

**Third Party Intervention submitted by ClientEarth**

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**I. Introduction**

1. This case raises important questions of how to interpret the European Convention on Human Rights (“the Convention”) in light of States’ environmental obligations. It is the first case before the European Court of Human Rights (“the Court”) that brings to the fore the link between the rights guaranteed by the Convention and the legal procedures for authorising fossil fuel extraction projects and assessing their climate impacts. Effective environmental assessment is critical to avoiding negative environmental impacts, and by extension, impacts on human rights. The urgency of the climate crisis only underscores the importance of ensuring that environmental assessment fully supports the energy transition, including in a way that protects rights.<sup>1</sup>
2. ClientEarth’s submission addresses the following matters: (i) the content of the legal duty to conduct environmental assessment; (ii) the consequences of failing to assess environmental impacts at the strategic level, including in the specific context of the climate impacts of fossil fuel extraction projects; and (iii) the link between environmental assessment and human rights, with special reference to fossil fuel extraction projects and their climate impacts.
3. At the outset of this submission, we note that where the Court’s Question 3(d) of the Questions to the Parties in this case refers to environmental assessment “*prior to the granting of the licences*”, we refer to the Strategic Environmental Assessment (SEA) process that applies at that stage.<sup>2</sup> Where the Court refers to environmental assessment taking place “*at any later stages of the administrative process relating to production*”, we refer to the Environmental Impact Assessment (EIA) process that applies at that stage. We use the term ‘environmental assessment’ to cover both SEA and EIA.<sup>3</sup>
4. As we explain in more detail below, assessing the full climate impacts of new oil and gas licences – including their downstream emissions impacts – at the SEA stage is necessary

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<sup>1</sup> Already in 2013 the EU Commission explained that: “*It is clear that ‘business as usual’ will neither achieve our climate change nor our biodiversity objectives. The time has come to make sure that we employ all available tools to tackle these global threats. Environmental Impact Assessments (EIAs) and Strategic Environmental Assessments (SEAs) are legally required and systematic tools, and as such they are well suited to systematically tackle the problems.*” EU Commission, *Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment*, 2013, p. 3 (<https://ec.europa.eu/environment/eia/pdf/SEA%20Guidance.pdf>).

<sup>2</sup> As noted in the Norwegian Supreme Court’s judgment in the present matter: “*The SEA Directive has been incorporated into Norwegian law, including in sections 6 a–6 c of the Petroleum Regulations ...*” (§185).

<sup>3</sup> While this terminology and categorisation are commonly used when referring to environmental assessments at the strategic and project levels, they are by no means universal across all countries and regions. See UN Environment Programme (UNEP), *Assessing Environmental Impacts – A Global Review of Legislation*, 2018, p. 3 (<https://www.unep.org/resources/assessment/assessing-environmental-impacts-global-review-legislation>).

to ensure that the overall assessment of environmental impacts is effective. In this context, 'downstream' emissions refer to the greenhouse gas emissions<sup>4</sup> from the use of fossil fuels, including their combustion. These emissions are fossil fuels' main climate impact, typically exceeding the emissions from 'upstream' extraction processes by a substantial degree and as much as 900%.<sup>5</sup>

## **II. The content of the legal duty to conduct environmental assessment**

5. The legal duty to conduct an environmental assessment is firmly established in EU / EEA law and other international legal codes.
6. In the EU and EEA, the EIA Directive<sup>6</sup> (in force since 1985) and the SEA Directive<sup>7</sup> (in force since 2001) impose binding environmental assessment procedures on all States. These Directives have also served as model approaches internationally for mandating environmental assessments, both at the level of projects and of strategic plans and programmes, together with other early frameworks for environmental assessment that have been developed in other regions.<sup>8</sup>
7. The Espoo Convention on Environmental Impact Assessment in a Transboundary Context of 1991 also requires State Parties to assess adverse transboundary environmental impacts of major projects and to notify and consult affected States.<sup>9</sup> Its 2003 Protocol on Strategic Environmental Assessment – to which 32 Council of Europe Member States and the European Union are Parties – requires States to evaluate the environmental consequences of their official draft plans and programmes by conducting SEA, in addition to the existing project-related EIA requirements under the Convention.<sup>10</sup>

### ***Key differences between SEA and EIA and inherent limitations in EIA***

8. By reference to the EU / EEA framework, there are a number of key differences between SEA and EIA, including that:

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<sup>4</sup> The primary greenhouse gases are carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulphur hexafluoride (SF<sub>6</sub>). See Annex A to the 1997 Kyoto Protocol to the United Nations Framework Convention on Climate Change.

<sup>5</sup> See, e.g., <https://www.lse.ac.uk/granthaminstitute/news/emissions-targets-in-the-oil-and-gas-sector-how-do-they-stack-up/> (“... downstream emissions from burning fossil fuels are the major source of emissions from oil and gas, accounting for roughly 70 to 90 per cent of lifecycle emissions from oil products and 60 to 85 per cent of those from natural gas.”).

<sup>6</sup> Directive 2011/92/EU, as amended by Directive 2014/52/EU.

<sup>7</sup> Directive 2001/42/EC.

<sup>8</sup> See UNEP, *Assessing Environmental Impacts – A Global Review of Legislation*, 2018, pp 10-19.

<sup>9</sup> The importance of considering environmental protection had previously been recorded in the Rio Declaration of 1992 (Article 4), while Article 17 specifically set out that: “*Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.*” In the specific context of climate change, the UN Framework Convention on Climate Change of 1992 also provided in Article 4(1)(f) that: “[a]ll Parties ... shall ... [t]ake climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions ...”.

<sup>10</sup> International treaties relating to public participation in environmental decision-making also expressly require public participation in the preparation of plans and programmes – see e.g. Article 7 of the Aarhus Convention of 1998, and Article 7(3) of the Escazú Agreement of 2018.

- a. SEA takes place at the early programme- or plan-making phase, when all strategic and policy options and alternatives are open;<sup>11</sup> by contrast, EIA takes place at the point of consenting individual projects and once a plan or programme has been adopted.
  - b. The responsibility for conducting SEA and preparing the environmental report lies with the state and the relevant public authority,<sup>12</sup> whereas the developer is responsible for preparing the environmental report under EIA law.<sup>13</sup>
  - c. In contrast to the EIA regime, in SEA the consultation of environmental authorities is required at the screening stage for determining whether an SEA is required,<sup>14</sup> and the scope of the environmental report must also be consulted on.<sup>15</sup>
9. These key differences are common across the different environmental assessment frameworks in place in many regions. It is in this context that the UN Environment Programme (UNEP) identified a number of “*inherent*” limitations in respect of EIA as part of their 2018 global study. These included that EIAs typically:

*“ React to development proposals rather than anticipate them, so they cannot steer development away from environmentally sensitive sites;*

*• Are financed by the project proponent, and thus are often steered in favour of the project and not the environment;*

*• Often happen after a decision has already been made, and thus are unlikely to change the course of the investment planned (no real assessment of alternatives);*

*• Do not adequately consider the cumulative impacts caused by several projects or even by one project’s subcomponents or ancillary developments.”<sup>16</sup>*

10. As discussed below, SEA is designed to address these deficiencies and gaps in the EIA process.

### ***The self-standing and complementary obligations to conduct SEA and EIA***

11. That the obligations to conduct SEA and EIA are both self-standing and complementary is a fundamental and long-standing principle of EU environmental assessment law, confirmed in Article 11(1) of the SEA Directive<sup>17</sup> and upheld on a number of occasions by the Court of

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<sup>11</sup> See Article 4(1) of the SEA Directive.

<sup>12</sup> See Article 3(4)-(5) of the SEA Directive.

<sup>13</sup> See Article 5 of the EIA Directive.

<sup>14</sup> See Article 3(6) of the SEA Directive.

<sup>15</sup> See Article 5(4) of the SEA Directive.

<sup>16</sup> UNEP, *Assessing Environmental Impacts – A Global Review of Legislation*, 2018, p. 4.

<sup>17</sup> Article 11(1): “An environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337/EEC and to any other Community law requirements.”

Justice of the European Union (CJEU).<sup>18</sup> For example, in *Thybaut and Others* the CJEU explained that:

*“... although Article 5(3) of the SEA Directive provides for the possibility of using relevant information obtained at other levels of decision-making or through other EU legislation, Article 11(1) of that directive specifies that an environmental assessment carried out under that directive is to be without prejudice to any requirements under the EIA Directive. Furthermore, an assessment of the effects on the environment carried out under the EIA Directive cannot lead to an exemption from the obligation to carry out the environmental assessment required by the SEA Directive for the purposes of addressing the environmental aspects particular to the SEA Directive.”<sup>19</sup>*

12. The essential function of SEA in strengthening the overall environmental assessment process – in addition to the existing requirements for project-level assessment – is also explained in the Recitals to the SEA Directive:<sup>20</sup>

*“(4) Environmental assessment is an important tool for integrating environmental considerations into the preparation and adoption of certain plans and programmes which are likely to have significant effects on the environment in the Member States, because it ensures that such effects of implementing plans and programmes are taken into account during their preparation and before their adoption.*

*(5) The adoption of environmental assessment procedures at the planning and programming level should benefit undertakings by providing a more consistent framework in which to operate by the inclusion of the relevant environmental information into decision making. The inclusion of a wider set of factors in decision making should contribute to more sustainable and effective solutions.” (emphasis added)*

13. A failure to comply with the SEA Directive requires national authorities to remedy the breach in full, including where necessary by annulling or suspending the plan or programme in question.<sup>21</sup>

14. Outside of the EU / EEA, the self-standing nature of SEA and EIA obligations was addressed in a recent decision of the Argentine Federal Court relating to offshore oil and

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<sup>18</sup> *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401, §64; *Verdi Ambiente e Società*, C-305/18, ECLI:EU:C:2019:384, §56; *Inter-Environnement Bruxelles and Others*, C-671/16, ECLI:EU:C:2018:403, §65.

<sup>19</sup> *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401, §§63-64.

<sup>20</sup> See also the Recitals to the SEA Protocol to the Espoo Convention: “Recognizing that strategic environmental assessment should have an important role in the preparation and adoption of plans, programmes, and, to the extent appropriate, policies and legislation, and that the wider application of the principles of environmental impact assessment to plans, programmes, policies and legislation will further strengthen the systematic analysis of their significant environmental effects”.

<sup>21</sup> See *A and Others*, C-24/19, ECLI:EU:C:2020:503, §83: “It follows that the competent national authorities, including national courts hearing an action against an instrument of national law adopted in breach of EU law, are therefore under an obligation to take all the necessary measures, within the sphere of their competence, to remedy the failure to carry out an environmental assessment. That may, for a ‘plan’ or ‘programme’ adopted in breach of the obligation to carry out an environmental assessment, consist, for example, in adopting measures to suspend or annul that plan or programme ... or in revoking or suspending consent already granted, in order to carry out such an assessment ....”.

gas exploration, which found that a failure to conduct SEA made proceeding with the proposed activities unlawful:

*“According to the definition in the ‘Guide for the Preparation of a Strategic Environmental Assessment’ of the Ministry of Environment and Sustainable Development ... SEA is ‘a systematic, intergovernmental and participatory process that promotes environmental quality and compliance with the objectives and goals of sustainable development in government planning processes (policies, plans and programs), in such a way that can influence decisions and related projects early’ ... It is important to note that SEA does not replace the Environmental Impact Assessment (EIA) procedure, rather it complements it.”<sup>22</sup> (emphasis added)*

### **III. The consequences of failing to assess environmental impacts at the strategic level, including in the specific context of the climate impacts of fossil fuel extraction projects**

15. Failure to assess a significant environmental impact – including the downstream emissions impacts relating to oil and gas extraction – through SEA risks undermining the overall effectiveness of the environmental assessment in relation to a proposed activity. There are three key reasons for this:
16. First, to ensure that environmental assessment can influence policy-making, it is crucial that all significant environmental impacts are assessed and considered at the strategic level before options are narrowed and alternatives reduced.
17. In this context, the United Nations Economic Commission for Europe (UNECE) has described the benefits of assessing impacts at the SEA level as follows:

*“Compared to an [EIA] of an individual project, SEA intervenes much earlier in the decision-making process. This allows SEA to prevent irreversible effects and costly mistakes due to bad planning. SEA also applies to a level of planning and programme development that sets the framework for future projects subject to EIA and potentially for many other actions that may have an impact on the environment. The potential for environmental gain is much higher with SEA than with EIA – developing a more sustainable transport policy rather than simply minimizing the environmental impact of building a road, for example.”<sup>23</sup>*

18. The CJEU has also emphasised the importance of SEA in affecting policy choices before these are narrowed and decided. For example, in *Inter-Environnement Bruxelles and Others* the CJEU held that:

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<sup>22</sup> *Godoy, Ruben Oscar v Estado Nacional* (58/2022), 11 February 2022 (unofficial translation). ([http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2022/20220211\\_FMP-105202\\_order-1.pdf](http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2022/20220211_FMP-105202_order-1.pdf)).

<sup>23</sup> UNECE, *Protocol on Strategic Environmental Assessment – Facts and Benefits*, 2016, p. 6 ([https://unece.org/DAM/env/eia/Publications/2016/Protocol\\_on\\_SEA/1609217\\_UNECE\\_HR.pdf](https://unece.org/DAM/env/eia/Publications/2016/Protocol_on_SEA/1609217_UNECE_HR.pdf)). See also EU Commission, *Guidance on Integrating Climate Change and Biodiversity into Strategic Environmental Assessment*, 2013, pp 37, 42: “SEA should be used as an opportunity to address the key issues of climate change and biodiversity at an early stage, when many options are still open ... An important function of SEAs is to assess the consistency and coherence between the proposed [plan / programme] and the relevant policy objectives and targets for biodiversity protection and climate change.”

*“It should be borne in mind that the fundamental objective of the SEA Directive is to ensure that ‘plans and programmes’ which are likely to have significant effects on the environment are subject to an environmental assessment when they are prepared and prior to their adoption ... In that regard, it is apparent from Article 6(2) of that directive that the environmental assessment is supposed to be carried out as soon as possible so that its conclusions may still have an influence on any potential decision-making. Indeed, it is at that stage that the various alternatives may be analysed and strategic choices may be made.”<sup>24</sup>*

19. Indeed, this point was highlighted in the minority judgment of the Norwegian Supreme Court in the present case before the Court:

*“Article 5(2) SEA Directive provides no basis for postponing the consideration of important aspects of the environmental effects, as the estimates become more certain and detailed at a later stage. That would be incompatible with the SEA Directive’s objective. I reiterate that the strategic choices are made at this early stage.” (§271)*

20. Secondly, a failure to assess an environmental impact at the strategic level through SEA will also undermine the possibility of effective cumulative impact assessment.

21. In this context, SEA guidance produced by the Irish Environmental Protection Agency explains that:

*“Although cumulative impacts can be considered in EIAs of individual projects, the strategic plan-making level – which by definition considers issues at a larger geographic and time scale than project planning – has the most effective and potentially creative opportunities to identify, avoid and mitigate cumulative effects. [Cumulative Effects Assessment] in SEA can set a framework for impact assessment and mitigation at the project level.”<sup>25</sup>*

22. The guidance goes on to emphasise that *“climate change is the ultimate cumulative effect, nationally and internationally. Thresholds for greenhouse gas emissions are already being exceeded.”<sup>26</sup>*

23. The key function of SEA in assessing cumulative impacts was also described in the recent Argentine Federal Court decision cited above, again in the specific context of offshore oil and gas exploration:

*“Among the benefits and reasons for implementing an SEA are ‘improving the quality of policies, plans and programmes, since it enables different concurrent effects on the same territorial and temporal scale to be addressed early’. In*

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<sup>24</sup> C-671/16, ECLI:EU:C:2018:403, §§62 and 63. See also *Thybaut and Others*, C-160/17, ECLI:EU:C:2018:401, §§61 and 62; *A and Others*, C-24/19, ECLI:EU:C:2020:503, §46.

<sup>25</sup> Irish Environmental Protection Agency, *Good Practice Guidance on Cumulative Effects Assessment in Strategic Environmental Assessment*, January 2020, p. 5 (<https://www.epa.ie/publications/monitoring--assessment/assessment/strategic-environmental-assessment/EPA-Good-Practice-Guidelines-SEA.pdf>).

<sup>26</sup> *Ibid*, p. 8.

*addition, it 'provides a better understanding of the indirect, cumulative and synergistic impacts of different undertakings that could make up the plan in question, anticipating the development of adequate management measures' ... Considering the scope of the anticipated works and their territorial scale ... SEA appears an ideal instrument for assessing the possible cumulative impacts that in principle would not be sufficiently addressed in the EIA procedure."<sup>27</sup> (emphasis added)*

24. The Arctic Council's Offshore Oil and Gas Guidelines – endorsed by Norway as a Council member – support the use of SEAs in the development of oil and gas resources, and also emphasise its important role in assessing cumulative impacts:

*"The use of SEA is recommended on a regional basis to determine the potential environmental impacts of human activity including opening areas for oil and gas. ... One important component of the SEA process is the analysis and tracking of cumulative impacts on a regional basis. This information in turn should be used to adjust policies, and development, accordingly."*<sup>28</sup>

25. This important benefit of SEA has also been emphasised in academic commentary – again, including in the specific context of oil and gas exploration – with Doelle et al explaining that SEAs must complement project-specific environmental assessments as those *"are not well suited to dealing with a consideration of alternatives, cumulative effects and broader policy issues"*.<sup>29</sup>

26. Thirdly, to be effective and not risk being misleading, SEA must take into account all significant environmental impacts. This includes assessing all combustion emissions impacts relating to the downstream use of the oil and gas to be extracted by a plan or programme. As noted above, greenhouse gas emissions from the use of fossil fuels typically exceed the emissions from extraction processes by a substantial degree (as much as 900%). If an SEA assesses only a limited category of emissions related to the plan or programme, it will provide a partial and likely significantly understated assessment of its environmental effects.

27. That the assessment of downstream emissions impacts in offshore oil and gas SEA is feasible and effective is demonstrated by such assessments having been carried out by other national authorities and mandated by courts.

28. For example, the US Bureau of Ocean Energy Management's 2016 SEA in respect of its Oil and Gas Leasing Program 2017-2022 considered such emissions:

*"In addition to the direct emissions from ... oil and gas operations ... [the Bureau] has evaluated [greenhouse gas] emissions covering the lifecycle of ... oil and gas production and consumption. This includes both the 'downstream' combustion and onshore processing of oil and gas products as*

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<sup>27</sup> *Godoy, Ruben Oscar v Estado Nacional* (58/2022, 11 February 2022) (unofficial translation).

<sup>28</sup> Arctic Council, *Arctic Offshore Oil and Gas Guidelines*, 2009, p. 17.

<sup>29</sup> Doelle et al, *Using Strategic Environmental Assessments to Guide Oil and Gas Exploration Decisions: Applying Lessons Learned from Atlantic Canada to the Beaufort Sea*, RECIEL 22(1), 2013, p. 103.

well as the ‘upstream’ emissions from offshore exploration, development, and production.”<sup>30</sup>

29. However, while this assessment did quantify the projected impact on foreign oil consumption in terms of barrels of oil, it excluded this aspect from its emissions calculations. This approach was subsequently found to be unlawful by the United States District Court for the District of Columbia in a decision regarding a later lease sale. The Court held that this “entirely failed to consider an important aspect of the problem”.<sup>31</sup>
30. In line with the CJEU’s approach to remedies noted above, the Court granted the “standard remedy” of vacatur, annulling the lease sale decision and any actions taken based on it.<sup>32</sup>

#### **IV. The link between environmental assessment and human rights, with special reference to fossil fuel extraction projects and their climate impacts**

31. The Court has not yet had an opportunity to examine the implications for Convention rights of the climate impacts of fossil fuel extraction projects. However, there are standards and principles that have already been developed in the Court’s case law, and by other courts and human rights bodies, that are highly relevant to cases where the applicants argue that such implications exist.

#### ***Relevant standards for the applicability of Articles 2 and 8 of the Convention***

32. The Court has confirmed on numerous occasions that certain positive obligations of states apply in the context of “dangerous industrial activities”.<sup>33</sup> The Court has not further defined this category of activities, but the concept appears to cover a wide range of industrial activities. We submit that fossil fuel extraction projects plainly constitute “dangerous industrial activities”, including due to their severe climate impacts.<sup>34</sup> These impacts result from the carbon dioxide and other greenhouse gases emitted when the extracted fossil fuels are burnt (and in the extraction process itself), and from the release of methane (a particularly potent greenhouse gas) during extraction and supply processes.
33. The Court’s case law in the area of protection from “natural disasters” is also relevant.<sup>35</sup> There is international scientific consensus that climate change increases the incidence of

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<sup>30</sup> Bureau of Ocean Energy Management, *Outer Continental Shelf Oil and Gas Leasing Programme 2017-2022 – Final Programmatic Environmental Impact Statement*, November 2016, p. 4-6 ([https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/fpeis\\_volume1.pdf](https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/fpeis_volume1.pdf)).

<sup>31</sup> *Friends of the Earth et al v Debra Haaland*, 21-2317 (RC), p. 31 ([https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1\\_21-cv-02317/pdf/USCOURTS-dcd-1\\_21-cv-02317-3.pdf](https://www.govinfo.gov/content/pkg/USCOURTS-dcd-1_21-cv-02317/pdf/USCOURTS-dcd-1_21-cv-02317-3.pdf)). See also the *Willow* and *Liberty* cases cited in *Friends of the Earth* at pp 24ff.

<sup>32</sup> *Friends of the Earth et al v Debra Haaland*, 21-2317 (RC), p. 67.

<sup>33</sup> See e.g. *Öneryıldız v Turkey*, [GC], 2004, §71.

<sup>34</sup> In this context, the UN Special Rapporteur on Human Rights and the Environment has made the following recommendations to developed States: “Prohibiting further exploration for additional fossil fuels, since not all existing reserves can be burned while still meeting the commitments of the Paris Agreement; ... Prohibiting the expansion of the most polluting and environmentally destructive types of fossil fuel extraction, including oil and gas produced from hydraulic fracturing (fracking), oil sands, the Arctic or ultra-deepwater.” United Nations, *Report of the Special Rapporteur on Human rights and the Environment on a safe climate*, A/74/161, 15 July 2019, §78 (<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/216/42/PDF/N1921642.pdf?OpenElement>).

<sup>35</sup> See e.g. *Budayeva and Others v Russia*, 2008, §§137 and 142.

extreme weather and natural disasters, such as drought, wildfires and floods.<sup>36</sup> These disasters have caused death, illness, food and water scarcity in Europe and worldwide.

34. Further, with respect to Article 8, the Court does not require an actual harm or even threat to health to have occurred.<sup>37</sup> In some cases, a “*likelihood of exposure to an environmental threat*” has been sufficient.<sup>38</sup> In other cases even the mere existence of a “*potential risk*” has triggered the applicability of the Convention rights.<sup>39</sup>
35. Finally, the Court must as far as possible interpret the Convention in harmony with other rules of international law of which it forms part.<sup>40</sup> In this regard, the well-established international environmental principle of intergenerational equity is highly relevant to the current case. This principle requires that present development needs should not be met at the cost of the ability of future generations to meet their own needs.<sup>41</sup> Because greenhouse gases accumulate and can persist for thousands of years, future generations – including today’s young people – will suffer disproportionately both from past and current emissions.<sup>42</sup> This has also resulted in the well-documented emergence of climate change anxiety in children and young people, which presents a further dimension of intergenerational inequity.<sup>43</sup> The Court must take into account all of these inevitable effects on future generations, including today’s young people, when assessing the existence of risk for the purposes of applicability of Articles 2 and 8 of the Convention.
36. Other courts are increasingly invoking the principle of intergenerational equity in similar contexts to the present case. For example, the New South Wales Land and Environment Court in Australia has found that the failure to assess downstream greenhouse gas emissions from the use and combustion of fossil fuels to be contrary to the principle of intergenerational equity:

“... it is apparent that there is a failure to take the principle of intergenerational equity into account ... if the major component of [greenhouse gas emissions] which results from the use of the coal, namely [downstream combustion] emissions, is not required to be assessed.”<sup>44</sup>

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<sup>36</sup> IPCC, *Sixth Assessment Report – Working Group II Summary for Policymakers*, February 2022, SPM.B.1 ([https://report.ipcc.ch/ar6wg2/pdf/IPCC\\_AR6\\_WGII\\_SummaryForPolicymakers.pdf](https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf)).

<sup>37</sup> *Brândușe v. Romania*, 2006, §67.

<sup>38</sup> *Dzemyuk v Ukraine*, 2014, §§82-84.

<sup>39</sup> For example, in *Hardy and Maile v UK*, the Court found Article 8 applicable because the potential risks posed by liquefied natural gas terminals were such as to establish a sufficiently close link with the applicants’ private lives (§§191-192).

<sup>40</sup> *Saadi v. the United Kingdom* [GC], 2008, §62.

<sup>41</sup> Developed in 1972 in the Stockholm Declaration (see Principle 1), the principle of intergenerational equity is now part of many international treaties and instruments, including the United Nations Framework Convention on Climate Change (Article 3.1), the 2015 Paris Agreement (preamble), the Rio Declaration on Environment and Development (Principle 3).

<sup>42</sup> Inman, M., *Carbon Is Forever*, *Nature Climate Change* 1, 156–158, 2008 (<https://www.nature.com/articles/climate.2008.122>), see also US Environmental Protection Agency, <https://www.epa.gov/climate-indicators/greenhouse-gases>.

<sup>43</sup> Hickman, C. et al., *Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey*, *The Lancet* 5 (12), 2021 ([https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196\(21\)00278-3/fulltext](https://www.thelancet.com/journals/lanplh/article/PIIS2542-5196(21)00278-3/fulltext)).

<sup>44</sup> *Gray v Minister for Planning and Others* [2006] NSWLEC 720, §126 (<http://climatecasechart.com/climate-change-litigation/non-us-case/gray-v-minister-for-planning/>).

37. Climate change is already having severe impacts, and without preventive action today, these impacts will continue to intensify in the future to “cataclysmic” levels.<sup>45</sup> As the IPCC’s recent Sixth Assessment Report concluded:

*“The cumulative scientific evidence is unequivocal: Climate change is a threat to human well-being and planetary health. Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all. (very high confidence)”<sup>46</sup>*

38. In conclusion, for today’s young people, these risks are clearly so real, serious and immediate as to be capable of forming a “sufficiently close link” with the rights under Articles 2 and 8 of the Convention.

### **Relevant obligations under the Convention with respect to environmental assessments**

39. In the context of dangerous industrial activities, the Court considers States’ decision-making processes, and in particular whether the State has conducted “appropriate investigations and studies so that the effects of activities that might damage the environment and infringe individuals’ rights may be predicted and evaluated in advance and a fair balance may accordingly be struck between the various conflicting interests at stake.”<sup>47</sup>

40. In particular, the crucial importance of environmental assessments has been underscored in many cases,<sup>48</sup> and the Court has taken into account whether these environmental assessments have been full, thorough and implemented in a timely way.<sup>49</sup>

41. The requirements for timely, full and thorough environmental assessments are also relevant to another well-established positive obligation: the duty to inform the public about the environmental risks to allow them to assess the danger to which they are exposed.<sup>50</sup> Given the severe climate risks, major fossil fuel projects must meet these requirements, including through full compliance with the applicable regulations such as the SEA Directive.<sup>51</sup>

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<sup>45</sup> See, e.g., *Report of the Special Rapporteur*, A/74/161, §26: “Climate change is having a major impact on a wide range of human rights today, and could have a cataclysmic impact in the future unless ambitious actions are undertaken immediately. Among the human rights being threatened and violated are the rights to life, health, food, water and sanitation, a healthy environment, an adequate standard of living, housing, property, self-determination, development and culture. Addressing climate change raises issues of justice and equity, both between and within nations and generations.”

<sup>46</sup> IPCC, *Sixth Assessment Report – Working Group II Summary for Policymakers*, SPM.D.5.3.

<sup>47</sup> *Giacomelli v Italy*, 2006, §83; *Hatton and Others v the UK*, [GC], 2003, §128.

<sup>48</sup> See e.g. *Giacomelli* §§94-95, *Tătar v Romania*, 2009, §112, *Taskin and Others v Turkey*, 2004, §120.

<sup>49</sup> *Kapa and Others v Poland*, 2021, §158, *Flamenbaum and Others v. France*, 2012, § 156, *Giacomelli* §§86 and 92-94. Of particular relevance to the present case, the Court has held that delayed implementation of environmental assessments can deprive them of useful effect in *Giacomelli* §§87-89 and 92-94, *Dubetska and Others v Ukraine*, 2011, §§143-144, and *Taskin*, §§120-124.

<sup>50</sup> *Giacomelli*, §83.

<sup>51</sup> See, also, *Aristimuño Mendizabal v France*, 2006, §79. In the context of SEA, see also European Social Committee, *Marangopoulos Foundation for Human Rights v Greece*, 2006, §122. In the context of intergenerational equity, see also the New South Wales Land and Environment Court’s judgment in *Gray* cited above, §126.