings, even though they have been informed of the deaths since at least September 21, 2023, it can be concluded that both the heirs of the deceased and the original defendants have implicitly but definitely waived the resumption of proceedings, it can be concluded that both the successors in title of the deceased and the original defendants have implicitly but definitely waived the resumption of proceedings. Julius Clauwaert, Ms Jeanne Okonsky, Mr Patrick Wechuyzen and Mr Leo Van Riel.

B. Questions of admissibility and jurisdiction

97. Below, the court will examine the admissibility of appeals (1) and voluntary interventions on appeal (2), the court's power of jurisdiction (3), and the admissibility of original actions (4).

1. Admissibility of appeals

98. The Belgian State, the Walloon Region and, as the case may be, the Brussels-Capital Region*[2] conclude that the appeal lodged by the parties referred to in Appendix A is inadmissible.

[22] In the operative part of its conclusions, the Brussels-Capital Region asks the Court, "*insofar as necessary, to declare inadmissible the main appeal lodged by the parties referred to in Appendix A of the request for appeal, which*

in appeal that were not mentioned in Appendix A, or that appear in Appendices C or D, filed in the first instance.

99. The appellants in the main proceedings assert that the persons listed in Appendix A on appeal are the same as those listed in Appendix A attached to the judgment, the only difference being in the numbering of the persons. They explain that the summons initiating proceedings in the first instance had been filed with an Appendix A containing 8,429 persons, whereas the Appendix A attached to the judgment contains 8,422 persons, the difference being explained by the fact that 7 persons (whose names are specified in their conclusions) were included twice in the first. In view of the elimination of duplicates, the appellants in the main proceedings explain, an automatic renumbering has been carried out at the level of the registry of first instance in appendix A to which the judgment refers, and which still includes Mr. Castermans, who has since died. Finally, they point out that, in Appendix A attached to their appeal request, the duplicates have been deleted along with the corresponding numbers, and that automatic numbering has been deactivated, which would explain why the numbers corresponding to the duplicates and to Mr. Castermans are missing and why the last person on the list, Mr. Zwysen, still bears number 8.429.

100. It is undisputed that only parties who were involved in the case at first instance may lodge an appeal, on pain of inadmissibility (A. DECRoEs, "Receivability of an appeal: quality and interest", note under Cass., April 24, 2003, *R.C.J.B.*, 2004, pp. 371-372 and references cited).

Insofar as some of the parties listed in Appendix A filed an appeal, even though they were not parties to the case at first instance, their appeal would be inadmissible.

However, in view of the explanations given by the original plaintiffs, there is nothing to indicate that persons who were not or were no longer involved in the case at first instance would have joined the appellants on appeal, so this objection of inadmissibility must be rejected. In any event, the Court notes that this question has no bearing on the outcome of the dispute.

101. In their operative part, the appellants in the main proceedings claim that the :

- *the cross-appeal lodged by the Belgian State by way of its main submissions containing a cross-appeal of May 30, 2022, insofar as it concerns the inadmissibility of a "cross-appeal".*

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would not have been *mentioned in Appendix A, filed at first instance*". On p. 16 of its conclusions, the Brussels-Capital Region uses the following heading: "*ACCEPTABILITY OF THE APPEAL BY MADAME DE VRIENDT AND CONSOPTS*". The developments under this heading relate, however, to the admissibility of *the intervention* of Mrs. De Vriendt and the other persons listed in Appendix B to the application of January 10, 2022, and not to the admissibility of the main appeal lodged by the parties listed in Appendix A.

main appeal lodged by the parties referred to in appendix A of the appeal request, which would not have been mentioned in appendix A, lodged at first instance'",

- *"the cross-appeal lodged by the Walloon Region by way of its Conclusion of Appeal containing a cross-appeal insofar as it concerns 'the parties referred to in Appendix A attached to the request for appeal and who, as the case may be … are not included in Appendix A attached to the judgment o quo of June 17, 2021; are included in Appendix D attached to the judgment a quo; are included in Appendix C attached to the judgment a quo'".*

This objection to admissibility is not clearly developed in their conclusions.

The Court also notes that the objection of inadmissibility raised by the Belgian State and the Walloon Region, which is examined above, cannot be analysed as a cross-appeal, since it does not seek to set aside the judgment under appeal, but to have the Court declare the main appeal inadmissible insofar as it was lodged by parties who were not involved in the case at first instance. However, it is not possible to raise an objection of inadmissibility against an objection of inadmissibility.

102. In the body of their conclusions (p. 168), the appellants in the main proceedings argue that the appeals lodged by the Belgian State and the Walloon Region in cases 2022/AR/737 and 2022/AR/891 are inadmissible insofar as they are directed against the persons listed in appendix A to the judgment under appeal and all these parties are appellants[23] . Similarly, the parties intervening voluntarily in the appeal proceedings conclude that the appeals lodged against Mrs De Vriendt and all the persons mentioned in appendix B of their application to intervene are inadmissible, on the grounds that appendices B to the judgment and to the application to intervene voluntarily in the appeal proceedings are the same, with the exception of three persons, Mrs Delphine Nicolas (no. 18246), Mrs Nele Haelvoet (no. 23973) and Mr Luc Patteeuw (no. 3322), who did not wish to appear in the appeal proceedings.

103. Insofar as the persons listed in appendices A of the judgment under appeal and of the request for appeal registered under the docket number RG n°2021/AR/1589 are the same (with the exception of the late Mr. Castermans), the appeals of the Belgian State and the Walloon Region insofar as they concern "*the parties referred to in appendix A, as attached to the judgment under appeal of June 17, 2021 (RG n°2015/4585/A - exhibit 0.1), not included in appendix A attached to the appeal petition filed with the Brussels Court of Appeal (RG n°2021/AR/1589 - exhibit 0.3)*" would not, however, be inadmissible, but would be deprived of purpose.

However, in view of the explanations provided by the appellants in case 2021/AR/1589, there is nothing to indicate that, apart from the deceased, there are any persons referred to in appendix A of the judgment under appeal who have not lodged an appeal. Consequently, the Court declares the appeals of the Belgian State and the Walloon Region to be without object, insofar as they are directed against "*the parties referred to in Annex A, as attached to the judgment".*

[23] For the record, these appeals were lodged by the Belgian State and the Walloon Region to ensure that all those present in the first instance were also present on appeal.

including appeal of June 17, 2021 (RG n°2015/4585/A - exhibit 0.1), not included in appendix A attached to the appeal petition filed with the Brussels Court of Appeal (RG n°2021/AR/1589 exhibit 0.3)".

On the other hand, whether or not the Annexes B of the judgment under appeal and the application for voluntary intervention in the appeal coincide (subject to the three persons mentioned above and the deceased), the appeals of the Belgian State and the Walloon Region, insofar as they are directed against these persons, remain relevant, since these persons are not appellants, but voluntary interveners in the appeal and, moreover, the admissibility of this intervention is rightly challenged (hereinafter, paragraph 105).

104. The Flemish Region asks the Court to declare the main appeal inadmissible.

However, it does not raise any specific plea of inadmissibility of the appeal in its conclusions. On p. 52, the Flemish Region does indeed invoke the "inadmissibility of the application", but it does not appear that it is referring in this way to the appeal filed by the appellants. The developments that follow seem to be more akin to a declinatory of jurisdiction (hereinafter paragraphs 108 to 116), a plea of inadmissibility of the original actions (hereinafter paragraphs 117 to 136) or a debate on the merits (hereinafter paragraphs 137 et seq.).

If the Flemish Region fails to clearly state a possible ground for inadmissibility of the appeal, the court is not obliged to respond.

2. Admissibility of voluntary interventions at appeal level

105. The Belgian State, the Brussels-Capital Region and the Walloon Region conclude that the application for voluntary intervention filed on January 10, 2022 by the parties listed in Appendix B to the said application is inadmissible.

According to the Belgian State (and the Brussels-Capital Region), insofar as these persons are the same as those who had already intervened at first instance, their petition is inadmissible. The Belgian State points out that, insofar as these persons are not the same as those who had already intervened at first instance, their petition is inadmissible, and must therefore be reclassified as an aggressive intervention prohibited on appeal.

106. However, there is nothing to suggest that there are any parties in this appendix B to the motion to intervene of January 10, 2022 who were not included in appendix B to the judgment under appeal. The parties concerned explain that Appendix B to the aforementioned motion is the same as that filed in first instance, with the exception of three persons: Ms Nicolas, Ms Haelvoet and Mr Patteeuw, who did not wish to be included in the appeal. They point out that number 615 has been removed because it mentioned Mr Stocké in

double. The court concluded that, subject to these clarifications, the parts of the two appendices B are the same.

107. If, by virtue of article 812, aiia+s 1eFof the Judicial Code, intervention can take place before all courts, a motion to intervene filed on appeal by a party who was present, called or represented at first instance is inadmissible (in this sense, see Cass., October 23, 2015, *Pas.*, I, liv. 10, 2395). The circumstance, invoked by Ms. De Vriendt and the parties listed in Appendix B in the degree of appeal, that the Dutch translation of the aforementioned judgment of October 23, 2015 would allow a different teaching to be inferred is irrelevant since it concerns a decision originally handed down by a French-speaking chamber. Moreover, the Court cannot follow them when they consider that this judgment was aimed at a particular situation: its teaching is gérteFal, and the Court agrees with it.

As a result, the motion to intervene filed on January 10, 2022 by parties who had already intervened at first instance is inadmissible.

That being said, the Court notes, like Mrs De Vriendt et al, that the stakes are relative, to say the least, given that all the parties listed in appendix B of the judgment under appeal are respondents by the Walloon Region and the Belgian State, so that they are all regularly involved in the case on appeal as respondents.

3. The power of jurisdiction

108. In its operative part, the Région wal(onne asks the court to "*decline jurisdiction*". It points out that the elements which enable "*the act of jurisdiction to be recognized*" must concern a dispute or a finding relating to a subjective right (art. 144 of the Constitution). In this case, she points out, "*the subjective right relied on by Klimaatzaak et crts. is the subjective right established by articles 1382 and 1383 of the Civil Code or, but this is disputed, articles 2 and 8 ECHR*" (her conclusions, p. 91).

It does not dispute that articles 1382 and 1383 of the former Civil Code enshrine a subjective right, but it considers that the action "*must relate to an entire subjective right*", whereas the action brought by the appellants in the main proceedings seeks only "to *establish an alleged fault, without in any way seeking reparation for any damage that might be linked to this alleged fault by a causal link*" (Idem).

As far as Articles 2 and 8 of the ECHR are concerned, she considers that they "*cannot constitute an autonomous basis for action in domestic law*" (her conclusions, p. 48). These provisions "*contain nothing more than standards of conduct",* they do not provide for the sanction of their violation, this sanction residing "*in domestic law, from which the national judge draws his jurisdictional power and finds at his disposal a variety of ways and means to implement, depending on the applicable national provisions*" (p. 104). This thesis would be confirmed by a "*rapid overview of the rulings of the Cour de ca5sation*".

which would testify *"to the fact that the provisions of the ECHR are not invoked autonomously, but in combination with domestic law" (Idem). In* her view, it follows that the appellants *"invoke rights which they expressly deprive the judge of the power to sanction under national law",* so that the court should "*declare itself without jurisdiction" (Ibid.,* p. 105). Lastly, without explicitly indicating that this is an element that should lead the court to declare itself without jurisdiction, it states that individuals can "*invoke violations of international provisions before the national court only if they can rely on a subjective right conferred by such provisions",* that the *"source of this subjective right depends on the direct effect of the provision of international law invoked"*, and that no direct effect can be recognized for positive obligations incumbent on States *(Idem).*

109. With regard to articles 1382 et seq. of the former Civil Code, however, the Walloon Region's argument is lacking in both law and fact.

110. In law, the fact that a plaintiff fails to invoke one of the conditions for the existence of a subjective right, or is mistaken as to what can be obtained in court by invoking such a right, does not deprive the judiciary of its power of jurisdiction. Moreover, article 18, paragraph 2, of the Judicial Code authorizes an action, even on a declaratory basis, to prevent the violation of a right that is seriously threatened. Since such a claim, relating to future damage, can be deemed admissible, it must o *fortiori* be deduced that the judiciary has jurisdiction to hear such a claim.

111. In fact, the appellants' claim in the main proceedings is not limited to requesting a finding of fault without alleging the existence of damage causally linked to that fault. In fact, the appellants repeatedly refer to damage that has already occurred (for which they seek compensation in kind) and justify their requests for injunctive relief by the desire to avoid aggravation of that damage (see, in particular, p. 156 of their conclusions: *"It is not pecuniary reparation that interests the appellants, but rather the granting of an injunction, which under the guise of reparation in kind, may relate both to the reparation of damage that has already occurred and to the prevention of further damage*"; see also p. 26, p. 146, pp. 154-156 and
pp. 163-164). This is a question of substance, not admissibility.

112. With regard to Articles 2 and 8 of the ECHR, it should be remembered that, under Articles 144 and 145 of the Constitution, disputes concerning civil and political rights fall within the jurisdiction of the courts, except in the case of political rights, where the exceptions provided for in the Law apply.

113. It is settled case law that the jurisdiction of the judiciary (in reality, its power of jurisdiction) is determined by the real and direct object of the dispute (Cass., September 24, 2010, *Pas.,* I, p. 2375, concl. by Advocate General Vandewal; Cass., March 8, 2013,

Pas, I, p. 601 and concl. by Advocate General Werquin) and that, when the object of the dispute relates to an administrative act, it is necessary to verify whether a subjective right is at stake.

According to the Cour de cassation's definition, the existence of a subjective right presupposes a "*specific legal obligation that a rule of objective law directly imposes on a third party and in the performance of which that party has an interest"* and, for a *"party to be able to rely on such a right vis-à-vis the administrative authority, the jurisdiction of that* authority *must be linked*" (Cass., March 8, 2013, *Pas.,* I, p. 601; see also Cass., December 20, 2007, *R.C.J.B.,* 2009, p. 419). The authority has bound jurisdiction when its legal obligation derives from a norm of objective law that leaves it no choice in deciding how to apply it to the concrete case: if the conditions laid down by the Ioi are met, the authority has no room for manoeuvre and must apply the norm (conclusions of Advocate General Vandewal before Cass., September 24, 2010, *Pas.,* I, p. 2374).

Admittedly, it could be deduced from this definition of the subjective right that the positive obligations imposed on States by Articles 2 and 8 of the ECHR (see points 139 and 141 below) do not have the character of a "*specific"* legal obligation (at least until they are sufficiently clarified by the case law of the European Court of Human Rights). Such a definition, which concerns the specific dispute over the actual subject matter of the claim, is however too simplistic and does not suffice to delimit the notion of "specific".
"civil law" as referred to in Article 144 of the Constitution and which, along with that of
"(B. BLERO, "L'article 145 de la Constitution comme solution aux conflits de compétence entre le juge de l'excès de pouvoir et le juge judiciaire", in *Le Conseil d'État de Belgique* cinquante *ans après sa création (1946- 1996),* Brussels, Bruylant, 1999, p. 202).

Indeed, equally consistent case law rightly points out that the judiciary has *"the power both to prevent and to remedy any unlawful infringement of subjective rights by authorities in the exercise of their diSCFetional power (...)*" (Cass., January 3 2008, *Pas.,* I, n°4; see also Cass., November 24 2006, *Pas.,* I, n°599; Cass., December 26 2014, *Pas.,* \, p. 3037). It follows that the notion of subjective right, insofar as it enables the judicial power's jurisdictional power to be determined, cannot be limited to the notion of linked jurisdiction. This is all the more the case given that, while it is no longer in doubt since the *La Flandria* judgment (discussed below, point 225) that the extra-contractual liability of the administration towards private individuals falls within the remit of the judiciary insofar as it involves "civil rights" within the meaning of article 144 of the Constitution, the fault of the public authority does not consist solely in the violation of a rule requiring it to abstain or to act in a certain way, but can also be analysed as an error of conduct to be assessed according to the criterion of the normally careful and prudent authority, placed in the same conditions (see. Hereinafter, paragraph 220). However, it seems difficult to assert, without rendering this distinction or its meaning meaning meaningless, that the obligation to behave as a normally careful and diligent authority constitutes a *"specific legal obligation*" within the meaning of the aforementioned definition of the law.

subjective. Indeed, while it is accepted that every subject of law has a subjective right to compensation for damage caused by a public authority's breach of its duty of care, it is difficult to limit the notion of subjective right to the *specific* legal obligation that a rule of objective law imposes directly on a third party.

114. As a result, the judiciary has the power to rule on disputes relating to the various rights set out in the European Convention on Human Rights, without it being necessary at this stage to rule on the question of their direct effect (on this subject, see points 150 et seq. below). For example, the Cour de cassation rightly overturned a judgment which had deduced from the discretionary power of the authorities to grant a foreigner a residence permit on the grounds of exceptional circumstances the absence of any subjective right to obtain such a permit, whereas the plaintiffs in the appeal invoked an infringement of several of their fundamental rights, in particular the right to private and family life, guaranteed by article 8 of the ECHR (Cass., March 26, 2009, *Pas,* I, 799) or the decision by which an appeal judge had declared himself without jurisdiction even though the plaintiffs were "*asserting their civil right to respect for their physical integrity and to the prohibition of inhuman and degrading treatment, guaranteed by Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms" and this, "without verifying whether the physical integrity of the plaintiffs was threatened (...) '* (Cass., April 15, 2016, *J.L.M.B.,* 2017, liv. 17, p. 810; see also the conclusions of Advocate General Werquin prior to this judgment:
"When the real and direct object of the request of the foreigner, who wishes to stay on the territory within the framework of a family reunification, tends to obtain the protection of the right to life or the right not to be subjected to inhuman and degrading treatment, the courts and tribunals are competent to know about it when they are the only ones able to ensure this protection; if it is established that these civil 5ubjeCtive rights are threatened, this foreigner has a subjective right to obtain a measure which tends to protect these civil rights").

115. The Court concludes that it has jurisdiction to hear the action of the appellants in the main proceedings.

116. As indicated above, the Flemish Region's conclusions are as follows:
"Irrecevabilité du requête : dëclinatoire de compétence . pas de pouvoir pour la Cour d'imposer des objectifs de réduction d'émissions, ou du moins, pas de fondement juridique pour pouvoir imposer les objectifs de redUCtion sollicités par les appelantes" (p. 52). In her opinion, the Court had no jurisdiction to rule on the appellants' action.

Insofar as the arguments of the Flemish Region are to be analyzed as a declinatory of jurisdiction, the Court refers to the foregoing developments, which respond to the pleas of the Walloon Region.

4. Admissibility of originating actions

117. The Flemish Region and the Walloon Region contest the admissibility of the actions brought by both Klimaatzaak and the natural persons already present at first instance (i.e. those listed in Appendix A of the first instance).

After recalling the principles applicable to any legal action (1), the court will examine the admissibility of the action brought by Klimaatzaak (2) and by these individuals (3).

118. However, 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).

For the rest, and as indicated above (paragraph 104), the Flemish Region invokes, on pp. S2 to 68 of its pleadings, the inadmissibility of the application, without it being possible to determine the exact nature of its objection. Insofar as this objection should be qualified as a plea of inadmissibility (it would then be a question of challenging the admissibility of the appellants' initial "request", and therefore of their action), it should be noted that, since it essentially concerns complaints based on the principle of separation of powers, it is not a question of admissibility but, where appropriate, of jurisdiction (see above, paragraphs 108 to 116) or of substance (see below, paragraphs 137 et seq.).

a) Principles applicable to the admissibility of legal action

119. Pursuant to article 17, para. ieF of the Judicial Code, the action cannot be admitted if the plaintiff has no interest in bringing it.

Article 18 of the same code stipulates that the interest "*must be born and present*", but specifies that the action "*may be admitted when it has been brought, even on a declaratory basis, in order to* prevent *the violation of a seriously threatened right*". Recourse to the preventive action requires the plaintiff to demonstrate, on the one hand, the existence of a serious and grave threat likely to create, from the outset of the action, a specific disturbance and, on the other hand, that the requested decision presents a concrete utility for him (C. DE BOE, "Le défaut d'intérêt né et actuel", *A.D.L.,* 2006/1-2, p. 129). This action implies that the claimant is the holder, at the time he invokes it, of the right he says is threatened (Cass., December 5, 2018, RG n°P.18.0208.F, www.|uportal.be). The trial judge is free to assess whether a right is seriously threatened (Cass., December 3 1984, *Pas.,* 1985, p. 414). In addition, a party to proceedings who claims to be the holder of a subjective right has, even if that right is contested, the requisite standing to have his claim heard within the meaning of article 17 of the Judicial Code.

the existence and scope of the subjective right that this party invokes is not a matter of admissibility but of the basis of the claim (Cass., January 26, 2017, *J.L.M.B.,* 2017, p. 1557; Cass., October 29, 2015, *Pas.,* I, n° 632; Cass., February 23, 2012, *Pas.,* I, n° 130; Cass., February 16, 2012, Pas.
November 2007, *Pas.,* I, no. 558).

The interest to act referred to in articles 17 and 18 of the Judicial Code, which conditions the admissibility of an action, is assessed according to the time at which the claim is lodged (Cass., April 24, 2003, *Pas.,* 2003/4, p. 854; see also Cass., December 4, 1989, *Pas.,* 1990, p. 414; Cass., June 13, 2014, *Rev.* not. *b.,* 2015, liv. 3094, p. 198; Cass., May 29, 2015, *R.A.B.G.,* 2015, liv. 15, 1047).

Unless there is a legal exception, a claim lodged by a natural or legal person cannot be admitted unless the claimant has a personal and direct interest, i.e. an interest of his or her own. The proper interest of a legal entity includes only that which concerns the existence of the legal entity, its patrimonial assets and moral rights, especially its honor and reputation, and the mere fact that a legal entity pursues a goal, even if it is statutory, does not give rise to a proper interest (Cass., September 19, 1996, *Pas.,* I, p. 830; Cass., December 13, 2018, RG n°C.15.0405.F).

The result is that, subject to legal exceptions, neither *actio popularis* nor even collective interest actions are admissible in principle (N. BERNARD, S. V N DROOGHENBROECK, l. HACHEZ, C. JADOT, A, DAVID, A. PICQUÉ, C. LANGLois and B. GOMES, "Urgenda: Quelles leçons pour la Belgique?", *A.P.T.,* 2021/1, p. 7 and references cited). Collective interest action can be defined as *"legal action brought by a group (...) to protect the purpose for which it was formed"* (O. DE SCHUTTER, "Action d'intérêt collectif,
remède collectif, cause significative", note under Cass., September 19, 1996, *R.C.1.B.,* 1997, p.. 113) whereas a popular action is an action brought with the sole aim of demanding respect for the Ioi and defending the general interest, regardless of any personal link between the plaintiff and the facts underlying his action (in this regard, see. R. DELFORGE, "L'intérêt à agir des associations dans le contentieux environnemental et climatique et le cas de Klimaatzaak", *A.D.L.,* 2021/1, p. 199 and references cited).

b) The admissibility of Klimaatzaak's request

120. The Walloon Region contests the admissibility of Klimaatzaak's action on the grounds, in substance, that it is exercising a popular action (which is prohibited), that it is acting to prevent pure ecological damage whereas it can only claim compensation for moral damage, and that it does not have a personal, direct, certain, born and present interest.

The Flemish Region also denounces the absence of a born and present, personal and direct interest on the part of the appellants in the main proceedings (and therefore of Klimaatzaak) and the fact that the action brought before the court would be a popular action.

121. It is worth recalling the specific nature of litigation relating to environmental law, while bearing in mind that it is not disputed that article 17, para. 2 of the Judicial Code, as inserted by the Ioi of December 21, 2018, is not applicable to the present case, which was filed prior to its entry into force.

122. Article 3.4 of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter the "Aarhus Convention") stipulates that each party to this Convention shall give "*due recognition and support to associations, organizations or groups which have as their objective the protection of the environment, and shall ensure that its national legal system is compatible with this obligation*".

Article 9.3 of this convention also requires parties to ensure "*that members of the public who meet the criteria, if any, laid down in its domestic law may institute administrative or judicial proceedings to challenge acts or omissions by private persons or public authorities which contravene provisions of national law relating to the environment".* Article 2.4 defines the term "public" as "*one or more natural or legal persons and, in accordance with the legislation or custom of the country, the asSOCiations, organizations or groups constituted by such persons".*

123. It follows from these provisions that Belgium has undertaken 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, provided they meet the criteria laid down by national law.

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 (see, regarding the requirement of a direct and personal interest required by article 3 of the law of April 17, 1878 containing the preliminary title of the Code of Criminal Procedure, Cass., June 11, 2013, *Pas.,* I, 1299). The "circumspection" of the doctrine as to the scope of this judgment invoked by the Walloon Region (its conclusions, p. 53) concerns only - and rightly so - the fact that its teaching can be transposed to legal action by ASBLs constituted for collective interests other than environmental protection (C. DE BoE and R. VAN MELSEN, "Vers une action d'intérêt collectif devant les juridictions de l'ordre judiciaire?", *A.P.T.,* 2014/3, p. 390) In this sense, this teaching - which must be seen as a legal exception - is not intended to call into question the principle of the prohibition of popular action.

124. The result is that, at least for actions brought before the entry into force of the law of December 21, 2018, the restrictive interpretation of the notion of interest limited to that of an "interest" is no longer applicable.

own interest, which is not explicitly imposed by the legal text of articles 17 and 18 of the Judicial Code, must give way to a broader interpretation in the case of an action brought by an association which, as in the case[24] , has as its objective the protection of the environment and intends to challenge the inaction of the public authorities in this field, which is deemed to be wrongful or contrary to fundamental rights. In this context, the fact that an association's corporate object does not contain a "*material or geographical limit"* or is not pursued "*in a lasting and effective manner*" (conclusions of the Walloon Region, p. 55) is irrelevant.

125. As the first judges rightly considered, the concept of "*national environmental law"* cannot be understood restrictively as referring solely to rules adopted by national authorities, but as including all rules forming part of the Belgian legal order. It follows 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).

126. It is true, however, that the admissibility of Klimaatzaak's action could, in the current state of positive law and although the question is controversial (see C. BARTHELEMY, "Le préjudice écologique consacré par la jurisprudence : Winston Churchill ou Neville Chamberlain ?", *J.L.M.B.,* 2022/8, pp. 350-355), to be called into question insofar as it would denounce only pure ecological damage (defined, according to the doctrine cited by the Walloon Region, as *"any damage caused directly to the environment taken* as such*, independently of its repercussions on people and property").*

    It has to be said, however, that Klimaatzaak does not denounce (or at least not only) pure ecological damage, but also - if not mainly - individual ecological damage (on this distinction, see in particular N. DE SADELEER, "De la réparation du dommage environnemental individuel à celle du dommage collectif. Quelques réflexions sur des arrêts récents", in C. Delforge (ed.), *Responsabilité, risques et progrès,* Bruxelles, Larcier, 2021, pp. 7-25), some of which have already been realized. It is therefore inaccurate to assert, as the Walloon Region does on p. 59 of its conclusions, that the notion of *"individual ecological damage"* is *"not otherwise identified in legislation, in doCtrine* oo *in jurisprudence*". The mere fact that the astreintes are claimed for the exclusive benefit of Klimaatzaak is not sufficient to demonstrate that the harm suffered by Klimaatzaak has been caused to the environment.

[4] *The articles of association of Klimaatzaak ASBL state that it was formed to protect present and future generations against man-made climate change and the reduction of biodiversity, by taking legal action and encouraging the participation of civil society in the development of policy and action in these areas, but also to protect the environment within the meaning of the law of January 12, 1993 concerning a right of action for the protection of the environment.

is purely ecological: it is merely a means of pressure designed to ensure that the respondent parties put an end to the infringement of their rights deemed unlawful by the appellants in the main proceedings.

127. In any case, Klimaatzaak at least has an interest in suing for moral damages in the event of environmental damage. As the Constitutional Court points out, there is an "*essential difference between the environmental association and the citizen in an action for compensation for damage to an element of the environment that belongs to no one", since* while the latter *"will in principle have no direct and personal interest in bringing an action for compensation for the injury to that interest", on the* other hand, "*a legal person that has been incorporated with the specific object of protecting the environment can (...) effectively Suffer moral damage and bring such an action*" (C.C., January 21, 2016, n° 7/2016, *Amén.,* 2016, n° 3, p. 194, pt. B.8.1).

In this respect, even considering that an association such as Klimaatzaak could only claim non-material damage in the event of environmental infringement (a reading not required by the aforementioned judgment of January 21, 2016), it does not follow that it could only claim pecuniary compensation for this non-material damage and not, in the context of a preventive action and subject to the requirements specific to such action, an injunction aimed at putting an end to an unlawful infringement of its rights or preventing the worsening of existing damage, in the context of a preventive action and subject to the requirements specific to such an action, an injunction aimed at putting an end to an unlawful infringement of its rights or preventing the worsening of an existing damage. There is therefore no point in asking the Constitutional Court the question suggested by the Walloon Region on p. 66 of its conclusions[25] , which is based on this premise.

128. The Walloon Region also concludes that Klimaatzaak's action is inadmissible on the grounds that its interest is not personal, direct, certain, born and present.

However, it should be noted that, as mentioned above (paragraph 126), 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.

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[25] Conclusions, p. 66: "*A* r/rre *subsidiaire, il y a lieu de poser à la Cour Constitutionnelle la question préjudicielle suivante: Does article 17 of the Judicial Code in its wording applicable to the present case, read alone or in conjunction with article 1382 of the Civil Code, violate articles 10 and 11 of the Constitution in the interpretation according to which a legal person which has been formed and acts to defend a collective interest, such as the protection of the environment or certain elements thereof, has no interest or standing to claim anything other than pecuniary compensation for any non-material damage it may suffer as a result of the infringement of the collective interest for which it was formed?' ".*

With regard to the personal nature of the interest, the Court refers to the preceding developments. As for the certainty of this interest, it is sufficiently clear from the elements set out by the Court in Part I of this judgment (Facts and context).

129. It follows that, as the first judges rightly decided, Klimaatzaak's action is admissible.

c) Admissibility of applications from individuals

130. The Walloon Region considers that the action of natural persons is inadmissible if it concerns pure ecological damage, if they cannot act in the collective interest and if they do not establish that they have a personal, direct, certain, born and present interest.

The Flemish Region also denounces the absence of a born and present, personal and direct interest on the part of the appellants in the main proceedings in general (and therefore of the natural persons in particular) and the fact that the action brought before the court would be a popular action.

131. 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 (p. 50 of the judgment under appeal, to which the Court refers).

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.

132. The Walloon Region is also wrong to assert that the individuals in this case are claiming pure ecological damage, when they are clearly claiming individual damage, including problems with food and water supplies, damage to infrastructure and human settlements, and increased morbidity and mortality, impacts on physical health (increase in infectious diseases and non-communicable diseases such as allergies, worsening of symptoms of pre-existing cardiovascular and respiratory diseases) and mental health (including anxiety-related harm), not to mention risks to life or physical integrity resulting from extreme events such as storms, floods, avalanches and landslides (their conclusions, p. 165).

133. The Walloon Region considers that the action by individuals "*could be admissible only insofar as each of these parties demonstrates its individual interest in*

However, it must be noted that Klimaat aak and crts. do not provide any information specific to their respective situations; they do not provide any personal supporting documents; they confine themselves to general and abstract considerations, valid for all and even valid for everyone; these considerations do not make it possible to distinguish the action of natural persons from a popular action; consequently, the action of these natural persons is inadmissible" (his conclusions, p. 62)[26] .

However, 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.

This is all the more the case given the European Court's observation that it is "*often impossible to quantify the effects of significant industrial pollution in each individual situation and to distinguish the influence of other factors, such as, for example, age and occupation*", and that *"the same* applies to *the deterioration in quality of life resulting from industrial pollution", "quality of life*" being "*a highly subjective concept which does not lend itself to precise definition"* (Eur. Ct. D.H., *Cordella v. Italy* judgment, January 24, 2019, §160).

In addition, given that the same claims have been made by all the appellants in the main proceedings, that no claim for compensation has been made by them *(a fortiori* on an individual basis), that a single procedural indemnity has been claimed for all these parties and that Klimaatzaak's action is in any case admissible, it would be contrary to the proper administration of justice to resort to pre-trial proceedings on this issue, which would force all parties to the case to debate the individual interests of several thousand people, when there is no doubt that at least the bulk of these parties have such an interest.

134. With regard to the certain, born and present nature of the interest of the natural persons, the Court refers to the above developments concerning the admissibility of Klimaatzaak's action (in particular with regard to the existence of already existing damage and art. 18, para. 2 of the Judicial Code). In any event, it should be noted that the individuals consider that the respondents have violated articles 2 and 8 of the ECHR and articles 1382 and 1383 of the former Civil Code insofar as they are concerned, and have done so for several years, by failing to do their part in terms of the necessary measures to limit global warming so as to prevent it from eventually crossing the threshold deemed dangerous for life and likely to seriously affect their private and family life.

As mentioned above, 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

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On p. 84 of its conclusions, the Brussels-Capital Region, which does not explicitly question the admissibility of the original claim, considers in the same vein that *"the interest of the appellants is not sufficiently individualized in that it relates in general to the right to a healthy environment".*

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

135. For the rest, the Court points out that the question of whether or not the rights invoked by the appellants have been violated by the public authorities is a question of substance and not of admissibility.

The lower courts were therefore right to rule that the actions brought by the natural persons were admissible, a solution which is all the more necessary in view of the need to interpret domestic admissibility criteria in the light of article 9.3 of the Aarhus Convention.

136. For the same reasons, the Court considers that the parties listed in Appendix B, who are being challenged by the Belgian State and the Walloon Region, had an interest in intervening in the case.

The judgment will also be confirmed on this point.

C. Examination of the means

137. The appellants in the main proceedings level a twofold reproach at the respondents:

- their part in the global effort to reduce GHG emissions and avoid dangerous global warming;
- the absence of the healthy and loyal cooperation needed to develop good climate governance at national level.

In their view, these elements constitute both a violation of articles 2 and 8 of the ECHR (first plea) and a fault within the meaning of articles 1382 and 1383 of the former French Civil Code (second plea).

The Court will examine the arguments put forward by the appellants in the main proceedings in the order they have invoked them, despite the invitations of certain respondents to proceed differently.

1. The first plea: violation of articles 2 and 8 of the ECHR

a) The scope of Articles 2 and 8 of the ECHR, particularly in environmental matters 138

The ECHR does not enshrine as such a right to a healthy environment (Cour eur. D.H., *Ivan Atanasov v. Bulgaria,* December 2, 2010, § 66). The European Court, which favors a teleological and evolutionary approach by considering the convention as a

The "*living instrument*" principle (Eur. Court of Human Rights, *EB v. France,* January 22, 2008, §92) has, however, developed a significant body of case law concerning rights that may be violated "*par ricochet*" as a result of environmental damage (N. BERNARD, S. VAN DROOGHENBROECK, I. HACHEZ, Ü. JADOT, A. DAVID, A. PICQUÉ, C. LANGLois and B. GOMES, *op. cit.* p. 12). This applies in particular to
– and above all - articles 2 and 8, which are invoked by the appellants in the main proceedings.

1) Article 2 of the ECHR

139. Article 2 enshrines the right to life of the persons protected by the Convention. This provision imposes on each State the obligation to "*refrain from causing death voluntarily and wantonly*" (negative obligation), but also the positive obligation to "*take the5 necessary measures to protect the lives of persons under its jurisdiction"* (European Court of Human Rights, *Kurt v. Austria* judgment*,* June 15, 2021, §157). While the European Court accepts that *"any presumed threat to life does not oblige the authorities, under the Convention, to take concrete measures to prevent it",* it considers that "*this is not the case, in particular, where it is established that the said 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*" (Cour eur. D.H., *Oneryildiz v. Turkey* judgment*,* June 18, 2002*,*
§63; see also Cour eur. D.H., judgment in *Zammit Moempel v. Malta,* November 22, 2011, §67). As far as environmental issues are concerned, violation of the right to life is conceivable in all *"areas likely to give rise to a serious risk to life or the various aspects of the right to life"* (Cour eur. D.H., *Oneryildiz v. Turkey* judgment*,* June 18, 2002, §64).

In other words, in order to assess the existence of a positive obligation on the part of a State under Article 2, it is first necessary to verify the existence of a real and immediate risk to life. In this respect, the requirement of an "*immediate*" risk *does* not imply that there should be an "immediate" risk to life.
"In other *words, the "protection offered by Article 2 also covers dangers which may arise in the long term"* (N. BERNARD, S. VAN DROOGHENBROECK, I. HACHEZ, C. JADOT, A. DAVID, A. PICQUÉ, C. LANGLois and B. GOMES, op. cit. GOMES, *op. cit.* p. 15 and
ref. cited).

It must then be ascertained whether the public authority knew or ought to have known that this risk existed, and whether it took the necessary and sufficient measures (or appropriate measures, according to other Court rulings) to mitigate this risk. By definition, the protection of the right to life as a positive obligation implies the adoption of preventive measures. This is no different in environmental matters (see Cour eur. D.H. (GC), *Oneryildiz v. Turkey* judgment*,* November 30, 2004, §101: "*It follows that the Turkish authorities, at several levels, knew or were supposed to know that several individuals living in the vicinity of the Ümraniye municipal landfill were under real and imminent threat. Consequently, they*

had, under article 2 of the Convention, a positive obligation to take effective, necessary and sufficient measures to protect them (...)" (emphasis added).

The obligation under Article 2 to take preventive operational measures is an obligation of means and not of result[27] . According to the Court, "*where the competent authorities have become aware of the existence of a real and immediate risk to the life of others such as to give rise to an obligation on them to act, and where, faced with the risk identified, they have taken appropriate measures within the scope of their powers, the fact that such measures may nevertheless fail to produce the desired result is not in itself such as to justify a finding that the State has failed to fulfil its obligation under Article 2 to take preventive operational measures*" (Cour eur. D.H., *Kurt v. Austria* [GC] judgment, June 15, 2021, § 159). States' margin of appreciation as regards the measures to be taken is, in principle, greater when environmental damage is beyond human control than when it results from "*dangerous activities of human origin*" (Eur. Court HR, *Bouda "i'eva v. Romania* judgment*,* March 20, 2008, §135). Finally, 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 (Cour eur. D.H., *Budayeva and others v. Russia* judgment*,* March 20 2008, § 135; Cour eur. D.H., *Brincat and others v. Malta judgment,* July 24, 2014, § 101).

Moreover, Article 2 of the ECHR, as interpreted by the European Court of Human Rights, does not impose any requirement of "*characterized* inaction" (conclusions of the Belgian State, p. 207 et seq.) distinct from the aforementioned requirements.

2) Article 8 of the ECHR

140. Article 8 of the ECHR states that everyone has the right to respect for his private and family life. home and correspondence. It follows from Article 8 §2 of the ECHR that state interference with the right guaranteed by Article 8 §9 must meet three conditions
These requirements are cumulative: they must be provided for by law, pursue a legitimate aim and be proportionate. In particular, to assess the proportionality of an interference with the exercise of protected fundamental rights in relation to the legitimate aim pursued (article 8§2), it is necessary to take into account the measures taken by the State, in parallel with this interference, to protect the fundamental rights of individuals. These protective measures help to restore the balance between competing interests.

141. The European Court of Human Rights accepts that serious environmental nuisances - and not just pollution as invoked by the Walloon Region (p. 110 of its conclusions) or nuisances resulting from "specific" activities as written by the Brussels-Capital Region (its conclusions, p. 79) - can constitute an infringement of the right to respect for the environment.

[27] However, the distinction drawn in Belgian civil law between obligations of means and obligations of result should not be applied to the interpretation of this provision.

of private and family life (e.g. Cour eur. D.H., *Powell and Rayner v. United Kingdom,* February 21 1990, Lopez Ostra v. Spain, December 9 1994, Guerra v. Italy, February 19 1998). Nor is it required, for there to be a violation of Article 8 of the ECHR, that the situation be "*in one way or another unlawful independently of the violation"* of that provision, as the Brussels-Capital Region suggests (its conclusions, p. 77). A

An "arguable grievance" in this area *"may be denied if an environmental risk reaches a level of seriousness that significantly diminishes the applicant's ability to enjoy his home or his private or family life",* the assessment of this minimum level being relative and dependent "*on all the facts of the case, in particular the intensity and duration of the* nuisance *and its physical or psychological consequences on the health or quality of life of the person concerned*" (Eur. Ct. D.H., *Cordella v. li:alie* judgment*,* January 24, 2019, §157). To benefit from the protection of Article 8 of the ECHR, the applicant must therefore establish that there has been interference in his private sphere due to the environmental situation complained of, and that this interference has

reaches a minimum level of seriousness (S. VAN DROOGHENBROECK, C. JADOT and C. DE BUEGER, "Environnement, climat et droits fondamentaUK 'î, in *Actualités choisies des droits fondamentaux,* C.U.P., Limal, Anthemis, 2021, §10). On the other hand, it is not necessary, as the Flemish Region claims, for this interference to be "*specifically linked locally*" (its conclusions, p. 113).

Article 8 can be applied in environmental cases, whether the environmental damage is directly caused by the State, or whether the State's responsibility stems from the absence of adequate regulation of private industry (J. BODART, "La protection de l'environnement par le biais du droit au respect de la vie privée et familiale et du domicile", *Amén.,* 2003/4, no. 8, p. 215). Whether one approaches a case from the angle of a positive obligation on the State to adopt appropriate and reasonable measures to protect the rights guaranteed in the first paragraph of Article 8, or from that of interference by a public authority (negative obligation) to be justified from the angle of its second paragraph, the applicable principles are, in the words of the European Court of Human Rights, "*quite similar*" (Eur. Court HR, *Tatar v. Romania* judgment*,* January 27 2009, § 87). Thus, in both cases, the State must strike a fair balance between the competing interests of the individual and of society as a whole, as the objectives listed in paragraph 2 may

play a role in striking this balance, even in the case of positive obligations resulting from paragraph [ieF] (see in particular Cour eur. D.H., judgment in *Flamenbaum v. France,* 13 December 2012, §134). In this respect, the State enjoys, in principle, a wide margin of appreciation to determine the measures to be taken to ensure compliance with the Convention, no special status being reserved for human environmental rights (Cour eur. D.H. [GC], judgment in *Hatton and Others v. United Kingdom,* July 8, 2003, §122).

142. As in the case of the right to life, the existence of a serious and imminent risk is not excluded by the fact that the feared impacts are remote in time (0. DE SCHUTTER, "Climate change and human rights: the Urgenda case", *Rev. Trim. D.H.,* 2020/123, p. 594). In *Taskin v. Turkey*, the European Court of Human Rights rejected the Turkish government's argument that Article 8 was inapplicable as of the date on which the decision was handed down.

While the risk to which the applicants referred was "*hypothetical, as it can only occur within a period of twenty to fifty years"*, it could not have constituted an "*imminent and serious risk*" (Cour eur. D.H., *Taskin and others v. Turkey,* November 10, 2004, §107-114).

143. The European Court of Human Rights has also reiterated on several occasions that, with regard to activities dangerous to I enviFonnement, the principles developed in the context of the positive obligations deriving from Article 8 also apply to Article 2 (Cour eur. D.H., *Budayeva and Others v. Russia* judgment, 20 March 2008, § 133; Cour eur. D.H., *Brincat and Others v. Malta* judgment, 24 July 2014, § 102).

b) National iuge control, subsidiarity and margin of appreciation

144. The appellants in the main proceedings consider "*that the margin of appreciation granted by the Court of Human Rights to the Contracting States in application of the principle of subsidiarity does not apply to national judges, who are the guarantors of the effective protection of fundamental rights within their own system*" and whose control is therefore "*full and complete*", so that the
The "*notion of a margin of appreciation, as set out in the case law of the European Court of Human Rights and invoked by the respondents, is not such as to limit the* Court's *review of the respondents' action"* (their conclusions, p. 278).

This argument cannot be followed according to the Belgian State, which insists that the "*principle of subsidiarity, which applies (...) to the control exercised by the European Court of Human Rights in relation to that exercised by the national courts, is completely unrelated to the margin of appreciation enjoyed by the Member States in implementing respect for human rights".) to the control exercised by the European Court of Human Rights in relation to that exercised by national courts, is completely unrelated to the margin of discretion enjoyed by Member States in implementing respect for the fundamental rights protected by the ECHR*", so that it could not "*lead to the elimination of the discretion enjoyed by Member States in the adoption and implementation of their climate policy".* And he concludes that "*this discretionary power of the States remains full and complete, which implies that the control of the judicial judge is a marginal control"* (his conclusions, p. 214). The Walloon Region agrees with the Belgian State. The Brussels-Capital Region also considers that the margin of appreciation granted to States applies to the control exercised by national judges (its conclusions, p. 76). The Flemish Region insists on the wide margin of discretion granted to States, without however examining its link with the principle of subsidiarity (its conclusions, p. 114 et seq.).

145. Article 1 of the ECHR requires States to secure to everyone within their jurisdiction the rights and freedoms defined therein, from which it can be deduced that the Convention entrusts "in the *first place to each of the Contracting States the duty of securing the enjoyment of the rights and freedoms enshrined therein*" (European Court of Human Rights, *Handyside v. United Kingdom* judgment, December 7, 1976, §48). The resulting principle of subsidiarity embodies "*the essence of a rule on the distribution of COiTipétences between the Court and the member States*", the ultimate aim of which is to
"to "*secure to everyone within the jurisdiction of a State the rights and freedoms set forth in the Convention"* (Eur. Court of Human Rights, *Kavala v. Turkey* judgment, December 10, 2019, §99).

It is based both on an imperative *to ensure* the *effectiveness* of the rights enshrined (the angle favored by the appellants in the main proceedings) and on a concern to respect the *legitimacy* of national sovereignties (a consideration at the heart of the respondents' arguments).

146. From the point of view of *effectiveness,* subsidiarity *"is expressed in Articles 13 and 35 §1 of the Convention*" (Cour eur. D.H. [GC], *Kudla v. Poland* judgment*,* October 26 2000, §158). Article 13 confers on anyone whose rights and freedoms protected by the Convention have been violated an effective remedy before a national court, whereas Article 35 requires the applicant not only to have mobilized the procedural avenues available in his State, but also to have put forward, before the national courts, pleas based on the ECHR. The purpose of the rule enshrined in Article 35 is to give States the opportunity to prevent or "*remedy alleged breaches*" (Cour eur. D.H., *Van Oosterwij "ck v. Belgium* judgment*,* November 6 1980, §34) and it "*is based on the assumption - the object of Article 13 of the Convention, with which it has close affinities - that the domestic order* provides *an effective remedy for the alleged violation*" (Eur. Court HR [GC], *Mifsud v. France* judgment*,* September 11 2002, §15). The criterion of effectiveness permeates all the case law of the European Court of Human Rights, which insists that the Convention is *"intended to protect rights that are not theoretical or illusory, but concrete and effective*" (Eur. Court HR, *Airey v. Ireland* judgment*,* October 9 1979, §25). In certain areas, such as the application of Article 6 of the ECHR, the Court has held that *"the best remedy in absolute terms is, as in many areas, prevention*" (Cour eur. D.H., *Olivieri et al. v. Italie,* 2016, § 45).

Thus, although, as the Walloon Region in particular points out (its conclusions, p. 104), Articles 2 and 8 ECHR do not explicitly provide for a sanction in the event of a violation of the obligations enshrined therein, such a sanction may be deduced from the right to an effective remedy enshrined in Article 13 ECHR, which must make it possible not only to obtain reparation for the damage caused by the violation of the other rights enshrined in the Convention, but also to put an end to such violation, and ideally to prevent it (S. VAN DROOGHENBROECK, "Flandria, Anca, Ferrara .... Urgenda? Entre réparation et prévention, de l'indemnisation à l'injonction", 1.7., 2020/36, p. 750). In environmental matters, a comparable requirement for an effective remedy arises from Article 9.4 of the Aarhus Convention, which stipulates that judicial procedures "*shall provide adequate and effective remedies, including injunctive relief where appropriate, and shall be objective, fair and expeditious without being prohibitively expensive ... '".*

147. From the point of view of *legitimacy,* the European Court of Human Rights is keen to respect the diversity of national solutions to human rights issues in terms of the democratic stakes involved. In its /-lotion judgment of July 8, 2003, the Court explained the link between subsidiarity and democratic legitimacy: "*The Court recalls at the same time the fundamentally subsidiary role of the Convention mechanism. The national authorities enjoy direct democratic legitimacy and, as the Court has repeatedly affirmed, are in principle in a better position than the international judge to take action on their own behalf.*

local needs and contexts. (...) When questions of general policy are at stake, on which profound divergences may reasonably exist in a democratic State, particular importance must be attached to the role of the national decision-maker" (Cour eur. D.H. *DGC)*, *Hatton and others v. United Kingdom,* July 8, 2003, §97).

This "*partiCUl importance*" that the Court believes should be accorded "*to the role of the national decision-maker*" is embodied in the concept of the national margin of appreciation, incorporated into the ECHR preamble by Protocol no. 15 and presented as "*the praetorian expression*" (Fr. SuDRE, *Droit européen et international des droits de l'homme,* Paris, P.U.F., 1989, p. 228) or the "*corollary*" (G. MALINVERNI, "Le Protocole n°15 à la Convention européenne des droits de l'homme", *Rev. trim. dr. h.,* 2015, p. 54) of the principle of subsidiarity. As summarized by the European Court of Human Rights: "*In accordance with the principle of subsidiarity, it is primarily for the Contracting Parties to ensure respect for the rights and freedoms defined in the Convention and its Protocols, and in doing so they enjoy a margin of appreciation subject to the Court's control"* (Eur. Court D.H. [GC], *Correia de Matos v. Portugal* judgment*,* April 4, 2018, §116). This margin of appreciation will generally be wider in ethically, politically or even economically sensitive areas, particularly in the absence of a European consensus (see Fr. TuLKEHs and L. DONNAY, "L'usage de la marge d'appréciation par la CouF européenne des droits de l'homme. Paravent juridique superflu ou mécanisme indispensable par nature?", *Revue de science criminelle et de droit pénal comparé,* vol. 1, 2006, p. 12 et seq.) This is particularly true in environmental matters, where the Court considers that, given the complexity of the issues involved, its role can only be marginal, as the "*choice of means*" concerning environmental issues falls mainly within the national margin of appreciation (Cour eur. D.H., décision *Greenpeace e.V. et autres c. Allemagne,* May 2, 2009).

While in principle this margin of appreciation should not apply in the context of Article 2 of the ECHR, given the absolute nature of the protection conferred on the right to life, it is clear that this concept now seems to apply to the positive obligations imposed on States (Fr. TULKrNs and L. DONNAY, *op. cit.* pp. 15-20 and references cited; Cour eur. D.H. [GC], *Garib v. Netherlands* judgment*,* November 6, 2017, §137; see also 0. Dr SCHUTTER, ' Changements climatiques et droits humains : l'affaire Urgenda ", *op. cit.,* p. 594 :
"The question therefore arises as to the degree of intensity of judicial review, on the spectrum that ranges from a marginal review, limited to the censure of manifest error of assessment, to a more advanced review, which checks the appropriateness of the measures adopted by asking whether, with regard to all the measures likely to contribute to the objective sought, the authorities have taken the most appropriate measures").

148. The link between the principle of subsidiarity and the margin of appreciation cannot therefore be denied. The Belgian State, which asserts that the *"principle of subsidiarity (...) has nothing to do with the margin of appreciation*", itself admits, in the same breath, that the "*corollary of the principle of subsidiarity is that the Member States are granted a margin of appreciation in the implementation of this control*" (its conclusions, no. 380, p. 215).

The appellants in the main proceedings are also right to assert that the margin of appreciation relates solely to relations between the European Court of Human Rights and the national authorities. It is therefore "*not trans5posable into domestic national relations and, consequently, before the national judge*" (N. BERNARD, S. VAN DROOGHENBROECK, I. HACHEZ, C. JADOT, A. DAVID, A. PiCQUÉ, C. LANGLois and B. GOMES, *op. cit.* p. 23). Contrary to what the Brussels-Capital Region maintains (its conclusions, p. 176), the reference to the concept of "*national decision-maker*" and to the latitude of the national legislator in the *Hatton* judgment (see point 147 above) does not contradict this assertion. Indeed, in the same paragraph of the judgment, the European Court of Human Rights states that it is the "*national authorities*" (defined more broadly, therefore, than the legislature) that "*are in principle in a better position than the international judge to rule on local needs and contexts*".

149. This being said, while the margin of appreciation within the meaning of the ECHR does not apply to the judiciary when it reviews the action of the legislative and executive powers, it is nonetheless subject to the principle of the separation of powers, which requires it, albeit by virtue of this constitutional principle and not a Strasbourg principle, to limit itself to a marginal review in the event of discretionary competence on the part of the other two powers. It is in this sense that the Belgian State denounces the fact that to follow the argument of the appellants in the main proceedings with regard to the control to be exercised by the national judge over the executive and legislative powers, would be to operate "*a shift such as to violate head-on the constitutional principle of the separation of powers, prohibiting the judicial judge from substituting his own assessment for that of the legislator*" (its conclusions, pp. 214-215). However, as explained below, this question cannot be dissociated from that of the direct effect of Articles 2 and 8 of the ECHR.

c) <u>The direct effect of Articles 2 and 8 of the ECHR and the separation of powers</u>

150. The Walloon Region (in its opinion, pp. 105 et seq.) and the Brussels-Capital Region (in its opinion, pp. 67 et seq.) consider that the appellants could not rely on the positive obligations imposed by Articles 2 and 8 of the ECHR, since these provisions would not have direct effect in the positive sense. These provisions could not therefore constitute autonomous grounds for their claim.

151. Although eminent judges have suggested that "it *would never occur to anyone to contest the direct effect of the European Convention on Human Rights*" (Conclusions of Advocate General De Koster preceding Cass., June 2 2006, *Pas.,* I, p. 1324, § 133), it has to be said that the issue is more complex. In a judgment of March 6, 1986, the French Supreme Court held that Article 8 of the ECHR, insofar as it lays down positive obligations, was not sufficiently precise and complete to constitute a source of subjective rights for individuals, and that the direct effects of this provision were therefore limited to the negative obligations it lays down (Cass., March 6, 1986, *Pas..,*

1986, I, p. 433; *R,C.J.B.,* 1987 and note Fr. RiGAUx; see also Cass. 10 mai 1985, *Rev. Not. 8.* 1986, p. 438). The view that the direct effect of the rights enshrined in the ECHR is limited to the negative obligations imposed on States has since been widely endorsed (see in particular the references cited by J. PIERET, "L'influence du juge belge sur l'effectivité de la convention : retour doctrinal et jurisprudentiel sur le concept d'effet direct", in *Entre ombres et lumières : cinquante ans d'application de la Convention européenne des droits de l'homme en Belgique,* V. Chapaux, J. Pieret and A. Schaus (eds.), Bruxelles. Schaus (eds.), Brussels, Bruylant, 2008, p. 108).

Advocate General Werquin recently wrote that "*a clear treaty norm, legally complete, which requires contracting States either to abstain or to act in a specific manner, and which is likely to be invoked as the source of a right of its own by persons subject* to *the jurisdiction of those States or to subject persons to obligations, or a norm of domestic law which requires subjects of law to abstain or to act in a specific manner,* has *direct effects in the national legal order"* (his conclusions before Cass, 15
December 2022, RG n° C.21.0003.F, www iuportal.be). The reasoning behind the traditional position on diFect effect is that the negative obligation (e.g., for Article 2 of the ECHR, to refrain from causing death in a wilful and irregular manner) imposes a sufficiently determined course of conduct, unlike the positive obligation (e.g., for the same provision, to take appropriate and reasonable measures to protect the lives of persons under its jurisdiction in the event of a real and immediate threat).

152. Authoritative doctrine has, however, demonstrated the limits of a binary approach, confined to the distinction between positive and negative obligations, particularly in view of the reversible nature of an obligation (0. Dr SCHUTTER, *Fonction de juger et droits fondamentaux : transformation du contrôle juridictionnel dans les ordres juridiques américains et européens,* Brussels, Bruylant, 1999, pp. 142-159) and the open texture of legal norms, particularly in the field of fundamental rights (J. PIERET, *Op. cit,* p. 108), in favor of a contextualized and gradual approach to direct effect, articulated with the closely related principle of the separation of powers (on this question, see. I. HACHEZ, " Précision et droits de l'homme dans l'ordre juridique belge : focus sur la notion polysémique d'effet direct ", Rev. *Dr. H.,* 2015, p. 2 et seq. ; see also 0. Dr SCHUTTER, *Fonction de juger et droits fondamentaux, op. cit,* p. 154: *'What is at stake in direct applicability is not, as is claimed, the precision and completeness of the international rule: it is the powers of the judge who is asked to apply the international rule*').

The Court also considers that the clear and precise nature of norms such as Articles 2 and 8 of the ECHR should not be assessed *in abstFaCto,* by examining the text alone, but by taking into account both the interpretation given to it by its authorized interpreters (notably the European Court of Human Rights) and the context (national but not exclusively) in which the provision finds application. On the national level, the question is to determine whether the *"reception structures*" of the Belgian legal system allow the judge to give effect to the norm concerned "*without profound normative modification"* (I. Hachez, *op. cit.*

cit. p. 5; see also J. PIERET, *Op. cit.* p. 29). Taking into account the international context makes it possible, as does the European Court of Human Rights, to make
reference, for the purposes of interpreting the Convention, to European and international 'consensuses' revealed by 'sources external' to the Convention itself, whether they be found in instruments with (hard law) or without (soft law) intrinsic legal efficacy, or even in scientific studies or the conclusions of expert c o m m i t t e e s " (N. BERNARD, .
VAN DROOGHENBROECK, l. HACHEZ, C. JADOT, A. DAVID, A. PicaUE, C. LANGLois and B. GOMEs, *Op. cit,* §12).

Indeed, as indicated above, the ECHR is a living instrument that must be interpreted in the light of current conditions, which may involve taking into account non-binding sources of law (Cour eur. D.H. (GC), judgment in Demir & *Baykara v. Turkey,* November 12, 2008, §76 et seq.; in particular Article 7b/s of the Constitution, Article 3, 1º of the UNFCCC and the Preamble to the Aarhus Convention, which emphasize the need to protect future generations), or even factual elements such as scientific studies on which there is unanimous agreement, or political consensus at international, European or national level. This is particularly true in a matter as complex as global warming: it is impossible to determine whether the public authority knew or ought to have known of the existence of a risk, and whether it took the necessary and sufficient measures to mitigate that risk, without referring to the knowledge of experts in the field. In this sense, the fact can inform the law, without, as the Walloon Region fears, creating or abolishing it. Only such an approach can guarantee the effectiveness of the rights enshrined in the ECHR. To deprive these rights of any direct effect in all circumstances, in their "positive obligations" aspect, would be tantamount to preventing their holders from gaining access to the courts, and would run counter to the "effectiveness" aspect of the subsidiarity principle referred to above.

153. However, it should be borne in mind that, as mentioned above, the principle of subsidiarity is also, and rightly so, closely associated with the question of national democratic *legitimacy.* In Belgian law, this concern is embodied in respect for the principle of separation of powers, which requires the judge not to make a political choice, but to confine his review to compliance by the legislative and executive powers with rights which, in their positive aspect, impose on the public authority an obligation to act (or to refrain from acting) that is sufficiently determined with regard to the aforementioned context. The judge must ask himself the following question: "*Would he be inconsiderately stepping outside the role assigned to him by the separation of powers if he himself gave effect to the conventional norm invoked before him?" (*\. HACHEZ, *op. cit.,* p. 5).

154. When it comes to climate policy, the issue is highly complex, and both the first judges and the respondents emphasized the need for caution on the part of the judiciary. The judgment under appeal thus states that "(T)*he extent and pace of the reduction of GHG emissions by Belgium, as well as the internal distribution of the efforts to be made in this direction, are and will be the result of political arbitration in which the judiciary cannot interfere*" (p. 82). The Flemish Region, for its part, specifies that *drastic measures*

such as banning fossil fuel vehicles or closing the port of Antwerp", if they are likely t o have a positive impact on GHG emissions,
"will also have catastrophic socio-economic consequences" when
"Some people would find themselves socially isolated, as they would no longer be able to move around as they wish, employment would be seriously affected, with collateral damage to social security and prosperity in general, etc." (her conclusions, p. 57). In her view, in establishing a climate policy, it is not only the right to pFotection of a healthy environment that needs to be taken into account, but also other rights such as the right to work, the right to social security, the right to property or freedom of trade and enterprise, which implies "*an examination between these different environmental, social and economic components" (Ibid.,* p. 58). The Brussels-Capital Region concurs, pointing out that "*reducing GHG emissions to the proportions sought by the appellants necessarily implies changes in the organization of life in society, with major repercussions on the way o f life of the inhabitants of the Brussels-Capital Region",* such changes requiring "*the mobilization of substantial financial and budgetary resources and major trade-offs with regard to the current use of public resources*" (its conclusions, p. 114). The Climate Ordinance thus expresses "*the need, in drawing up Brussels' climate policy, to ensure that balances (socio-economic, institutional, democratic and environmental) are maintained, which implies carrying out assessments and making trade-offs when adopting measures relating to climate policy" (Ibid.,* p. 120). The Belgian government points out that *"climate policies, conducted at international, European and Belgian level, are conceived in consideration of more global issues*", both in material and spatial terms. On the material level, climate policy is determined, at international and European level, by "*major geostrategic stakes*" that are not necessarily illegitimate (such as the demand from developing countries to be able to increase their GHG emissions in order to improve the well-being of their inhabitants, or the demand from industrialized countries to organize a transition that will avoid major inequality between citizens), and the COPs "*are the fruit of negotiations and political balances"* (his conclusions, p. 171). On the spatial level, the Belgian State points out that "*climate policy is part of a global dialogue with all the complexity and nuance that this necessarily implies*" and that the balance to be struck is global, so that it is "*not unreasonable for a State to be part of the concert of nations in determining its climate policy" (Ibid.,* p. 172). It also stresses that the legislature has broad discretionary powers in implementing its climate policy, which "*cannot be pursued in disregard of any other consideration of social cohesion, economic development or other aspects of the environment, for example*" *(Ibid.,* p. 165). Finally, the Walloon Region points out that achieving GHG emission reduction targets "*does not depend entirely on the public authorities*", whose means of action are not unlimited (its conclusions, p. 86).

155. The question of whether a judge can impose global warming mitigation measures on a state without taking a position on a political issue which, given

of the balance of issues at stake (and in particular of the impact on other fundamental rights), should fall exclusively to the other powers, is bitterly debated by the doctrine (on the subject, see in particular J. ALLARD, ï' La justice, pouvoir et contre-pouvoir démocratique ", E-legal, *Revue de droit et criminologie de l'ULB,* vol. 7, 2023, February 2023 ; V. LEFEBVE, " Témoin impuissant, acteur militant ou aiguilleur politique ? Le rôle du juge en démocratie à la lumière de I' 'affaire climat'", E-legal, *Revue de droit et criminologie de l'ULB,* vol. 7, 2023, February 2023). Thus, while some believe that "*determining the appropriate level of emissions reduction is* a *political issue that should be based on a democratic decision taken by parliamentary assemblies"* and that it *"should not depend on a decision by courts and tribunals that do not have the same legitimacy*" (B. DUBUISSON, "Responsabilité civile et changement climatique. Libres propos sur le jugement rendu dans l'affaire 'Klimaatzaak'", in *Liber amicorum Xavier Thunis,* Bruxelles, Larcier, 2022, p. 261) or point out that the negative effects of global warming mitigation measures by a State are "*often more direct and immediate than their positive effect"* and that, *"while the positive effects are global, these adverse effects often take place in the State's territories, where these measures are implemented"* (B. MAYER, "Is climate change mitigation a human rights treaty obligation?*", J.E.D.H.,* 2022/1, p. 12), others relativize the aforementioned threat to other fundamental rights in the short term, insist on the contrary on the threat posed by climate change to these other rights in the longer term** or on the fact that it is not a question of depoliticizing issues that are by nature political, but of politicizing them in a different way by focusing *' attention on the human dimension of politics, by focusing on the concrete consequences of political decisions on people's living conditions, and by paying particular attention to situations of vulnerability and the most marginalized"* (O. DE FROUVILLE, "Les droits de l'homme au service de l'urgence climatique?", *J.E.D.H.,* 2022/1, pp. 171-174; in the same vein, see. M. PETEL, "Droits humains et contentieux climatique: une alliance prometteuse contre l'inertie politique", *J.E.D.H.,* 2021, n°2, pp. 143-175; 0. DE SCHUTTER, "Changements climatiques et droits humains: l'affaire Urgenda", *op. cit,* pp. 604-605, who suggests that "*the issue of climate change is, arguably par excellence, one that traditional political mechanisms are ill-equipped to handle: the impacts of the accumulation of GHGs in the atmosphere are, for the most part, remote, both in time and space; because of the considerable time lag, of several decades, between emissions and their impacts, the political system, which often operates in the short term according to the imfTlediate preOCcUpations of the electorate, is not in a position to respond adequately to the dëfi ; finally, powerful and well-organized economic players, capable of blocking political decision-making, tend to oppose any significant change in direction that the situation calls for* (...) ").

In its judgment of March 24, 2021, the German Constitutional Court also pointed out that insufficient climate ambition at present would result in fundamental rights being restricted far more radically in the future (Federal Constitutional Court of Germany, Neubauer judgment of March 24, 2021, no. 1 BvR 2656/18, filed as Exhibits 0.13 (German version) and 0.14 (French translation) in the appellants' main proceedings).

156. Finally, on p. 175, the appellants cite Professor H. Dumont. Dumont, according to whom "*democracy is in danger when it is reduced to the majority will of voters and elected representatives, forgetting the requirements of the rule of law*" (H. DUMONT, "La démocratie, moteur des mutations de l'Etat de droit et vice-versa", in *Liber Amicorum André Alen,* Intersentia, Anvers, 2020, p. 91). The Belgian State retorts (p. 150 of its conclusions) that the same author goes on to specify that "*democracy is also in danger when it tends to confuse the necessary subordination of political power to law with 'the utopia of the overcoming of politics by law', via the subtraction of certain rules, decisions and political options that are decisive for the life of the collecCtivite OR national parliamentary, social and media debates, in favor of a fragmentation of deliberation forums that are certainly framed by law, but increasingly technical and disconnected from one another"* (H. DUMONT, *Op. cit,* p. 92).

The Court, for its part, states in the same text that *"the ideals of the rule of law and democracy must adjust to each other in simultaneous awareness of the places that unite them and the tension that may oppose them"* (H. DUMONT, *Op. cit.,* p. 91). 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[29] .

d) Application to the case in point

157. In the past, the appellants in the main proceedings criticize the respondents for not having adopted and implemented climate governance that would have led to a reduction in GHG emissions *of "significantly more than 40% compared with 1990*" (their conclusions, p. 177).

For the present and the future, the appellants in the main proceedings consider that the respondents should have put in place a climate policy enabling them to achieve a GHG emissions reduction of -81% by 2030 compared with 1990.

After making a few preliminary remarks, the Court will examine compliance with Articles 2 and 8 of the ECHR in turn.

1) Preliminary remarks

In the same vein, see. Hoge Raad, Urgenda, December 20, 2019, ECLI : NL :HR :2019 :2006, §6.3.

158. It should be noted at the outset that Klimaatzaak does not invoke - and *a fortiori* does not demonstrate
- is itself the holder of the rights enshrined in articles 2 and 8 of the ECHR[30] . It follows that the judgment under appeal was wrong to conclude that these provisions had been violated in respect of the "plaintiffs" without distinction, and therefore including Klimaatzaak.

159. As regards Article 2 of the ECHR, the Belgian State does not *"contest that global warming is liable to endanger, even seriously, the lives of the natural persons who are parties to the proceedings*", but considers that *"the relevant question to be asked in order to determine whether the respondents are in breach of Article 2 of the ECHR in the present case is whether the lives of the natural persons who are parties to the proceedings are seriously endangered by global warming, as a result of the climate policy implemented by the Belgian State"* (its conclusions, p. 205). With regard to Article 8, he states that, from the point of view of positive obligations, it is a question of demonstrating "*that global warming, as a result of the policy implemented by Belgium and the Belgian State, is likely to have a current, visible and measurable impact on their private lives and their homes"* (his conclusions, p. 220).

The Court cannot follow this analysis. The question is not whether the lives of the natural persons involved in the proceedings are endangered or whether there is a risk of serious interference with their right to respect for private and family life as a result of global warming caused by the climate policy implemented by the Belgian State, but 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 the scope of their powers and capabilities, 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.

160. Furthermore, 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. As O. De Schutter, "*for the obligation to prevent the occurrence of an event which, if it were to occur, might constitute a violation of international law, it is not necessary to prove that the adoption of preventive measures would necessarily have made it possible to avoid the occurrence of the said event: it is sufficient to show that these measures* are *likely to reduce its probability*" (0. Dr SCHUTTER, "Changements climatiques et droits humains: l'affaire Urgenda", *op. cit.,* p. 602). Yet, he rightly continues, *"any effort to reduce net GHG emissions, wherever that effort is made, has a global climate change mitigation effect"* and *"this effect is certain rather than purely hypothetical*" *(Idem).* In the same vein, the German Constitutional Court has rightly held that a State "*cannot in this respect disengage itself from its*

[3]* The question of whether it can invoke the violation of these provisions in relation to natural persons, who may not be parties to the case, was raised in the pleadings but not developed by the parties in their conclusions. The answer to this question is not, however, decisive in deciding the case in point, given the admissibility of the action brought by the individuals and the developments that follow.

responsibility by highlighting the GHG emissions produced by other States" but that, on the contrary, it follows "*from this particular dependence of the international community a constitutional imperative to actually take own, and if possible internationally agreed, measures to protect the climate '* (*Neubauer* judgment cited above, §203, according to the uncontested translation of the appellants in the main proceedings). The Dutch Supreme Court has also concluded that States are individually responsible for climate issues, despite the globaldimension of thephenomenon (HogeRaad, *Urgenda,* December 20, 2019, ECLI NL :HR :2019 :2006, §§5.7.1-5.8).

161. 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 (conclusions of the Belgian State, p. 224; conclusions of the Flemish Region, p. 123, where the latter points out that *"the respondents have fulfilled their European emission reduction targets";* see also conclusions of the Brussels-Capital Region, p. 91). 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 (conclusions of the Belgian State, p. 163). 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.

162. Furthermore, it is not correct to assert that, if the Court were to find that the respondents (or some of them) had violated Articles 2 and 8 of the ECHR, this would be tantamount to sweeping aside the measures put in place by the respondents (conclusions of the Walloon Region, p. 79 et seq.). A finding of such an infringement would merely point to their inadequacy. Furthermore, it should be remembered that, by virtue of the principle of primacy of international law having direct effect on domestic law, the judge must disregard the latter if it contravenes the former (Cass., May 27 1971, *Pas.,* 1971, I, p. 886, with the conclusions of Mr. Attorney General W.J. Ganshof van der Meersch; Cass., November 9 2004 and November 16 2004, *R.C.J.B.,* 2007, pp. 211 et seq.) In this sense, and contrary to what the Brussels-Capital Region maintains, there is nothing to prevent "*articles 2 and 8 of the ECHR from allowing the appellants to free themselves from the Conditions applicable under Belgian law in order to obtain reparation or prevention of damage*" (its conclusions, p. 126) insofar as the

repair or prevention of such damage would constitute an effective remedy for a breach of these provisions.

163. Moreover, the fact that the appellants in the main proceedings did not contest each of the measures taken by the respondents cannot be construed as a waiver on their part of their right to invoke the violation of articles 2 and 8 of the ECHR, nor can it alter the assessment of the respondents' compliance with these provisions.

Similarly, the fact that the appellants are no longer asking the Belgian State to achieve a GHG emissions reduction target by 2025 does not necessarily mean that they are giving up their claim that the measures already implemented are insufficient, but is more likely to be the simple consequence of the passage of time since the case was brought before the appeal court.

Finally, even if the positive obligations of the Belgian State and the Regions to take preventive operational measures to preserve the lives of individuals and their right to respect for private and family life are, as indicated above (point 139), in principle obligations of means and not obligations of result (conclusions of the Belgian State, p. 201; conclusions of the Brussels-Capital Region, p. 81 *in fine),* it is undisputed, and at the very least indisputable, in view of the climate science examined above, that measuring the reduction of GHG emissions is the main tool for combating dangerous global warming. The extent to which the right to life and to respect for private and family life has or has not been sufficiently safeguarded can therefore be assessed by analyzing the GHG emission reduction objectives that have been pursued and by verifying the results that have been obtained. Indeed, at international and European level, it is the measurement of GHG emission reductions that is used to determine Belgium's obligations and to assess the results of its climate governance, rather than a detailed analysis of the concrete measures designed to implement this governance. While the mere fact that an insufficient objective has been set or that a sufficient result has not been achieved cannot, considered in isolation, suffice to establish a violation of Articles 2 or 8 of the ECHR with regard to the obligations of means which they enshrine, the setting of an insufficient objective coupled with results which are also insufficient constitute, in this context, a sufficient presumption that the public authorities failed to take appropriate measures to prevent the realization of the serious and imminent risk of which they were aware, and thus violated articles 2 and 8 of the ECHR, unless they can establish that these measures constituted a disproportionate burden.

2) Compliance with article 2 of the ECHR

The risk involved

164. The existence of a real risk to the lives of the natural persons involved in the case is not in dispute. The Court has already noted the numerous warnings issued by the most eminent climate experts and the admission of this risk by the international political community (see points 12, 14, 17, 18 and 29 to 32 of the statement of facts). Moreover, even if the threshold of global warming deemed dangerous is not expected to be crossed for several decades, the "immediate" nature of this risk in the above sense is clear from the numerous IPCC reports referred to above: the process has in fact been underway for several decades and has already had negative consequences for the lives of many people, so that it is imperative to take action now. In its latest report, the IPCC noted that, although GHG mitigation policy and legislation have continued to develop since the ARS, global warming of 3.2°C by 2100 is currently forecast on the basis of Nationally Determined Contributions (NDCs) pledged up to October 2021. In order to limit warming to 1.5°C, the IPCC therefore recommends immediate action to significantly reduce global emissions over the course of this decade. Admittedly, it is likely that some of the individuals involved will no longer be alive by the end of the century. However, it is worth remembering the gradual nature of global warming and the impact it is already having (and will continue to have in the future), particularly in terms of heatwaves, a situation that threatens the lives of the very elderly.

Moreover, the real and immediate nature of the consequences of global warming is not really contested by the respondents. For example, the Belgian State *"does not deny that global warming is likely to endanger, even gravenly, the lives of natural persons who are parties to the proceedings*" (its conclusions, p. 205, emphasis added). Nor does it deny "*the need to mitigate climate change" (Ibid.,* p. 201, emphasis added). The Walloon Region cites its Déclaration de Politique Régionale of September 2019, in which it stated that *"(\}'urgence climatique et les dégradations environnementales sont telles que la société tout entière* est *appelée à modifier ses comportements en profondeur"* (its conclusions, p. 23, emphasis added). The Brussels-Capital Region, for its part, "does *not intend in any way to contest the merits of the arguments raised by the appellants as to the demonstration of the urgency created by the risks associated with climate change, as evidenced by the significant resources deployed to bring GHG emission reductions to their maximum level in the Brussels-Capital Region*" (its conclusions, p. 7, emphasis added). Finally, the Flemish Region takes up, without contesting, the lessons of the various COPs, notably those of COP25, which emphasized "*the urgency of climate change and the need for Parties to do their utmost to ensure that their Nationally Determined Contributions (NDCs) are revised with a high level of ambition*" (its conclusions, p. 16, emphasis added).

Risk awareness

165. It is then necessary to verify when the respondent parties knew or should have known that they had to act (and to what extent), before determining whether they took appropriate and reasonable measures to ensure the protection of the lives of the natural persons involved in the case.

166. Since at least 1988, 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"* (UN General Assembly Resolution 43/53 on Protection of Global Climate for Present and Future Generations). This was followed by the establishment of international climate governance, as well as the creation of the IPCC and its first reports. In 1995, the IPCC was still stating that it was not possible to establish an "*unmistakable link"* between climate change and human activities. As early as the Kyoto Protocol, which was adopted in 1997 but came into force in 2005, Belgium undertook to reduce its GHG emissions by 8% between 2008 and 2012 (the first commitment period), a target reduced, by virtue of burden-sharing between member states, to 7.5% by European Union Decision n°2002/358/EC. It is not disputed that this target has been achieved, so there is no need to dwell on this period, especially as the appellants in the main proceedings are only asking the Court to declare that the parties have breached Articles 2 and 8 of the ECHR "*in pursuing their climate policy over 2020*".

The 2013-2020 period

167. According to the appellants in the main proceedings, Belgium "*knew as early as 2009-2011, and by 2015 at the latest, that it had to put in place a climate governance system that would enable it to achieve emissions reductions of over 25% and at least 40% by 2020, in order to comply with a downwardly revised dangerous warming limit. And all this time she knew that it was urgent to make this effort, that the threat to all life was immediate and potentially irreversible. It didn't.*" (his conclusions, p. 111).

168. With specific reference to the second commitment period (2013-2020), the Court recalls that, in March 2007, the European Council had initially decided on a reduction in GHG emissions of at least 20% by 2020 compared to 1990 levels. A few months later, however, the IPCC recommended in its 4th"e report that Annex I countries reduce GHG emissions by 25 to 40% by 2020.

Similarly, in its above-mentioned report, the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol on the work of its fourth session, held in Vienna from August 27 to 31, 2007, stressed that, "*according to the contribution of Working Group III to the Fourth Assessment Report, in order to achieve the lowest stabilization level assessed in the work of the Intergovernmental Panel on Climate Change to date, and to limit potential damage accordingly, Annex I Parties should collectively reduce their emissions to a level of*

emissions by 25% to 40% below 1990 levels by the means that may be available to them to achieve these objectives". Following on from the above, at COP13 in Bali in December 2007, the States Parties to the UNFCCC adopted an Action Plan which explicitly recognizes the need to substantially reduce GHG emissions to meet the ultimate objective of the UNFCCC, stresses the urgency with which this should be done and refers, albeit in a footnote, to the IPCC's recommendation of a 25-40% reduction in GHGs for Annex I countries.

Despite this action plan, the European Parliament, which had declared a few months earlier that a -30% GHG target for 2020 was imperative, adopted the 2020 Climate and Energy Package on December 17, 2008, calling for a 20% reduction in GHG emissions by 2020, with a commitment to increase this target to 30% if other major economies in the developed and developing world commit to making a fair contribution to the overall effort to reduce emissions.

Belgium, which is bound by the positive obligations imposed by Article 2 of the ECHR, was nevertheless aware that a 20% target was insufficient in the light of these obligations. Thus, in its declaration of Walloon regional policy of July 16, 2009, the Walloon Parliament had indicated that "*the objectives set by the European Union to reduce greenhouse gas emissions by 20% by 2020 (or by 30% in the event of an international agreement) compared to 1990 levels are laudable but insufficient",* that Europe should "*see further, Belgium and Wallonia too",* so that, in "the *event of an international agreement, the Government will request that Belgium advocate that the European objective be raised to 40%*". On December 3, 2009, the House of Representatives passed a resolution in the run-up to the Copenhagen COP, in which it called on the federal government to demand at international and European level that the targets to be adopted take account of the 25-40% GHG reduction included in the recommendations of the 4th"e IPCC report, and a few days later the Flemish Parliament passed a resolution stating that "*the precautionary principle implies that for the group of developed countries reduction targets of 25-40% are necessary by 2020 compared to 1990* (...)"*.*

169. At COP15 in December 2009, the States Parties signed the Copenhagen Accord, which recognized that a sharp reduction in global GHG emissions was essential to limit global warming to 2°C, while considering "*strengthening the long-term goal, taking into account various scientific findings, in particular with regard to a temperature increase of 1.5°C*". At COP16 in 2010 (Cancûn Agreements), States recognized that climate change had an impact on the effective enjoyment of human rights, and that consideration should be given to strengthening the long-term global goal, "taking into *account the best available scientific knowledge, in particular with regard to a global average temperature increase of 1.5°C*". In 2011, in Durban, the COP noted the worrying and significant gap "*between the combined effect of the Parties' mitigation commitments and the global target".*

annual global GHG emissions by 2020 and global emissions profiles that provide a reasonable prospect of containing the rise in global average temperature to below 2°C or 1.5°C above pre-industrial levels". In both Cancún and Durban, the need for Annex I countries to reduce GHG emissions by 25-40% by 2020 was explicitly reiterated.

Despite these repeated warnings, the parties to the Kyoto Protocol agreed on December 8, 2012, following COP18 in Doha, to target a reduction in GHG emissions of just 18% below 1990 levels by 2020 for Annex I parties (with the European Union's target set at 20%). As mentioned above, however, it was also decided that, by 2014 at the latest, it would be necessary for Annex I countries to revise their ambitions upwards, taking into account the target set in Bali.

At each of the COPs 19, 20 and 21, the target of a 25-40% reduction in greenhouse gas emissions by 2020 compared with 1990 levels, based on a 2ºC warming trend, was systematically reiterated3*. As a result, there was not only a scientific but also a political consensus on the issue, which provides a basis for interpreting Article 2 of the ECHR in the context of Belgium's positive obligations.

Admittedly, as J'affirme l'Etat belge, the objectives of the 4th[e] IPCC report were *"set globally for Annex I countries"* (its conclusions, p. 168). This did not, however, absolve Belgium, in the absence of a clear individual allocation, from referring to these objectives, which were scientifically established and the subject of a consensus on the part of the international political community, in order to determine its share in preventing a violation of Article 2 of the ECHR. Where necessary, the Court recalls the principles of common but differentiated responsibilities and precaution enshrined in Article 3 of the UNFCCC, as well as Article 3.1 of the Kyoto Protocol, which refers more explicitly to the individual responsibility of Annex I parties (in the same vein, see. Hoge Raad, *Urgenda, op. cit. §7.3.2:* "*The United Nations Climate Convention and the Paris Agreement are both based on the individual responsibility of States",* according to the uncontested translation of the appellants in the main proceedings).

The Court concluded that it had been clear to the respondents since 2007, and at the very least since 2009, that in view of its obligations under Article 2 ECHR, Belgium had to reduce its GHG emissions by at least 25% by 2020 in order to limit global warming to 2ºC. The fact, invoked in particular by the Belgian State, that adaptation can constitute an "*equally adequate* response *to climate change*" (its conclusions, p. 154, see also the conclusions of the Brussels-Capital Region, p. 83) does not prevent the mitigation systematically advocated by the IPCC reports from being the only solution.

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[3]As the Dutch Supreme Court points out, the fact that this target was not subsequently recalled is explained by the fact that the distinction between Annex I and non-Annex I countries was subsequently abandoned, which does not imply that the AR4 reduction scenario would have been exceeded (Hoge Raad, Urgenda, *op. cit...),* §7.2.4).

indispensable, though not necessarily sufficient or exclusive. The same applies to the other measures mentioned by the Brussels-Capital Region "*to protect the lives of Brussels residents from the consequences of climate change*" (its conclusions, p. 83).

170. Moreover, it is not disputed that other European countries have already raised their 2020 GHG emissions reduction targets in 2009: Germany (40%) (2012), Denmark (40%) (2013), the UK (35%) (2013) and Sweden (40%) (2009), and have therefore set themselves a national target that is up to twice as high as the EU target. Nor is it disputed that their intentions have been realized. According to the inventory reports submitted by these countries in 2022 for the period 1990-2020 to the UNFCCC secretariat (available on the Secretariat's website (www.unfccc.int) and included in exhibits P30 to P32 of the appellants' file in the main proceedings) .

- emissions in Germany will be 41.3% lower in 2020 than in 1990; emissions in the United Kingdom will be 49% lower in 2020 than in 1990; emissions in Sweden will be 36% lower in 2020 than in 1990;
emissions in Denmark will be 41.3% lower in 2020 than in 1990.

171. This does not mean, however, that in absolute terms, a minimum GHG emissions reduction threshold of -40% was necessarily required to ensure compliance with Article 2 of the ECHR. As the Brussels-Capital Region points out, comparison is not reason, and these figures do not take into account other criteria such as the efforts made before 1990 or the particular situation of each of these countries (its conclusions, p. 39; see also the comparative work between these four countries and Belgium, on pp. 40-46 of its conclusions). These figures confirm, however, that the Belgian authorities were under no obligation to adhere to European targets, and that other countries have taken note of the inadequacy of these targets in the face of climate challenges.

172. The appellants in the main proceedings present, on pp. 103 and 182 of their conclusions, a table summarizing the factors which, in their view, justify setting the minimum target at a reduction of -40%.

Effort required in relation to the fork of 25-40% over 2020	Country Annex II
From 2007, 2°C	
RCD principle	Significantly more than 25%; towards the top of the fork
Fairness principle	Reinforces the RCD principle; towards the top of the fork, if not 40%.

Precautionary principle Principe de précaution	40%
Damage prevention principle Principe de prévention des dommages	Towards the top of the fork, if not 40%
From 2009 gradual shift from 2°C to 1,5°C Dès 2009 glissement progressif de 2°C vers 1,5°C	
COP decisions Décisions de la COP Paris Agreement Accord de Paris	40% or more Plus que 40% 40% off

173. However, it has to be said that these parties do not clearly indicate how each of the principles invoked, the COP decisions or the Paris Agreement make it possible to achieve a minimum 40% reduction in GHG emissions by 2020. In this respect, it should be remembered that the obligations of the Belgian authorities under Article 2 of the ECHR concern persons under their jurisdiction, so that neither the RCD principle nor the principle of equity can, beyond the political consensus reached in Bali and subsequently confirmed, be taken into account in determining the minimum threshold imposed by this provision in view of the requirements of the principle of separation of powers.

174. However, it is clear that, over time, the inadequacy of the -25% threshold must have become clear to the respondents.

175. So, after the IPCC indicated that global warming would probably exceed 2º C by the end of the century, COPs 19 and 20 reiterated on the one hand that climate change represented *"an urgent and potentially irreversible threat to human societies, future generations and the planet*" (COP19), and secondly that there was a significant and worrying gap between States' GHG reduction commitments for 2020 and the objective of containing the rise in the planet's average temperature to below 2°C or 1.5°C. Finally, the Paris Agreement of December 2015, reached at COP-21, acknowledged the need to contain *"the rise in global average temperature to* well *below 2°C above pre-industrial levels"* and to continue "*action to limit the rise in temperatures to 1.5°C above pre-industrial levels*". The Belgian government admits that, since the Paris Agreement, "*the 1.5°C objective has become clearer"* (its conclusions, p. 170), while the Brussels-Capital Region states that this threshold is "more realistic".
appeared for the first time in the Paris Agreement' (his conclusions, p. 60).

176. Since at least 2015, therefore, it has become clear that the aforementioned minimum of -25% would be insufficient given the need to keep global warming "*well below 2º C"*, and the 2018 special report confirmed that the 2°C target should now be abandoned for that of 1.5° C. In its 2018 report, UNEP also noted that the current commitments expressed in the NDCs were insufficient and that, if the ambitions of the NDCs were not revised upwards before 2030, it would become impossible to meet the 1.5°C target.

While the shift from a target of 2º C to 1.5º C necessarily implied an upward revision of the minimum threshold of -25% for 2020, the Court was unable to determine with certainty that this shift from 2º to 1,5° C had to be translated into a -40% reduction in GHG emissions under Article 2 of the ECHR (even considering that it had to be combined with the precautionary and preventive principles), *a fortiori* that the respondents were in a position to make this translation at the time, in theory or in practice.

On the other hand, a national reduction in GHG emissions of -30% by 2020 could be considered a minimum in the light of Article 2 of the ECHR.

In this respect, the Court notes that in its communication of January 10, 2007, the European Commission proposed that "*the EU* should *set itself the objective, within the framework of international negotiations, of reducing greenhouse gas (GHG) emissions from developed countries by 30% (compared with their 1990 levels) by 2020*", such an effort being considered "*necessary to limit the rise in global temperatures to 2 degrees Celsius*" (Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Limiting Global Climate Change to 2 degrees Celsius. The way ahead for 2020 and beyond, COM(2007) 2 final, Brussels, January 10, 2007). On January 31, 2008, the European Parliament adopted a resolution "*recalling that industrialized countries, including those that have not yet ratified the Kyoto Protocol, have a leading role to play in the global fight against climate change and must commit to reducing their emissions by at least 30% by 2020*". Lastly, the preamble to Directive 2009/29/EC reiterates *"the European Council's target of a 30% reduction by 2020, which is considered scientifically necessary to avoid dangerous climate change*".

The European Union's 2013-2020 Climate and Energy Package took note of this objective, albeit cautiously since it called for a 20% reduction in GHG emissions by 2020 compared to the base year (1990), with a commitment to increase this target to 30% if other major economies in the developed and developing world commit to making a fair contribution to the overall effort to reduce emissions.

177. The Walloon Region has made no mistake in this regard, since as early as 2014 (the deadline set by the Doha COP for raising the EU's proposed -20% target), it was already forecasting a 30% reduction in GHG emissions by 2020 in its "Climate" decree.

Moreover, it claims, without being contradicted on this point, to have far exceeded this target, having reduced its GHG emissions by 38.5% by 2020 (excluding the sector).

forestry3[2]). The "COVID" effect discussed below seems to have played only a marginal role, given that the Walloon Region specifies, also without being challenged, that its GHG emissions (excluding the forestry sector) were 38.2% lower in 2021 than in 1990 (its conclusions, p. 42).

In these circumstances, the Court considers that it has not been established that the Walloon Region has not done its part in reducing GHG emissions, which is essential in order to comply with its positive obligation to respect the right to life of the people living on its territory. The criticism that it (also) failed to cooperate sufficiently with the other respondents does not appear sufficient to call this conclusion into question, given the results sought (see also point 51 of the statement of facts above) and obtained.

178. As regards the measures taken by the other respondents, the Court notes that the Belgian State states in its conclusions that, despite the decision taken by the National Climate Commission on April 26, 2012 to extend the National Climate Plan 2009-2012 to the period 2013-2020, this plan could not be implemented as it was subject to negotiations on burden sharing 2013-2020 between the Belgian State and the Regions, which were only concluded with an agreement of December 4, 2015, which was finally included in a cooperation agreement of February 12, 2018, i.e. 2 years before the expiry of the second commitment period.

According to the Belgian State, the Belgian reduction in GHG emissions was, in 2019, 19.95% compared to 1990 and, in 2020, 26.9% compared to 1990. It admits, however, that this spectacular drop is due to the COVID crisis: "*From 2019 to 2020, there is a sharp decrease (8.60%) linked to the health crisis'* (its conclusions, p. 120). This is confirmed by the fact that, by 2021, total GHG emissions (excluding the LULUCF sector) "*had fallen by 23.9% compared with 1990* (...)" (Belgian State conclusions, p. 59). For the record, in its 2021 report, UNEP had noted an exceptional 5.4% drop in global GHG emissions in 2020 (see point 57 above).

The graph of Belgium's GHG reductions from 1990 to 2021 inclusive (source: federal website Climat.be, cited by the appellants in the main proceedings) shows a relative stagnation of GHG emissions between 2015 and 2019 and a sharp rise from 2021, demonstrating that, without the Covid effect, the results required by Union law would probably n o t have been achieved:

[2] *As the parties have not explained the impact of this forestry sector, the court concludes that it is negligible.

Figure 4.a. History of GHG emissions

179. In any case, it is undisputed that the -30% target was not reached in 2020, with or without a health crisis, and it is clear that, without the effect of this crisis, even the -25% target would not have been reached. The graph above also confirms that, for most of the period under consideration (2013-2019), the efforts made have produced only minimal results. However, as indicated above, Article 2 of the ECHR required the Belgian State to take appropriate measures, throughout this period, to reach the minimum threshold, initially -25%, which should have been revised upwards, by 2018 at the latest, to aim for a 30% reduction in GHGs.

Given this lack of ambition, the violation of Article 2 of the ECHR is established on the part of the Belgian State, even if the results achieved do not depend solely on the climate governance carried out at federal level.

180. The Flemish Region highlights the adoption, on June 28, 2013, of its third Flemish Climate Policy Plan 2013-2020, which includes a Flemish Mitigation Plan ("Het Vlaams Mitigatieplan" or VMP) whose aim is to reduce GHG emissions in Flanders between 2013 and 2020 (its conclusions, p. 38). However, it does not specify Flanders' overall target for this period. An examination of this plan reveals, on the one hand, that it was in line with the European objective of -20% for 2020 and, on the other, that it was aware of a document dated March 8, 2011 from the European Commission (COM(2011) 112) indicating that, in order to achieve an 80% reduction in GHG emissions by 2050, the EU actually needed to achieve a 25% reduction in GHG emissions by 2020 (VMP, p. 15). The appellants in the main proceedings also refer to an opinion of the Minaraad (Flemish Council for the Environment and Nature) submitted to the Flemish Parliament on December 4, 2009, which already stated that, for the 2020 target, "*the emission reductions required for developed countries should rather be at the upper end of this range (2S ä 40%)*" (their conclusions, p. 183).

Given its national importance[33] , particularly in terms of GHG emissions, it was incumbent on the company to set itself a target of at least -30% by 2020.

This was not the case. Nor does the Flemish Region indicate what its GHG reductions were in 2020 compared with 1990, merely stating "*that* it *can generally be concluded that Flanders has achieved (...) the non-ETS targets for the period 2013-2020*" (its conclusions, p. 86) and that the VEKP ("Het Vlaams Energie- en Klimaatplan") 2021-2030 is the subject of an annual progress report, the most recent of which dates from October 28, 2022 and "*contains the latest Flemish GHG inventory data for the year 2020*" (its conclusions, p. 39).

An examination of this report (especially p. 8) reveals the following:

- the reduction in GHG emissions across all sectors between 2013 and 2019 is marginal,
- the reduction in GHG emissions in Flanders by 2020 was only 20%,
- This reduction represents a *"sharp fall"* compared with 2019 (-9%) which, according to the report, can be largely explained by the health crisis.

Here too, it is clear that the Flemish Region did not take appropriate and reasonable measures to do its part during the period in question.

181. The Brussels-Capital Region *'emphasizes the special context of the city-region that is BruxelleS and the measures taken by the Region to combat climate change*' (its conclusions, p. 76), underlines its *"institutional particularity due to its role as the capital of Belgium*" and the fact that, as a "*city-region",* it "*differs from other regions in particular through its essentially urban character, its small surface area and its population density*", which explains why *"efforts in terms of emissions reduction or development of renewable energies (per capita) deliver lesser results in the Brussels-Capital Region*" (its conclusions, p. 91).

These particularities must be taken into account: unlike the Flemish and Walloon Regions, whose size and configuration make them more comparable to small states, the Brussels-Capital Region should be compared to other cities in a comparable situation. Thus, without being challenged on this point, the Brussels-Capital Region asserts that total GHG emissions from the territory of the Brussels-Capital Region represented, in 2020, only 3% of Belgium's total emissions.

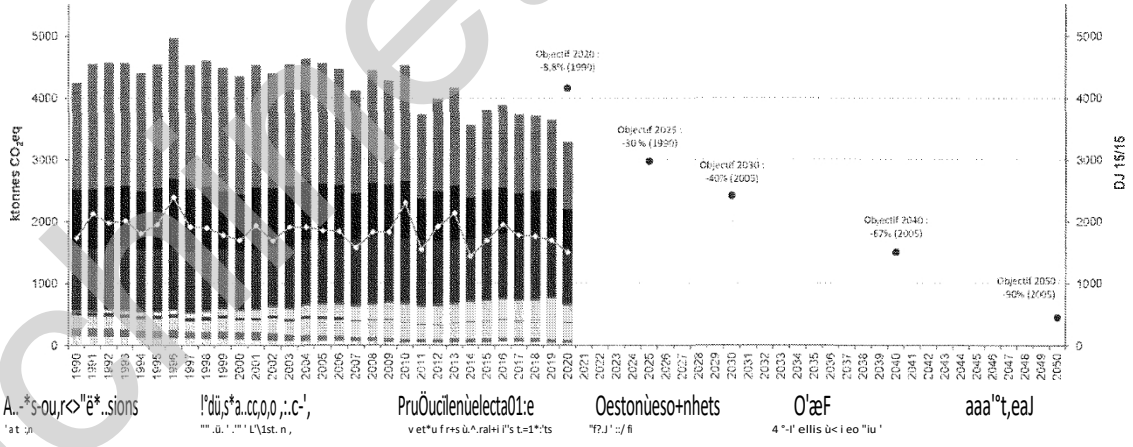
Just as the global dimension of global warming cannot exempt Belgium from doing its part, its special status cannot spare the Region from doing its part.

[3]According to the Brussels-Capital Region, in 2020, the Flemish Region was responsible for around 65% of GHG emissions from Belgian territory (its conclusions, p. 33).

Bruxelles-Capitale to do likewise in Belgium's efforts to reduce GHG emissions, since it is, like the other respondents, subject to the obligations imposed by Article 2 of the ECHR.

However, while in 2002 the Brussels Government had adopted a "*Plan d'amélioration structurelle de la qualité de l'air et de lutte contre le réchauffement climatique 2002-2010"* which integrated "*the strategy, priorities and actions to be undertaken over the next ten years and was imperative for all the administrative entities dependent on the Region"* (conclusions of the Brussels-Capital Region, p. 88), nothing of the kind has, according to information provided to the court, been adopted for the period 2013-2020. It was only on June 2, 2016 that, according to the Brussels-Capital Region, "*the first Regional Air-Climate-Energy Plan (...)* was adopted*, which, in addition to achieving the regional objectives that stemmed from the (intra- and inter-) Community agreements on the distribution of European objectives, set an objective of reducing GHG emissions by 30% in 2025"* (its conclusions, p. 91).

In terms of results, the Brussels-Capital Region claims to have reduced its GHG emissions by 23% in 2020 compared with 1990. It does not, however, specify the figures for 2021, although it follows from the above that, at least for global and national emissions and for those of Flanders, the health crisis has had a significant effect on the 2020 figures. This impact is confirmed by an examination of the graph below, which is included in the conclusions (on p. 37).



The same graph shows that, over the period 2013-2020, efforts to reduce GHG emissions have been very limited: after a substantial increase in 2013 and a significant reduction in 2014, emissions have risen again, only to fall slightly, reaching a level in 2019 that is almost identical to the situation prevailing in 2011.

In the same way as for the Belgian State and the Flemish Region, these elements testify to the fact that the Brussels-Capital Region has not taken the appropriate measures to do its part under Article 2 of the ECHR.

182. It follows from these developments that, with the exception of the Walloon Region, none of the respondent parties was in a position to set objectives compatible with what the best climate science, validated by the Bali Agreement and therefore by the international political community, required in terms of article 2 of the ECHR, i.e. GHG emission reductions of at least 25%, in order to take account of the lessons learned that a target well below 2º C of global warming was necessary to avoid ultimately endangering the lives of people living on Belgian territory, and therefore of the individuals involved in the case. This lack of ambition was reflected in the actual reductions in Belgium's GHG emissions, which, without the COVID effect, would clearly have fallen short of the 25% reduction recommended more than 13 years earlier (as confirmed by the 2021 results). The same is true of the Flemish and Brussels regions. This is all the more true given that the
If not since 2015, then at least since 2018 in view of the 1.5° C target, the -25% target had become manifestly insufficient, so that it was now necessary to aim for GHG reductions of at least 30% by 2020. It should be noted, incidentally and as the first judges did, that throughout the years of the second commitment period, the European Union had frequently warned the Belgian State of the risk of not reaching the European objective - which was nevertheless insufficient in view of the positive obligations incumbent on the Belgian State under article 2 of the ECHR - of 20%.

183. Admittedly, 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 the obligations imposed by Article 2 of the ECHR, the principles of which have been recalled above. However, it has to be said that the results achieved by Belgium, which was able to benefit from those of the Walloon Region, fell far short of this objective. 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 deemed dangerous by the scientific community, as this threshold resulted from the IPCC reports at the time, from being crossed.

The application, insofar as it seeks a finding of a violation of Article 2 of the ECHR by the respondent parties, with regard to the climate policy they pursued and implemented between 2013 and 2020, is well-founded, except with regard to the Walloon Region. The judgment is therefore confirmed insofar as it concerns, for this period, the violation of Article 2 ECHR by the Belgian State, the Flemish Region and the Brussels-Capital Region (with the exception of Klimaatzaak, see point 158 above).

- The 2021-2030 commitment period

184. As regards the 2021-2030 commitment period, the appellants in the main proceedings consider that the respondents should have opted for an 81% reduction in GHG emissions by 2030 compared with 1990 and that, having failed to do so, they have, also for this period, breached Articles 2 and 8 of the ECHR. Taking into consideration, in particular, the principle of the separation of powers and the margin of appreciation of public authorities in the exercise of their powers, but also the fact that this objective had become unattainable due to insufficient performance in 2020, they nevertheless limited the injunction to be addressed to the respondents to measures sufficient to reduce the overall volume of annual GHG emissions from Belgian territory by a minimum of 61% by 2030.

185. It is up to the appellants in the main proceedings to show that the percentages of 81% or at least 61%, which they claim constitute Belgium's minimum contributory share, are justified in the light of the protection they enjoy under Article 2 of the ECHR.

186. With regard to the 81 o/o reduction percentage, the appellants, recalling the Glasgow Pact of November 2021 and citing a scientific study of 2021[3] *, insist on the crucial nature of the present decade with regard to the challenges of global warming, and consider that the developed States, whose historical responsibility is high and whose GDP per capita is high, have in fact already consumed their fair share of emissions and should in principle cease emitting from 2030 onwards, so that this justifies a particularly increased effort on their part (their conclusions, p. 110, n° 234).

187. The percentages of -81% and -61% result from a study by Professor Joeri Rogelj of the Grantham Institute, entitled "Belgium's national emission pathway in the context of the global remaining carbon budget", carried out in March 2023. Rogelj is 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 Council on Climate Change (their conclusions, p. 196). In his study, he starts from the global residual carbon budget established by the 6th"e IPCC assessment report, which gives a two out of three chance of meeting the threshold of a dangerous global warming of 1.5°C, i.e. 400 GtCO2, and deduces, according to different distribution keys, the remaining carbon budgets for Belgium from January 2021 and, on this basis, a linear trajectory of GHG reductions from 2020 to 2030, decreasing thereafter to reach a target of net zero in 2050 ("trajectory 1", or "path 1", described as a "concave trajectory" by the appellants in the main proceedings). In another table, Professor Rogelj envisages a linear trajectory not from 2020 to 2030, but from

[34] L. RAJAMANi et al, "National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law", *Climate Policy,* 2021, 21:8, Exhibit J4 in the file of the appellants in the main proceedings.

2020 until Belgium's carbon budget is exhausted, still determined according to the different allocation keys ("trajectory 2" or "path 2").

188. The percentage of -81% is determined on the basis of the criterion of equal per capita emissions, which is, according to the appellants in the main proceedings, the one that is "*minimally consistent with fairness*" (their conclusions, p. 197).

As indicated above (point 173), however, the principle of equity cannot, beyond that which has been the subject of sufficient international political consensus (such as the Bali Plan), be taken into account in the development of our business.
under Article 2 of the ECHR, which concerns Belgium's respect for the right to life of persons under its jurisdiction within the meaning of Article ieF of the ECHR.

189. In the alternative, the appellants in the main proceedings propose the distribution key that is least restrictive for Belgium (known as the "Grandfathering" key, which, according to Mr. Rogelj, is contrary to the principles of equity in international environmental law) and the lowest percentage between trajectories 1 and 2, i.e. -61%, concluding that this is the "*minimum minimorum for effectively tackling the climate emergency", which* is *"beyond any margin of discretion. The respondents have no choice but to do even less": "In other words, this is the minimum threshold in respect of which the authorities have no discretion to comply with their obligations under ECHR law (…*)" (their conclusions, p. 351).

190. The reasoning of the appellants in the main proceedings can be approved in principle, as indicated above: the principle of separation of powers prohibits the court from determining a rate of GHG reduction which it deems desirable or equitable in view of Belgium's historical responsibility for GHG emissions. In order to establish a violation of Article 2 of the ECHR, it is necessary to show that the respondent parties failed to take appropriate and reasonable measures to prevent the right to life of the natural persons involved in the case from being endangered in the long term, taking into account the knowledge available for the 2020-2030 commitment period. Only a GHG emissions reduction target for 2030 can therefore be adopted, which would be the minimum accepted by the best available climate science, if the Belgian State is to do "its part" to prevent the dangerous threshold in terms of global warming from being crossed.

191. In this respect, 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). Professor Rogelj's choice is therefore valid.

192. The choice of the to retain the the allocation key of Nor is "Grandfathering" open to criticism. If this key is problematic in terms of

certain principles of equity debated in international environmental law, which, while not binding, cannot be taken into consideration in the application of Article 2 of the ECHR in view of the aforementioned principles: 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.

193. Finally, the choice of the remaining global carbon budget, to which the distribution key is to be applied, depends on the probability of limiting global warming to 1.5°C. For example, it is currently accepted that a scenario with a one-in-two chance of avoiding dangerous global warming would result in a total carbon budget of 500 GtCOt, whereas a scenario with a two-in-three chance of avoiding dangerous global warming would limit this budget to 400 GtCOt.

The appellants in the main proceedings point out that the IPCC "*systematically works with a probability of two chances out of three",* just as it does in UNEP's Emission Gap Reports and in the studies they cite. They consider that logic leads to the exclusion of "*a probability of one chance out of two; as in a coin toss, chance reigns*", and point out that Professor Rogelj excluded this probability on the basis of the precautionary principle and that, in the *Neubauer* judgment, the German court "*acknowledged the use of the probability of 67%, two chances out of three, without making any specific comments, espousing the established approach on this point"* (their conclusions, p. 202).

However, the Walloon Region considers that there is a trade-off to be made in the choice of the residual carbon budget, depending on whether it gives two chances out of three of meeting the threshold of a dangerous global warming of 1.5°C "*rather than a budget giving one chance out of two or another giving five chances out of six*" (its conclusions, p. 83). In the same vein, the Belgian State points out that the reports relied on by the appellants in the main proceedings are based "*like any effort-sharing scenario, (...) on values*" and are therefore "*in this sense, eminently political*" (its conclusions, p. 174).

194. The Court notes that the IPCC reports take into account both a two-in-three probability and a 50% probability. Thus, in AR6, it is stated that the best estimate for the residual carbon budget since 2020 to limit warming to 1.5°C with a 50% probability is estimated at 500 GtCOz (synthesis report, p. 46). The 67% probability seems, in this report, to be used only for limiting warming to 2º C *(Idem).* The same applies to the summary for political decision-makers.

The 50% scenario is also retained in the opinion issued on June 15, 2023 by the European Scientific Advisory Board on Climate Change (hereinafter the "Advisory Board"), tabled at the hearing on October 12 with the agreement of all parties. The Advisory Board, which was established by the European Climate Ioi (Article 12 of which introduced an Article *10a* into Regulation (EC) No 401/2009 on the European Environment and Energy Agency), is responsible for the preparation and implementation of the European Climate Change Strategy.

the European information and observation network for the environment), is made up of The Board is made up of "*fifteen confirmed scientific experts representing a wide range of relevant disciplines*", appointed by the Board of Directors "*following an open, fair and transparent selection procedure"* and who "*deliver their opinion in complete independence of the Member States and the institutions of the Union"* (art. 10bis above). Under Article 3 of the same law, the Council has been given a number of tasks, including examining the most recent scientific findings of IPCC reports and scientific data on climate, and providing scientific opinions on existing measures and measures proposed by the Union, on climate objectives and indicative GHG balances, and on their suitability in relation to the objectives of this Regulation and the Union's international commitments under the Paris Agreement. Article 3, §3 specifies that, in its work, the Advisory Board *"shall base itself on the best available and most recent scientific data, including the latest reports from the IPCC, IPBES and other international bodies*", that it "shall *proceed in full transparency and shall make its reports public".* The members of this committee currently include Professor Joeri Rogelj, author of the study on which the appellants' request is based.

195. In view of these factors, the court is not in a position to conclude that only a scenario at - 61% would be compatible with the positive obligations of Article 2 of the ECHR, whether according to the best available climate science, by virtue of the precautionary principle invoked in the aforementioned study, the binding scope of which is not developed by the appellants in the main proceedings, or by virtue of an international political consensus. On the contrary, it can be deduced from the fact that the Advisory Board, on which Mr Rogelj sits, has retained such a budget t h a t , according to the best climate science, a 50% scenario is not unreasonable. What's more, as Professor Rogelj points out, a budget of 500 GT CO2 implies that a warming of 1.7°C (i.e. still well below 2°C) can be avoided with a probability of around 85%, whereas the 1.5°C threshold allows for certain overruns. Admittedly, it might seem more prudent to opt for a higher probability. However, in view of the above-mentioned factors, such a choice would b e 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 ECHR as interpreted in the light of the principle of the separation of powers.

The fact that the German Constitutional Court - indeed, without further elaboration - would have endorsed a two-in-three scenario (submissions of the appellants in the main proceedings, p. 202) does not detract from this conclusion. In its *Neubauer* judgment, the German Court did not comment specifically on the choice of the 67% scenario: it merely took note of the fact that the German committee of experts had adopted it (§36 of the judgment), so that no conclusion can be drawn from it in legal terms.

196. In these circumstances, no violation of article 2 of the ECHR can be inferred from the fact that none of the respondent parties has to date undertaken to achieve a reduction of the

emissions by a minimum of 81% or 61% by 2030 and, o *fortiori,* that they have not taken the appropriate measures to achieve such targets.

197. However, the appellants in the main proceedings told the court that their claim also concerned, in the alternative, a reduction of less than 61%, in the event that the court were to consider that the *"minimum threshold in respect of which the authorities have no discretionary power in order to comply with their obligations under ECHR law (...)*' would be lower. The respondents confirmed at the hearing that the court could rule *infra petita.* As the Court is seized of such a request, it is incumbent on it to ascertain what this minimum threshold is, compliance with which would be required by article 2 of the ECHR as interpreted in the light of the principle of the separation of powers.

198. The European Union's adoption of the Climate Law means that, at least since 2021, there has been a European consensus on the need to reduce the EU's GHG emissions by at least 55% by 2030. The Court also pointed out that Belgium has been committed to this objective since the Belgian State signed a government agreement on September 30, 2020, explicitly incorporating it.

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.

199. At the request of the court, the parties specifically debated the question of the scientific basis for this percentage of -55%. They produced an impact report drawn up on September 17, 2020 by the European Commission. This report consists of two parts, 140 pages and 228 pages respectively (the annexes). It states (on pp. 6-8 of Part I) that, in order to meet the commitments made by the European Union under the Paris Agreement (notably the development of a long-term GHG strategy), the EU had set itself a target of climate neutrality by 2050, which implied revising the previous -40% GHG target for 2030 upwards, to reach a target of 50 or 55% (to avoid having to make a significant part of the transition after 2030). The Commission expresses its preference for the 55% target, which would enable a faster green energy transition with limited economic risks (p. 127). Part II of the report refers to the overall residual carbon budget for a temperature of 1.5°C resulting from the SR1.5 special report (i.e. 580 and 420 GtCO2respectively for 50% and 67% scenarios), but points out that such a budget does not indicate *how* GHGs *can be* reduced in a way that is compatible with limiting global warming to well below 2°C or 1.5°C (p. 194). The Commission goes on to point out that the latest UNEP reports do not provide any information on the trajectories to be followed at "regional" level (such as the EU) to comply with the Paris agreements, but that the "ADVANCE" project leads to the conclusion that the objective of climate neutrality in 2050 combined with GHG reductions of 50-55% in 2030 is not feasible.

not only compatible with the 1.5°C target, but also more ambitious than required.

The 55% rate was also discussed in the aforementioned June 15, 2023 opinion issued by the European Union's Advisory Council. In this 110-page report, the Advisory Council, which is an independent body, envisages a target for the EU by 2040 to achieve carbon neutrality by 2050, in a way that is compatible with global warming of 1.5°C with no or limited overshoot. The Council notes that, according to certain principles of fairness, the EU has already used up its fair share of the global emissions budget. It therefore suggests, on the basis of the latest scientific data available and after analyzing more than 1,000 possible trajectory scenarios (and their implications in terms of side effects, benefits, resilience and feasibility), to keep the EU's GHG emissions budget within the limits of 11 to 14 Gt CO2between 2030 and 2050, which implies reducing GHG emissions by 90 to 95% by 2040, compared with 1990 (a range that takes into account several dimensions of equity and feasibility of emissions reductions).

With regard to the EU's target of at least a 55% reduction in GHG emissions compared with 1990, the Advisory Board believes that this will enable the recommended 2040 target to be met, and post-2030 emissions to be kept within the recommended budget, although it believes that further efforts to increase ambition beyond 55% (to 70% or more by 2030) would significantly reduce the EU's cumulative emissions up to 2050, and thus increase the equity of the EU's contribution to global GHG mitigation.

Finally, the Court notes that, in the above-mentioned study by Professor Rogelj, the GHG emission reduction rate shown for Belgium in the second table, using the same distribution key *(grandfathering)* but assuming an overall residual carbon budget of 500GtCO/ (i.e. a probability of 50%), is also 55% for 2030 compared with 1990.

200. The appellants in the main proceedings claim that, in 2020, the European Parliament would have
"criticized the target of -55% by 2030 compared with 1990, pointing out that it was not in line with the best available climate science and the findings of UNEP". They then quote from a report ("Draft report on the proposal for a regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law) (COM(2020)0080"), which they translate as follows: "*As UNEP's 2019 Emissions Gap Report makes clear, global emissions must be reduced by 7.6% per year, starting now, in order to limit global warming to 1.5°C. For the EU - even without taking into account ëquitë issues such as per capita emissions or responsibility for historical emissions - This would mean a 68% reduction by 2030 compared with 1990 levels*" (Iheir conclusions, p. 121).

An examination of the report shows, however, that this is not the official position of the European Parliament, but rather the proposal of the rapporteur of one of the Parliament's committees, who suggested opting for a more ambitious reduction target of 65% by 2030 (p. 38/39). This proposal has clearly not been followed, even by the Parliament, since the European Climate Law was adopted by the latter in co-decision with the Council.

The appellants also cite a statement allegedly made by the Vice-President of the European Commission prior to COP 27 in Sharm-El-Sheikh in November 2022, "*announcing that the target of at least -55% by 2030 would be raised to at least -57% by 2030*" (their conclusions, p. 121). For its part, the Belgian State states (its conclusions, page 94) that the Parliament and the Council of the European Union have reached a provisional agreement on a revision of the regulation on land use, land-use change and forestry, as part of the "Fit For 55" legislative package, which will raise the European Union's GHG reduction target from 55% to 57% by 2030. It does not follow, however, that a 55% reduction in GHG emissions by 2030 would prevent any EU country from doing its part to avoid an unacceptable breach of 1.S°C under Article 2 of the ECHR.

201. The court concludes that it does not yet have the elements to consider that the The "minimum minimorum" sought by the appellants in the main proceedings would be greater than this 55% reduction by 2030. The Court also notes, insofar as is necessary, that the German Constitutional Court, in its *Neubauer* judgment, considered that this objective was not incompatible with the right to life and physical integrity protected by Article 2 §2 of the Constitution (§§144-170), but, based on a scenario of 67% (i.e. less favorable to the German State), concluded that the German law was unconstitutional in that it was likely to impose a disproportionate burden on fundamental rights for the period after 2030 (§§182-265).

For the reasons already given in paragraph 161 above, but also because the validity of the European objectives currently in force and, more specifically, of Directive 2003/87/EC and Regulation (EU) 2018/842 is not called into question, it is not necessary to refer to the Court of Justice for a preliminary ruling the question suggested by the Flemish Region or, in the body of its conclusions (p. 29, no. 52), by the Belgian State[35] .

202. On the other hand, it can be considered, on the basis of the same elements, that a -55 Ois reduction in GHG emissions by 2030 constitutes this minimum threshold, below which Belgium cannot go without failing to comply with Article 2 of the ECHR.

[35] In it, the Belgian State states that: *"In any event, the action brought by the parties KLIMAATZAAK et al. could not be upheld without first referring a question to the Court of Justice of the European Union for a preliminary ruling on the conformity of European climate legislation 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".*

Admittedly, the European system is more complex since, as explained above, it is made up of ETS sectors on the one hand and non-ETS sectors on the other. For the latter, Regulation (EU) 2023/857 of April 19, 2023 amending Regulation (EU) 2018/842 on binding annual reductions in GHG emissions by the Member States from 2021 to 2030 contributing to climate action to meet their commitments under the Paris Agreement and Regulation (EU) 2018/1999 imposed on the Belgian State a -47% reduction in GHG by 2030 compared with 2005 levels. Bearing in mind that the European Climate Act targets a 55% reduction by 2030 compared with 1990, and that the Belgian State is positioned more favorably than many other European States in terms of its ability to contribute, there is no doubt that Belgium's compliance with a target of reducing GHG emissions from its territory by at least 55% by 2030 compared with 1990 is a minimum requirement for meeting its positive obligations to protect human rights. This is the objective set by the Belgian government in its agreement of September 30, 2020. The Walloon Region estimates in its PACE 2030, page 20, that the implementation of a -47% reduction compared to 2005 for non-ETS sectors, combined with the expected reductions in ETS, will enable it to meet its overall reduction target of -55% compared to 1990.

The Court concludes that the target of -55% by 2030 must be achieved as *a minimum,* so that, as far as the Belgian State, the Flemish Region and the Brussels-Capital Region are concerned, the violation of Article 2 of the ECHR committed during the second commitment period is brought to an end, and, as far as the Walloon Region is concerned, no such violation can be found for the 2020-2030 commitment period.

203. The question of how long this objective should have been pursued by the respondents requires a qualified answer.

On the one hand, it should be remembered that the obligation placed on States by Article 2 of the ECHR cannot impose an excessive burden on them, and that, even in the event of a climate emergency, the time needed for a public authority to adapt, through democratic means, its GHG emission reduction targets in the light of all the factors to be taken into consideration (and in particular the latest findings of climate science) cannot be disregarded. In the original quotation, the appellants in the main proceedings called for a reduction in GHG emissions of 55% and at least 40% by 2030, so that, at least in 2015, 55% seemed to them to be the most ambitious, while 40% did not seem unreasonable. I(should also be borne in mind the specific characteristics of each of the respondents. For example, the Flemish Region is characterized by the presence of large cities and heavy industry (in particular, the port of Antwerp), while the Brussels-Capital Region emphasizes "*the virtual absence of industry* in *the Brussels area",* which means that it "*can only implement a climate policy that essentially targets individual emissions (heating, transport),*

where margins are limited" (his conclusions, p. 38). As for the federal State, it has limited power over its territory, which includes that of the Regions, since it acts only through the competences that remain attributed to it, notably in fiscal matters and in the energy sector, and which are detailed in its conclusions (its conclusions, p. 100, no. 170).

On the other hand, 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. In their conclusions of December 16, 2019, the appellants' demand was raised to "65% *or at least 55%"*, based on a report drawn up by a group of Belgian experts at the request of "Youth for Climate". However, this report does not explicitly state what percentage should be targeted for 2030 in order to guarantee climate neutrality in 2050 while respecting a specific carbon budget for Belgium, even though it clearly shows that a target of 40% in 2030 would be clearly insufficient.

As early as 2019, a target of -55% has been mentioned. In its Regional Policy Declaration of September 9, 2019, the Walloon Region states that it is "*aiming for carbon neutrality by 2050 at the latest, with an intermediate stage of reducing greenhouse gas (GHG) emissions by 55% compared to 1990 by 2030*" (p. 3).

In 2020, the relevance of this target was confirmed and made known to the respondents: as indicated above, on September 17, 2020, the European Commission published its impact report in which it concluded that the objective of climate neutrality for 2050 implied revising the previous -40% GHG target for 2030 upwards, to a target of 50% and, preferably, 55%. The government agreement of September 30, 2020 stipulates in particular 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 to achieve this*" and *"undertakes to adapt its contribution to the National Energy and Climate Plan (PNEC) along these lines through an action plan*".

Finally, since the entry into force of the European Climate Law on July 29, 2021, the target of a 55% reduction has become binding for the European Union. Even though it was not yet known how this target would be divided between the member states, the respondents could not have been unaware that, from that date onwards, they would have to work towards it.

204. However, to date, the Belgian State, the Flemish Region and the Brussels-Capital Region have failed to demonstrate that they would have taken appropriate and reasonable measures to enable Belgium to reduce its GHG emissions by 55% by 2030, and thus put an end to the violation of Article 2 of the ECHR already committed during the second commitment period (2013-2020) and still continuing today.

205. On pages 179 to 183 of its conclusions, the Belgian government describes the actions taken to implement and update the PNEC 2030 and monitor climate policies. In particular, it cites the Council of Ministers' decision of April 2, 2021 to implement federal policies *and measures (*PAMs) aimed at reducing GHG emissions as quickly as possible, and mentions that, in this context, a total of 36 roadmaps have been drawn up by the various federal ministers, who are responsible for their implementation. It cites the summary report of September 2022 on the implementation of climate policies 2021-2030, the Government's decision of December 17, 2021 to set up a Belgian Knowledge Centre for Complex Climate Risks, and the establishment of climate roundtables. The Belgian government also cites a plan for recovery and resilience, adopted in 2021, providing for investments of 5.9 billion euros, including 1.2 billion for the Belgian government, to contribute to the effort to reduce GHG emissions. Also mentioned are the federal sustainable development plan, the agreement on energy transition, the issue of green government bonds and Belgium's decision, taken at COP 26 *'in* Glasgow, to join the *Global Methane Pledge* to contribute to a collective effort to reduce global methane emissions by at least 30% below 2020 levels by 2030.

These projects are to be welcomed and encouraged, but the Belgian government has produced no evidence to show how the reduction in GHG emissions has progressed since their adoption or, even in terms of projections, to what extent these decisions are likely to enable it to make up the lost ground following the 2013-2020 commitment period. Worryingly, the Belgian government admits that, by 2021 and despite the government agreement of September 30, 2020, GHG emissions had only fallen by 23.9% compared with 1990, which raises serious concerns about the 2030 deadline. The court also noted that counter-productive measures are still in place, financing the production of fossil fuels[36] at a time when the decade (2020-2030) crucial to avoiding the risk of dangerous global warming is already well underway.

206. In addition, under article 14 of EU regulation no. 2018/1999 of December 11, 2018 on the governance of the energy union and climate action, Belgium was required to submit to the European Commission by June 30, 2023 a draft update of the latest notified version of the integrated national energy and climate plan (PNEC). However, at the time of the pleadings, and despite the urgent request to this effect sent in February 2023 by the country's various strategic councils[37] , this project had clearly not been completed.

[6] *In particular, the federal CRM program - "Capacity Remuneration Mechanism" - set up by the federal authorities to award energy contracts and subsidies (via auctions) enabling new gas-fired power plants to become profitable.

[7] *See. the opinion on the revision of the National Energy-Climate Plan 2030 (PNEC) jointly drafted by the Economic and Social Council of the Brussels-Capital Region (CESRBC), the Environmental Council of the Brussels-Capital Region (CERBC), the Milieu- et Natuurraad van Vlaanderen (Minaraad), the Sociaal-Economische Raad van Vlaanderen (SERV), the Conseil économique et social de Wallonie (CESW) and the Conseil wallon de l'Environnement pour le Développement durable (CWEDD) (exhibit p. P.38 of the appellants in the main proceedings).

still not been submitted (although, according to the Belgian State, the Council of Ministers has, since April 21, 2023, taken note of the draft federal contribution to the adapted draft NECP). Similarly, the cooperation agreement for sharing the effort to reduce GHG emissions between the Belgian State and the Regions for the period 2021-2030 was still under discussion until the day the present case was taken under advisement. This delay is all the more problematic in that, according to the forecasts of the existing NECP - which was itself criticized by both the European Commission and all the country's strategic councils in their February 2023 opinion - and applying the "WAM" scenario (i.e. the most ambitious), Belgium can only meet the previous target of -35% GHG in the non-ETS sector by using flexibility mechanisms to make up the shortfall (the forecasts indicate -34.4%). Admittedly, the Belgian government states that this version of the NECP *"will be revised by means of an action plan, in line with the objective of reducing GHG emissions by 55% in 2030 compared with 1990"* (its conclusions, p. 134). However, this was still not the case at the time the report was taken under advisement.

207. At regional level, the Flemish Region writes in its conclusions that, while the "*European Climate Law sets a new net reduction target of -55% by 2030, compared to 1990"* and the *"climate* target *for non-ETS sectors for Belgium is increased to -47% (compared to 2005)*", the Flemish Government would have "*by approving the draft update of VEKP 2021-2030, increased the reduction ambition for non-ETS sectors from -35% to -40% (compared to 2005)*", specifying that, in particular "*through new burden-sharing agreements, the various entities will ensure that the Belgian climate objeCtive is achieved by taking additional measures and/or by utillSClht the flexibility allowed within the European framework"* (its conclusions, p. 101). It also states that, on December 20, 2019, the Flemish Government "approved the Flemish Climate Strategy 2050 ("Vlaamse Klimaatstrategie 2050")", which
"sets a clear target for 2050, i.e. a reduction in emissions for sectors outside SEQE of 85% by 2050 and the ambition to move closer to climate neutrality" (conclusions, p. 43, emphasis added). The court concludes that neither in terms of measures taken, nor even in terms of climate ambition, is the Flemish Region currently doing its part to enable Belgium to reduce its GHG emissions by 55% by 2030.

208. Finally, the Brussels-Capital Region has no intention of setting, even on its own scale, a reduction in GHG emissions that would enable it to meet the aforementioned target. The Brussels COBRACE plan calls for a 40% reduction in GHG emissions by 2030, but in relation to 2005 levels. Without contradicting them on this point, the appellants in the main proceedings point out that, in 2005, the Region's emissions "*were a little higher than in 1990*", so that a *"-40% compared to 2005 is* normally *a slightly smaller effort than a "-40% compared to 1990".*
-40% compared to 1g9o" (conclusions, p. 215). The Brussels-Capital Region also writes in its conclusions (p. 36) that its GHG emissions "*in 2020 are 23% lower than in 1990, and 28% lower than in 2005*", confirming the difference, which is far from anecdotal, between the two reference years.

209. The Court concludes that the violation of Article 2 of the ECHR continues in the heads of these three paFties, none of which explicitly asserts - or in any case establishes - that a reduction of - 5S % 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.

210. As far as the Walloon Region is concerned, the question arises differently, since it has not been demonstrated that it violated Article 2 of the ECHR during the second commitment period. On the contrary, it reduced its GHG emissions by almost 40% by 2020, in line with the countries set as examples by the appellants in the main proceedings. As a result, it has necessarily entered the 2020-2030 decade in a better position than the other respondents. The Court also noted that, unlike the other respondents, it had shown itself to be more ambitious on the normative front, since it had mentioned, without being contradicted on this point, a legislative reform in progress (submitted to the Conseil d'Etat during the pleadings) aimed at enshrining the 55% target in positive law.

The mere fact that, at the time of the pleadings, there was no definitive anchoring of the aforementioned reduction target in Walloon legislation, nor any sanction provided for in the event of non-compliance with targets mentioned in the PACE, is not sufficient to undermine the above conclusions, given that the Walloon Region demonstrated in 2020 that it was not only complying with the targets it had set itself, but was even achieving better results. Nor is the fact that the Walloon Region would have granted permits for two new gas-fired power plants at Flémalle (Awirs) and Seraing in 2021-2022 sufficient to find a violation of Articles 2 and 8 of the ECHR. The Court recalls that it has no business interfering in the specific choices made by the public authority. From the point of view of its review, the Court confined itself to the results of the GHG emissions as they result from the reports produced (and not contested).

The Court concludes that, also for the 2021-2030 commitment period, the appellants in the main proceedings do not demonstrate that the Walloon Region is in breach of Article 2 of the ECHR.

The mere fact that the situation of the Walloon Region is more favorable than that of other Regions does not detract from this conclusion.

211. The application, insofar as it seeks a finding of a violation of Article 2 of the ECHR by the respondent parties, with regard to the climate policy they have pursued and implemented since 2021 and up to the present day, is therefore well-founded, with the exception of the Walloon Region. The judgment is confirmed insofar as it concerns, for this period and until its delivery, the violation of article 2 of the ECHR by the Belgian State, the Flemish Region and the Brussels-Capital Region, with regard to the natural persons involved. It will be reformed insofar as it concerns the Walloon Region and relates to the violation of Klimaatzaak's fundamental rights.

212. On the other hand, it cannot be prejudged at this stage whether the Belgian State, the Flemish Region and the Brussels-Capital Region will fail to comply with Article 2 of the ECHR in the future and by 2030, in the context of the climate governance they will be implementing, which has yet to be updated in the light of the current European objectives, which, given their scientific basis, according to the Court, constitute an adequate criterion for assessing the respondents' compliance with human rights.

The request, insofar as it seeks to establish that there are serious and unequivocal indications that, in pursuing their climate policy for 2030, the respondents will continue to violate article 2 of the ECHR, is therefore unfounded.

3) Compliance with article 8 of the ECHR

213. With regard to Article 8 of the ECHR, the Belgian State and the Brussels-Capital Region consider that the natural persons involved in the proceedings must demonstrate a causal link between global warming and the negative impact on their living environment, and that the threshold of severity has been reached.

However, the Court was of the opinion that the above-mentioned IPCC reports not only sufficiently demonstrated that the location and living conditions of all individuals (and therefore including the physical persons involved in the case) are and above all will be impacted by global warming, but also that this impact will be extremely significant. These include, but are not limited to, dangerous rises in temperature and sea levels (Flanders was particularly at risk), increased risk of flooding, water shortages, negative impact on human health (including mental health, with the growing phenomenon of eco-anxiety), jeopardized food security, increased climate migration and poverty.

As explained under article 2 of the ECHR, this risk is real and immediate. It is unprecedented, and is likely to seriously impair the ability of natural persons present at the case to enjoy their home and their private or family life.

The mere fact that the public authorities seem to have finally understood the need to act is not enough to exclude the causal link mentioned above.

214. For the rest, the above developments relating to Article 2 of the ECHR can be transposed, *mutatis mutandis,* to the analysis relating to Article 8 of the ECHR, including with regard to the thresholds for 2020 and 2030.

Admittedly, it could be argued that the minimum threshold for reducing GHG emissions could be higher, as there is no question of avoiding endangering life and limb.

of individuals, but to protect their right to respect for their private life and home. It should be remembered, however, that

- environmental nuisances are only likely to result in a violation of Article 8 of the ECHR if they are of a certain seriousness,
- the principles developed in the context of the positive obligations arising from article 8 also apply to article 2,
- in the context of Article 8 of the ECHR, a fair balance must be struck between the competing interests of the individual and society as a whole, which implies, from the point of view of domestic law, particular caution in setting the thresholds required with regard to the separation of powers.

The Court concludes that, both for the 2013-2020 commitment period and for the 2021 commitment period to date, the respondents have, with the exception of the Walloon Region, also violated Article 8 of the ECHR in relation to the natural persons in question.

215. On the other hand, for the same reasons as set out above, the application, insofar as it seeks a finding that there are serious and unequivocal indications that, in pursuing their climate policy to 2030, the respondents will continue to violate article 8 of the ECHR, is unfounded.

216. Since, on the basis of articles 2 and 8 of the ECHR, the Court has only partially upheld the claim of the appellants in the main proceedings, it is necessary to ascertain whether, on the basis of articles 1382 et seq. of the former Civil Code as invoked in their second plea, it is possible to uphold the claim in its entirety.

2. The second plea: violation of articles 1382 and 1383 of the former French Civil Code

IntroduCtlOFt

217. The appellants in the main proceedings challenge the extra-contractual civil liability of the Belgian State and the three Regions on the basis of Articles 1382 and 1383 of the former Civil Code, claiming not a breach of the norms of positive international, European and Belgian climatic law, but of the general standard of prudence insofar as, being aware of the danger, these authorities refrained from taking the necessary measures to prevent it or, in any case, to limit it (their conclusions, no. 423, p. 169).

218. After recalling the principles applicable to civil liability (a), the Court will consider the existence of the faults attributed to the respondents (b), the damage alleged by the appellants in the main proceedings (c), the causal link between the damage alleged and the faults (d) and, finally, the possible impact of the conduct of the appellants in the main proceedings on the liability attributed to the respondents (e).

a) Principles applicable to civil liability

1) Fault, damage and a causal link

219. In accordance with articles 1382 and 1383 of the old Civil Code, aquilian liability is subject to the simultaneous fulfilment of three conditions: the existence of fault, the existence of damage and the existence of a causal link between the two.

220. Fault can be defined as *"any violation of a legal or regulatory norm imposing or prohibiting a certain behavior*" or "*any breach of the standard of care*", the latter being *"violated when one does not behave as a normally far-sighted and diligent person finding himself in identical circumstances."* (Cass., May 24, 2018, R.G. n° C.17.0504.N, www-iuportal.be). In a similar vein, but underlining the subjective element of fault, X. Thunis defines it as "*the violation, imputable to his auteur, d'une norme juridiquement obligatoire imposant d'agir de manière déterminée ou de se comporter comme une personne normalement diligente et prudente*" (X. THUNIS, "La faute civile, un concept polymorphe", in *Responsabilités. Traité théorique et pratique,* J.-L. Fagnart (ed.), Titre ll, Livre 20, 2e"e éd., Waterloo, Wolters Kluwer, 2017, p. 26, n° 27; see also the numerous references cited in B. DUBUISSON, V. CALLEWAERT, B. Dr CONINCK, F. GEORGE et N. SCHMITZ, "Les faits générateurs de responsabilité", in *Droit de la responsabilité civile,* vol. 1, Bruxelles, Larcier, 2023, p. 15 et seq.)

221. The notion of "damage" consists of "*the impairment of any interest or the loss of any legitimate advantage",* and presupposes "*that the victim of the wrongful act is in a less favorable situation after it than before*" (Cass., June 5, 2020, *R.G.A.R.,* 2020, 15712). It therefore refers to the negative difference between two situations, the first being that of the victim after the harmful event and the second being that in which the victim would have been in a less favorable situation than before the event.
(Conclusions du ministère public avant Caen, ieFavril 2004, 1.*T.,* 2005, p..
357, note Estienne; see in the same vein the definition given by the Flemish Region, on p. 122 of its conclusions).

The damage must be certain and personal to the person claiming compensation (D. DE CALLATAŸ, "Le dommage réparable", in *Droit de la responsabilité civile,* vol. 2, Bruxelles, Larcier, 2023, p. 26 and references cited; on the second condition, see. Cass., June 5, 2020, *R.G.A.R.,* 2020,

15712: "*Only the holder of such an interest or benefit may invoke* the infringement *thereof. scope*"). It is sometimes taught that damage must be "*born and present"*, but this is not always the case.
The expression is "*ambiguous and even inaccurate, since the judge can precisely take account of future damage",* so that it is "*an imperfect qualification intended to exclude uncertain damage", which "therefore duplicates the characteristic of certainty*" (P. VAN OMMESLAGHE, *LeS Obligations,* t. II, Bruxelles, Bruylant, 2013, p. 1551). A victim can therefore *"seek and obtain reparation for future damage, provided that he can demonstrate its occurrence and extent with certainty*" (C. DELFORGE, C. DELBRASSINNE, A. LELEUX, S. MORTIER, â. VAN ÊUYLEN, L. VANDENHOUTEN, M. DEFOSSE, S. LARIELLE and N. VANDENBERGHE, "Chronique de jurisprudence (2015 to 2016) - Aquilian liability (articles 1382 and 1383 of the Civil Code) ", *R.C.J.B.,* 2019/4, p. 727; in the same vein, 1. DURANT, " La réparation dite intégrale du dommage ", in B. Dubuisson et P. Jourdain (diF.), *Le dommage et sa réparation dans la responsabilité Contractuelle et extracontractuelle,* Bruxelles, Bruylant, 2015, p. 448; D. DE CALLATAŸ, "Le dommage réparable", *op. cit.,* p. 41; B. DuBuisso , "Civil liability and climate change. Libres propos sur le jugement rendu dans l'affaire 'Klimaatzaak'", *op. cit.* p. 276). In a decision dated January 3, 2018, the French Supreme Court (Cour de cassation) overturned a decision that had dismissed claimants' claims for compensation on the grounds that they had not proved that the damage had been incurred in the present, whereas "*the judge may* award *damages for the prejudice that the injured party will suffer in the future, provided that the cause of the prejudice exists at the time of the judgment in such a way that the court can5e assess the damage that will necessarily result from it*" (Cass., January 3, 2018, *Pas.* 2018, n° 3, p. 9; *R.G.A.R.,* 2018, 15475). Lastly, the certainty of the loss is a notion of fact left to the discretion of the trial judge (Cass., October 14, 2020, *R.G.A.R.,* 2020, 15725).

222. The legal notion of cause is understood, in accordance with the theory of equivalence of conditions, as being the condition without which the damage would not have occurred as it did in *concreto* (Cass., June 13 1932, *Pas.,* I, 189; June 18 1973, *Pas.,* I, 968; March 27 1980, *Pas.,* \, 931; May 3, 1996, *Pas.,* I, n° 146; February 21, 2001, *Pas.,* I, n° 107). If the damage suffered has been caused by several concurrent faults, each of the authors is liable for reparation of the entire damage (Cass., October 17, 2014, *Pas.,* I, p. 2277; Cass., February 17, 2017, RG n°C.16.0297.N, www.juridat.be). In terms of obligation to the debt, these authors will therefore, in principle, be held *in solidum* (P. VAN OMMESLAGHE, *De Page. Traité de droit civil belge,* t. II, vol. 2, Brussels, Bruylant, 2013, pp. 1630-1631).

The judge cannot order the tortfeasor to compensate for the damage suffered if he finds that there is doubt as to the causal link between the fault and the damage (Cass., December 6, 2013, *Pas.,* I, p. 2457, concl. T. Werquin). However, the proof that the plaintiff must provide is not absolute. Jurisprudence is satisfied with judicial certainty, i.e. a high degree of likelihood (in this sense in particular, I. DURANT, "A propos de ce lien de causalité qui doit unir la faute au dommage", in *Droit de la responsabilité,* CUP, 01/2004, p. 27; see also P. Vol OMMESLAGHE, *De Page. Traitë de droit civil belge, op. cit.* p. 1613, who prefers to speak of "reasonable human certainty"). To exclude the causal link, the judge must
"be able to say that, without the fault, the damage would nevertheless have occurred as it did.

in concreto, all other conditions of damage being identical' (Cass., November 21, 2012, *Pas.,* \, p. 2272).

223. The burden of proof for all three elements lies with the plaintiff3 . He must therefore demonstrate that, without the fault, the damage would not have occurred as it did *in concreto* (art. 8.4 of the Civil Code). Unless otherwise stipulated by law, proof must be provided
The burden of proof must be established "*with a reasonable degree of certainty"* (art. 8.5), it being specified that the person who bears the burden of proof of a fact *"for which, by the very nature of the fact to be proved, it is not possible or not reasonable to require certain proof*", may *"content himself w i t h establishing the likelihood of this fact*". As far as the existence of the damage is concerned, this can be done by any legal means (Cass., October 14, 2020, *R.G.A.R.,* 2020, 15725). The certainty required is a judicial certainty, and the damage must "*not necessarily be certain in its extent, but in its principle"* (D. DE CALLATAY, *op. cit.,* p. 41).

2) The victim's behavior

224. There are two ways in which the victim's behavior can be taken into account when determining the extent of reparation owed by the tortfeasor, in application of the theory of equivalence of conditions.

On the one hand, when the damage has been caused by concurrent faults, including that of the victim, *"the author of the damage cannot be ordered to pay full reparation to the victim"* and *"it is up to the judge to assess the extent to which the fault of each party contributed to causing the damage and to determine, on this basis, the share of damages owed by the author to the victim*" (Cass., September 5, 2003, *Pas., I.,* 1360). The victim's compensation is therefore "*limited when he has himself committed a fault in causal relationship with the loss suffered", the* judge having to take "*into account in this respect the relative importance of the different faults, i.e. their greater or lesser ability to cause the loss*" (Cass., March 13, 2013, *Pas.,* I, n°178).

On the other hand, it is widely accepted that the victim must, after the event giving rise to the damage, ensure that it does not worsen unnecessarily. However, he or she is not obliged to restrict the damage as far as possible, but only to take reasonable measures to limit the loss if this would have been the behaviour of a reasonable and prudent man (Cass., May 14 1992, *J.1.M.B.,* 1994, p. 48; Cass., June 13 2016, *A.G.D.C.,* 2017, liv. 6,
p. 370).

In both cases, the onus of proving the victim's fault lies with the party at fault. The victim's fault does not have the effect of interrupting causality, and can only exclude the liability of the tortfeasor if it can be shown that Ie

[38] Even if the Flemish Region considers t h a t it "*must establish that in this case no fault can be imputed to it*" (its conclusions, p. 122).

without this fault, the damage would have occurred in the same way as it did in *concreto* (P. VAN OMMESLAGHE, *De Page. Traitë de droit civil belge, op. cit.* t. Il, vol. 2, pp. 1616 and 1629).

3) The aquilian responsibility of public authorities

225. By entrusting the courts and tribunals with disputes concerning civil rights, the Belgian constituent intended to protect these rights by having regard *'neither to the quality of the disputing parties, nor to the nature of the acts which would have caused an injury to rights, but solely to the nature of the injured right*', so that the judiciary is competent to hear a claim for compensation for an injury, even if the author is '*the State, a municipality, or some other person under public law (...*\') (Cass, November 5, 1920, *Pas.,* I, p. 239, also known as Arrêt
"La Flandria").

Since the *La Flandria* ruling, it has been accepted that the State may incur liability in the exercise of its executive function. According to settled case law, the administrative authority commits a fault giving rise to liability under articles 1382 and 1383 of the Civil Code, when it adopts a course of conduct which either amounts to an error of conduct to be assessed according to the criterion of the normally careful and prudent authority, placed in the same conditions, or, subject to an invincible error or other cause of justification, violates a norm of national law or an international treaty which requires this authority to abstain or to act in a specific manner (Cass., May 13 1982, *Pas,* I, p. 1086; Cass. october 25 2004, *Pas,* I, p. 1667, n°.
507; Cass., December 21, 2007, *Pas.,* I, no. 661; Cass., March 19, 2010, *Pas.,* I, no. 200; Cass., February 9, 2017, J.T., 2019, liv. 6756, p. 33, which specifies that the international law provision must have direct effects in the domestic order).

The principle of the separation of powers does not imply that the State would be "*generally exempt from the obligation to compensate for damage caused to others by its fault or that of its organs in the exercise of the legislative function"* (Cass., September 28, 2006, *J.T.,* 1996, pp. 594 et seq. with the conclusions of First Advocate General J.-F. Leclercq, said judgment...).
"Ferrara").

Under articles 1382 and 1383 of the former French Civil Code, the fault of the legislature which may give rise to liability on the part of the State consists of conduct which either constitutes an error of conduct to be assessed according to the criterion of the normally careful and prudent legislator, placed in the same conditions, or, subject to invincible error or some other ground for exoneration from liability, violates a norm of national or international law having direct effects in the domestic order, which requires it to refrain from or to act in a certain way (in the same sense, see. Cass., December 15, 2022, RG n° C.21.0003.F, www.|uportal.be; see also Cass., April 30, 2015, *Pas.,* I, p. 1077; see also Cass., September 10, 2010, *Pas.,* \, p. 2226). The Brussels-Capital Region is therefore wrong to "*argue that, under Belgian law and more particularly in the*

According to the jurisprudence of the Cour de cassation, the mere violation of the general principle of prudence cannot, on its own, constitute the basis of a fault on the part of the legislator, and therefore cannot engage his civil liability on the basis of article 1382 of the Civil Code" (his conclusions, p. 58).

226. From a methodological point of view, it is first necessary, in principle, to verify whether a supra-legislative rule required the legislator to act or refrain from acting in a specific manner. In this respect, the Court agrees with the doctrine which considers that "*the degree of determination of a legal command does not lie solely in the wording of the provision which conveys it*" and that it is "necessary to ascertain whether a supra-legislative rule requires the legislator to act or refrain from acting in a specific manner".
In this respect, the term 'liability' can only be experienced through an appreciation of the interpretative context which gives it its meaning and significance at a given moment" (S. vAN DROOGHENBROECK, "La responsabilité extracontractuelle du fait de légiférer, vue d'ensemble", in *La responsabilité des pouvoirs publics,* Brussels, Bruylant, 2016, p. 371).

In the absence of a violation of a norm imposing a specific behavior, the judge must check whether the legislator behaved like a normally prudent and diligent legislator in the same circumstances. Criteria that may be taken into consideration include whether the legislator ignored the warning issued by the Legislation Section of the Conseil d'Etat, or whether the violation of a higher standard was manifest *(Ibid.,* pp. 374-376). In his conclusions preceding the *Ferrara* ruling, Advocate General Leclercq considered that the legislator is not acting as a good father of the family if he fails to act.
"when the *country is threatened by risks to safety, public health, hygiene, the environment, etc.*") or when it
"fails to take the necessary measures to guarantee its subjects constitutional rights and freedoms and the rights and freedoms of the ECHR" *(Pas.,* 2006, I, no. 445).

In the view of the Belgian State, if a judge were to find that the legislator had not behaved like a normally prudent and diligent legislator, he would himself be creating a model of such a legislator, thereby creating a risk of legal uncertainty and a clear violation of the principle of the separation of powers, judicial review must therefore be carried out "*at the margins, so as not to obscure the hazards and constraints associated with all political decision-making"*, and only *"manifest errors of assessment can be sanctioned*" (his conclusions, pp. 147-148). He believes that
"He cites articles by Professors Van Drooghenbroeck and Bouhon, among others.

According to the former, when it comes to verifying the legislator's compliance with the standard of care, the judge "*will be very close to a frontier that the principle of the separation of powers forbids him to cross",* so that he will have to *"exercise caution and restraint himself"* (S. VAN DROOGHENBROECK, "La responsabilité eKtracontractuelle du fait de légiférer, vue d'ensemble", *op. cit.,* p. 380).

According to the second, if *"it is not positive law that serves as a reference, then moral considerations take over - as, moreover, the notion of the normally prudent and diligent legislator, inspired by the good father of the family of yesteryear, encourages us to do".* And he asks: *"When legislative production is not incompatible with constitutional or international law, who other than the legislator himself, with his full competence (which is admittedly relativized today), can assess its adequacy in relation to a moral ideal - or rather moral ideals?*" (Fr. BOUHON, "La responsabilité civile pour la faute du législateur - Anno 2020", 1.*T.,* 2020, p. 749).

The Court notes, however, that these two authors immediately qualify their remarks by rightly pointing out that the extensive interpretation given to certain legal norms has the consequence of marginalizing hypotheses in which the only standard of conformity is that of the normally prudent and diligent legislator. Thus, S. Van Drooghenbroeck notes that "*the multiplication of supralegislative norms, and the extensive interpretation given to them by their appointed interpreters, make it relatively easy to find that, in addition to a possible breach of the duty of prudence, the legislator has also been guilty of a violation of a higher norm prescribing him to act in a given direction*", giving the example of *"abstention from acting in the event of serious environmental peril",* which "*can be analyzed as a breach of the positive obligations imposed on the State on the basis of Articles 2 or 8 of the European Convention on Human Rights, as interpreted by the case law of the European Court of Human Rights"* (S. VAN DROOGHENBROECK, "La responsabilité extracontractuelle du fait de légiférer, vue d'ensemble", *op. cit,* p. 380; see also the conclusions of Advocate General Werquin, who repeats these remarks virtually *in extenso,* before Cass., December 15, 2022, RG n° C.21.0003.F, www iuportal.be). In the same vein, Professor Bouhon points out that, even in the aforementioned cases, *"the State's obligation to act may often be based on rules of law, such as Article 2 of the European Convention on Human Rights which, as interpreted by the European Court of Human Rights, requires States to act in the face of certain risks in order to prevent foreseeable harm"* (Fr. BouHON, *op. cit.,* p. 749).

227. 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.

in the face of a serious threat to the environment, property and personal safety.

228. When examining fault, and as the Belgian State rightly points out, "*one must be careful not to carry out an a posteriori analysis of fault*" (its conclusions, p. 153). In principle, therefore, it is at the time of adoption of the disputed rule that the wrongfulness of the State's conduct should be assessed, and not at the time when the rule was deemed unconstitutional or contrary to a norm of international law with direct effects (S. VAN DROOGHENBROECK, "La responsabilité extracontractuelle du fait de légiférer, vue d'ensemble", *op. cit,* p. 376; Conclusions de l'avocat général Werquin avant Cass., 15 décembre 2022, RG n° C.21.0003.F, www iuportal.be). However, if a norm should, subsequent to the adoption of the disputed rule, acquire a degree of determination sufficient to conclude that it henceforth requires the legislator to act or refrain from acting in a specified manner, the legislator may also be held at fault for having failed to amend the said rule in accordance with the command thus specified.

b) Examination of alleged faults

229. As a reminder, the appellants in the main proceedings are sending the respondents a double reproach '

- their share of the global effort to reduce GHG emissions in order to avoid dangerous global warming, and more specifically: for the past, they believe that the Belgian State and the Regions should have at least reduced Belgium's GHG emissions by 40% by 2020 compared with 1990 ;
  - o For the future, they consider that the policy to be implemented should aim, at the very least, for an 81% reduction in GHG emissions in 2030 compared to 1990;
- the absence of the healthy and loyal cooperation needed to develop good climate governance at national level.

Before examining the two periods in dispute, it is still necessary to address two objections raised by the respondents, concerning the identification of the MiS a II pouvOiFS involved and the limited capacity of these parties in the fight against global warming.

The Court has already noted that, as soon as the parties agree that there is no binding supra-legislative rule of international law that would impose a specific behaviour on the respondent parties with regard to reducing GHG emissions, the cOUF will first examine compliance with the standard of behaviour (the only one invoked by the parties).

appellants in the main proceedings), before going on to examine the question of Articles 2 and 8 of the ECHR.

1) As for identifying the powers involved

230. The Brussels-Capital Region criticizes the judgment for failing to distinguish between the responsibility of the Brussels legislature and that of the Brussels executive.

It points out that, until the adoption of the above-mentioned "climate" ordinance of June 17, 2021, there was no legislative standard empowering the Brussels Government or requiring it to take all necessary measures to reduce the overall volume of GHG emissions in Brussels. In this context, it considers that to grant the requests of the appellants in the main proceedings would be tantamount to requiring the Brussels Parliament to legislate in this sense, failing which the Brussels Government would be able to act without empowerment, which would lead to a confusion of executive and legislative powers and would violate the principle of the separation of powers and articles 105 and 108 of the Constitution.

231. The executive and legislative powers are organs of the Brussels-Capital Region through which it necessarily acts, within the limits of its competences.

The Brussels-Capital Region is liable for the inaction of its bodies, insofar as it proves to be at fault. In this respect, it is immaterial whether the fault is precisely attributable to the legislative power, because it wrongfully refrained from legislating, or to the executive power, because it wrongfully refrained from executing the norms in force, or from taking the legislative initiatives (submission of draft laws, ordinances or decrees) that prudence dictated.

As will be explained below (point 237 et seq.), by taking into account Belgium's international commitments - which, it is true, are not binding as regards the level of national contributions in terms of reducing GHG emissions, beyond what has been promised by the European Union - combined with scientific knowledge acquired in the field of climate science, it is possible to define a standard of good behaviour that is sufficiently precise to be able to assess, without violating the principle of the separation of powers, the extent to which each entity, including the legislative power, is committing, at its own level, a breach of the general duty of care, by refraining from taking, within the framework of the competences devolved to it, the minimum measures necessary to reduce GHG emissions and thus respond to the climate emergency.

Moreover, the initiative to legislate does not entirely escape the executive branch, which has the power to introduce bills, decrees or ordinances. In this case, it is as much in the definition of the necessary climatic ambitions as in their implementation that mistakes have been made.

have been committed by each entity, within the limits of the powers devolved to them.

Lastly, since the entry into force of COBRACE, as amended by the climate ordinance of June 17, 2021, the Brussels executive is indeed empowered to take the necessary measures to achieve the reduction targets expressed in the regional Air-Climate-Energy plan (the "PRACE") as described in point 66 of the statement of facts.

2) On Belgium's limited capacity in the global fight against global warming

232. The respondents to the main action point out that the federal State and the federated entities are only some of the many players involved in the fight against global warming, that their action is limited to emissions emanating from Belgian territory, and that the impact of these emissions is minimal on a global scale. Consequently, the Belgian State considers that, if it were envisaged to condemn it and/or the Regions, a balance of interests should first be carried out, taking into account the effects of such a condemnation in the light of other policies of general interest (economic, fiscal, budgetary, etc.) and other actions already taken by the various Belgian public authorities.

233. The Court has already examined the plea relating to the limited impact of Belgian efforts at global level from the angle of Articles 2 and 8 of the ECHR. Reference should be made to them where necessary (paragraph 160). It is clear from the latest IPCC reports that every GHG emission counts and has an impact on global warming, since it reduces the residual carbon budget at world level (cf. in particular, in the IPCC Special Report on Global Warming of 1.5°C, the technical summary for decision-makers, page VI of the introductory section: "*Every fraction of a degree more, every year, every choice counts*"). It should also be remembered that, from the point of view of equivalence of conditions, the slightest fault is in principle sufficient to activate the regime of articles 1382 and 1383 of the former Civil Code.

234. It is also clear from the elements in the file (in particular, the report by the National Climate Commission, K. De Ridder *et al, Évaluation de l'impact socio-économique du changement climatique en Belgique. Étude commandée par la commission nationale climat,* VITO, July 2020, 253 p., exhibits C.15 and C16 of the appellants' file in the main proceedings) that postponing efforts will be more costly than rapidly implementing reduction measures with a view to gradually achieving net emissions equal to zero in 2050 (this is the "price of procrastination"), as indeed was judged by the German Constitutional Court in its *Neubauer* ruling of March 24, 2021 (appellants' exhibit 0.14 of the appellants: "*In practice, the sparing of future freedom requires that the transition to climate neutrality be launched in good time*", recitals no. 248 *ff*, pp. 82 ff).

235. Lastly, § 203 of this German judgment, cited above when examining the plea concerning the violation of the ECHR (point 160 above), and § 204, underlining, in the Paris Convention, the importance, in order to win and preserve the mutual trust of the States parties, of honouring their commitments as the key to the effectiveness of this agreement, an indispensable instrument in the global fight against global warming. It follows that the inadequate contribution of a single country is detrimental to the global fight against global warming.

236. In the light of all these factors, the minimum national contribution (in terms of reducing GHG emissions) as defined below, on the basis of the IPCC reports and the international consensus that existed at the time, constitutes the exact measure of the behavior to be expected from a normally prudent and diligent authority, with regard to the risks of dangerous global warming.

3) The 2013-2020 period

237. In the case in point, for the period 2013-2020, the Court considers that the behavior of the Belgian State, the Flemish Region and the Brussels-Capital Region is at fault insofar as the thresholds for their contribution to the reduction of GHG emissions, as defined and implemented, were clearly insufficient in the light of the achievements of climate science at the time, to meet the risks of dangerous global warming.

As a reminder, the existence of a real risk of damage linked to global warming and the impact of human activities and rising GHG concentrations have been known with a sufficient degree of certainty at least since the 4'th"e IPCC report in 2007 (see point 12 above).

As indicated above (point 169), the fact that adaptation can be an equally adequate response to climate change does not mean that the mitigation systematically advocated by the IPCC reports is not indispensable, even if it is not necessarily sufficient or exclusive.

238. On the basis of points 12 and 15 above, it is now clear that, since 2007 and at least since 2009, Belgium has been aware of the need to reduce GHG emissions by at least 25% by 2020 in order to limit global warming to 2ºC, even though the European Union has set a less ambitious target (20%).

In points 37 et seq. of the statement of facts, the Court also recounted the reasons for considering that, progressively from 2015 onwards, it appeared that the aforementioned minimum of -25% would be insufficient in view of the need to keep global warming "*well below 2º C*".

The IPCC's 2018 special report confirmed that the 2°C target should now be replaced by the 1.5°C target.

Of course, as the Belgian government points out, the 4th[e] IPCC report set a reduction target of 25% to 40% "*globally for Annex I countries*", without distinguishing individually for each country (its conclusions, p. 168). It can also be accepted that, in principle,
"(I) the equi/ivre *to be found is global"* and that *"it is therefore not unreasonable for a State to join the Concert of Nations in determining its climate policy*" (its conclusions, p. 171). However, as indicated above (point 169), as soon as the States had not agreed on any distribution of the effort to be made, 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.

As explained in paragraphs 171 to 176 above, this does not mean that, in absolute terms, a minimum GHG emissions reduction threshold of -40% by 2020 was necessarily imposed on Belgium to avoid dangerous global warming. For the reasons set out above, the Court is not in a position to determine with certainty that the change from 2º to 1.5° C had to be translated into a -40% reduction in GHG emissions by 2020 in the light of the general obligation of prudence, nor, *a fortiori,* that the respondents were in a position to make this translation at the time, in theory or in practice.

On the other hand, the Court considers that, since at least 2018 (see point 176 above), given the -25% threshold set on the basis of a 2º C target and the shift from 2 to 1.5°C, a -30% reduction in GHG emissions at national level by 2020 could, at the very least, be considered a minimum in the light of the general obligation of prudence, which had to be taken into account, from that point onwards, when defining climate governance. In concrete terms, given the approach of the 2020 deadline, this meant that, as early as 2018, the authorities had to seriously revise upwards their GHG emission reduction targets, not only for 2020 but also for future deadlines such as 2030 and 2050.

239. The fact that Belgian climate governance complies with European Union and international standards on GHG reduction targets does not absolve the Belgian authorities concerned of any blame. On the one hand, as already indicated above, the standards in force within the European Union in no way prevented Member States from individually pursuing higher GHG emission reduction targets, and on the other hand, it is a fact that these standards were, as far as the GHG emission reduction targets assigned were concerned, insufficient to meet the risk of dangerous global warming. What's more, if these European targets (a 20% reduction in GHG emissions) go beyond those defined in the

Initially set by the Doha Amendment in 2012 (COP-18, i.e. an 18% reduction), these targets were quickly exceeded, as they were due to be revised upwards as early as 2014 (point 34 above) and, in 2015, the Paris Agreement also implied an upward revision of nationally determined contributions, even if this was not quantified.

240. By taking into consideration the minimum threshold required by prudence in view of the risk posed by dangerous global warming, the Court did not violate the principle of the separation of powers. This is the minimum threshold, within the range of possible actions set out in the IPCC reports (from -25% to -40% by 2020, compared with 1990), to limit the risk of serious disruption in terms of economic and human costs, which the state of climate science known at the time made it possible to predict with a sufficient degree of certainty, if GHG emissions were not reduced sufficiently.

Below the minimum threshold imposed by prudence, given the magnitude of the consequences of climate disruption as predicted, if policy remains unchanged, the margin of appreciation of each State simply no longer exists, and there is no longer any reason to arbitrate with other interests such as, for example, the preservation of social cohesion or economic growth (conclusions of the Belgian State, p. 165), interests which it has not been demonstrated could not be preserved by pursuing these minimum objectives, and which would in any case also be flouted in the event of dangerous global warming.

Such an approach does not, any more than in the context of the examination of articles 2 and 8 of the ECHR, amount to granting scientific reports a "*legal consecration*" (conclusions of the Belgian State, p. 192) or to recognizing them indirectly as a "*source of positive law"* (conclusions of the Brussels-Capital Region, p. 86), but to ascertain the extent to which the best available climate science makes it possible to confer on the standard of care a sufficiently precise content to assess, in law, the conduct of the authorities to which a fault is attributed, and to do so without substituting for the discretionary power of the legislative and executive powers.

241. It could therefore be expected of a normally prudent and diligent State (or federated entity) that, between 2013 and 2020, it would initially set itself a GHG emissions reduction target of 25% below 1990 levels by 2020, and that in 2018, following the Paris Agreement, this target would be revised upwards, taking into account the fact that, to avoid global warming of more than 1.5°C, it should have been raised to at least -30% by 2020. In this respect, the Court recalls that article 4.3 of the Paris Agreement states that "/o *next nationally determined contribution of each Party shall represent a*
contribution determined at the previous national level and will correspond to its level of ambition as high as possible, taking into account its common but differentiated responsibilities and its respective capacities, in view of the

dÎffërenteS Situations nationales" (emphasis added). However, it cannot reasonably be argued that Belgium did not have the capacity to set itself such objectives.

242. Not only was climate governance, as conceived, faulty because it was insufficiently ambitious, but its implementation also showed shortcomings and only finally achieved the objective initially assigned (deemed insufficient) thanks to the Covid crisis. In this respect, the Court refers to the comments made above in paragraphs 178 to 182 concerning the Belgian State, the Brussels-Capital Region and the Flemish Region, which individually failed to take the necessary measures and to coordinate their action effectively.

243. However, there is no fault to be found with the Walloon Region, which, as early as 2014, included the -30% GHG emissions reduction target in its "Climate" decree, a target which it is undisputed was met at the end of the 2013-2020 commitment period (cf. point 177 above).

The claim insofar as it relates to a finding of a breach of articles 1382 and 1383 of the former Civil Code by the respondents, in respect of the climate policy they pursued and implemented between 2013 and 2020, is well-founded except in respect of the Walloon Region. The judgment is therefore confirmed insofar as it concerns, for this period, the violation of articles 1382 and 1383 of the former Civil Code by the Belgian State, the Flemish Region and the Brussels-Capital Region.

4) The 2021-2030 period

244. The Court also found that the Belgian State, the Brussels-Capital Region and the Flemish Region were at fault in their current climate policy for 2030.

As a reminder, the final 2019 NECP currently being implemented was designed around the European Union's previous target of a -35% reduction in GHG emissions in non-ETS sectors by 2030 (linked to an overall GHG reduction target for the Union of -40% by 2030 compared to 1990, Article 2, 11º of Regulation (EU) 2018/1999 of December 11, 2018).

For the reasons given above, it is clear that Belgian climate governance is at fault insofar as it has not pursued the objective of reducing GHG emissions by at least 25% below 1990 levels by 2020, and then, from 2018 onwards, a more ambitious target for the future, taking into account the need f o r a reduction of at least -30% by 2020, a minimum target that would have been imposed on any normally reasonable and prudent authority in the same circumstances.

It follows that this climate governance is also at fault insofar as, up to now, the measures currently in force in Belgium have been based on an objective of

reduction limited to -35% for non-ETS sectors by 2030 (in line with the general European objective of -40% compared to 1990), a threshold that is clearly insufficient in view of the -30% threshold that should already have been imposed by 2020, and the consequent delay in reducing emissions, and the objective of neutrality by 2050.

The Court again refers to the IPCC's special report of late 2018, which points to the consequences of global warming beyond 1.5° C and concludes that 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 zero net emissions by 2050 (recital C1, page 12). A 40% reduction in GHG emissions by 2030 compared with 2010 means, in the Belgian context, a greater reduction effort than a 40% reduction in emissions by 2030 compared with 1990.

The same report states, in point D1 of the summary for decision-makers on page 18, that

"According to estimates, the mitigation measures announced by countries under the Paris Agreement would result in global GHG emissions of 52 - 58 GteqCO2 yr-1 in 2030 (medium confidence level). Trajectories that take these announced measures into account would fail to limit global warming to 1.5°C, even if they also took into account an increase in the scale of emission reductions and measures announced after 2030, which would be very difficult to achieve (high confidence). Overruns and dependence on large-scale CO2 elimination can only be avoided if global CO2 emissions begin to decline well before 2030 (high confidence). {1.2, 2.3, 3.3, 3.4, 4.2, 4.4, encadré inter- chapitre5 11 du chapitre 4}" (emphasis added).

The court also recalls the UNEP reports of 2018 and 2019, which highlight the serious inadequacy of the national contributions subscribed to date.

As already mentioned, these scientific reports and the commitments made by Belgium at international level, even if they are not binding as regards the level of the national contribution expected from each country, help to define what would be the behavior of a normally reasonable and prudent authority, placed in the same circumstances.

Given the need to pursue a gradual reduction in GHG emissions over time, and the scientifically-proven need to achieve zero net emissions by 2050, a normally prudent and diligent authority was obliged, as early as 2019, in the 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.

Indeed, it was on the basis of similar considerations that, as early as 2021, the European Union raised its overall target for reducing GHG emissions to -55% below 1990 levels by 2030, a threshold which, for the reasons set out in paragraphs 199 to 202 above and which can be transposed here *mutatis mutandis,* the Court validates as constituting the minimum level required by prudence (and not a level of -81% or -61%, taking into account the requirements of the principle of separation of powers), of which the respondents should have been aware since 2021 at the latest.

This threshold is reasonably necessary to avoid :

- exposing future generations to the risk of major climate disruptions rendering part of our territory uninhabitable (rising sea levels, flood zones), or with serious consequences for the economy, health and access to basic resources (heat waves, storms, extreme rainfall, etc.),
- to impose a very sharp reduction in GHG emissions in the future, over a 20-year period between 2030 and 2050.

These two hypotheses would undoubtedly be far more damaging for the entire Belgian population than the constraints and restrictions to be expected from a higher level of ambition now, by 2030.

The only way to limit the risk of finding oneself in one of the two above-mentioned hypotheses 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. Moreover, the Belgian State explicitly admits that "*the Green Pact for Europe and the objectives it contains unquestionably make it possible to determine the standard of conduct as provided for by article 1382 of the Civil Code*" (its conclusions, p. 177).

However, it is undisputed that Belgian GHG emissions rose again in 2021 and that, even in the scenario with additional policies ("WAM"), the results expected in 2030 will not even reach the -35% target in the non-ETS sector (the announced result being -34.4%).

The European Commission, in its October 14, 2020 opinion on the final 2019 PNEC, has already pointed out the plan's lack of ambition, criticisms echoed in 2023 by all the country's strategic councils (page 41 of the judgment under appeal, exhibits P.38 of the appellants, point 65 of the statement of facts).

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.

It is true that, since 2020, the federal and regional authorities have taken decisions in principle to implement the objectives defined at European level, as described in points 64 to 66 and 68 above, and a new cooperation agreement is currently being negotiated to update the PNEC.

This does not exonerate the Belgian authorities from the mistakes they have made in setting up, until recently, a climate governance system that was too unambitious, and whose effects will linger as long as these new decisions are not translated into legally binding standards, or at the very least into concrete achievements or sufficiently persuasive incentives to steer the behavior of citizens and businesses in the right direction. None of the documents submitted can guarantee that the measures adopted to date will make it possible to achieve the -55% target by 2030 and climate neutrality by 2050.

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.

245. As stated above, the Walloon Region is in a better position than the other respondents because

- by 2020, it has already achieved and largely surpassed a GHG reduction target already set, since 2014, at a 30% reduction compared to 1990 ;
  for the future, it already incorporates the Belgian target of a -47% reduction in GHG emissions in the draft revision of the PNEC ;
- PACE incorporates the European objective of a total reduction in GHG emissions of up to -55% by 2030 compared with 1990 (page 20 of PACE);
- a draft "carbon neutrality" decree has, according to the arguments put forward, been approved on second reading and was, at the time of writing, being submitted to the legislation section of the Conseil d'Etat.

In this context, and unlike the other respondents, it has not been established that the Walloon Region is at fault in the climate policy it is implementing for the long term, up to 2030.

5) For both periods combined

246. Surabondamment et comme indiqué ci--dessus, même si ce n'est pas invoqué comme tel par les parties appelants au principal3[9] , la Belgique violate non seulement la norme de prudence, telle que définie ci--dessus, mais également une norme contraignante de droit international qui a acquis un contenu suffisamment déterminé.

By virtue of the general principle of law according to which the judge is bound to decide the dispute in accordance with the rule of law applicable to it, he has "*the obligation, while respecting the rights of the defense, to raise ex officio the legal grounds whose application is required by the facts specifically invoked by the parties in support of their claims*" (Cass., March 4, 2013, *Pas.,* I, n°526).

The Court also recalls that the general principle of law relating to respect for the rights of the defense does not require a judge to order the reopening of debates when he bases his decision on elements which the parties could have expected, in view of the course of the debates, to be included in his judgment, and which they were able to contradict (J.-F. VAN DROOGHENBROECK, "Faire l'économie de la contradiction?", *R.C.J.B.,* 2013/2, pp. 203-248), as is the case here.

However, as explained above, Belgium's positive obligations under Articles 2 and 8 of the ECHR have, given the context as defined above, acquired a sufficiently definite content so that their breach alone constitutes a fault within the meaning of Articles 1382 and 1383 of the former Civil Code.

6) Individualizing faults

247. As mentioned above (points 181 and 203), there are obviously differences between each of the Regions and the Federal State.

The Belgian State also stresses that it does not have the power to compel federated entities to work together more effectively. It states that it has put in place the necessary and appropriate structures to ensure effective collaboration between all the entities concerned. According to the Belgian State, the introduction of more integrated climate governance would require a reform of the Constitution, which did not achieve the required majority in 2019. The Belgian State also maintains that there is no obligation to conclude a cooperation agreement on climate matters. It concludes that no fault can be imputed to it (its conclusions on pages 19S to 198).

[3e] The appellants criticize the first judges for having considered that only objectives enshrined in norms of positive international, European and national domestic climate law would be binding, and for not having taken into consideration the possibility of liability on the basis of an error of conduct to be assessed according to the criterion of the normally careful and prudent administrative authority placed in the same conditions (their conclusions, no. 425, p. 170).However, contrary to what the Walloon Region maintains, they do not exclude the possibility that the Court might examine the liability of authorities for failure to comply with legal standards.

However, the Belgian State has not demonstrated that Belgium's federal structure prevented it from basing its climate policy on the thresholds referred to above (-25% and -30% for 2020, -55% for 2030, in relation to 1990), which are defined in relation to a level where there is no longer any margin of appreciation with regard to the future dangers and constraints involved in pursuing a less ambitious emissions reduction threshold. Moreover, the Government Agreement of September 30, 2020 stipulates that the federal government *"will set itself the target of a 55% reduction in GHG emissions by 2030, and will take measures within its sphere of competence to achieve this",* and *"undertakes to adapt its contribution to the National Energy and Climate Plan (PNEC) in this direction by means of an action plan*", At the very least, this demonstrates that, for the future, the Belgian State considers itself capable of pursuing and implementing more ambitious climate governance than in the past.

Neither the Belgian State, nor the Brussels-Capital Region, nor the Flemish Region have demonstrated that their characteristics constitute an obstacle to the definition and pursuit of climate governance that meets the minimum requirements imposed by the standard of care and, moreover, human rights.

It follows that it is not necessary to go beyond the foregoing developments in paragraphs 178 to 182 (concerning the violation of Articles 2 and 8 of the ECHR, which apply here *mutatis mutandis)* to establish the existence of fault committed individually by the Federal State, the Brussels-Capital Region and the Flemish Region. It suffices to note the inadequacy of their ambitions and results.

248. It was also up to the Federal State and the Regions to cooperate effectively to achieve this result.

However, it is a fact that the cooperation required to define effective climate governance is not working properly in Belgium: it is enough to note that it took until 2018 for the previous cooperation agreement, concluded in 2015, to be validated, and that the update of the PNEC 2021-2030, which should have taken place by June 2023, has still not been completed for lack of a cooperation agreement obtained in good time. The Court also refers to the opinions issued in 2014 and 2023 by the country's Strategic Councils (exhibits F.17 and P. 38 of the appellants, above points 48 and 65).

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.

Each party must make a loyal contribution with a view to reaching a cooperation agreement whose outcome should be, at the very least, that defined above in terms of GHG emission reduction thresholds.

Admittedly, the absence of a cooperation agreement or of sufficiently integrated cooperation at national level does not, in itself, allow us to conclude that all the parties called upon to negotiate it have failed to cooperate.

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 (Exhibit 0.14 of the appellants), 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.

As for the Walloon Region, while it may have failed in its obligation to cooperate, which has not been sufficiently demonstrated, it must be acknowledged that this alleged failure has had no impact on the results it has achieved in terms of reducing GHG emissions by 2020 and on the objectives it is pursuing for 2030, and that it has made a useful contribution to the Belgian results achieved for 2020, so that this failure, assuming it has been established, is unrelated to the damage in question.

7) Conclusion

249. The claim, insofar as it relates to a finding of fault on the part of the respondents in respect of the climate policy they have pursued and implemented for the periods 2013-2020 and from 2021 to the present, is well-founded, with the exception of the Walloon Region. The judgment is therefore confirmed insofar as it concerns, for this period and until its delivery, the finding of fault by the Belgian State, the Flemish Region and the Brussels-Capital Region.

Since the Court finds no fault on the part of the Walloon Region, there is no reason to ask the Constitutional Court the preliminary questions it suggested concerning the constitutionality of article 1382 of the former Civil Code.

250. On the other hand, as indicated above, it is not possible at this stage to prejudge the faults that the Belgian State, the Flemish Region and the Brussels-Capital Region will commit, in the future and by 2030, in the context of the climate governance that they will implement and which has yet to be updated in the light of current European objectives, objectives which, given their scientific basis, constitute, in the Court's view, an adequate criterion for assessing whether the respondents have complied with the general duty of care, and even allow international law norms (Articles 2 and 8 of the ECHR) to be given a sufficiently precise content to constitute norms of international law with direct effect imposing a specific course of conduct.

The request, insofar as it seeks to establish that there are serious and unequivocal indications that, in pursuing their climate policy for 2030, the respondents will continue to commit faults, is unfounded.

c) <u>As for the damage</u>

251. The appellants in the main proceedings argue that they are suffering damage that is "*rapidly worsening and crescendoing*" (their conclusions, p. 317). They explain that there is a time lag of some forty years between GHG emissions and the "*full realization of their warming potential*" *(Idem).* They thus distinguish three time slices in the damage caused by global warming

one that "*includes the consequences of the global warming we are observing today*" and was caused by GHG emissions between 1750 *and* 1980, which led to a global warming of 1.1°C,
the second concerns the harmful effects of GHG emissions from 1980 to the present day, which *"will gradually be realized week by week, month by month, over the coming years*" but will not be fully realized until 2050-2060 (although they can no longer be avoided),

- a third tranche relating to GHG emissions produced from now on, which will have an impact in around 40 years' time and could lead, when added to past emissions, to a warming of 3.2 to 4º C in 2100.

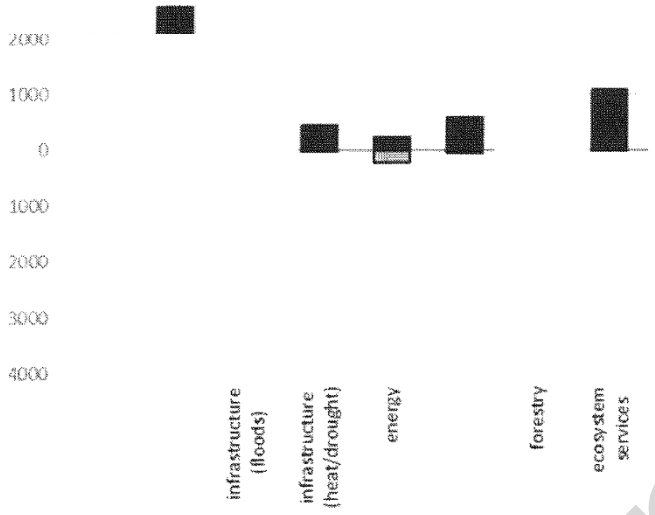
In their view, Belgian citizens *are* "*currently* suffering *the latent and creeping effects of emissions up to 1980, while the effects of emissions between 1980 and 2023 have yet to manifest themselves"* (their conclusions, p. 320). They point out that the areas of daily life affected are the basic physical conditions of daily life (heat), the integrity of the territory in which we live (rising sea levels), health (especially vulnerable people, but also climate anxiety), geopolitical stability and security, food and energy security, mobility, the economy and the equilibrium of financial markets.

The appellants in the main proceedings point out that, among the various people in Appendix A, *'some will experience the entire progressive* reo//sot/on of *the damage over 2100 years, others will not',* specifying that, among them, *'more than 30% are under 30 years of age, more than 43% under 35*', some of whom *are* '*children and adolescents'* (his conclusions, p. 321). And he adds: "*Given the ubiquity and severity of these impacts, it's simply impossible not to be affected" (Idem).*

The appellants in the main proceedings also point to the damage resulting from the "*price of procrastination*", both in terms of individual freedoms and in socio-economic terms.

In terms of freedoms, they point out that the postponement of measures to reduce GHG emissions "*seriously threatens the fundamental rights and freedoms of individuals (…) in that the effects will intensify and the measures to be taken will become more drastic and costly*" (their conclusions, p. 323). In the same vein, they cite the judgment of the German Constitutional Court of March 24, 2021 (*Neubauer* judgment*),* which found that it infringed the rights and freedoms guaranteed by the German Constitution to postpone beyond 2030 the burdens entailed by the restrictions necessary to preserve the climate (Exhibit 0.14 in their file).

252. On the socio-economic front, the appellants in the main proceedings cite a 2020 study by the National Climate Commission, which assesses the cost of climate change in Belgium and identifies costs "*in the areas of health, labor produCtivity, infrastruCture in correlation with flooding and in correlation with drought and heat, energy, agriculture, forestry, ëcosystem services, insurance and cross-border impacts".* They produce the following table in which the estimated economic costs are shown above level 0 and the gains from climate change below this level by sector, compared with current conditions, taking into account the RCP8.5 *(business as usual)* climate scenario*,* for the year 2050 (bars) and for the year 2100 (dots). This would result in total costs of around €9,500 million/year, or around 2% of Belgian GDP, while the gains (milder winters) would amount to €3,000 million/year, or 0.65% of GDP (by way of comparison, the annual budget of the Federal Public Service of Justice in 2019 was €1,950 million).



253. Les parties appelantes au principal dénoncent encore une atteinte prochaine au patrimoine des personnes physiques via les impôts qui seront plus élevés pour prendre les mesures nécessaires (conclusions, pp. 325-326). Selon elles, si « *les parties intimées avaient mené une politique climatique prudente et diligente, avec un niveau d'ambition approprié comme d'autres pays l'ont fait, chacune des personnes physiques à la cause bénéficierait de la possibilité de mesures moins incisives, s'inscrivant dans un éventail d'options plus large, à coûts économiques moindres et à chances de réussite plus élevées* » (leurs conclusions, p. 325). Et de citer l'arrêt rendu par le Hoge Raad des Pays-Bas dans son arrêt *Urgenda* du 20 décembre 2019: « *Chaque émission de GES réduit le budget carbone encore disponible* (…). *Tout report des réductions d'émissions signifie donc que les réductions d'émissions futures devront être de plus en plus importantes pour compenser le report dans le temps et dans l'espace. Cela signifie qu'à chaque report de la réduction des émissions, les mesures d'atténuation à prendre ultérieurement devront, en principe, être de plus en plus intrusives et coûteuses pour atteindre le résultat escompté, et seront également plus risquées* (…) ».

254. The appellants in the main proceedings state that the damage manifests itself differently on Belgian territory, but that it personally affects each of the natural persons involved, regardless of their geographical location. Based on various reports, they summarize the impact as follows

"For Wallonia, reference is made to the deadly floods of summer 2021. For current and future damage, reference is made to urban areas such as the city of Liège, which is prone to flooding and heat waves. In Flanders, a rise in the level of the North Sea has already been observed since 1951. In 2010, the average sea level in Ostend rose by 103 mm, in Nieuwpoort by 115 mm and in Zeebrugge by 133 mm compared to 1970.

These figures correspond to an average rise of 2.6 mm, 2.9 mm and 3.3 mm per year respectively over recent decades. By 2100, sea levels on the Belgian coast are projected to rise by 60 to 90 cm, or even 200 to 300 cm in the most pessimistic scenarios.
Future projections highlight that in Brussels, as a result of concrete development, heatwaves will triple by 2100, doubling in intensity and halving in duration. In Flanders, groundwater reserves will be particularly high due to the high level of soil sealing (16%) in the region. With regard to biodiversity and tourism in Wallonia, the loss of the Fagnes is noteworthy (...)" (their conclusions, n° 839 and 840, p.326).

255. Klimaatzaak asserts that it has suffered moral and personal ecological damage, given its corporate purpose, which concerns the protection of present and future generations against anthropogenic climate change and the loss of biodiversity, as well as the protection of the environment. It "*seeks an injunction to prevent or at least limit the worsening of the damage*" (its conclusions, p. 321).

256. The Belgian State does not directly address the question of the damage claimed by the appellants in the main proceedings: it considers that the claim does not seek to repair existing damage, but only to prevent future damage (its conclusions, p. 144). The Court will return to this question in the chapter on injunctions.

In the same vein, the Brussels-Capital Region considers that the appellants in the main proceedings have not demonstrated that their claims are of such a nature as to make good the damage they have suffered or to prevent such damage (its conclusions, p. 124). Nor does it expand on the nature of this damage.

The Flemish Region contests the fact that the appellants in the main proceedings have suffered personal and actual damage. It considers that the alleged damage is not certain, but rather hypothetical. In its view, the "*alleged health problems have not been proven*", nor has the alleged non-material damage. The Flemish Region considers that, insofar as it has an ambitious climate policy and that this policy will continue to evolve in the years to come, the appellants cannot hold it liable for the damage they allege (its conclusions, pp. 126-128).

The Walloon Region considers that the damage is not certain, personal or sufficiently localized geographically. Like the Belgian State and the Flemish Region, it considers that the action is not aimed at repairing existing damage, but at preventing future damage, which would be uncertain since its occurrence is envisaged only in terms of probability in the IPCC reports (its conclusions, p. 97 ff.).

257. As indicated above (points 126 and 132, admissibility section), the appellants in the main proceedings do not limit their claims to collective environmental damage (i.e. damage to a collective interest caused by a man-made physical change to the environment, over and above any damage to individual interests).

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, which is already being felt, for example, in the budgets of federated entities, which have had to cope with the consequences of climate disruption (notably the destruction of infrastructure following the floods of 2021) or finance the adaptations needed to prevent its effects (the works needed to prevent rising sea levels). Increased spending to cope with climate disruption will put pressure on other aspects of the budget of the federal state and federated entities, and limit funding possibilities for other crucial sectors such as education, justice, health, public transport, etc.

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.

258. As far as Klimaatzaak is concerned, it was explained above in paragraph 127 that it was entitled to claim non-material damage as a result of the damage to the environment.

As indicated above, an environmental association may, at the very least, suffer moral damage as a result of the harm caused to the collective interest in defending the environment.

of which it was formed (C.C., January 21, 2016, no. 7/2016, *Amén.,* 2016, no. 3, p. 194, pt. B.8.1).

The purpose of this association is :

-protecting present and future generations from anthropogenic climate change;
protecting present and future generations from the loss of biodiversity;
environmental protection within the meaning of the law of January 12, 1993 concerning a right of action in environmental matters.

It is a scientific fact that these interests are harmed by the risk of global warming in excess of 1.5°C.

The Court found that Belgian climate governance as carried out to date does not respect the minimum contribution that can be expected from Belgium, in terms of reducing GHG emissions, to meet *this* risk and consequently violates both articles 2 and 8 of the ECHR and articles 1382 and 1383 of the former Civil Code.

This is sufficient to demonstrate the injury to the interests for which Klimaatzaak was set up.

d) As for the causal link

259. The Belgian government points out that the impact "*of GHGs created today on Belgian territory is minimal on a global scale*", so that "*reducing this impact would not in itself solve the problem*" (its conclusions, pp. 153-154).

260. The Brussels-Capital Region disputes any causal link between the faults of which it is accused and the damage claimed by the appellants in the main proceedings (its conclusions, p. 48). It points out that it *is* difficult "to *demonstrate a causal link between an action or abstention of a State in climate matters and specific consequences on the situation or rights of a specific claimant",* since "*questions of liability linked to global warming are characterized by a particularly distant causal link between the fault and the damage",* whereas, for "*liability to be activated, there must be a causal link between a specific fault and specific damage".* According to the Region, the appellants cite numerous reports, none of which establishes that
They do not "formally establish the link between global warming and GHG emissions from the Brussels-Capital Region", nor do they prove "*that if the Brussels-Capital Region had taken such and such measures, there would be no heatwaves, no increase in vector-borne diseases, no floods and no unrest".*

allergy. She5 therefore did not establish any causal link between the fault and the alleged damage" (her conclusions, pp. 53-54).

261. The Flemish Region also contests the causal link, arguing that "*its policy has only a very marginal influence on this global problem"* (its conclusions, p. 129). In her view, "*since* the *Flemish Region's alleged negligence can only have a minimal impact on the climate problem (less than 0.50%), it is doubtful whether the condition relating to the Causal link is met*" (her conclusions, p. 130), even if she admits that "*any person can be held liable for a fault which is a necessary condition for the damage suffered in practice"* and that no distinction "*is made according to the more or less important role played by the fault in the damage*" (her conclusions, p. 122).

262. The Walloon Region also contests any causal link between the alleged breaches and the damage, pointing out that, with or without the necessary measures, it cannot be ruled out that the feared damage will still occur. It stresses that the sources of the damage are worldwide, and that each State taken individually is powerless to cause or prevent the damage, and that the condemnation of certain "responsible parties" to the exclusion of others "responsible" will not allow the damage to be made good, nor will it provide any benefit to the victim (cf. the question referred for a preliminary ruling on page 103 of its conclusions).

263. From the point of view of equivalence of conditions, the fact that the appellants in the main proceedings have not called the Communities into the case, even though some of their competences concern climate policy, and that they have not made "*any attempt to delimit the responsibility of each of the legislators involved"* (Belgian State's submissions, p. 156) is irrelevant. Moreover, the Communities are not concerned by the cooperation agreements concluded to date with the aim of fulfilling Belgium's international obligations to combat global warming.

264. As a reminder, the damage alleged by the appellants in the main proceedings manifests itself chronologically in three successive stages, as follows

a first tranche which includes the consequences of the global warming we are observing today, caused by GHG emissions between 1750 and 1980, which led to a global warming of 1.1°C,
the second concerns the harmful effects of GHG emissions from 1980 to the present day, which will gradually be realized but will not be fully realized until 2050-2060,
a third tranche relates to GHG emissions produced from now on, which will have an impact in around 40 years' time and could lead, when added to past emissions, to a warming of 3.2 to 4º C in 2100.

265. The first stage is not causally linked to the shortcomings or faults identified here: it would have occurred even if the respondents had revised their ambitions upwards in good time, given that, before the 1980s, the measures needed to avoid dangerous global warming were not yet clearly identifiable and quantifiable, and that the technological means to deal with it (notably renewable energies) had not yet been sufficiently developed.

266. Part of the second part of the damage is already present. While it is certain that the quantity of GHGs emitted would have been less without the fault of the respondents, it is not sufficiently certain that the effects of global warming as such, which constitute part of the damage alleged by the appellants in the main proceedings, could have been mitigated if, as early as the second commitment period referred to above (2013-2020), the respondents had raised their ambitions in terms of reducing GHG emissions. Other countries have followed suit and, unfortunately, the effects of global warming are now being felt more intensely and more rapidly than originally anticipated. In this respect, it is at most the loss of a chance to avoid the effects of global warming as they are already appearing in Europe (heatwaves, droughts, floods, etc.) that is causally linked to the shortcomings observed from 2013 onwards. However, it is not necessary for the resolution of the dispute to determine more precisely the percentage of this loss of opportunity (insofar as this is possible).

Among the harmful effects of emissions from 1980 to the present day, the court nonetheless found the following to be causally linked to the faults committed:

- O eco-anxiety, a health problem that has been shown to affect a significant proportion of the population (Exhibit E.22 of the appellants, study by *The Lancet Countdown),*
- o non-material damage resulting from the appellants' awareness of the inadequacy of the means used by the Belgian authorities to protect the interests of future generations,
- o damage to the interests defended by Klimaatzaak.

What's more, the insufficient ambitions of the past continue to have an impact today. At the very least, they are delaying the achievement of the objectives needed at national level to prevent dangerous global warming, in collaboration with other nations.

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 moral damage suffered personally by the appellants in the main proceedings in their individual capacity.

267. The third part of the damage, namely 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 (latest UNEP annual report 2022, Exhibit E.28 of the appellants in the main proceedings).

268. The Court concluded that there was a causal link between the faults it had identified and the damage suffered by the appellants in the main proceedings, which consisted of :

in the phenomenon of eco-anxiety;
in moral prejudice resulting from awareness of the inadequacy of the means implemented by the Belgian authorities to protect the interests of future generations; in the loss of a chance to avoid the effects of global warming as they are already appearing today in Europe (heat waves, droughts, floods, etc.) and as they will appear in the future;

- in the excessive reduction in the residual carbon budget compared with what was required for good climate governance, with the future but certain consequences that this implies;
in undermining the interests defended by Klimaatzaak.

Without the faults committed, the eco-anxiety would have been lower, as would the moral prejudice, the residual carbon budget would not have been dented to the same extent, Klimaatzaak's interests would have been preserved and Belgium would be in a better position to fight effectively, in concert with other nations, against the risk of dangerous global warming.

e) <u>As for the appellants' conduct</u>

269. The Brussels-Capital Region explains that it has, for several years, "*approved numerous ordinances and decrees and approved various strategic plans intended (essentially or incidentally) to reduce GHG emissions*" but that the appellants in the main proceedings "*have never contested these deCisiOn5 (which they claim are insufficient) and refrain from doing so in5 the context of the present action*" (their conclusions, p. 5).

Insofar as this remark should be interpreted as a breach by the appellant paFties in the main action of their obligation to limit their damage, it cannot be accepted: on the one hand, the appellant parties in the main proceedings brought their action in 2015, i.e. only two years after the first period criticized (2013-2020, i.e. the second commitment period) and, on the other hand, it could not be expected of these parties that they would systematically challenge each and every decision adopted by the Brussels-Capital Region (and, more generally, the respondent parties), especially as they call into question Belgian climate policy as a whole.

270. The Flemish Region, for its part, considers that, if the Court finds that there is a causal link between the fault attributed to it and the damage claimed by the appellants in the main proceedings, it should be noted that the latter are also liable: "*Indeed, the appellants themselves also produce GHG emissions. (...) It could therefore be said that, without the actions of each of the appellants, the damage would not have occurred as it did. Responsibility does not lie solely with the defendants".* She concludes that, in this case, *"there can only be shared liability*" (her conclusions, p. 131).

As she points out, however, Aquilian liability presupposes the meeting of three cumulative conditions, namely fault, damage and a causal link, and the "*mere fact that an action causes damage is not sufficient to consider it faulty*" (her conclusions, pp. 121-122). In the present case, however, the Flemish Region does not invoke - and o *fortiori* does not establish - the existence of fault on the part of the appellants in the main proceedings.

D. Functions

1. Applicable principles

a) Injunction and the principle of separation of powers

271. The question of respect for the principle of the separation of powers arises not only at the stage of examining the possible violation of articles 2 and 8 ECHR or articles 1382 and 1383 of the former Civil Code (is the obligation imposed by these provisions sufficiently deteFmined - if necessary taking into account the context as defined above - to enable an individual to denounce its violation in the context of a subjective dispute?) but also, in the event of a positive answer, at the stage of the measures that may be ordered by the judge.

In his conclusions preceding a decision of June 26, 1980, the then Attorney General Venu had already pointed out that the courts of the judiciary "*constitute in the State a Power which is the natural guardian of all subjective rights"* and that the Constitution "*necessarily entrusted them with the mission of ordering the reparation of unlawful infringements of these rights" (Pos.,* 1980, I, p. 1355), so that they "*do not violate the principle of the separation of powers by interfering in the attributions reserved to the Executive when, in order to restore the rights of the victim of the illiCite act of the administrative authority, they order compensation in kind for the damage and prescribe to this authority the measures intended to put an end to the infringement of the victim's rights*" (p. 1356). However, he went on to specify that the judge cannot "*perform acts in place of (the administrative authority) which that authority alone is competent to perform*", so that he can neither annul nor reform administrative acts. On the other hand, the judge may issue an injunction, but this must be individual in nature: "*such an order does not, in itself, infringe the principle of continuity of public service, even when the work ordered relates to State property which the State assigns to a public service".* This principle only precludes measures of forced execution, which does not exclude a penalty payment *"which, although constituting an indirect means of coercion, is not a means of forced execution"* (pp. 1357-1361).

Since then, 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 (Cass., 26 juin 1980, *Pas.,* I, p. 1350 et seq.; Cass. 1er octobre 2007, *Pas.,* I, p. 1676; Cass. 4 septembre 2014, *Pas.,* I, p. 1731). However, this principle prohibits them "from *carrying out, outside this hypothesis, acts of public administration and from reforming or annulling the acts of administrative authorities"* (Cass., September 4, 2014, *Pas.,* I, p. 1731). The measures thus ordered cannot in fact deprive the public authority of the choice of measures to be implemented to achieve the ordered result. In the aforementioned ruling of September 4, 2014, the Cour de cassation thus rightly considered that the contested ruling justified its decision to "order õ lo [plaintiff] to *withdraw from cultivation the disputed parcel belonging to it"* but could not, without disregarding the general legal principle of the separation of powers, order it to give this parcel "*an allocation of meadow, hay meadow, fallow land or green area"* (Cass., September 4, 2014, *Pas.,* I, p. 1731). More recently, it held that "*the judge who, in order to fully restore the rights of an injured party, orders reparation in kind for his loss by prescribing the administration to take measures intended to put an end to the harmful illegality, must indicate the illegality to which these measures are intended to put an end and, without depriving this authority of its authority, must order the administration to take measures intended to put an end to the harmful illegality.*
discretion nor substitute for it, specify their scope in such a way that it cannot give rise to any reasonable doubt for this administration" (Caso., ie£ April 2022, RG n° C.21.0338.F, www.juportal.be). In the opinion preceding this judgment, Advocate General de Koster had stated that, "*although the judgment under appeal was obliged to impose a principal sentence formulated in a sufficiently precise manner insofar as this sentence was accompanied by a penalty payment (...), it could not deprive the claimant of her freedom (...).*

of appreciation as to the choice of the most appropriate measure to ensure compensation in kind for the loss resulting from the plaintiff's fault, on pain of violating the principle of the separation of powers".

The same principles apply, *mutatis mutandis,* to the legislative power.

In the type of litigation submitted to the court, several authors consider that the fact of making an injunction to the executive or even the legislative power does not necessarily constitute an infringement of the principle of separation of powers if, such as the measure to reduce GHG emissions requested by the appellants in the main proceedings, it "*remains general, in the sense of the result to be achieved for the purposes of compliance with a higher standard, without going into a precise and exhaustive indication of the means of achieving it*" (S. VAN DROOGHENBROECK, "Flandria, Anca, Ferrara .... Urgenda? Entre réparation et prévention, de l'indemnisation à l'injonction", 1. 7. 2020/36, p.. 750, which states that such a measure could even, in fundamental rights litigation, be *'dictated by the need to honor the right to effective legal protection guaranteed, inter alia, by Article 13 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union",* and that "*it is not a question of throwing out the principle of the separation of powers in order to satisfy European requirements, but simply, in a conciliatory approach, of adopting the interpretation best able to meet them"). A* number of authors have taken the same line (X. THUNIS, "Dérèglement climatique : y a-t-il un pilote dans l'avion ?", *Amén.,* 2022,
p. 34; M. WUINE, "Analyse du jugement du tribunal de première instance dans l'affaire climat à la lumière des décisions rendues dans 'l'Affaire du siècle' et Urgenda*", J.L.M.B.,* 2022/8, p. 367; see also P. LEFRANC, "het klimaatzaak vonnis: wachten op "de man de bomen plantte"?
", 7.M./î., 2021/4, p. 340; E. DE KEZEL, "De Belgische klimaatzaak: het aansprakelijkheidsrecht als gamechanger?", *7.0.0.,* 2021, p. 216).

The Court also considers - contrary to what was decided in the judgment under appeal - that, given the violations of articles 2 and 8 of the ECHR as well as articles 1382 and 1383 of the former Civil Code, an injunction to remedy this unlawful infringement of individual rights would not, in principle, be contrary to the principle of the separation of powers.

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).

b) Injunction and prohibition to rule by general provision

272. The Brussels-Capital Region also considers that, if the Court were to grant the request made by the appellants in the main proceedings, it would be ruling by way of general provisions, in violation of article 6 of the Judicial Code (its conclusions, p. 113).

273. Article 6 of the Judicial Code stipulates that judges "*may not rule by way of general and regulatory provisions on cases submitted to them*". Inherited from French law (former art. 5 of the Civil Code), which developed in a context of mistrust of judges quite different from the prevailing conception in our legal system, article 6 of the Judicial Code nevertheless finds a foundation in our constitutional law. As P. Martens writes, "*even without having to explain it by a history that is not our own, it is the expression of the separation of powers* (...)" (P. MARTENS, "Que reste-t-il de l'article 6 du Code judiciaire?", in *Le Code judiciaire a 50 ans. Et après? Hommage à E. Krings et M. Storme,* Bruxelles, Larcier, 2018, p. 185). It is therefore first and foremost in the light of this principle that this provision must be interpreted. However, the Court has already noted that the principle of separation of powers does not necessarily preclude the application made to it by the appellants in the main proceedings.

Moreover, the main aim of this provision was to prohibit the judge from legislating, even if it was mainly applied in France and Belgium to sanction decisions that referred to judicial precedents without any further motivation (P. BELLET, "Servitudes et libertés du juge : les articles 4 et 5 du Code civil français", in *Arguments d'autorités et arguments de raison en droit,* G. Haarscher, L. Ingber and R. Vander Elst (eds.), Brussels, Ed. Nemesis, 1988, pp. 153 and 157).

However, in the present case, the appellants' request does not seek the Court's intervention. As one authoritative doctrine points out, a general injunction to impose a reduction in GHG emissions on a State "does *not directly affect the rights and obligations of citizens who are not parties to the dispute, nor does it purport to dictate a precise standard to anyone*" (N. BERNARD, S. VAN DROOGHENBROECK, I. HACHEZ, C. JADOT, A. DAviD, A. PicauE, C. LANGLois and B. GOMES, *op. cit.,* p. 30).

c) Ini nction and respect for the division of powers between the federal State and the Regions

274. Lastly, the respondents point to the problem posed by the fact that environmental matters are divided between them, so that it would be inconceivable to convict them all together without infringing constitutional principles concerning the division of powers.

275. There can be no doubt that, in the context of internal proceedings such as those in the present case, the authorities responsible for a particular climate-related matter must in principle be involved, and that "*in application of the principles of exclusivity of competence*

and autonomy in their exercise (...) no one may be required in fine to do more or anything other than what falls within 'his' share of responsibility, as determined by the rules dividing competence" (N. BERNARD, S. VAN DROOGHENBROECK, 1. HACHEZ, Û . JADOT, A. DAVID, A. PICQUÉ, C. LANGLois and B. GOMES, *Op. cit.* p. 34). These authors consider, however, that "(a)s *long as it does not go into the precise identification of the actions to be taken, a general injunction to act, addressed to all authorities (federal and federated) holding competences potentially relevant to achieving the prescribed result*" does *not "seem reprehensible in terms of the canons of Belgian federalism*", a global injunction can "*be satisfied by identifying all the authorities which, in terms of competences, are in a position to act to achieve the desired result*", leaving it to them "subsequently to *determine the actions to be taken*" *(Idem).*

The Court also considers that an award against all the respondent parties is conceivable, but that constitutional principles concerning the division of powers require that these parties be given the opportunity to determine how the award should be shared. In other words, an order *in Solidum,* even if it were possible, in the case of an injunction and/or reparation in kind and not an order for the payment of a sum, is not conceivable from a constitutional point of view (and is no longer requested by the appellants in the main proceedings): the award as envisaged here could therefore only consist of a single result to be achieved collectively by the entities to which the injunction is addressed, these being called upon to negotiate and determine themselves, within the limits of their competences, the share that each would invest in achieving the overall objective, as well as the means and measures to be implemented to achieve it.

Indeed, the definition of a minimum threshold only makes sense at national level, and only this level is relevant to the obligations of the Belgian State. As for the latter, while there is no doubt that its powers are limited with regard to the territory of the Regions, its levers are not non-existent: it has already put in place the structures necessary for the smooth collaboration of all the entities concerned, and can put in place policies natuFe to promote results (as confirmed by the decisions of the Council of Ministers of April 2, 2021 and October 8, 2021, referred to in points 216 and 217 of its conclusions).

276. The issue is further complicated by the fact that, as the Walloon Region has committed neither a fault within the meaning of Articles 1382 and 1383 of the former Civil Code, engaging its liability, nor a breach of Articles 2 and 8 of the ECHR, the injunction would not be addressed to the latter but only to the Belgian State, the Flemish Region and the Brussels-Capital Region. However, the territory of the Belgian State includes that of the Walloon Region, and the results at national level will necessarily be determined by the Walloon results. However, the foregoing developments have shown that, to date, the Walloon Region has done more than "its share" in reducing GHG emissions by 2020, and has committed itself to doing its share by 2030, so that an injunction concerning the entire national territory should, in fact, be of such a nature as to facilitate the task of the condemned parties. However, it goes without saying that, if the situation were to change, this would be a factor to be taken into account in monitoring compliance by the parties concerned.

the Belgian State, the Flemish Region and the Brussels-Capital Region, of the injunction in question. In any event, and as indicated above, each entity would only be condemned to the extent of its share in the effort to be made.

d) Ini°nction as a sanction for violation of articles 2 and 8 of the ECHR

277. As indicated above (point 146), 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, which must make it possible to put an end to the violation of the other rights enshrined in the Convention, and ideally to prevent it, but also to obtain compensation for the damage caused by the violation. Article 9.4 of the Aarhus Convention also stipulates that judicial proceedings must provide adequate and effective remedies, including injunctive relief where appropriate.

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.

Moreover, these international requirements are compatible with our legal system, as can be seen from the reasons given in point 271 above.

e) Ini nction, as reparation in kind for damage causally linked to the faults committed and as a preventive measure against the occurrence of future damage.

1) Introduction

278. The Court has noted above that the conditions for civil liability under articles 1382 and 1383 of the former Civil Code have been met in the case of the Belgian State, the Flemish Region and the Brussels-Capital Region, which have committed faults in the climate governance carried out to date, faults that are causally linked to damage that has already occurred, as described in points 257, 258 and 268 above.

Some of this damage (so-called dangerous global warming and excessive damage to the residual carbon budget) has not yet occurred, however, and the risk of it happening can be limited if Belgium, like other countries, does its part to combat global warming.

Hence the question of the legal justification for the measure sought by the appellants in relation to the principles applicable in tort law.

2) The distinction between reparation in kind, cessation of unlawful action and preventive action

279. The Belgian State insists on the need to make a clear distinction between reparation in kind for damage, which may take the form of an injunction but which implies that the damage for which reparation is claimed has already occurred, and a prohibition or injunction whose sole purpose is to prevent damage that has not yet occurred. In his view, the claim made by the appellants in the main proceedings is not a claim for reparation, but rather a preventive action (his conclusions, pp. 144-145). However, such a claim would have to be anchored in a legal regime that has not even been enshrined yet, namely article 6.42 of the proposed law on Book 6 "Extra-contractual liability" *(Doc. Ch.,* sess. 2022-2023, n°55-3231/001), which imposes a triple condition not met in the present case, namely the violation of a norm imposing a specific behavior, a certain future damage causally linked to the unlawfulness and an adequacy between the injunction and the unlawfulness (his conclusions, p. 189 et seq.).

280. In the same vein, the Brussels-Capital Region considers that, "*as the law currently stands, a judge is not empowered to issue injunctions such as those sought by the appellants on the basis of articles JJ82* and *1383 of the Civil Code*" (its conclusions, p. 124).

281. For the past ten years, legal writers have been calling for a distinction to be made, following the lead of French doctrine (see in particular G. VINEY, "Réparation en nature, cessation de l'illicite et mesures purees préventives"). VINEY, "Réparation en nature, cessation de l'illicite et mesures purement préventives
", in *Le dommage et sa réparation dans la responsabilité contractuelle et extracontractuelle,* B. Dubuisson and P. Jourdain (dir.), Bruxelles, Bruylant, 2015, pp. 7-58), between claims for reparation in kind for damage already sustained, claims aimed at putting an end to an unlawful situation at the origin of damage already sustained or in the process of being sustained, and claims for purely preventive measures (Th. LÉONARD, "Faute extra-contractuelle et juridictions commerciales: principes et plaidoyer pour un retour à une vision unitaire de la faute", *R.D.C.-T.B.H.,* 2013/10, p. 954-955; P. WÉRY, "Les condamnations non pécuniaires dans le contentieux de la responsabilité", in *Le dommage et sa réparation dans la responsabilité contractuelle et extracontractuelle, op. cit.*
59 et seq. See also F. DELPÉRÉE, "La prévention et la réparation des dommages causés par l'administration", note sous Cass. 26 juin 1980, *R.C.J.B.,* 1983, p. 192; H. BOCKEN, "Herstel in natura en rechtelijk beyel of verbod", in *Liber amicorum Jan Ronse,* Brussels, E.Story-Scientia, 1986, p. 500 ff).

Compensation in kind for damage is at the heart of the indemnity function of extra-contractual civil liability. For some, it is even the only civil "sanction" resulting from the application of articles 1382 and 1383 of the former Civil Code (Th. LÉONARD, "Faute extra- contractuelle et juridictions commerciales: principes et plaidoyer pour un retour à une vision unitaire de la faute", *op. cit.,* p. 954). More recently, X. Thunis confirms that, "*(e)ven today, reparation and compensation of victims remains the main function of civil liability, even if the function of prevention is emerging in recent texts" (X.* THUNIS, ' Dérèglement climatique : y a-t-il un pilote dans l'avion ? ", *Amën.,* 2022, p. 32).

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The possibility for a person to ask a judge for an injunction to stop wrongful conduct that has caused him or her damage is not specific to civil liability. It is a prerogative that belongs to any person holding a subjective right, who can bring an action for cessation of the infringement of his right, even in the absence of fault (Th. LÉONARD, *Conflits entre droits subjectifs, libertés civiles et intérêts légitimes. Un modèle de résolution basë sur l'opposabilité et la responsabilité civile,* Bruxelles, Larcier, 2005, 1995, pp. 380-381 and 483). When applying articles 1382 and 1383 of the former Civil Code, however, the three conditions of liability (fault, damage and causal link) must be met for the plaintiff to be able to invoke the violation of t h e subjective right he claims to derive from these provisions.

The question of the possibility of bringing an action to prevent future damage is more complex. The authors of the aforementioned proposal for a law on Book 6 "Extra-contractual liability" consider that such an action is not currently permitted by our legal system. In their view, "*the theoretical basis for justifying*" an injunction to prevent future damage "*is insufficient*" if "*one of the conditions of liability, namely the existence of damage, is not fulfilled"* and "the *mere fear of future damage does not negate present prejudice" (Doc. Ch.,* sess. 2022-2023, n°55-3231/001, p. 162). Article 18 of the Judicial Code, which authorizes legal action "*when it has been instituted, even on a declaratory basis, with a view to preventing the violation of a right that is seriously threatened*", does not offer a solution either, since it is "*a simple procedural rule which leaves unchanged the application of the rules of substantive law in matters of liability" (Idem;* in the same vein, see. J.-L. FAGNART, "Introduction générale au droit de la responsabilité", Vol. 1, *Responsabilités. Traitë théorique et pratique,* Brussels, Ed. Kluwer, 1999, p. 17, no. 28: "*La prévention des dommages est étrangère à la responsabilité en droit positif").*

However, this position is not unanimous. Professor Wéry points out that, under article 144 of the Constitution, judges are competent "*both to prevent and to remedy an unlawful injury to a civil right*" (P. WÉRY, "Les condamnations non pécuniaires dans le contentieux de la responsabilité", *op. cit.,* p. 86, citing Cass., October 21 1982, *Pas.* 1983, I, p. 51; see also Cass., June 2 2006, *Pas. 2006,* liv. S-6, 1302). This author is also less categorical about the fact that article 18 of the Code judiciaire could not be mobilized (P. WÉRY, "Les condamnations non pécuniaires dans le contentieux de la responsabilité", *op. cit.,* p. 86: "*Comment, par ailleurs, ne ne pas faire aussi écho aux propos du Procureur général E. Krings qui rappelle l'existence de l'article 18 du Code judiciaire . . .)").*

The reservation expressed by the authors of the Ioi proposal seems all the more unjustified given that, as indicated above, reparable damage also extends to future damage when the latter is certain (which they also admit, since article 6.27 of the proposal confirms that *"future damage is reparable if it* is *the certain consequence of a present impairment of a legally protected interest"*\.

The Court concludes 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.

certain (in the aforementioned sense). In addition, it follows from the foregoing (see above, in particular paragraph 246) that the conditions set out in draft article 6.42 are met in the case in point, provided that the standards violated require sufficiently specific conduct and that the misconduct committed has a causal link with certain future damage.

2. Application of the principles to the case in point

282. Contrary to what the Belgian State maintains in particular (its conclusions in point 402, p. 225), the injunction to take sufficient and appropriate measures to achieve a certain objective of reducing GHG emissions from Belgian territory is perfectly 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.

283. In view of the moral damage and anxiety resulting from the realization that the authorities are not doing enough to face up to a danger that threatens future generations, in view of the moral damage resulting from the infringement of the interests defended by Klimaatzaak, there is no more adequate remedy than the establishment of climate governance that pursues, right now, an objective in line with what prudence and the preservation of human rights require.

More broadly and for the future, to limit the risk of dangerous global warming and prevent excessive damage to the residual carbon budget, there is no more appropriate measure than reducing GHG emissions from Belgian territory.

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.

Enjoining the Belgian State and the Flemish and Brussels Regions to reduce their GHG emissions by 2030 is both the most adequate reparation in kind for damage already done and the prevention of future damage, which is recognized (cf. above) as being admissible in law if it results with sufficient certainty from faults already committed.

284. In the case in point, the Court has already ruled that the GHG emissions reduction rate requested by the appellants in the main proceedings, i.e. -61% by 2030, was not in a position to

determine that this was the only scenario compatible with Belgium's positive obligations under articles 2 and 8 of the ECHR or articles 1382 and 1383 of the former Civil Code (see points 189 to 195 above).

For the reasons set out above in paragraphs 198-202, it must be considered that a - 5S% reduction in GHG emissions compared to 1990 by 2030 constitutes this minimum threshold, below which Belgium cannot go without violating both Articles 2 and 8 of the ECHR and the general duty of care.

In this respect, the court has already ruled that it was not sufficiently established that this objective would have been insufficient to prevent the consequences of dangerous global warming.

285. 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.

286. As the Court's injunction is limited to a GHG emissions reduction target that has already been validated at European level, and whose relevance is not contested by the respondents, this injunction can in no way constitute an infringement of the principle of the separation of powers.

As indicated above, however, the injunction cannot be assimilated to a condemnation *in solidum;* the respondent parties (with the exception of the Walloon Region) are not required to achieve the - 55% target by 2030 on their own, but rather to do their part, within the limits of their respective competences, to ensure that this target can be achieved. It will therefore be up to these parties, in consultation with the Walloon Region, and in particular within the framework of the NECPs to be presented to the European Commission, to determine how and in what way this effort should be borne (the Court notes in this respect that a cooperation agreement was, at the time of taking the matter under advisement, in the process of being negotiated with regard to the requirements set by the European Union), in order to achieve the result they are enjoined to reach by 2030.

In addition, the Flemish Region, the Belgian State and the Brussels-Capital Region are invited to submit to the Court, on the occasion of the debates to be held on the question of the astreinte (point on

which the Court reserves the right to rule on (see below), the latest updated NECP, which should reflect Belgium's target of a 55% reduction in GHG emissions by 2030 compared with 1990, making it possible to individualize the efforts made and to be made by the Federal State, the Flemish Region and the Brussels-Capital Region to achieve this target.

E. On-call duty and document production requests

287. In their summary submissions, the appellants in the main proceedings seek an order that the respondents to pay Klimaatzaak a penalty of €1,000,000 per month of delay in reaching the target imposed for 2030, with effect from August [1], 2031. They request to this end, on the one hand, to order the respondents to communicate to Klimaatzaak the GHG emissions report for 2030 on the same day that it is communicated to the European Commission in 2031 and, on the other hand, to order them to pay Klimaatzaak a penalty of €10,000 per day of delay in communicating the GHG emissions report for 2030.

288. Lastly, the appellants also request that it be recorded that Klimaatzaak undertakes to fully allocate the astreintes due in accordance with its corporate purpose.

1. As for the request for astreintes ancillary to the injunction

289. The Belgian State is opposed to this, arguing that, on the one hand, "*the separation of powers prevents the judiciary from imposing, without respect for the democratic principle, a precise objeCtive on the legiSlCitive power, even if the latter has committed a fault within the meaning of article 1382 of the Civil Code*" and that, on the other hand, *the attainment of GHG emission reduction targets therefore also depends in part on the effective compliance of those to whom the standards are addressed*", as the State has limited powers of action in this area, with the result that "*the principal obligation is not sufficiently precise to allow the addition of a penalty payment"* (pp. 245 and 246).

290. In its conclusions, the Brussels-Capital Region concurs with the Belgian State's argument, considering that any order that might be made against it in respect of the measures requested by the appellants in the main proceedings "*could not be formulated in terms5 sufficiently precise for their infringement to be ascertained and give rise to the payment of a penalty payment"* (p. 135).

291. For its part, the Flemish Region, which is also contesting this claim, insists that the astreinte does not constitute a claim for damages. In this respect, it likens the appellants' claim in the main proceedings to a "*disguised request for compensation*". She develops that "*the appellants are asking, de facto, in the alternative, for financial compensation in the event that reparation in natura is not possible*" (p. 135 of her summary conclusions). Finally, joining the Belgian State on this issue, the Flemish Region asserts that "*the claim is so broad that it is impossible to couple it with a penalty payment"* (p. 137).

The Flemish Region also considers that the rules governing the competence, internal organization and operation of the authorities make it impossible for it to execute the main request, "as *the penalty as an incentive* loses(s) *all its usefulness*" (p. 137).

292. Finally, the Walloon Region considers that it would be inconceivable for a party to be condemned to a penalty payment because of the behavior of a third party. In the alternative, it asks the Court to question the Constitutional Court as follows: "*Does article 1385bis of the Judicial Code, interpreted as meaning that an order to pay astreintes together, in solidum or in some other way, may be made against debtors irrespective of their power and competence, as defined by the Constitution and the laws enacted to implement it, violate articles 10, 11 and 134 of the Constitution in that it treats debtors in incomparable situations in the same way?* "(his conclusions, pp.115-116).

293. In terms of principles, the Court points out that the common law on astreinte is based on articles 1385b/s to 1385oct/es of the French Judicial Code, which were inserted by the Ioi of January 31, 1980 approving the Benelux Convention of November 26, 1973 providing a uniform law relating to astreinte.

An astreinte is a pecuniary sentence, accessory to a "principal" sentence (art. 1385bis of the French Judicial Code), intended to encourage the party to whom it is addressed to comply with the principal sentence, because it is due only in the event of non-compliance (C. DE BOE, "Le contentieux de l'astreinte", in *Droit des Saisies et voies d'exécution,* A. Gillet (ed.), Bruxelles, Larcier, 2022, p. 123). Thus, an astreinte is not a means of enforcing judgments, but a means of pressure designed to compel a recalcitrant litigant (including public authorities - see below) to effectively and promptly enforce a judicial decision (J. DE LEVAL, "Observations sur l'astreinte", J.£., 1980, pp. 242 -245).

The astreinte may be ordered by a subsequent decision (Cass., May 11, 2010, *Pas.,* \, n°1466), and the imposition of an astreinte is an option for the judge, not an obligation (Cass., May 4, 2016, R.G. n°P.16.0011.F, www.juportal.be). The judge is free to determine the terms and conditions according to the circumstances of the case (Cass., April 26, 2012, *Pas.,* n°917).

The judge may set the astreinte at a single sum, or at a fixed sum per unit of time or per contravention. In the latter two cases, the judge may also determine an amount beyond which the astreinte order will cease to have effect (art. 1385ter of the French Judicial Code).

Having set out these principles, the Court also recalls that courts and tribunals may, at the request of a party invoking a subjective right, impose on public authorities the measures necessary to prevent, halt or remedy a violation of that right, where appropriate under penalty of a fine. However, the judge must be careful not to infringe the political freedom of the said authority (A. WIRTGEN, "Civiele acties tegen de Staat: een verstoorde balans in de trias politica?", *T.P.R.,* 2022, all. 1-2, 131-207, n°68). This possibility had already been put forward by Attorney General Velu,

then Advocate General, in his aforementioned conclusions, in which he specified that the principle of continuity of public service, which does not prohibit an injunction to be issued against the public authorities, only precluded measures of forced execution, which therefore did not exclude a penalty payment "*which, although constituting an indirect method of coercion, is not analyzed as a means of forced execution" (Pas.,* 1980, I, p. 1361).

In its aforementioned ruling of September 4, 2014, the Cour de cassation thus rightly considered that the contested ruling justified its decision to "order *the* [plaintiff], *under penalty of a fine of two hundred and fifty euros per day of delay, to withdraw from cultivation the disputed parcel belonging to it*" (Cass., September 4, 2014, *Pas.,* I, p. 1731). More recently, Advocate General de Koster had stated that, "*while the judgment under appeal was obliged to pronounce a principal condemnation formulated in a sufficiently precise manner insofar as this condemnation was accompanied by a fine (...), it could not deprive the plaintiff of her freedom of appreciation as to the choice of the most appropriate measure to ensure reparation in kind of the loss resulting from the fault of the plaintiff under penalty of violating the principle of separation of powers"* (Caen., 1er April 2022, RG n° C.21.0338.F, www.|uportal.be).

In other words, the measures ordered by the court may be subject to a penalty as long as they do not deprive the public authority of the choice of measures to be implemented to achieve the ordered result.

294. It is therefore in vain that the Belgian State asserts in its conclusions that the principle of the separation of powers prevents the Court in the present case from granting, where appropriate, the penalty payment requested in favor of Klimaatzaak in order to accompany the injunction made to it, as well as to the Brussels-Capital Region and the Flemish Region, to take the appropriate measures so that Belgium achieves in 2030 the objective of reducing GHG emissions by 55% compared to 1990.

295. As decided above (points 282-286), in the case of the Belgian State, the Brussels-Capital Region and the Flemish Region, the injunction is based both on the violation of articles 2 and 8 of the ECHR and on the remedy for present damage or the prevention of future damage on the basis of articles 1382 and 1383 of the former Civil Code. In this respect, as the Court has already pointed out, imposing such a reduction in GHG emissions in order to prevent global warming does not deprive the public authority of its discretion in the matter, as long as the law imposes, as *a minimum,* the pursuit of this objective, below which there is no margin of discretion. On the other hand, the public authority retains full discretion both as regards the pursuit of a possibly more ambitious objective, and as regards the determination of the measures likely to enable its implementation. *Mutatis mutandis,* attaching a penalty to the injunction does not deprive the public authorities of the choice of a more ambitious objective or of the measures to be implemented to achieve the ordered result.

296. In addition, and contrary to what the respondents maintain, the undertaking by the Belgian State, the Brussels-Capital Region and the Flemish Region to do their part to achieve the aforementioned objective of -55% GHG emissions by 2030 is sufficiently precise to be able to be

accompanied, where appropriate, by a penalty payment. This is particularly the case when the parties have agreed on the share to be borne by each of them.

Nor, contrary to what the Flemish Region maintains, does the division of environmental powers between the Belgian State and the aforementioned federated entities affect the precision of the principal sentence, to which a penalty payment may be added, since the Court does not require the respondents to exercise powers other than their own.

Lastly, it is futile to try to see how the request made by the appellants in the main proceedings to attach a penalty to the aforementioned injunction constitutes a disguised claim for damages, as the Flemish Region maintains.

In fact, the request for an astreinte made by the appellants in the main proceedings corresponds to the nature of an astreinte, which, if granted, is to constitute a means of putting pressure on the debtor so that he complies with the sentence imposed on him. The Flemish Region thus confuses the injunction issued by the Court with the astreinte requested, which is coercive in nature and does not seek to remedy any prejudice on the part of the appellants in the main proceedings.

It must therefore be concluded from the foregoing that there is no legal impediment to attaching a penalty, if necessary, to the injunction better described above, issued by the Court to the Belgian State, the Brussels-Capital Region and the Flemish Region. Since the Court does not issue any injunction to the Walloon Region, there is no reason to question the Constitutional Court along the lines suggested by the Walloon Region, as to the constitutionality of article 1385bls of the Judicial Code. In any event, the Court does not accept the interpretation on the constitutionality of which the Walloon Region is questioning.

However, the Court considers that it does not have sufficient evidence at this stage to conclude, with the requisite degree of certainty, that the effectiveness of the condemnation requires the immediate pronouncement of an astreinte, nor that there are *ipso facto* grounds for presuming that the respondents would not voluntarily comply with the injunction issued by the Court.

Accordingly, the Court considers that it is appropriate to reserve judgment on the question of the astreintes (penalty payments) intended to accompany the main judgment, pending communication by the most diligent party :

- official GHG emission figures for Belgium, the Brussels-Capital Region and the Flemish Region, for the years 2022 to 2024, official figures that will be contained in the annual GHG emission inventories that Belgium will be responsible for transmitting to the European Union pursuant to Article 26 of EU Regulation 2018/1999 of December 11, 2018, and
- of the latest PNEC updated at that time, enabling individual efforts to be made by each entity.

Updating the data to 2024 should thus enable the court to verify the need to impose a penalty on one or other of the parties to ensure the effectiveness of the sentence.

The case will be rescheduled before the court on the initiative of the most diligent party.

2. As for the request to produce a document under penalty of a fine

297. It follows from the conclusions of the appellants in the main proceedings that it is only for the purpose of verifying compliance with the principal injunction and the discharge of the fine of €1,000,000 per month of delay which they wish to attach to it that they also request that the respondents be ordered to communicate to Klimaatzaak, under penalty of a fine of €10,000 per day of delay, the GHG emissions report for 2030.

298. The respondents object. In this respect, the Belgian State argues pius specifically that the report requested by Klimaatzaak "*is, in any event, public and published*" and that the need to attach a penalty to any order has not been demonstrated (p. 246), while the Brussels-Capital Region refers *"to the provisions of regional law relating to the publication of environmental information, which provides for ad hoc remedies"* (p. 135).

299. Insofar as the Court reserves to rule, until the data relating to the years 2022 to 2024 are communicated to it, on the penalty payments linked to the main injunction, it will also reserve to rule on Klimaatzaak's request for the production, subject to a penalty payment, of the GHG emissions report relating to 2030, insofar as this request is intrinsically linked to the first penalty payment request, the fate of which is reserved.

F. Costs

300. The Walloon Region' s main appeal still has a purpose with regard to the parties intervening in the appeal proceedings, whom it has named as respondents, insofar as their intervention is inadmissible. It is without object insofar as it is directed against the parties listed in Appendix A to the judgment under appeal, who have not lodged an appeal. Its cross-appeal is well-founded in that the judgment under appeal is reversed insofar as it found fault on its part and a violation of articles 2 and 8 of the ECHR, so that it can be considered as the successful party within the meaning of article 1022 of the French Judicial Code.

The Walloon Region seeks an order that the appellants in the main proceedings, Mrs De Vriendt and the other persons whose names appear in Annex B attached to the application to intervene dated January 10, 2022, pay the costs.

In principle, however, protective intervention does not give rise to an award of costs, as long as the intervener is not unsuccessful or unsuccessful within the meaning of articles 1017 and 1018.

1022 of the Judicial Code (H. BOULARBAH, "Les frais et les dépens, spécialement l'indemnité de procédure", in *Actualités en droit judiciaire,* H. Boularbah and F. Georges (dir.), Bruxelles, Larcier, 2013, pp. 369-370; P. KNAEPEN, "PdS d'indemnité de procédure pour l'intervenant conservatoire", *J.T.,* 2015/8, n° 6594, pp. 205-206 and ref. cited). The mere fact that the intervening parties have been summoned by the Walloon Region is not sufficient to make them parties who succumb vis-à-vis the Walloon Region.

It follows that the parties appealing in the main proceedings by appeal 2022/AR/891 may be considered as the unsuccessful parties against the Walloon Region and ordered to bear its costs. However, in the absence of a statement, these costs will be reserved.

The fee for the scheduling of the petition due upon registration of case RG n°2022/AR/891 will be borne by the Walloon Region (10%) and by the appellants (90%).

301. As far as the relationship between the appellants in the main proceedings and the other respondents is concerned, it is true that the court is reserving judgment in part, since it is not at this stage ruling on the question of penalty payments.

This question alone, however, is not sufficient to prevent the Court from awarding costs, since it is clear from the foregoing that, whatever is decided with regard to the astreintes, these other respondents are unsuccessful, even if only partially, in relation to the appellants in the main proceedings.

Despite the considerable stakes involved in this dispute, it is not a case that can be assessed in monetary terms.

The appellants in the main proceedings ask the court to order *"the Parties5 respondents to pay all costs and expenses of both proceedings, including the procedural indemnity of €1,320 + €1,680, i.e. €3,000, indexed if necessary".*

For the first instance, the basic amount for cases not assessable in money at the date of delivery of the judgment under review was €1,560.

On appeal, the basic amount is €1,800.

The registration fee due upon registration of the case RG n°2022/AR/737 will be borne by the Belgian State, its main appeal being devoid of purpose (except insofar as it is directed against the intervening parties but without creating a link of proceedings with these parties) or unfounded.

The registration fee due at the time of registration of case RG n°2021/AR/1589 will be borne by the Belgian State, the Flemish Region and the Brussels-Capital Region if they are unsuccessful.

BY THESE REASONS,

THE COURT, ruling contradictorily,

Having regard to article 24 of the law of June 15, 1935 on the use of languages in judicial matters,

Acknowledges the parties' procedural agreement, more fully described above, regarding the identification of the parties to the appeal;

Gives notice to the original plaintiffs of the death of [redacted]

Insofar as their death has been duly notified to the court, declares that the proceedings are extinguished as far as they are concerned in the absence of any resumption of proceedings before the close of the debates;

Acknowledges that the Belgian State has waived its warranty claim;

Declares the motion to intervene filed on January 10, 2022

inadmissible; Declares the appeals admissible;

Declares the appeals of the Belgian State and the Walloon Region to be without object, insofar as they are directed against the parties referred to in Appendix A, as attached to the judgment under appeal of June 17, 2021, and which are not included in Appendix A attached to the request for appeal;

Declares the main appeal of the Belgian State, and the cross-appeals of the Flemish Region and the Brussels-Capital Region unfounded, except insofar as the judgment under appeal found a violation of Articles 2 and 8 of the ECHR to the detriment of ASBL Klimaatzaak;

Declares the main appeal of the Walloon Region well-founded insofar as follows;

Declares the main appeal filed by Klimaatzaak and the parties referred to in Appendix A as attached to the appeal petition and updated on September 8, 2023 admissible and well-founded to the following extent;

Confirms the judgment under appeal insofar as it

declared admissible the original action and the voluntary intervention of the parties listed in Appendix B of the judgment;
ruled that the dispute fell within the jurisdiction of the courts and tribunals;
ruled that, in pursuing their climate policy, the Belgian State, the Brussels-Capital Region and the Flemish Region did not behave as normally prudent and diligent authorities, which constitutes a fault within the meaning of article 1382 (extended by the Court to article 1383) of the former Civil Code and

infringe the fundamental rights of the individual plaintiffs, and more specifically articles 2 and 8 of the ECHR, by failing to take all necessary measures to prevent the effects of climate change on their lives and privacy;

Reversing and ruling for the remainder;

Also ruling on the new request made by the appellants in the main proceedings;

Declares it admissible and well-founded to the following extent:

Declares the original claim and the new claim unfounded insofar as they are directed against the Walloon Region and partially founded insofar as they are directed against the other respondents in the main proceedings;

Finds that, with regard to the climate policy they have pursued and implemented since the judgment under appeal was handed down and up to the present day, 2020 and 2030, the Belgian State, the Flemish Region and the Brussels-Capital Region have violated Articles 2 and 8 of the ECHR and have committed faults within the meaning of Articles 1382 and 1383 of the former Civil Code;

By way of reparation for the harmful consequences of the breaches found, to prevent the occurrence of future and certain damage, part of which has already occurred, and to ensure the effectiveness of the protection of Articles 2 and 8 of the ECHR, orders the Belgian State, the Flemish Region and the Brussels-Capital Region to take, after consultation with the Walloon Region, the appropriate measures to do their part in reducing the overall volume of annual GHG emissions from Belgian territory by at least -55% in 2030 compared with 1990;

Holds that it is up to the respondents condemned by the present judgment to determine, in consultation with the Walloon Region, the share to be borne by each of them;

Declares the application unfounded, insofar as its purpose is to establish that there are serious and unequivocal indications that, in pursuing their climate policy for 2030, the respondents will continue to violate articles 2 and 8 of the ECHR and to commit faults within the meaning of articles 1382 and 1383 of the former Civil Code;

Suspend judgment on the request for penalty payments intended to ensure compliance with the above injunction issued to the Belgian State, the Flemish Region and the Brussels-Capital Region, pending communication by the most diligent party of official figures for Belgium's GHG emissions for the years 2022 to 2024, which official figures will be contained in particular in the annual inventories of GHG emissions that it will be up to the Belgian State, the Flemish Region and the Brussels-Capital Region to produce.

Belgium to transmit to the European Union pursuant to Article 26 of Regulation EU 2018/1999 of December 11, 2018 and the latest updated PNEC at that time for the years 2021-2030;

Also postpones ruling on Klimaatzaak's request to produce, under penalty of a fine, the GHG emissions report for the year 2030;

Invites the more diligent party to have the case rescheduled before this Court, as soon as the GHG emissions figures for the years 2022 to 2024 and the latest updated PNEC available at that time are obtained, with a view to ruling on the request for penalty payments and on the request for production, under penalty payment, of the GHG emissions report for the year 2030;

Orders the appellants in the main proceedings to pay the costs of the Walloon Region, reserved in the absence of a statement ;

Orders the Belgian State, the Flemish Region and the Brussels-Capital Region to pay the costs of the appellants in the main proceedings, liquidated on their behalf at €395.36 (summons costs) + €1,560 (IP 1st inst.) + €1,800 (IP appeal);

Order the Walloon Region to pay the sum of €40 to SPF Finances (RG no. 2022/AR/891), as the fee for scheduling the appeal, in accordance with
article 269 of the code of registration, mortgage and court fees,

Orders the appellants in the principal action to pay the sum of €360 to SPF Finances (RG n°2022/AR/891), as a fee for scheduling the appeal request, in accordance with article 269^2 , §1^e ' of the Code of Registration, Mortgage and Court Fees.

Condemns the Belgian State to pay the sum of €400 to SPF Finances (RG n°2022/AR/737), as a fee for scheduling the appeal, in accordance with article 269^2 , §1er of the Code of registration, mortgage and court fees,

Orders the Belgian State, the Flemish Region and the Brussels-Capital Region to pay the sum of €400 to SPF Finances (RG no. 2021/AR/1589), by way of fees for scheduling the appeal, in accordance with article 2692, §1 of the Code of registration, mortgage and court fees,

Thus judged and delivered at the public civil hearing of the 2nd"^{e} chamber F of the Brussels Court of Appeal, on November 30, 2023.

Where were present and seated

R. Coirbay, Chairman,
L. Coenjaerts, consultant,
J. Van Meerbeeck, consultant,

C. Willaumez, clerk.

C. Willaumez J. Vari Meerbeeck

L. Coenjaerts R. Coirbay