Summons

"*A SUD et al. vs Italy* "

Civil Court of Rome

2021

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Invertiamo il processo

INDEX

FOREWORD

0. With the present action, the plaintiffs are suing the Italian State to obtain compliance, within the prescribed time limits and in the prescribed manner, with its **positive obligations** to combat climate change.

1. The exhaustive and full knowledge of the factual and legal elements constituting the reasons for the claim, the evaluation of the evidence in the file, presuppose the consideration of the **climate problems**. Therefore, they are illustrated first, also with regard to their impact on the facts of human life (**Chapter I**).

2. Following this illustration, we acknowledge the serious and worrying global **climate emergency** condition, ascertained by the world scientific community and declared by the EU, highlighting the key elements of urgency (**Chapter II**).

3. For the same reason, we also proceed to represent the specific **emergency condition** of the **Italian territory**, which can be summarized with the formula of climatic *hot spot*, because the Italian State must take it into account in its decisions and because it is fully aware of it (**Chap. III**).

4. The State's obligations, now aggravated by the planetary climate emergency and the Italian emergency condition, are provided for first and foremost by several sources operating in the **multilevel Euro-Union legal system**: **l. no. 65/1994** ratifying and implementing the 1992 United Nations Framework Convention on Climate Change (hereinafter UNFCCC); **l. no. 204/2016** ratifying and implementing the 2015 Paris Climate Agreement (hereinafter Paris Agreement); **European law**, both original and secondary, which includes and integrates the UNFCCC and Paris Agreement; **additional related or supplementary sources**, such as the *Reports* of the "*Intergovernmental Panel on Climate Change*" (hereinafter IPCC) and the decisions and declarations of organs and bodies of which Italy is a member. State obligations also derive from the **Constitution** (articles 2, 3 c.2, 9, 10 c.1, 11, 32, 33, c.1/c.6 and 117 c.1) and from the European **Convention on Human Rights** (hereinafter ECHR) (articles 2, 8, 14) (**Chap. IV**).

5. These sources define **state duties** to protect the climate system, directed at ending the steady rise in temperature, and pursuing and maintaining climate stability,

contribute to halting the degenerative effects of the climate emergency, thus making effective, in the present and in the future, the essential contents of the most fundamental rights of the human person, preventing their violation (**Chap. V**).

6. In fact, the persistent (permanent) violation of the ways and times of the state duties of protection is suitable to found, *ratione loci*, the **climatic responsibility of** the defendant Italian State, which can be traced back to the cases as per **articles 2043 Civil Code** or **2051 Civil Code, as well as articles 1173 and 1218 Civil Code.** as well as **articles 1173** and **1218 civil code**. (**Chap. VI**).

IN FACT

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I. CLIMATE ISSUES

ROOTEDNESS IN THE LAWS OF NATURE

I.1 The climate of the planet has always been in constant change, with significant fluctuations in global average temperatures that have always occurred over thousands of years. The history of planet Earth is characterized by the alternation of periods with temperatures (even) higher than the current ones and others of glaciation; this happened, however, because of natural evolutions that lasted thousands of years. The current warming, on the other hand, occurs with an unprecedented rapidity never recorded before and, above all, does not depend on the natural variability of the planet's climate system, but is a consequence of human activity.

This increase in temperature is a very serious problem, because it is happening too quickly for living beings to adapt to it and is causing extreme weather events to increase dramatically.

I.2 Global warming is caused - due to a linear and direct causality - by the anthropogenic emissions of some gases that alter the composition of the **atmosphere**, which consists of a mixture of gases that, by retaining a portion of heat, ensures the stability of the temperature on the planet.

I.3. The phenomenon of heat retention is referred to as the '**greenhouse effect**', while the gases which permit it are referred to as '**greenhouse gases**'.

I.4 The **official list** of greenhouse gases has been formalized both by the **Kyoto Protocol** of **1997**, ratified and made enforceable in Italy with l. n.120/2002, and by **Annex I** to **EU Regulation n.2013/525**. There are **six in** all: carbon dioxide (CO_2), the most widespread; methane CH4); nitrous oxide (N2O); hydrofluorocarbons (HFC); perfluorocarbons (PFC), sulphur hexafloride (SF6).

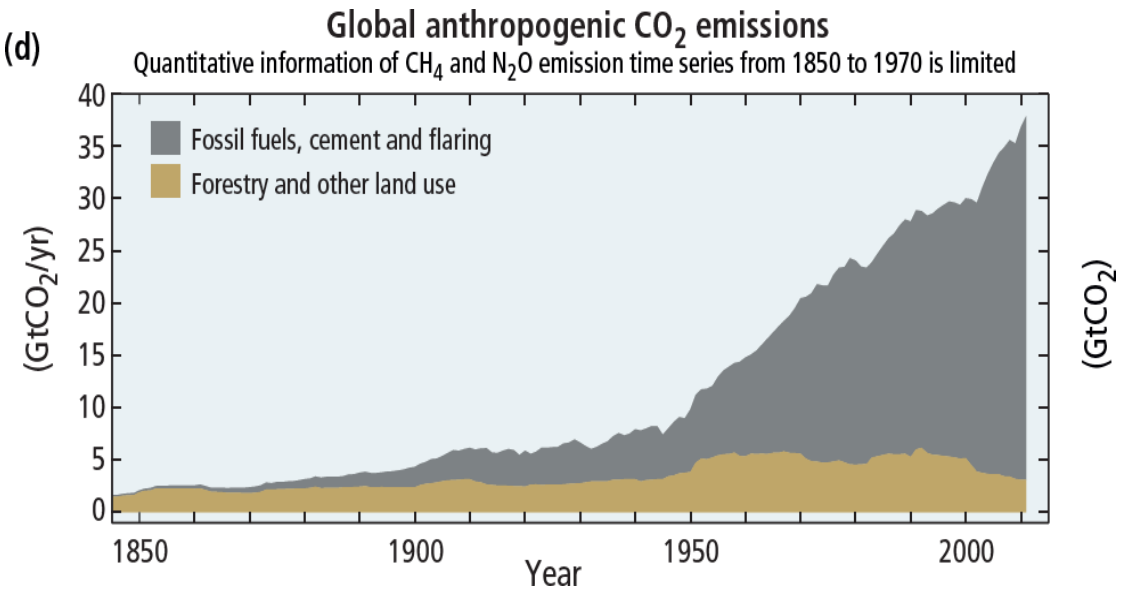
I.5 The contribution of each gas to the greenhouse effect is determined by its **radiative forcing** (i.e., its ability to maintain the input of heat into the Earth system) and its residence time and therefore concentration inside the Earth system.

I.6 The ***Global Warming Potential*** (GWP) index describes this contribution. It is calculated in relation to CO_2 (carbon dioxide), which is taken as a reference parameter, using the formula "**CO_2equivalent**" (**CO_2-eq**). In addition, the unit "**parts per million**" (**ppm**) is used to indicate the concentration of greenhouse gases in the atmosphere, which indicates how many greenhouse gas particles there are in the atmosphere for every million particles of various kinds. Therefore, the formula "**ppm CO_2-eq**" identifies the concentration of GHGs, with the radiative forcing of each converted to CO_2.

I.7 Greenhouse gases derive from both **natural** processes (such as human respiration or photosynthesis) and **artificial processes**, i.e. induced by **human** (artificial) **activities,** which contribute to increasing artificial emissions of these gases and their concentration in the atmosphere.

They have increased exponentially since the industrial era, precisely as a result of human activities of production of goods and services through the extraction and use of **fossil substances** such as **coal** (or hard coal), **oil**, **natural gas** (primarily **methane**), containing carbon.

The following graph (taken from the **IPCC Report *AR5***, precisely from the *Synthesis Report*, p. 3), gives an irrefutable account of the anomalous surge of greenhouse gas emissions, especially after 1950 (due to the increasing global diffusion of the production system based on fossil energy):



I.8 As is well known, in this artificial anthropogenic increase of greenhouse gas and its concentration in the atmosphere, which therefore retains increasing amounts of heat, lies the **climate problem** rendered by the expression **anthropogenic global warming**. Suffice it to say that, while the concentration of greenhouse gases in the atmosphere (CO2-eq) in recent 800,000 years has remained constant (within a range of 180 to 300 ppm), from the industrial age onwards, it is now persistently increasing. As can be seen from the official international detector *DaylytradCO2, the* current CO2 concentration already reaches a level of **418-420 ppm**.

I.9 The scientific evidence, collected by international, supranational and national institutions (including Italy), constantly verified and updated by the world scientific community, is now incontrovertible and irrefutable in the observation of the constant rapid worsening of the Earth's climate problems. In fact, the increasing concentration of greenhouse gases destabilizes the balance of the **entire climate system**, and therefore of all its **constituent spheres**, which are interdependent on each other. **This is why anthropogenic global warming determines climate change**, which is **also defined as anthropogenic.** We will see *below*, in Chapter II, that the destabilization has become so serious and worrying for the fate of all humanity, that it has led the world scientific community and the same institutions, such as the European Parliament, to declare a **climate emergency**, in all its components of acceleration and degeneration.

I.10 The picture of climate problems (now climate emergency) therefore invests all **spheres of** the climate system. **ISPRA** (Istituto Superiore per la Protezione e la Ricerca Ambientale, established by **l. n.132/2016**) classifies six of them: **atmosphere** (air); **hydrosphere** (water); **cryosphere** (ice and Poles); **pedosphere** (soil); **lithosphere** (rocks); **biosphere** (plants, animals, bacteria, viruses, **humans**).

I.11 Each sphere of the climate system, affected by global warming (triggered by anthropogenic artificial emissions of greenhouse gases), activates in turn a series of processes, which determine the overall response of the climate system to the increase of greenhouse gases. This articulation of processes is defined ***feedback*** loop, with regard to the reactions and feedbacks between the individual six spheres of the climate system and within each of them (including the human being); **pathogenesis**, with regard to the destabilization of the biosphere alone (therefore also of the human being) and the impairment of all determinants (physical and psychological) of health.

I.12 ***Feedback loops*** consist of **circular sequences of cause-effect**, in which the effect generated by one or more causes acts back on the cause by amplifying or dampening the initial effect. If the initial effect is amplified, the *feedback* is "**positive**" (i.e. additional destabilizing effects compared to the initial one). If, on the other hand, the initial effect is dampened, the feedback is "**negative**". For example, a *feedback* that increases global warming is "positive", while one that decreases it is "negative". The anthropogenic addition of greenhouse gases has increased "positive" *feedback loops*, as such damaging all spheres of the climate system.

I.13 **Pathogenesis**, on the other hand, concerns the causality of life forms only (therefore of the biosphere), but it does not coincide with the simple etiology of a single impairment of a single determinant of health. On the contrary, it identifies the alterations in the physiological state of any living form, consequent to the increase in temperature in the atmosphere, which lead to the stabilization or development of diseases or pathological states in the determinants of the health of living beings, compromising their homeostasis, i.e. the overall balance. The pathogenic process compromises the determinants of human health as well as of the environment

(in this case, we talk about loss of biodiversity).

I.14 It must be pointed out that *feedback loops* and pathogenesis are not alternative to each other (so that one excludes the other), but they are always **interconnected**, since they involve matter and energy everywhere. Therefore, the causal regularities of *feedback loops* and pathogenesis, inside the climate system and within its spheres, define the **causal chain** in a more articulated and complex **spatio-temporal projection** than the mechanistic before/after linearity of single phenomena or conducts (the one in which the causal link stops at a single event, instead of being observed as part of the interconnectedness of the climate system).

I.15 The consideration of the causal regularities of *feedback loops* and pathogenesis is essential to know **three** other **elements** of climate problems: the **places** of activation of *feedback loops* and pathogenesis; the **timing** of their manifestation; their **irreversibility**.

I.16 With regard to **places**, it is noted that any **local conduct** of artificial anthropogenic emissions of greenhouse gases affects the planetary climate system, activating interconnections between all its spheres and within them, with the observed effects of *feedback loops* and pathogenesis on individual local contexts. This is why all the interconnections of the climate system operate according to a **planetary-local dimension**.

I.17 The **timescales for the** manifestation of *feedback loops* and pathogenesis **are not linear**, since the individual spheres of the climate system react to global warming at different rates, according to their scales of temporal variation: daily for the **atmosphere**; differentiated across different living species for the **biosphere** (including humans); hundreds to thousands of years for the **cryosphere**; tens to hundreds of years for the **hydrosphere** and **pedosphere**; and tens to hundreds of millions of years for the **lithosphere.** The time lag, however, does not eliminate the causal regularity within the climate system, but simply prolongs it, depending on the spheres of reference. For this reason, both at institutional and scientific level, the formula "***Slow Onset Events***" has been introduced: events that are slow to manifest themselves, but inexorably interconnected with respect to the

artificial human emissions of greenhouse gases that disrupt all spheres of the climate system. **It is important to note the use of the plural in the indicated formula** ("*Events*"). The causal regularity does not end in a single event, but continues in time through the concatenations of *feedback loops* and pathogenesis. It is not by chance that in the scientific literature we speak of *stress* (to define the causal regularity "stressed" by anthropogenic global warming) and of *shock* (to identify the single events of manifestation of this "stressed" regularity). For example, a hurricane is an internal *shock* to the causal regularity of *feedback loop* between atmosphere and hydrosphere and lithosphere, a regularity "stressed" by anthropogenic global warming.

I.18 The **irreversibility** of climate problems is explained in the same terms, that is, the impossibility of restoring the previous equilibrium of any sphere of the climate system, after their causal regularity has been "stressed" by anthropogenic global warming. This is confirmed by the so-called **anthropause** or ***Thermal Inertia***.

I.19 The constant, decades-long anthropogenic emission of greenhouse gases has produced so much disturbance (we speak of "chronic disturbance") on all spheres of the climate system that the causal impulse, once triggered, does not stop instantaneously or quickly. Therefore, even if all artificial anthropogenic emissions were to suddenly cease, the *feedback loop* and pathogenesis effects would not stop. After all, this was seen from the pandemic experience of Covid-19, where the collapse of man-made emissions did not affect $_{CO2\text{-}eq}$ concentration and temperature rise. To reach a new equilibrium between all the spheres of the climate system, it will take years or decades or centuries, depending on the reaction and feedback times of the individual spheres; and it will still be a **new equilibrium**, not a return to the previous one.

THE IMPACT ON THE FACTS OF HUMAN LIFE

I.20 As mentioned, **human life** is **part of the climate system, as it is embedded in the biosphere**. Consequently, what has been briefly described cannot but affect the facts of human life. Just think of the **specularity** between **climate emergency** and

pollution, not coincidentally rendered with the formula "**two sides of the same coin**". *Feedback loops* and pathogenesis interconnect, activating *stresses* and *shocks* arising from the same source of causation (anthropogenic man-made greenhouse gas emissions) and affecting humans. The **two** main **occurrences of human disease**, reflecting this specularity on the face of the facts of human life are **chronic non-communicable diseases** (leading cause of death in the world) and **communicable diseases** (leading cause of vulnerability in the world). Evidence and scientific consensus on these are incontrovertible. Partly because of this certainty, the World Health Organization (henceforth **WHO**) has called the **Paris Agreement** the "*strongest public health agreement*" in **the world**.

I.21 But the irreversibility of causal regularities explains further incidences on the facts of human life: in particular syndemia, solastalgia, epigenetic conditioning. The term **syndemic** describes the exposure of life forms (starting with human life) to the co-occurrence of all *feedback loop* and pathogenesis effects resulting from anthropogenic global warming, given that all life forms are still matter and energy (the same zoonosis that caused the pandemic of the covid- 19 coronavirus was in October 2020 rubricated as a manifestation of syndemic, by the authoritative international medical journal *The Lancet*). This co-occurrence can go so far as to dis- balance even the psychological dimension of the human being (think, after all, of meteoropathy), in terms of increasing suffering from the degradation of the spheres of the climate system, defined by the term **solastalgia**.

Finally, **epigenetics**, which studies the reciprocal influences between the genome and the external environment, has shown that disturbances in the climate system even affect the **genetic makeup** of life forms, as they alter their regulation and reproduction systems, foreshadowing intergenerational damage (disturbances in today's climate system alter the regulation of tomorrow's life forms).

I.22 Precisely for this reason, **climate**, i.e. the complex of meteorological conditions of a given place on earth and of the entire planet Earth, averaged over a long period of time, acts as an **ecosystem function of regulation of life** and is thus officially

as defined by the UN *Millennium Ecosystem Assessment.* **Climate** is the **prerequisite for life** everywhere: everything everywhere depends on climate. Artificially disrupting the climate artificially compromises life everywhere, irreversibly and potentially irreparably between *feedback loops*, pathogenesis, syndromes, solastalgia and epigenetic conditions, chronic non-communicable diseases and communicable diseases.

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II. THE PLANETARY CLIMATE EMERGENCY

THE CLIMATE EMERGENCY DECLARED BY SCIENCE AND THE EU

II.1 What has been described about the irreversible consequences of artificial anthropogenic greenhouse gas emissions allows us to understand the current condition of **planetary climate emergency**, ascertained by the world scientific community with a **worldwide scientific denunciation** at the beginning of **2020** (*World Scientists' Warning of a Climate Emergency*), resumed in April **2021** (*We Are Living in a Climate Emergency, and We're Going to Say So*). It was joined by the EU's **official declaration of** a climate emergency. This is a **shocking and unprecedented** condition not for the history of recent years, nor for the history of humanity, but unfortunately for the history of planet Earth itself, so much so that it has forced world science to recognize that we have entered a new "geological era", called the "*Anthropocene*", in which the geo-physical fate of the entire planet depends on the irreversible imbalances caused by the human action of artificial emission of greenhouse gases. The *Nobel Prize Summit* in April 2021 called it "***Colossal Risk***": **it had never happened before**.

The emergency confirms the seriousness of the ongoing damage and its increase at all levels and spaces of life of people and ecosystems, with the related progressive violation of human interests and rights. The international initiative called "*Scientists' Warning*" promotes a constantly updated knowledge and understanding of it, presenting it in all its thermodynamic, ecosystem and energy interconnections. In fact, the scientific denunciation follows the global denunciation of the **ecosystem emergency**, signed by more than 15,000 scientists from around the world already in 2017 (*World Scientists' Warning to Humanity: A Second Notice*) and precedes the one on the **permanent syndemic**, at

following the increase in pathogenesis related to global warming and biodiversity loss, reported by the *2020 Report of* IPBES (the "*Intergovernmental Panel on Biodiversity and Ecosystem Services*", in which Italy participates), entitled *Escaping the "Era of Pandemics"*.

In a nutshell, there are four **determining features** of the climate emergency:

II.2 The **first** feature concerns the very high level of **scientific certainty** about its existence and seriousness. The certainty of the climate emergency subsists in **quantitative terms** (as the number of data and scientific evidence in the vast majority consensus of the international community), in **qualitative terms** (as the convergence of scientific explanations of the phenomena, in their causes, consequences and scenario forecasts, by the international scientific community), in **counterfactual terms** (of resistance to any empirical or hypothetical refutation, in the use of any protocol of scientific method).

II.3 The **second** character invests its **planetary scope**, referring to all spheres of the climate system, including the human being. This cognitive acquisition is rendered by the so-called Planetary Boundaries, planetary boundaries of "safety", identified by science to mark the impassable limits of any human action, beyond which irreversible degeneration of catastrophic proportions is triggered. The *Planetary Boundaries* formula has been officially endorsed by both the UN and the EU, so that it does not identify a mere scientific hypothesis, but the shared parameter for monitoring the health of planet Earth. There are nine Planetary *Boundaries*: climate change, loss of biodiversity, variation of the biogeochemical cycle of nitrogen and phosphorus, ocean acidification, land and water consumption, reduction of the ozone layer in the stratosphere, diffusion of aerosols in the atmosphere and chemical pollution. They are all interconnected, because they are all within the spheres of the climate system. Some of them have already been broken and this explains the emergence of the planetary condition of the climate emergency. Thanks to this method, it is therefore possible to make a comparison between states as to whether or not the boundaries have been breached.

II.4 In fact, the **third** character of the climatic emergency is consequent precisely to the overcoming of some *Planetary Boundaries*. It involves the so-called ***Tipping* Points**, the **points of no return** in the degeneration of the components of the single spheres of the climate system (think of the definitive melting of glaciers or permafrost, the reduction of the poles, desertification, the extinction of living species, the loss of rainforests).

In practice, *Tipping Points* register the overcoming of the "thresholds of permanence" of the single spheres of the climate system. Following them, catastrophic consequences are unleashed in acceleration, impossible to repair and therefore affecting the worsening of the entire climate system, with irrepressible cascade effects that are increasingly mutually interconnected, so much so that they may prelude a "***Global Tipping Point***", i.e. a **local-planetary-local acceleration** of *feedback loops* and pathogenesis completely out of human control and therefore destined to cause the collapse of the entire Earth. This is why the increasing likelihood of the "*Global Tipping Point*" has led the world scientific community and Institutions to declare a climate emergency.

II.5 The **fourth** character highlights the **dramatically new content** of the climate emergency compared to any other emergency of any other nature, precisely because of the risk of "*Global Tipping Points*". It follows that the climatic emergency **cannot be confused** with any environmental emergency, in virtue of the three characters described above. The difference is made by the **mathematical formula E = R *x* U**: the emergency (E) is given by the exponential increase of the risks (R) of "*Global Tipping Points*", multiplied by the urgency factor (U) of the little time available to avert them. The formula, introduced by Lenton M.T., Rockström J., Gaffney O. et al. in 2019 (*Climate Tipping Points - too Risky to bet Against*), shows that climate emergency does not describe a mere unforeseen or unpredictable event, nor a parenthetic and temporary situation. It consists, on the contrary, in the emergence [hence "*emergency*" (E)] of a catastrophic degenerative risk [hence "*risk*" (R)], on which to intervene urgently [hence the "*urgency*" factor (U)]. **The described formula has been introduced by science** to **test any decision to counter climate change, against the local-planetary-local acceleration of *feedback loops* and pathogenesis, foreshadowing** "***Global Tipping Point***".

THE "URGENT THREAT" ALSO RECOGNISED BY ITALY

II.6 By the way, even before the climate emergency was officially denounced by the world science and declared by the Institutions, there is an **official acknowledgement of urgency**, shared also by Italy: the UNFCCC Decision 1/CP21, adopted by the COP 21del 2015 for the approval of the Paris Agreement.

II.7 *In* fact, this document, taking up previous statements of similar content (see Decision 1/CP17 adopted in Durban in 2011), defined climate change as "*an urgent and potentially irreversible threat to* ***human*** *societies and the planet" (Recognizing that climate change represents an urgent and potentially irreversible threat to* ***human*** *societies and the planet*), in relation to which "*accelerating the reduction of global greenhouse gas emissions*". In practice, it prefigures the "*Global Tipping Point*" scenario and anticipates that very logic of prevention, formalized by the formula E = R *x* U: the risk (R) of the "*potentially irreversible threat to human societies and the planet*" of climate change (hence the "*Global Tipping Point*" scenario) is now considered an "urgent *threat*", hence an urgency (U). In light of this threat, the **Paris Agreement** establishes (in art. 2) the long-term objectives of containing the increase in global temperature that States must pursue ("*well below +2°C with respect to pre-industrial levels*" aiming to continue "*the action to limit such increase to +1.5°C*").

II.8 Not only that, but Decision 1/CP21 also declares the will to drastically reduce anthropogenic artificial greenhouse gas emissions **by 2030**, consistent not only with no. 13 of the 17 UN SDGs (the "Sustainable Development Goals" for 2030, which include, precisely at no. 13, the fight against climate change), but also with the verification of the overall effectiveness of state measures to combat climate change (see §§ 17 and 24 Decision 1/CP21). **Consequently, the time parameter of urgency (U) becomes 2030**, as later confirmed and made binding, for the EU states, by specific sources of European law (see *below*, Chap. IV).

II.9 Moreover, precisely in light of the 2030 time window, Decision 1/CP21 mandates the IPCC to "*provide a **Special Report** in 2018 on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways*" (see § 21 Decision 1/CP21).

II.10 Hence, the ***Special Report*** commissioned by Decision 1/CP21 to the IPCC for 2018 becomes the main scientific reference and recognized by States, including Italy, to proceed to the overall assessment of State actions with respect to the "*urgent and potentially irreversible threat*" of climate change, according to the logic E = R *x* U, also because States officially recognize themselves in the scientific methodologies and metrics of the IPCC (see § 31a Decision 1/CP21).

THE IPCC AND THE 2018 SPECIAL REPORT

II.11 The IPCC *Special Report* was published in October 2018, under the title *Global Warming 1.5°C* (henceforth the 2018 *Special Report*). It constitutes a cornerstone for the framing of issues of climate emergency and urgency, for three reasons: ***a)*** it was expressly commissioned by States on the occasion of the aforementioned Decision 1/CP21, thus assuming the legal nature of the "*instrument ordered* [.... *by the parties on the occasion of the conclusion of the Treaty*" (editor's note: specifically, the Paris Agreement), as per art. 31 n. 2, *letter a*, of the Vienna Convention on the Law of Treaties (henceforth Vienna Convention), made executive in Italy with l. n.112/1974; ***b) as a*** consequence, scientific methods, metrics and scenario projections, reported in such *Report*, become a supplementary element of knowledge and direction of the obligations of the States undertaken with the Paris Agreement; ***c)*** all the more so because its contents have been expressly approved by the representatives of the States.

II.12 It is worth remembering that the **IPCC**, which **won the Nobel Peace Prize** in 2007, was established in 1988 by the United Nations Environment Programme (henceforth UNEP) and the UN World Meteorological Organization (henceforth WMO) as the

Intergovernmental organization "*Science Based*", i.e. based on scientific knowledge of reality. It is the most important in the world with regard to climate change. The IPCC has 195 member states, **including Italy**, whose *Focal Point* is managed by the Euro-Mediterranean Centre on Climate Change Foundation. This means that the States, through their technical-scientific and not only political representative bodies, participate directly in the activities of the Organization, collaborating in the periodic census of the state of the art of world knowledge on climate problems and above all deliberating on all the decisions to be taken in the light of that scientific knowledge. For this reason, the IPCC periodically publishes *Scientific Assessment Reports* (**AR**), *Special Reports* (**SP)** and *Technical papers* (**TP**). They identify the **sources of scientific knowledge** of climate problems, **complementary** to the normative sources on the fight against global warming.

II.13 The 2018 *Special Report* confirms the need to **contain the global temperature increase within the limit of +1.5°C compared to pre-industrial levels**, noting that in case of an increase up to +2°C the **impacts** of climate change will be significantly more severe in terms of *feedback loops* and pathogenesis. In fact, with respect to ***feedback loops***, with an increase in warming of +1.5°C: ***a)*** *there* would be losses of 6-8% of living species, losses that would increase to 16-18%, in the hypothesis of a +2°C temperature; ***b)*** global sea level rise would be 10 cm lower with an increase in global warming of +1.5°C compared to +2°C ; ***c)*** in the first scenario (at +1.5°C), the probability for the Arctic to be free of sea ice in summer would occur once a century, while in the second scenario at least once every 10 years; ***d)*** coral reefs worldwide would decrease by 70-90% under the first scenario, while they would practically disappear under the second; ***e)*** also under the first scenario, the probability of extreme weather events (storms, hurricanes, cyclones, floods, desertification) would be much lower than under the second.

With respect to **pathogenesis,** the 2018 *Special Report* attests that with a global temperature increase of +1.5°C, rather than +2°C, we could: ***a)*** reduce the number of people exposed to climate-related risks and likely to end up in poverty by several hundred million by 2050; ***b)*** protect 10 million people from the risks associated with rising sea levels; and ***c)*** reduce the proportion of the global population exposed to increased water *stress* by up to 50%.

II.14 In addition, the **2018 *Special Report* confirms the scientific basis for the "urgent threat"** declared by Decision 1/CP21, finding that at the current rate of temperature increase (according to the World Meteorological Organization, the average global temperature increase stands at +1.2° to date), **the threshold of**

+1.5°C will be exceeded well before 2040. This factual element, based on science, contributes to the identification of the concrete content of the urgency factor (U) of the climate emergency with respect to the +1.5°C target, so that all state commitments to eliminate artificial anthropogenic greenhouse gas emissions cannot ignore such a time horizon.

II.15 The *Special Report 2018*, therefore, formalizes the urgency also in the date by which to act effectively to avert the irreversibility of the "threat": **2030**. Ultimately, 2030, i.e. the **next nine years**, marks the **point** of **no return to** take decisive action to prevent the "urgent threat" from becoming "irreversible" and stem the planetary climate emergency. We are therefore now beyond any conventional risk scenario. The stakes are very high. The **damage**, in the form of an ongoing "threat" and no longer a mere possible risk, is already **underway** and must be **urgently prevented** in its further unfolding and multiplication before it is too late (after 2030) and the "*Global Tipping Point*" scenario tragically comes true.

THE "CARBON BUDGET"

II.16 The 2018 *Special Report* identifies the so-called "***Carbon Budget***", which has been recognized since 2014, the year of publication of the IPCC's **AR5** (Assessment Report No. 5), as the **scientific method** that provides the best calculation of defining the maximum quantity

of greenhouse gases that can still be artificially emitted into the atmosphere. More precisely, the "***Carbon Budget***" consists in quantifying the level of greenhouse gases that can still be emitted in order not to exceed, with respect to the existing $CO_{2\text{-eq}}$ concentration, a certain increase in global temperature ("target"). The lower the target (e.g. containment of temperature increase within +1.5°C), the lower the "*Carbon Budget*" available compared to higher targets (e.g. containment within +2°C). Put another way, the "*Carbon Budget*" is the **difference** between the existing $CO_{2\text{-eq}}$ concentration level and the maximum atmospheric concentration level compatible with the agreed temperature increase target. The IPCC in its *AR5* found that in order to have a 66% probability of containing global warming below +2°C by 2100, the maximum atmospheric CO_2 concentration should be (according to its agreed metrics) no greater than 450 ppm. Consequently, the "*Carbon Budget*" will be the difference between this target value (450 ppm) and the current level of concentration (as seen *back*, Chap. I.10, the current concentration already fluctuates around 418-420 ppm). Obviously, if the objective of containing the temperature increase that we want to reach is lower (i.e. +1.5°C), the difference will change and the remaining "*Carbon Budget*" will be smaller. Well, for the increase not exceeding **+1.5°C**, the Special Report 2018 calculated that the global "*Carbon Budget*" would oscillate between **770 and 570 global gigatonnes (Gt) remaining**, within a range of probability of accuracy of the calculation between 50% and 66% (which means that emitting an amount between 570 and 770 gigatonnes of greenhouse gases there is a probability between 50% and 66% of reaching the target of +1.5°C).

II.17 The use of the so-called "Carbon Budget" method is essential in order to allocate among individual

States the residual amount of artificial anthropogenic CO_2 emissions still emitted into the atmosphere, in accordance with **two** precise obligations of climate law: that of **equity and solidarity** among States (as also enshrined in European law) and that of **precaution** in order to "*ensure global benefits*".

Fairness (or "**fair share**") among States is provided for in several sources: from Article 3 n.1 of the UNFCCC, to Decision 4/CMA.1 entitled "*Further guidance in*

relation to the mitigation section of decision 1/CP.21" (Annex I, § 6), to the Paris Agreement. Its *rationale* lies in the fact that each state has not contributed equally to artificial anthropogenic greenhouse gas emissions, so it is only fair that each one fulfils climate mitigation, taking into account "national circumstances" - even historical ones - of other States (see also UNFCCC *Preamble*, para. 3).

Instead, the *rationale for* the "**global benefits**" prescribed by the **precautionary** duty, provided for in Article 3 n. 3 of the UNFCCC (see *below*, Chap. IV) is explained by the local-planetary-local nature of the *feedback loop* and pathogenesis processes, activated by anthropogenic climate change (see *below*, Chap. I). Both, equity and precaution, are combined with intergenerational equity.

II.18 In the dual perspective of fairness and precaution (according to "global advantages"), the "*Carbon Budget*" was agreed at the global level within the IPCC: to allow States to determine their own commitments (the so-called NDC, National Determined Contributions, as called by the Paris Agreement), evaluating the weight of their climate responsibility in comparison with that of other States and according to "global advantages". In fact, the latter are none other than the long-term objectives identified in Article 2 of the Paris Agreement (+1.5°C and "*well below*" +2°C compared to pre-industrial levels), thanks to the differentiated contribution of each State. If a State ignores this double criterion of equity (or "fair share") and guarantee of "global benefits", renouncing the calculation of its "*Carbon Budget*", its national commitments will be approximate and unverifiable as an effective contribution to the fight against climate change. Among other things, **art. 4 n.3 of** the Paris Agreement, by requiring that national contributions to cut emissions are always progressive and improving, never regressive, assumes that the State never violates the criterion of equity (or "fair share") and guarantee of "global benefits".

II.19 The "*Carbon Budget*" is therefore an irreplaceable tool to **realistically plan state mitigation policies**, to be started immediately, as it is inferred from the cited art. 4 n. 1 of the Paris Agreement, which prescribes to "*reach the global emissions peak* [...] *as soon as possible*".

In fact, **the sooner the** reduction of emissions is programmed with the "*Carbon Budget*" method, through sequential and progressive cuts, implemented from year to year by each State, the more effective will be the activity to combat climate change, because: the faster global warming will be reduced; the more immediate benefit will be derived from the situations of climate *hot-spot* (such as Italy), with less damage and costs; the volume of annual global emissions to be cut will be better planned, because there will be more "*Carbon Budget*" still available.

Ultimately, the ultimate goal of containing temperature increase will be more easily achieved and maintained over time. If, on the other hand, the "*Carbon Budget*" is ignored altogether, any control over government decisions will become impractical.

II.20 Moreover, reducing greenhouse gas emissions **immediately** on the basis of the available "*Carbon Budget*", rather than planning them later, avoids any consequences in terms of **intertemporal inequity** (i.e. towards future generations, to whom the problem of combating climate change would be "transferred") and **spatial inequity** (i.e. towards the climate system, which would "suffer" the increase in damage from climate change), as recognized by a recent ruling of the German Federal Constitutional Court

FURTHER DECLARATIONS OF THE CLIMATE EMERGENCY

II.21 Further declarations of climate emergency, formalized around the world, have followed the scientific denunciation of 2020 and the *Special Report of* 2018 (the *Cedamia* and *Climateemergencydeclaration.org* websites survey them globally). But even the International Monetary Fund (IMF) spoke of a "threat" in its 2019 *Report The Economics of Climate,* while the International Bank of Settlements used the alarming formula of "*horizon tragedy*" to note the urgent need to meet the 2030 deadline.

II.22 Italy has not been outdone, with declarations by the Chamber of Deputies (on 11 November 2019) and the Senate (on 10 June 2020). Of particular importance is also the Declaration of 4 November 2020, formulated by the Italian State together with

other states within the UNFCCC, on the occasion of the US exit from the Paris Agreement. The signatories, recalling the "***threat** of climate change*," reiterated that "*the **science** is clear*" in calling for **urgent action**, strengthening actions and undertaking new ones, "to limit *the impacts of global warming*" and to contain it within the limits set by the Paris Agreement.

"GAPS" AND "DISCREPANCIES" IN STATE EMISSIONS

II.23 Precisely because of the fact that the IPCC was established, as mentioned, by the collaboration of UNEP and WMO, both UN organizations **periodically monitor and verify the "*gap*"** ("***Gap**"*) between the actions taken by individual States, the legal commitments assumed by the same States and the agreements formulated on the scientific evidence and scenarios of the IPCC. The reports of these verifications have unfortunately attested, until today, the **worrying and alarming gap** between what the States recognize about the existing "urgent threat" and the commitments actually taken to avoid it.

II.24 UNEP notes this annually with the ***Emission Gap Report***, again prepared in accordance with methods and metrics agreed upon by states within the IPCC. According to the December 2020 *Gap Report* 2020, *States'* "*current NDCs are grossly inadequate to meet the climate goals of the Paris Agreement and would lead to a temperature increase of at least +3°C by the end of the century*" (point 7, p. 21); moreover, *the* Report goes on to argue that "*countries must collectively increase their ambitions contained in NDCs by three times to meet the +2°C target and more than five times to meet the +1.5°C target*" (point 7, p. 21) and that states must hurry to cut their emissions because "*unless global emissions are significantly reduced by 2030, it will be impossible to keep global warming below +1.5°C*" (point 7, p. 21).

II.25 The **WMO** also periodically publishes the *State of the Global Climate*, which documents the trend of the indicators of the climate system (from greenhouse gas concentrations to land and ocean temperatures, rising sea levels, etc.) recording constant worsening even during the 2020s.

GLOBAL TIPPING POINTS

II.26 As things stand, in light of the *gaps* recorded by UNEP and WMO and of the "discrepancies" in calculation, the **risk of "*Global Tipping Points*" is dramatically high**. In fact, inserting the data that emerged from those gaps in the scientific formula E = R *x* U, one has immediate evidence of the urgent need to drastically change course in decisions to combat climate change.

Moreover, just to have a quick confirmation, it is enough to remember that already in 2017 there was full knowledge, in the scientific evidence used by the IPCC, of the deep difference between different scenarios of temperature increase. Indeed, in Xu Y.and Ramanathan V. (*Well below 2°C: Mitigation Strategies for Avoiding Dangerous to Catastrophic Climate Changes*) reads as follows: starting from the period 2030-2050, the **future**, in the light of available knowledge, can be envisaged in the following **three** ways: average temperatures higher than **+1.5°C**, a **dangerous scenario** for climate stability and human coexistence; higher than **+3°C**, a **catastrophic scenario;** higher than **+5°C**, an **unknown** scenario, because humanity has never coexisted with temperatures so high compared to those of the millennia of its presence on Earth, as also attested by the Report A Safe Climate: Human Rights and Climate Change by the UN Special Rapporteur on Human Rights and the Environment. Ultimately, the "*Global Tipping Points*" now represent the incontrovertible **situation of danger**, which all States must face with their decisions to reduce emissions.

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II. THE CLIMATE EMERGENCY IN ITALY

ITALY AS A HIGHLY VULNERABLE AND FRAGILE CLIMATE *HOT-SPOT*

III.1 Italy is a **climate *hot-spot***, i.e. a geographical area where there is a joint change in the climate parameters of temperature, precipitation and variability, which multiplies and aggravates the impacts on the territory and the people living there. This means that present and future damage to property and people in this geographical area is worse than elsewhere. The condition of climate *hot-spot* derives from the fact that Italy

is located on the border between arid and temperate zones (Eltahir A.E.B. *Whyis the Mediterranean a Climate Change Hot Spot?* , 2020), as also recognized by the CNR (*Gli "hot spots" del cambiamento climatico*, 2015). Moreover, Italy is in a condition of dual ***hot-spot***, i.e. on two fronts: as a **territory overexposed**, more than others, to the devastating effects of the global increase in temperature (due to its geographic conformation as a peninsula); as a **territorial sea** destined to the ecosystemic upheavals that the **Mediterranean** is going to face (being right in the middle of the Mediterranean). Countless evidences confirm the representation, starting from ISPRA data (since a document of 2014) and from the Databases of SNPA (National Environmental Protection System) whose cognitive elements, it seems important to underline it, "*constitute official and binding reference for the activities of competence of public administrations*" (**art. 3 n.1, *lett. c*, of l. n.132/2016**).

III.2 From the peculiar Italian condition it follows that: ***feedback loops*** and **pathogenesis**, consequent to the local-planetary-local regularity of anthropogenic climate change, affect more easily, rapidly and heavily the territory and its inhabitants; **damages and losses** increase exponentially due to the increasing **vulnerability of** the local context (affected, more frequently than elsewhere, by *feedback loops* and pathogenesis) in the **fragility** of its territory (meaning by "fragility", the weakening caused by human activities of building squatting, soil consumption, deforestation, etc.).). As a consequence, the urgency to face the climate emergency increases.

III.3 It is worth remembering that the EU is also fully aware of the Italian condition, as countless sources of scientific knowledge attest, including, since 2017, the *Report of* the European Environment Agency (henceforth EEA) *Preparing Europe for climate change: coordination is essential to reduce the risks caused by extreme weather events*.

III.4 In any case, the **scientific knowledge** on the peculiar Italian condition is innumerable and all converging on the damage, present and future, to people and things. We cite the "institutional" ones, as they are **recognized** by **the State**, because they derive from Institutions

with scientific competences attributed by Italian law or financed with public resources or of a supranational or international nature with the participation of Italy: Sistema Nazionale Protezione Ambiente (SNPA), including **ISPRA** (l. n.132/2016); Agenzia per le Nuove Tecnologie, l'Energia e lo Sviluppo Economico Sostenibile (ENEA: art. 37 l. n.99/2009); Istituto di Scienze dell'Atmosfera e del Clima del Consiglio Nazionale delle Ricerche (CNR-ISAC: d.lgs. n.213/2009); Istituto Superiore della Sanità (ISS: art. 9 d.lgs. n.419/1999); **Universities** (l. n.240/2010); Euro-Mediterranean Center on Climate Change Foundation (CMCC), author

- among others - of the first comprehensive *Risk Analysis. Climate Change in Italy*, in 2020; **MedECC Network**, including 25 countries (including Italy) under EU and UN mandate, author of the *First Mediterranean Assessment Report in* 2020 (the most important comprehensive document on Mediterranean impacts, risks and scenarios caused by climate change); Italian Alliance for Sustainable Development (ASVIS); European data program *Copernicus Climate Change Service*.

III.5 **Climatic data** and **information** provided by these Institutions, part of the organization of the Italian State, are **public**. They provide knowledge of Italy's *hot-spot* condition with regard to: the trend of emissions; the national average temperature (to control local temperature increases, thermal anomalies, precipitation decreases, sea temperatures, sea levels, future thermal scenarios, heat waves, alteration of seasonal cycles); spatial impacts (with specific regard to water resources, instability and hydrogeological instability, floods, desertification, loss of biodiversity, agriculture and food production, coastal areas, tourism and cultural heritage, urban settlements); diseases and damages; economic costs expected due to different scenarios of temperature increase. This is important **not only** to protect their own territory and its inhabitants, **but also** to effectively plan emission reductions for mitigation purposes.

III.6 Their analytical representation is provided by several **scientific documents,** among which we highlight the one drafted by the international scientific organization ***Climate Analytics***, specialized in the **analysis of state climate actions**, entitled "*Climate*

Impacts in Italy" (**All. B**) and the CMCC Report entitled *Risk Analysis. Climate Change in Italy*.

Both describe in detail the climate impacts already observed and those that are expected in Italy, which the State should take into account in its decisions; among them, the following is highlighted:

- in Italy, heat waves are set to be exacerbated by warming

and have already been linked in the past with a substantial increase in mortality: specific events have been recorded as real "*public health disasters*". By 2100, the number of people exposed to heat waves in Italy will increase up to 1000% in relation to +1.5°C warming, up to 1500% in relation to +2°C warming and up to 2000% in relation to +3°C warming;

- with a global warming of +1.5°C and +2°C, the worsening of the

drought in the Mediterranean will be unprecedented. If a global warming of +3°C is reached, Italy will probably turn "into a desert", as it will be subjected to constant drought phenomena;

- global warming will lead to a worrying increase in the intensity of events of extreme precipitation, hydrogeological instability and floods: 91% of Italian municipalities are already at risk of landslides and floods induced by heavy rainfall;
- Italy will face a drastic increase in the consequences of erosion, and coastal flooding.
- the increase in temperatures will dangerously increase the duration and intensity of the fire season, increasing both the areas at risk and the probability of particularly damaging fires. With the current trend of emissions, the risk of fires is expected to increase by as much as 40% for some regions of the peninsula.

DECLARATIONS OF KNOWLEDGE OF THE ITALIAN STATE

III.7 The Italian State, especially in recent years, has consistently made and officialised various declarations and explicit acknowledgements of the seriousness and urgency of the emergency

planetary and national climate. These declarations and explicit acknowledgements have come from the President of the Republic, the Government and Ministers, and the Chambers of the Italian Parliament. They are acts of different nature and scope, united by the fact that they contain manifestations of science or productions of environmental information. **Annex D**, edited by ***A Sud Ecologia e Cooperazione Onlus***, contains the complete overview.

III.8 As acts addressed to the general public, declarations and recognitions become real "**environmental information**", according to **art. 2 n.3 of** the **Aarhus Convention**, made executive in Italy by law n.108/2001, as well as "**climate information**", according to **art. 6, *letter a* (point ii)**, of the **UNFCCC** (in the part where it recognizes the right of the public to information on climate change and its effects). **ISPRA** has integrated the normative definitions, including, among the information, all the public documents related to environment and climate, including, for example, "*the reports on the implementation of environmental legislation*". The information, therefore, attests to public knowledge of the risks (in terms of predictability and prospects) and the public willingness of the duty to deal with them.

ITALIAN ACTIONS

III.9 Italy's **climate actions** are insufficient and inadequate for the purposes of combating anthropogenic climate change, in its dramatic emergency dimension and in consideration of Italy's condition as a climate *hot-spot* (whose average temperature has already risen at a rate twice as fast as the global figure, equal to +1.2°C, recording an increase of between +1.67°C and +2.71°C over the last fifty years).

III.10 The finding applies with regard to both the measures currently in force, and to additional measures, programmed with the **National Integrated Plan for Energy and Climate** (PNIEC), drafted by Italy in the framework of EU Regulation n.2018/1999 to represent the **founding document of** the response strategies of the Italian State, in the global perspective of **emission reduction** and protection of **human rights** (as can be deduced from *Recital no. 45* of the cited EU Regulation).

III.11 The provisional assessment of emission reduction **targets for** 2030 compared to 1990 levels is contained in the ***Climate Analytics Report***, "*Italy's climate targets and policies in compliance with the Paris Agreement and global equity assessments*" (**Annex C**). The Report notes that, as a result of the measures currently in force, by 2030, there will be a reduction in emissions (compared to 1990 levels) of **26%**; the same Report notes that, as a result of additional measures planned in the PNIEC, the planned reduction by 2030 will be **36%** (compared to 1990 levels).

III.12 The measures envisaged in the PNIEC project, therefore, a **minimum increase** in reduction (10%), evidently presupposed by the climate emergency in progress. In fact, the PNIEC has simply updated the National Energy Strategy (SEN), required by art. 7 of d.l. n. 112/2008 (converted into law n.133/2008). It, moreover, dates back to 2017, before the global denunciation of the climate emergency and is targeted (limited) only to decisions of energy and economic utility.

III.13 The percentage of emission reduction (36%) envisaged by the PNIEC **falls far short of** the mitigation commitment required of the Italian State in the fight against climate change; indeed, the relevant regulatory measures disregard the incontrovertible normative and scientific parameters for coping with the current climate emergency, according to the criterion of "equity" (or "fair share").

III.14 The ***Climate Analytics*** **Report** (**Annex C), to the** contents of which we refer for brevity, has quantified (clarified) **- on the basis of the scientific methodology defined by the IPCC in its AR5 report** - the percentage of emissions compared to the 1990 level that Italy is required to reduce, by 2030, to be in line with the long-term temperature objective of the Paris Agreement, in accordance with the criterion of equity (or "fair share"). It did so in light of **ISPRA data** (legally binding on the Italian State pursuant to art. 3 n.1, *lett. c*, of l. n.132/2016) and the **data** contained in the **PNIEC** (on which the State has built its mitigation strategy to 2030).

III.15 Well, in order to put in place climate actions that are consistent with a global temperature increase within +1.5°C - the long-term temperature objective

of the Paris Agreement - Italy is required, **by 2030,** to cut its emissions by **92%** from 1990 levels. Any lower level of ambition on the part of the Italian state would have three inexorable effects:

- would result in failing to meet *the "long-term temperature objective of Article 2"* required by Article 4(1) of the Paris Agreement,

- would generate intergenerational inequity, making future generations bear unfair negative consequences in terms of impact and costs, in violation of the rule of operating "*for the benefit of the present and future generations*", indicated by art. 3 n.3 of the UNFCCC and by the Preamble of the Paris Agreement,

- would determine inequalities on the "*fair share*" to be borne by the other States, which would be unjustly conditioned in the quantification of their efforts to fight climate change. If one were to disregard the principle of equity (or "fair share") in the common but differentiated responsibilities, opting for an equal rate of reduction among all States, the reduction of Italian emissions as a function of the containment of temperatures within +1.5°C would be **63% by 2030** compared to 1990 levels (**Annex C**).

III.16 The **abysmal** gap between the emission reduction targets currently pursued or planned by Italy (of 26% and 36% respectively) and that (of 92%) ascertained by *Climate Analytics* to be in line with the long-term temperature objective of the Paris Agreement, gives an account of the clear responsibility of the Italian State due to its substantial inertia in the fight against anthropogenic climate change. In this regard, it is worth recalling what the ***Report*** considers about Italy's current emissions reduction target: (it) "*represents a level of ambition so low that, **if other countries were to follow it, it would likely lead to unprecedented global warming of over 3°C by the end of the century***".

In addition, Climate Analytics adds that "*if current emission levels were to continue, Italy* [given its residual "Carbon Budget", identified by the same Report as **2.09 GtCO$_2$-eq**] *would **already in 2025** exhaust its fair share of releasable emissions in the period between 2020 and 2030*". (**see Annex C, p. 10**).

III.17 Moreover, the inadequacy of the PNIEC was underlined by the Resolution of the 13th Permanent Commission of the Senate of the Republic (Territory, Environment, Environmental Heritage) of January 13, 2021, which also denounced the urgency to act drastically to prevent Italy from becoming "*one of the most penalized countries in Europe*" (*ibid*., p. 7). The same urgency to drastically reduce emissions in all sectors of Italian activities, far beyond what was predicted by the PNIEC, was also confirmed by ISPRA, with its two Reports *Italian Greenhouse Inventory 1990-2019* and *Italian Emission Inventory 1990-2019*.

III.18 The same inadequacy marks the other government acts referring to the reduction of emissions: from the *Italian long-term strategy on the reduction of greenhouse gas emissions*, sent to the EU with a year's delay (in February 2021), explicitly parameterized to the PNIEC and therefore equally insufficient, to the *National Recovery and Resilience Plan*, to the Statements of the Prime Minister Mario Draghi on the occasion of the *Summit on Climate* of 22 April 2021.

As proof, on **5 May 2021**, the *report* by the international research organisation ***Climate Action Tracker***, entitled *Global Update: Climate Summit Momentum,* verified the new emission reduction scenarios resulting from the announcements by Heads of State and Government at the aforementioned *Summit*. The result is still insufficient: the trajectory of global warming would be reduced by just -0.2°C compared to current state plans, with a projected increase in global temperature of +2.4°C, far exceeding the legal constraints of the Paris Agreement.

III.19 Finally, it should be noted that the inadequacy of Italian climate actions is not compensated even by the **National Determined Contributions of the EU**, including the Italian one. In fact, their latest version was presented on December 18, 2020 and the UNFCCC expressed its opinion on these, as on those of other States, with the *Report* of February 26, 2021: the **judgment** was **negative** for the **obvious inadequacy** precisely in terms of the guarantee of "global benefits. Similarly, the study *Fossil CO_2 emissions in the post-COVID-19 era*, of March 2021, has shown that such state commitments, to stem the climate emergency in progress, should increase by **10 times** the

planned emission cuts. Moreover, according to Climate Action Tracker, the EU - if it wanted to contribute in a fair way to the achievement of the long-term goal set in the Paris Agreement - should reduce its emissions by 85% by 2030 compared to 1990.

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IN LAW

III. THE CLIMATE OBLIGATION

CLIMATE CHANGE IN ITALIAN AND EUROPEAN JURISPRUDENCE

IV.1a Anthropogenic climate change is now well known and recognized by Italian jurisprudence, both as a consequence of anthropogenic greenhouse gas emission activities and as a problem of necessary elimination of the same by the State. In fact, Italian judges are aware both of the existence of the phenomenon and of the central role of the State in combating it and the seriousness of its effects on the enjoyment of human rights. For example, the Court of Cassation, in its Order n.5022/2021, has already formalized the legal principle according to which the "*ineliminable core constituent of personal dignity*" must be guaranteed by the State in cases of serious risk resulting from climate change, since "*all States are bound to ensure to individuals conditions of life that make possible the full exercise of the right to life, in its broadest declination, even regardless of the existence of a current danger to survival*". The **Council of State, in Ad. Plen. n.9/2019**, affirmed the "*pre-eminent interest of the community to the gradual reduction of the component of carbon dioxide in the atmosphere*", which corresponds to the "*superior interest*" to combat climate change on the part of the State, "*to be understood both as a State-person, in relation to international obligations* [...], *and as a State-community representing the collective interest in improving environmental quality*"; while the Constitutional Court has declared the public purpose of "*eliminating dependence on fossil fuels*" (in connection with the "*decided favour*" towards energy sources other than fossil fuels: judgments nos. 124/2010, 286/2019, 237/2020, 46/2021;

similarly Court of Cassation SS.UU. n.16013/2018 and Cons. St. sez. IV n.84/2016). The Judges have also clarified the framing of international sources of climate law within the Italian constitutional system, as confirmed by the decisions of the Constitutional Court nos. 124/2010 and 85/2012 and those Cons. St. sez. V n.4768/2012, sez. VI n.4567/2016, Ad. Plen. n.9/2019, sect. V n.677/2020. With several very recent decisions issued by sect. VI, the Court of Cassation (among others nos. 4568/2021 and 7343/2021), two further acquisitions have been added: **a) that of** noting that the international sources on climate change have the identity of European law, due to the accession of the EU to them, therefore endowed with the requirement of direct application in Italy; **b)** that of defining the Paris Agreement of 2015 on climate "the *first universal and legally binding agreement on climate change*". The Court of Appeals of Turin, in Sentence n.1494/2019, also took note of the local-planetary-local dynamics of the effects of global warming and climate change, noting that the disasters resulting from climate change now affect the entire globe and not only the plaintiff's area of origin. Finally, the Constitutional Court, since sentence no. 127/1990, has established that, in the field of gas emissions, the limits set by administrative rules or authorizations are not in themselves resolving the doubts on the actual protection of human health and environmental healthiness, since "*scientific investigations are* necessary *to establish the compatibility of the maximum limit of emissions with their tolerability*".

IV.1b The decisions of the courts of other EU Member States are also very important. With them, it has been recognized not only that climate change is a human rights issue, but also that the State is judicially accountable for its inaction in failing to pursue the highest ambition in the elimination of greenhouse gas emissions as a preventive measure on damages (see *Urgenda v. Netherlands*, Supreme Court 2019; *Neubauer v. Germany*, German Constitutional Court 2021). Accordingly, they identify the essential cores of rights, to be protected in the use of climate precaution, fairness (or "fair share") in counting emissions, intergenerational solidarity, the duty to adhere to the latest findings of science, the

limitation of discretion: nuclei that can no longer be disallowed by prohibition of discrimination within the Euro-Union legal space (Art. 21 n.2 of the Charter of Fundamental Rights of the EU, henceforth the Nice-Strasbourg Charter, as well as Art. 14 ECHR). Other noteworthy judgments are those of the Supreme Court of the Republic of Ireland in 2020 and the Administrative Court of Paris in 2021, where the Courts concluded that the State had a duty to reduce its emissions and that the measures taken were not adequate. All of these cases are reviewed in UNEP's *Global ClimateLitigation* Report*: 2020 Status Review.*

THE SOURCES OF THE CLIMATE OBLIGATION

IV.2 Italy has signed all the international agreements and instruments related to the fight against climate change: from the UNFCCC, to the Paris Agreement, to the contents of the various IPCC *Reports*, to the 17 UN SDGs for 2030 (including the 13th on climate change). The State, consequently, has bound itself to fulfill a whole series of obligations and to do so in **good faith**, both towards other States, as prescribed by the cit. Convention on the Law of Treaties and the European principle of loyal cooperation (art. 4

n.3 TEU), as well as towards its own administrators, as required by articles 1375 and 1175 of the Italian Civil Code. Moreover, having adhered to all the IPCC *Reports*, the Italian State also recognizes itself in the criterion of the action "on the basis" of the scientific methods used in the IPCC, in compliance, among other things, with art. 191 TFEU and, as will be seen, with the UNFCCC and the Paris Agreement, as well as with the acquisitions of the Constitutional Court on scientific knowledge as limits to political discretion (*infra*, Chap. IV.22-27). This warp of constraints to be fulfilled in good faith is now further detailed by specific derivative sources of EU law.

IV.3 The State's climate obligations are mainly contained in the following **three sources**: **UNFCCC**, **Paris Agreement**, **EU Regulations nos. 2018/842, 2018/1999, 2020/852, 2021/241**. From these, it can be inferred that the **state obligation** is marked by **three** constitutive characteristics, which the sources help to detail: ***a) it is*** articulated in a "**complex obligation**", i.e. composed of a "**primary duty**" and a plurality

of "**secondary duties**", ancillary and instrumental to the first; ***b)*** its fulfilment, consisting of a series of actions to be undertaken with specific reference to the **sovereign territories** of the individual states and the **people** living there, does not identify an exclusively interstate bond (an international synallagma); ***c)*** it is a **science-based** obligation.

IV. 4a The **UNFCCC** is the mother source of all the content of the climate obligation. The reason is not only formal, but also **substantial** considering that:

a) The UNFCCC bases all its legal definitions, which can be deduced from the *Preamble* and Article 1, on the natural laws governing the climate system, as explained in Chapter I. Consequently, all the normative precepts of the UNFCCC based on scientific acquisitions (from the definitions of climate issues, to the imputation of man-made anthropogenic emissions) are neither debatable by States, nor discretionarily modifiable.

b) Precisely by virtue of the reference to scientific acquisitions, the normative framework of the UNFCCC, starting from the ***Preamble***, also recognizes and articulates the **causal sequence of** climate problems, activated by anthropogenic emissions: artificial human activities emitting greenhouse gases → increase in atmospheric concentrations of greenhouse gases → intensification of the natural greenhouse effect → further warming of the earth's surface and atmosphere → climate change → changes in the physical environment, animal and plant life → deleterious effects on natural ecosystems, health and well-being of mankind. Therefore, the following **art. 1 c. 2** describes climate change as "*any change in climate* ***attributed directly or indirectly to human activities*** *which alters the composition of the global atmosphere and adds to the natural variability of climate observed in comparable time periods*".

IV.4b In the light of the above, the UNFCCC identifies in **Article 2** the ultimate **objective that** all States must achieve through their decisions: "to *stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system*". **Climate stability** is therefore the **legal interest** protected by the Convention, or the **good of life** that it protects.

recognises, therefore protects, for "*the benefit of the present and future generations*", a formula used in the last paragraph of the ***Preamble*** and reiterated in **Article 3.1.**

IV.4c Therefore, the **primary duty of** the climate obligation, established by **art. 4 n. 2, *letter a***, of the **UNFCCC**, consists in a ***duty***, incumbent on the Parties listed in Annex I (among which the Italian State is included), having as its **object the** adoption of international actions and the assumption of "*corresponding measures to mitigate climate change by limiting man-made emissions of greenhouse gases and protecting and enhancing its* [i.*e.* the States'] *greenhouse gas sinks and reservoirs*". In summary, the primary ***fact*** is climate change **mitigation**, to be implemented through: - **limiting** anthropogenic emissions; - **protecting** the stability processes of the state climate system (its "sinks" and "reservoirs" of GHGs). **IV.4d** The **secondary duties of** the climate obligation define and specify the contents and implementation methods of the primary duty of *doing*. There are four of them: **equity** (or "**fair share**"); **climate precaution**; recourse to **science**; communication of **information** about climate change and its effects.

IV.4e Equity (or "fair share"), together with the principle of common but differentiated responsibilities and the principle of the respective capabilities of States, is referred to in **Art. 3 No. 1** of the **UNFCCC**. These principles must inspire the Parties in determining their actions to "*achieve the objective of the Convention and fulfill its provisions*", bearing in mind that (see also Art. 3) "*developed countries that are Parties to the Convention shall take the lead in combating climate change and its adverse effects*" (see also Art. 4.2a). As represented *overleaf*, Chap. II.17-19, equity (or "fair share"), together with the other principles mentioned above, underpins the use of the "***Carbon Budget***" in order to protect present and future generations in the face of the local-planetary-local dynamics of climate change.

IV.4f Climate precaution is described in **Article 3 No 3** of the **UNFCCC**. It is structured in **four contents**: **- priority** of **mitigation** measures over any other decision;

- non-postponement of the same, even in the presence of scientific uncertainties about situations

of risks of serious or irreversible damage; - **early detection**, **prevention** and **reduction of** the **causes** (not the effects) of climate change; - **assessment** of the effectiveness of mitigation measures (policies or measures) according to "***global benefits*** *at the lowest possible cost*".

Because of this special composition, the precautionary duty has been defined ***pro clima et vita*** (the priority of mitigation is the best choice to protect life in the 'global advantage' of the stability of the entire climate system) but also ***pro securitate*** (in favor of the security of climate stability), ***contra projectum*** (against decisions that do not take on the 'global advantages'), ***pro alio*** (for the priority option of prevention and reduction of the causes and not the effects of climate change). In addition, the reference to the "global benefits" instead of those exclusively of individual states emphasizes the planetary logic of prevention and not regression of state actions, consistent with the aforementioned objective of the "stabilization" of the planetary concentration of greenhouse gases (art. 2), the duty of equity (or "fair share") (art. 3 n.1). In short, the States must intervene on their own territories, in order to contribute to the prevention and non-regression of global climate stability.

IV.4g The use of **science** is formalized by the **UNFCCC** in the ***Preamble***, which recognizes the usefulness of acting on the basis of "*relevant scientific considerations*[...] *constantly reviewed in the light of new findings*[...]", in **Art. 4 n.2*(d)***, which requires States to use "*the best available scientific information and assessments of climate change and its impacts*", and in **Art. 5**, which urges States to support (not just use) scientific research. More generally, however, the recourse to science as a complementary contribution to state action is confirmed by the multiple references (ten) to scientific "knowledge", "cognition", "information" and "issues", always scattered throughout the text of the UNFCCC.

IV.4h The duty of **information relates to** findings on climate change and its effects and consists of both providing science-based public information and ensuring public access to it in the manner described in **Article 6 of the UNFCCC**.

IV.5 The **Paris Agreement** has supplemented the **objective** *set out in* Article 2 of the UNFCCC, so that the objective of climate stability is now to keep '*the increase in global average temperature well below +2°C compared with pre-industrial levels*' and to continue 'to take *action to limit the increase in temperature to +1.5°C compared with pre-industrial levels*' (**Art. 2.1, *a)***, with a view not only to "*significantly reducing the risks and effects of climate change*", but also to avoiding and minimizing "*the loss and damage associated with the adverse effects of climate change*" (**Art. 8**).

IV.6a In order to achieve this objective, Parties shall, in **Article 4 n.1**, "*aim to reach a global peak in greenhouse gas emissions as soon as possible*", and then "*undertake rapid reductions thereafter, in line with the best available scientific knowledge, so as to achieve an equilibrium between anthropogenic greenhouse gas emissions and removals in the second half of this century*" (so-called "**climate neutrality**", i.e. the equilibrium between the quantity of greenhouse gas emissions produced and its absorption by "sinks" and "reservoirs").

IV.6b The Paris Agreement also adjusted the content of the **primary *facet*** of the climate obligation, which now (for developed countries such as Italy), lies in the "*reduction* [no longer simply "limitation", as in the UNFCCC] *of emissions covering all sectors of the economy*" (**art. 4.4**). Furthermore, it reiterated the **secondary duties of** recourse to **science** (*Preamble* and Art. 4 n.1) and **equity**-"**fair share**" (Art. 2 n.2, 4 n.1), respecting the principle of **common but differentiated responsibilities** and respective **capabilities** (Art. 2 n.2, 4 n.3).

IV.6c The **deadline** by which to achieve the content of the emission reduction is taken from the aforementioned (*back*, Chap. II) *Special Report* of 2018 and is **2030**. This deadline (already set by the cited **13th UN SDG**) marks the **point of no return to** ensure the effective start of stabilization of the climate system. Said otherwise, 2030 represents the **ultimate limit** for the full implementation (not the mere adoption) of measures capable of limiting the temperature increase between +1.5°C and "*well below*" +2°C and thus stabilize the climate system in accordance with art. 2 of the UNFCCC. Consequently, its compliance is **essential** to ensure (effective) protection of the interest

legal right, i.e. of the good of life of "climate stability", of which future and present generations are the owners (beneficiaries) (the human right to climate, discussed *below*, in Ch. V.8-16). It has since been made **binding in** EU law by EU Regulations Nos. 2018/842, 2018/1999, 2020/852, 2021/241.

IV.7 Both the UNFCCC and the Paris Agreement **have been ratified by the EU,** thus also becoming part of Euro-Union law. The main regulations that explicitly refer to the Paris Agreement, imposing obligations on Member States, are nos. 2018/842, 2018/1999, 2020/852, 2021/241.

THE CLIMATE OBLIGATION IN THE ITALIAN LEGAL SYSTEM

IV.8 The UNFCCC is a framework convention with additional sources. It, in fact, enables in its turn, because of art. 2, further "legal instruments", such as the Paris Agreement, which integrate its contents. This means that, once ratified within the Italian State with law no. 65/1994, it enters the legal system as a **special source of the entire matter of climate change**, which it deals with together with its subsequent "legal instruments". Consequently, its efficacy is not only projected in international relations between States, according to the cited Vienna Convention (specifically with its subsequent "legal instruments"). Vienna Convention (specifically with articles 18, 26, 27, 31, 32, 61 n.2, 62 and 64). Rather, it extends to the national system of sources for the "special" subject matter treated as a source-law (the fight against climate change, not other environmental issues, as clarified now by EU Regulation no. 2021/241), finding legitimacy in art. 10 c.1, 11 and 117 c.1 Cost, as well as art. 1173 Civil Code. This means that the same interpretative canons of the Vienna Convention, starting with the one in Article 1173 of the Civil Code, are not applicable to the contract. This means that the same interpretative canons of the above-mentioned Vienna Convention, starting from that of good faith, must be used in its reading *also* for the internal application of its contents and of those of the further "legal instruments" enabled by it.

IV.9 The UNFCCC assigns to individual states the substantive function of **protecting and conserving**, *ratione loci*, the climate system (the formula is "*protecting the climate system*" including greenhouse gas "*sinks and reservoirs*"). This function is rooted in **two generally recognized principles** of **international law**: **territorial sovereignty**

and permanent sovereignty over natural resources, as recalled in par. 8 of the UNFCCC *Preamble* (in confirmation, recall Articles 1 and 2 of the Chicago Convention of 1944, made executive in Italy by Legislative Decree No. 616/1948, as well as the Document *First Report on the protection of the atmosphere* (A/cn.4/667), of 14 February 2014, by the *International Law Commission*). These principles operate for the **benefit of people**: for the well-being, freedoms and rights of each person, as is stated verbatim in the UNFCCC (*Preamble* and Art. 3) and is confirmed by countless sources in force in Italy (Art. 25 n.1 of the UN Universal Declaration of Human Rights of 1948; the UN Resolution 1803 AG of 14 December 1962; Principles 1 and 21 of the UN Declaration of Stockholm of 1972 on the human environment, included in the *Preamble* of the UNFCCC; and above all art. 1 n.2 of both the UN Covenant on Civil and Political Rights and the UN Covenant on Economic, Social and Cultural Rights, both of 1966, made executive in Italy with law n.881/1977). For these principles, the **automatic adaptation** *ex* **art. 10 of the Constitution** applies, so they **cannot be derogated from** by other Italian sources. It is no coincidence that the correspondence between the custody of territories and resources, on the one hand, and the welfare of people, on the other, is also reaffirmed by **EU law** (see **Court of Justice Grand Chamber Case C-366/10**, precisely with regard to the relationship between the Chicago Convention of 1944 and sources on climate change, and **Court of Justice Case C-266/16**, Conclusions Advocate General Wathelet, on the subject of sovereignty over natural resources).

IV.10 As a **UN instrument**, the UNFCCC gravitates in the orbit of **art. 11 Cost.** norm attributive of competence, originally referred to the UN and its normative productions having purposes of peace and justice. Consequently, its normative force is restrictive of state sovereignty in the specific competence of climate matters, not derogable or abrogated by exclusively internal disciplines.

IV.11 In its capacity as a **law of execution** (Law no. 65/1994), it is, however, placed as a **source interposed to** the Constitution, in the terms of **Art. 117, paragraph 1 of the Constitution**, therefore, not equal to the other formal laws.

IV.12 In conclusion, the UNFCCC has the features of a **composite source**: - expressing

generally recognized principles of international law, which are subject to adaptation *under* Article 10 limiting state sovereignty pursuant to art. 11 of the Constitution; - interposed between the Constitution and other sources, on the basis of art. 117, paragraph 1 of the Constitution; - having as its object a "special matter" (the fight against climate change); productive of obligations in terms of art. 1173 of the Civil Code.

IV.13 However, the UNFCCC is also a **source of EU law, since** the EU has acceded to it (by Council Decision 94/69/EC of 15 December 1993). Therefore, it still has the attributes of direct applicability and useful effect, like any other European source. On this matter, the case law of the Court of Justice is constant, from the "*Haegeman case*" (**Case C-181/73**) to the **Case C-66/18**, where the Court of Luxembourg confirmed that the participation of the EU in an international conventional system (such as the UNFCCC) implies the inclusion of its agreements in the European Union legal system, in terms of real law of the Union, as such invocable even in an action for infringement, *pursuant to* art. 258 TFEU, which is also an integral part of the system of competences between the Union and the States (as it is, for the issue of climate change, under Article 191 TFEU).

IV.14 It follows from this view that:

a) the **obligations** of the UNFCCC cannot be the subject of the discretion of the Member State, given that their content amounts to Euro-unit obligations and not to 'purely internal situations' (i.e. obligations which the State disposes of as it wishes towards its own administrators, by reason of purely internal sources);

b) their **interpretation** and **application** cannot be pursued with the aim of depriving the conventional source and other "legal instruments" of their useful effect, all the more so if the source contains *pro-personnel* principles (the benefits for present and future generations, of which the UNFCCC speaks) (see **CJEU Case C-297/19** nn.48, 52, 75);

c) any **conflict** or **incompatibility** between the UNFCCC (and related "legal instruments") on the one hand and sources of Italian law on the other must be resolved by giving primacy and effect to the UNFCCC and "legal instruments", as they are also EU sources (as requested, in Italy, since **Corte Cost n.170/1984**);

d) at the same time, the UNFCCC climate obligation integrates the **open catalogue of obligations**, enabled by art. 1173 c.c., thus assuming importance also at the level of domestic civil law, for the specific matter of the fight against climate change;

e) consequently, the UNFCCC (with its further "legal instruments") interacts with the rights of private parties, according to the Italian Civil Code (on the suitability of Article 1173 of the Civil Code to relate to international Conventions for the arising of obligations *ex lege*, see **Cass. civ. sez. III n.31555/2018**, p.1.3 and references *therein*);

f) at the same time, the interaction of the climate obligation with the rights of private persons takes place within the EU legal space, so that it cannot but project itself on the maximization of the level of protection of rights, in the terms of **Article 53 of** the **Nice-Strasbourg Charter**), EU primary law thanks to **Article 6 TEU** (see recently **Corte Cost. n.269/2017**, p. 5.2 *considered in law*);

g) Consequently, the parameter of legal subjection of the judge of **art. 101 Cost**. is inclusive of the composite source of the UNFCCC and its other "legal instruments".

IV.15 All this is fully consistent with **Article 4 n.18** of the **Paris Agreement,** which textually states: "*where the Parties act jointly in the framework of, and together with, a Regional Economic Integration Organization that is itself a Party to this Agreement* [ed: such as Italy/EU], *each Member State of such Regional Economic Integration Organization individually, and jointly with the Regional Economic Integration Organization, shall be responsible for its own emission levels...*". Moreover, this distinction of responsibility is at the very basis of the aforementioned **EU Regulations nos. 2018/842, 2018/1999, 2020/852** and **2021/241**, which converge in identifying **2030 as** the mandatory **time parameter** for the evaluation of state climate obligations in accordance with the Paris Agreement and the increase in temperature to a maximum of +1.5°C.

INTEGRATION OF THE CLIMATE OBLIGATION WITH THE "SCIENCE RESERVE"

IV.16 It has already been noted (see *back*, Chapters II.12 and IV.2-7) that the UNFCCC (with the additional "legal instruments") is a "***Science*** Based" source: based on science.

Therefore the special nature of its contents also concerns the (scientific) **method** and not only the subject matter. The assumption is reiterated by the Paris Agreement, where, in **art. 4 n.1**, it formulates the necessary recourse to the "*best scientific knowledge available*" by the States.

IV.17 This **scientific method** is **binding and conditioning** for the **State**. On the other hand, that science, with its acquisitions and results, constrains the public discretion also of the State is admitted in a general way by the cited law establishing the SNPA (n.132/2016), whose art. 3 n.1, *letter c*, establishes that scientific data and information of the System "*constitute official and binding reference for the activities of competence of the public administrations*". But the regulatory constraint is also in accordance with the **Constitution**, **TFEU** and **ECHR**.

IV.18 With regard to the **Constitution,** it is enough to think of its conformity with articles 9 c.1, 32 and 33 of the Constitution. By virtue of these, a constitutional jurisprudence has matured, whose contents are summarized by the doctrinal formula of the "**scientific reserve**". A regulation "*based on the guidelines shared by the national and international scientific community*" is constitutionally admissible, because it requires the public decision-maker, through recourse to the precautionary principle, to identify "*an acceptable danger threshold, on the basis of comprehensive knowledge accredited by the best available science*" (Constitutional Court n.5/2018), as indeed required by **art. 191 TFEU**.

IV.19 Con riguardo alla **CEDU** esiste una copiosa giurisprudenza della Corte Europea dei Diritti Umani (d'ora in poi Corte EDU) che riconosce la necessità che le misure adottate dagli Stati "*siano tenute sotto controllo tenendo conto in particolare degli sviluppi scientifici e sociali*" (*Rees c. Regno Unito*, app. n. 9532/81, § 47; si veda anche *Cossey c Regno Unito*, app. no. 10843/84, § 40; *Fretté v. France*, appeal no. 36515/97, § 42; *S.H. & Ors v. Austria*, appeal no. 57813/00, §§ 97, 103, 117, 118; *Dubská and Krejzová v. Czech Republic*, apps. no. 28859/11 and 28473/12, § 100; *Oluić v. Croatia*, no. 22330/05, §§ 29- 31), a principle also recognised in the *Urgenda* case by the Netherlands Supreme Court (§ 5.4.3).

IV.20 Indeed, the legal sources of the climate obligation hold the triple character of reliance:

- on the "*postulates of the natural sciences*";

- according to the "*guidelines shared by the international scientific community"*, i.e. the IPCC with its *Reports* (referred to *below*, Chap. II. 9-15);

- in order to identify *the* "*acceptable danger threshold*" i.e. the time limit of 2030, indicated by science mandated by the States in the cited. Decision 1/CP21 of 2015 (*back*, Ch. II. 6-10), but now "normalized" in the European legal space by EU Regulations Nos. 2018/842, 2018/1999, 2020/852 and 2021/241.

IV.21 On the other hand, the Constitutional Court has always affirmed that the acquisitions of science and its institutions constitute **limits** to **political discretion** (Constitutional **Court nos. 185/1998** and **282/2002**, p.5 *considered in law*) and to private autonomy (Constitutional Court no. 116/2006**,** p.6 considered in *law*), as well as **limits** to the **free conviction of the judge**, the expression of which cannot be translated into "*interference*" on the activity of scientific institutions or bodies, in order to re-evaluate information, findings and judgments (**Constitutional Court no. 121 /1999, p.3 considered in law), but not even (as inferred by Criminal Cassation no. 26568/2019, p.2 and ff. considered in law) in the failure to respect the "free conviction of the judge".1999,** p.3 *considered in law*), but not even (as can be inferred from **Criminal Court of Cassation section IV no. 26568/2019**, p. 2 et seq. *considered in law*) in the failure to respect the scientific "fair procedure", based on research programs and protocols of observation and explanation of reality, pursued by scientific institutions and publications.

LIMITS TO STATE DISCRETION

IV.22 The UN *Joint Statement on Human Rights and Climate Change,* signed by the five UN Human Rights Bodies on 16 September 2019, states at the end of the § 7: "*It is to be welcomed that national judiciaries and human rights institutions are increasingly committed to ensuring that States comply with their duties under existing human rights instruments to combat climate change.*" The link between climate emergency, human rights and effective judicial protection against the State is incontrovertible and the gravity of the situation,

ascertained and declared by the institutions, it necessarily restricts and constrains the margin of discretion of the States.

IV.23 According to the **UN Human Rights Committee** (cases **Landinelli Silva *v.* Uruguay 34/78** - findings of 8 April 1981; **Salgar de Montejo *v.* Colombia 64/79** - findings of 24 March 1985), any **declaration or situation of emergency** does not relieve the State of its **duties to protect** absolute rights threatened by the emergency and conditions and limits its discretion. The Italian jurisprudence also moves in this groove, in particular with the **Order Cass. civ. sez. III n.2481/2018**, in which it is specified that a **declaration of a state of emergency**, connected to calamitous events, does not constitute proof of their unpredictability, but rather the exact opposite, i.e. **explicit recognition** of the existence of ongoing damage and dangers, on which it is urgent to intervene in the rigor **of** technical-scientific measures, **limiting discretion**. Therefore, the **climate emergency**, denounced by world science and declared by the European Parliament, as well as by the branches of the Italian Parliament, **limits and conditions the discretion of the State**.

IV.24 Moreover, it has been found (*back*, Chap. II) that the scientific formula for ascertaining climate emergency is E = R *x* U, where U identifies the urgency of the **short time** available to intervene effectively in the emergency situation at hand. The time of urgency has been identified as **2030** by science (IPCC). This deadline is now **imposed normatively** by the oft-mentioned EU Regulations Nos. 2018/842, 2018/1999, 2020/852, 2021/241. The 2030 deadline marks the ultimate legal threshold of **non-regression** (the **point of no return**: see *back*, Ch. IV.6c) of existing conditions in the face of climate emergency.

IV.25 In other words, **2030 is the deadline for putting an end to the climate emergency** (the ultimate *rationale of* both the scientific acquisitions forecasting the risk constituting the emergency and the cited European Regulations that have made the date positive). It follows, with all evidence, that such a deadline **legally limits** the **discretion of** the State as a parameter of legitimacy external to the decisions of the State, "based on science", therefore in accordance with the so-called "reserve of science" in the assessment

of the climate emergency (*back*, Chapters II, III.1-6 and IV.17-21), and imposed by EU law (with the EU Regulations cited *back*, Chapter IV.7).

IV.26 It is worth remembering, moreover, that in the face of the granite scientific certainties on the climate emergency, the invocation of the State's **unquestionable discretion would degrade into indifference**. But such indifference is outside any realm of reliability, since it is not supported by objective, verifiable and scientifically correct evidence on the very use of non-independence. Among other things, as can be inferred from Constitutional Court sentence no. 52/2016 (p. 5.3 *considered in law*), the total lack of right, even political, is predictable only where it does not manifest external effectiveness and there are no regulatory constraints that define the boundaries and guide the exercise of power (in this sense, Constitutional Court no. 81/2012, p. 4.2. *considered in law*). These constraints and guidelines are instead clearly marked in the climate obligation (see *below*, Chap. IV.2-21) and are now marked as binding by the cited EU Regulations precisely with respect to the insurmountable time limit of 2030.

IV.27 It follows that the **time limit of 2030 is binding on the Judge by** virtue of **art. 101 of the Constitution.** It derives not only from the scientific institutions, empowered by the legal sources of climate obligation, but also from the cited EU Regulations, directly applicable in Italy. The judge must therefore verify the effective respect of that time threshold of "non-regression" in the State's actions in a climate emergency, so that the climate obligation is realized in the effective, full and non-regressive protection of the rights of the actors.

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V. INFRINGED RIGHTS

THE LINK BETWEEN CLIMATE ISSUES AND HUMAN RIGHTS

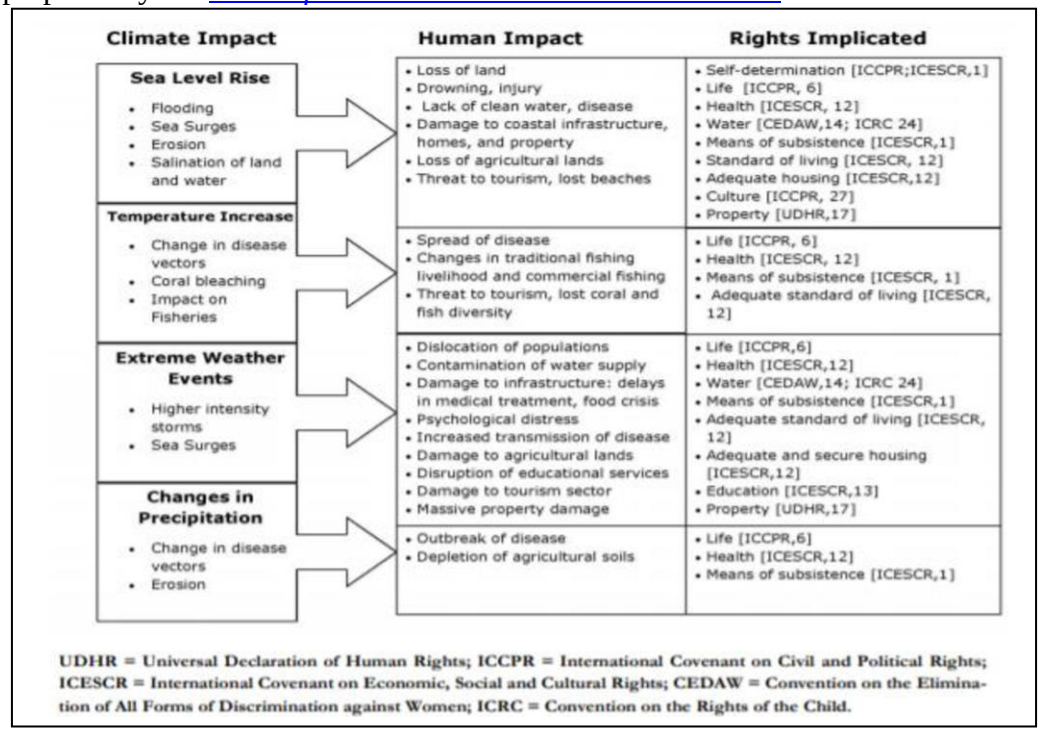
V.1 The **nexus** between **the impacts of climate change** and the enjoyment of **human rights** has been repeatedly emphasized and reaffirmed in recent years by a number of judicial precedents (including: the German Constitutional Court, *Neubauer et al. v. Germany*, § 147; the Supreme Court of the Netherlands, *Urgenda v. Netherlands*, §§ 5.5.2, 5.3.2, 5.6.2; the Supreme Court of Colombia, *Future Generations v. Minister of*

Environment et al. §§ 11.2 - 11.3; the High Court Green Bench of Lahore, *Asghar Leghari v. Pakistan*, §§ 6 - 8; the Supreme Court of Nepal, *Shrestha v. Nepal*, part. 61 Vol. 3; at the regional level, the Inter-American Court of Human Rights, *Advisory Opinion OC-23/17*, especially §§ 47, 54) and by countless ***Reports*** and **Declarations of** international institutions, of which **Italy is part**. Such documents, as noted by the *International Law Commission*, have the value of "***proof of consensus***" about what has been declared. The **most recent international synthesis** of the consensus on the human rights nexus is provided by **six documents**: the aforementioned. *Joint Statement on Human Rights and Climate Change*, of **2019**, the *Frequently Asked Questions on Human Rights and Climate Change of* the UN High Commissioner for Human Rights, of **2021**, the *Making Peace with Nature of* UNEP, of 18 February 2021, with the *Joint statement of United Nations Entities on the Right to Healthy Environment*, signed on 8 March 2021 by 15 UN Organizations, both on the triple crisis (climate change, pollution and loss of biodiversity) that threatens and harms human rights. Even the **National Institutions for the protection of human rights** (of which, as we know, **Italy is lacking**), recognize and document these connections, collected in the *Report Climate Change and Human Rights. The Contributions of National Human Rights Institutions* of December **2020**. See also Declaration of Nine United Nations Special Procedures on the Link between Climate Change and Human Rights of 2019 and the Safe Climate Report of the United Nations Special Rapporteur on Human Rights and the Environment also of 2019. The reconnaissance sources are therefore now innumerable and none of them have **ever** been **denied** or **disavowed** by **Italy**.

V.2 Moreover, **Italy** has **explicitly declared** its **commitment to** the humanitarian perspective of protecting its residents from the consequences of climate problems, with the signing of the *Geneva Pledge for Human Rights in Climate Action* in February 2015, adopted within the *Human Rights & Climate Change Working Group*. Indeed, the solemn pledge signed by the States is unequivocal: "*We the undersigned observe that climate change-related impacts have a number of implications, both direct and indirect, for the effective enjoyment of human rights.*"

V.3 *In* any case, the ***Preamble*** of the **Paris Agreement** requires that States "*respect, promote and take into account their respective obligations towards human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations, as well as the right to development, gender equality, empowerment of women and intergenerational equity*". Moreover, this principle had already made its way in the Cancun Agreements, adopted at COP 16 in 2010, which in paragraph 8 state: "*that Parties should, in all actions relating to climate change, fully respect human rights*".

The same can be inferred from ***Recital No. 45*** of the **EU** Energy and Climate **Regulation No. 2018/1999**, as well as the European Parliament Resolution of 15/01/20, according to which "*all people living in Europe should enjoy without discrimination the **fundamental right** to a safe, clean, healthy and sustainable environment and **a stable climate**, and that this right must be guaranteed through ambitious actions and must be **fully enforceable through the judicial system at national and EU level.***" A picture of human rights impacted by climate change can be gleaned from the following chart, prepared by the *Center for International Environmental Law*:



In the diagram, the first column indicates the **consequences** of climate change, the second the **related** human **impacts**, the third the **fundamental right affected**, with an indication (in acronym) of the International **Convention** or **Treaty** that recognizes it. From this it can be deduced that the situations compromised by climate problems involve **very fundamental rights of the human person**: the **right to life**, to **food**, to **water**, **to health**, **to a healthy environment**, to **adequate housing** and property, **to self-determination** in the **use of natural resources**, **present and future**, **to survival in standards of living** and **human development**. Equally evident is the observation that this impairment depends on *feedback loop* and pathogenesis processes, triggered by climate change and accelerated by the emergency.

V.4 Among all the rights mentioned, it is important to note the **indissoluble link** between the **right to life** and the **right to survival in human development**, as recently underlined by the **UNDP** with the *Report of the* end of 2020 *Human Development and the Anthropocene*, which is also the basis of the **first world survey on the climate emergency**, entitled *People's Climate Vote*, also edited by the UN in January 2021. Moreover, the formula "*common concern of mankind"*, which accompanies the theme of climate problems since the first UN Declarations (UN General Assembly Resolutions AG 43/53, 44/207 and 45/212) to then find consecration in the UNFCCC and the Paris Agreement, reflects the aforementioned link between life and human development, therefore between the "benefits" of the present and future generations, marked for the stabilization of the climate system.

V.5 Without stabilization of the climate system, the essential core of any fundamental right is no longer guaranteed, due to the obvious consideration that it **is progressively and irreversibly more and more compromised by *feedback loops* and pathogenesis** of anthropogenic climate change. This was recognized by the Court of Cassation in the cited. Ordinance n.5022/2021, with regard precisely to climate problems.

V.6 With the climate emergency, everything has changed and it has changed for the worse. Time is short and the stakes are very high, because all human beings are exposed

passively and threateningly to the devastating effects of the emergency (Gartin M. Larson K.L. Brewis A. et al, *Climate Changeas an Involuntary Exposure*, 2020).

V.7 Therefore, every human being has the **right to** demand the **non-regression** of **his human development** and of the **essential core of his rights** in the face of the dramatic **urgency of** the climate **emergency.**

THE HUMAN RIGHT TO CLIMATE

V.8 In this substantial claim of **non-regression** lies the **human right to a stable and safe climate**. It is consequential precisely to the nature of climate problems, as described in Chapter I. As such, it is more than just the right to life: **it is its presupposition**. In fact, any life can abstractly adapt, even through technological artifices, to a new climate system completely disrupted by unstoppable temperature increases of over 1.5°C. It would, however, be a **life in regression** with respect to the existential quality of the **present time** and therefore **worse** for **future generations**, affecting all spheres of human freedom, as affirmed precisely by the aforementioned judgment of the German Federal Constitutional Court, according to which the objectives of cutting emissions contained in the German climate law constitute an "*effect of anticipated interference*" on the individual freedoms of future generations. Moreover, the Court stated that "*the present generation must not be allowed to consume large portions of the* CO_2 *budget, thereby sustaining a minimal reduction effort, if this means having to leave subsequent generations with a drastic reduction burden, exposing their lives to global losses of fundamental freedoms.*" It is by virtue of this that all sources of climate obligation put **mitigation**, through emission reductions, before **adaptation**. And it is also understandable why, since 1992 with the UNFCCC, the fight against climate change has been focused on the objective of "**stabilizing the climate system**". Stabilization is achieved by fulfilling the duty of **mitigation**; and mitigation is the only measure that works "for the ***benefit of*** *present and future generations*". Ultimately, without stability

climate, the events or situations that mark the contents of any other present and future human right (from life to health, to healthy environment, to family and private life), would be destined to irreversible decline in the degenerative processes of the "*Global Tipping Points*", even more so in a context of climate *hot-spot*, such as the Italian one.

V.9 The human right to a stable and safe climate, therefore, now consists in the right of every human being to have states remove the current climate emergency in order to safeguard in time and forever the functionality of the climate system and preserve its thermodynamic stability by boldly focusing on mitigation. On this point, the UN Special Rapporteur on Human Rights and the Environment recognized that "*a safe climate is a vital element of the right to a healthy environment and is absolutely essential for human life and well-being*" (Safe Climate Report, par. 96). In practice, it consists of the right to the maintenance of the "safe operating space" of human beings within the recognized *Planetary Boundaries*.

V.10 In conclusion, the protection of the human right to a stable and safe climate is inescapable and necessary for the enjoyment of all other fundamental rights "*for the benefit of present and future generations*". On the other hand, the ways through which to ensure the protection of the subjective right are all formalized by the **legal norms** that define the content elements of the climate obligation (Chap. IV.2-21): from the **modalities of fulfilment** (the actions of mitigation and non-regression, through the abatement of anthropogenic greenhouse gas emissions according to climate precaution and equity-"fair share" in the calculation of the "*Carbon Budget*"), to the **objectives** (the containment of the increase in global temperature within +1.5°C or "*well below*" +2°C); to the **timescales** (by 2030 and for "climate neutrality" by 2050).

V.11 This is why the human right to a stable climate is explicitly referred to in the aforementioned Resolution of the European Parliament of 15/01/20 (art. 2), an act of democratic legitimation of the ways of fulfilling, in terms of results and timing, the climate obligation within the Euro-unitary legal space.

V.12 But the human right to a stable and safe climate fits in perfectly:

- in the **open catalogue of rights**, acknowledged by **art. 2 of the Italian Constitution**, which, as is known, has allowed the extension of the "protection of the landscape", *ex* art. 9 c.2 Cost, to the "protection of the environment", as well as of the "right to health", *ex* art. 32 Cost, to the "right to a healthy environment" (starting from the recent Constitutional Court nn. 184/1986, 559/1987, 455/1990, 202/1991, 218/1994, 399/1996)

- in the **duty of removing obstacles in fact**, imposed by the Constitution to avoid injustices, including intergenerational injustices.

Therefore, to exclude the judicial protection of the stable and safe climate would violate both art. 2 Cost, whose **indefectible content**, according to the granite orientation of the Constitutional Court, consists in imposing on the State not only not to abdicate the primacy of the human person **in the present and in the future**, but also to guarantee the intertemporal enjoyment of vital goods, in order to "*contribute to the fact that the life of every person reflects every day and in every aspect the universal image of human dignity*" (Corte Cost. nos. 479/1987, 561/1987, 217/1988, 364/1988, 26/1999, 167/1991, 368/1992, 81/1993, 224/1996, 267/1998, 309/1999, 390/1999, 509/2000, 159/2001, 252/2001, 448/2002, 341/2006, 432/2005, 148/2008, 40/2011, 60/2011), as well as Article 3 of the Constitution, cynically assuming that the climate emergency does not represent a "de facto obstacle" to the freedom and rights of the human person.

V.13 Other sources in Italy corroborate the represented assumption. For example, the link between life and present and future human development, in the non-regression of natural resources and therefore of the climate system (given that the climate system includes all the spheres of the Earth, as described *below*, in Chapter I) is evoked in **art. 1 n.2** of both the cited UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966, in the statement "in no case may a people be deprived of its economic, social and cultural rights". **UN Covenants on Civil and Political Rights** and **on Economic, Social and Cultural Rights** of **1966**, in the statement "***in no case*** *shall a people be* ***deprived*** *of its* ***means of subsistence***". **Climate**, in its ecosystemic function of regulating life (see *back*, Ch. I), is the **foundational** "means of subsistence" of all others: without its stabilization, there is only room for deprivation. Among other things, ignoring the right to a stable and safe climate would

also deprive the entire **UN Convention on the Rights of the Child of its** meaning, **and the** articles of the Convention on the Rights of the Child **of** 1989, enforced in Italy by **law no. 176/1989**, are totally focused on the **stability of the conditions of existence, present and future, of human beings** in their journey through life.

V.14 The precept of **non-regression of** the climate system is also present in EU law with **Art. 191 TFEU,** where it is mentioned, also with regard to the fight against climate change, the duties of "*improving the quality of the environment*", "a *high level of protection"*, "*preventive action*" and "*rectifying, as a priority, the damage caused to the environment at source*", in the legitimacy of public action on the basis of scientific knowledge, i.e. in the consideration of "*available scientific and technical data*" to assess "the *benefits and costs that may result from action or lack of action*"; duties further specified (as mentioned *below*, Chap. IV.6) by the Paris Agreement, where *the* "*absolute emission reduction targets covering all sectors of the economy*" (art. 4 n.4) require the "*progression*" of each state contribution with respect to its predecessors (art. 4 n.3) in order to "*increase*" climate mitigation actions also in the cooperation among states (art. 6 n.1), in the necessary recourse to the "*best scientific knowledge available*" (art. 4 n.1) and following not only market but also "*holistic*" approaches (art. 6 n.8).

V.15 The rule of **non-regression** is also the basis of the recent **EU Regulations nos. 2020/852** and **2021/241**, in the part where they frame as "environmentally sustainable" any activity or decision "*which contributes substantially to the achievement of one or more of the environmental objectives*" of climate change mitigation, climate change adaptation, sustainable use and protection of water and marine resources, transition to a circular economy, prevention and reduction of pollution, protection and restoration of biodiversity and ecosystems, without causing "*significant damage to any of the* remaining *environmental objectives*" (art. 3).

V.16 Obviously, all these rules enter the Italian legal system through the Constitution (art. 117 c.1).

RIGHTS UNDER THE ECHR

V.17 The human right to a stable and safe climate also interfaces with the catalogue of principles and contents of **art. 6** of the **Treaty of the European Union** (TEU), a source directly applicable in the Italian legal system. It is enough to think, for all, of the "essential content" of fundamental rights, as per **art. 52** of the Nice-Strasbourg Charter.

V.18 But the same provisions of the ECHR are directly relevant to the issue of climate emergency, as the recent *Urgenda* case decided by the Dutch Supreme Court attests.

V.19 The cornerstones of this relevance revolve around **art. 2** (right to life) and **art. 8** (respect for private and family life) **ECHR,** as well as **art. 14** (prohibition of discrimination) in conjunction with the first articles, as interpreted by the ECHR. Focusing on art. 2 and 8 ECHR, in extreme synthesis, the acquisitions that can be deduced from the Euro-humanitarian jurisprudence are the following:

a) the State has a positive obligation "*to take appropriate measures to safeguard the lives of persons under its jurisdiction*" within the meaning of Article 2 ECHR (*Osman v.* the *United Kingdom*, Grand Chamber, app no. 87/1997§115; *Öneryıldız v. Turkey*, app. no. 48939/99, judgment of 30 November 2004, §§71, 89; *Budayeva v. Russia*, app. no. 15339/02, judgment of 20 March 2008, §128; *Kolyadenko v. Russia*, app. no. 17423/05, judgment of 9 July 2012,

§157);

b) protection of the right to life "*applies in the context of any activity, public or otherwise, in which the right to life may be at stake*" (*Öneryildiz v. Turkey*, no.48939/99, judgment of 30 November 2004 § 71) and consists in the deterrent and preventive function of the State's primary duties "*against threats to the right to life*" (*Öneryıldız* § 89 referring to *Osman v. the United Kingdom*, no.23452/94, judgment of 18 October 1998 § 115);

c) the State similarly has a positive obligation "*to take reasonable and appropriate measures to ensure*" the right to respect for private and family life under Article 8 ECHR (*Hatton v. United Kingdom* (Grand Chamber), app no. 36022/97, § 98);

d) moreover, the EDU Court has found against Italy violations of positive obligations under Article 8 ECHR due to its failure to manage the risks of damage associated with environmental pollution and natural disasters (*Cordella v. Italy*, app. no. 54414/13 54264/15, judgment of 24 January 2019; *Di Sarno v. Italy, app.* no. 30765/08, judgment of 10 January 2012; *Giacomelli v. Italy, app* no. 59909/00, judgment of 2 November 2006; *Guerra v. Italy*, app. no. 14967/89, judgment of 19 February 1998);

e) in this context, the State's positive obligations *under* Article 2 ECHR overlap with those under Article 8 ECHR, as the State is required to take "*the same practical measures*" in the face of the threat *(Kolyadenko et al. v. Russia, § 216; Brincat et al. v. Malta, judgment of 24 July 2014, §102; Budayeva et al. v. Russia, apps. nos. 15339/02, 11673/02, 15343/02, 20058/02, 21166/02 judgment 20 March 2008 § 133, citing cases cited. Öneryildiz §§ 90 and 160*) and "*take appropriate measures to safeguard the lives of those within its jurisdiction*" (*Osman v. the United Kingdom, § 115*); this obligation "*applies in the context of any activity, public or otherwise, in which the right to life may be at stake*" (*Öneryıldız* § 71and *Budayeva* § 130);

f) in order to trigger the State's positive obligations under Articles 2 and 8 ECHR, the threat must be real (*Jugheli et al. v. Georgia,* app. no.38342/05, § 63, judgment 13 July 2017 § 67; *Cordella* § 169) and of it the State must be (or should have been) aware (*Lopez Ostra v. Spain* app. no.16798/90 judgment 9 December 1994 §§ 9, 11, 52-53, cited above. *Öneryildiz* § 101; *Fadeyeva v. Russia*, no. 55723/00 app. 9 June 2005 § 90, cited above. *Budayeva* §§ 147-148; cited above. *Kolyadenko* §§ 165 and 176, cited above. *Brincat* § 106, cited above. *Jugheli* § 77). Knowledge in the hands of the State may be recognized by virtue of the existence of sources of scientific cognition of a different nature, such as internal *reports* or documents (cit. *Lopez Ostra* § 53 and *Fadeyeva* §§ 85 and 90), warnings from other actors involved (cit. *Lopez Ostra* §§ 9 and 53, *Budayeva* § 148, *Kolyadenko* §§ 165 and 176), developments in "*objective scientific research*" (cit. *Brincat* § 106), regional or international commitments aimed at regulating, in scientific knowledge, the phenomenon carrying the threat (*Brincat* § 105);

g) these positive obligations of the State *under* Articles 2 and 8 ECHR arise irrespective of the prior identification of potential victims, as the ECHR protection must be satisfied even where the threat concerns the "*general public*" (*Stoicescu v. Romania* app. no. 9718/03 judgment 26 July 2011 §§ 54, 56, 59; see also *Cordella* § 172);

h) such obligations, in fact, must take as their priority the purpose of prevention through measures suggested by scientific knowledge (*Budayeva* § 137, *Brincat* § 112 and *Kotilainen et al. v. Finland*, app. no. 62439/12 judgment 17 September 2020 § 67);

i) only under these conditions can the measures be considered "*appropriate*" (*Budayeva* § 128) and it is possible to conclude that the State has acted with "*due diligence*" (*Fadeyeva* § 128; *Cordella* § 161; *Budayeva* § 152; *Jugheli* § 76);

l) in any event, the burden of proving all of the above, including any ignorance of the risks, rests on the State (*Fadeyeva* §§ 128-133, *Jugheli* § 76 and *Dubetska et al. v. Ukraine* app. no.30499/03 sent. 20 February 2011 § 155, *Cordella* § 161);

m) in order to comply with these obligations, the State's primary duty is to "*put in place a legislative and administrative framework designed to provide an effective deterrent against threats to the right to life*" (*Öneryıldız* § 89) and the right to private and family life (*Hatton* § 89) and to take "*preventive operational measures*" to protect persons whose lives are at risk (*Osman* § 115; *Öneryıldız* § 101), provided that this duty does not amount to an "*impossible or disproportionate burden*" (*Osman* § 116; *Öneryıldız* § 107).

V.20 Finally, the prohibition of discrimination laid down in Article 14 ECHR is relevant in this case in conjunction with Articles 2 and 8 ECHR. A recent climate case brought before the ECHR - *Duarte Agostinho et al v. 33 States*" (app. no. 369371/20) - invoked, in addition to Articles 2 and 8, also **Article 14** ECHR, which enshrines the prohibition of discrimination, highlighting the disproportionate impacts that climate change has on certain categories of people. With regard to children, it is pointed out that the discriminatory impact of the Italian State's climate inaction goes two ways. First, children are discriminated against as belonging,

because of their age, to a group particularly vulnerable to the impacts of climate change. Secondly, children are also discriminated against because the Italian State's inaction on climate change shifts the burden and cost of the harmful consequences of such failures primarily onto them (see on this point the judgment of the German Constitutional Court in the *Neubauer* case and the Dutch Supreme Court in the *Urgenda* case, § 4.7).

V.21 The acquisitions of the ECHR and its jurisprudence within a State see an inescapable point of reference, with specific regard to the climate obligation, in the final judgement of the so-called "*Urgenda* case" of the Dutch Supreme Court. Since this is an application of the ECHR within a member state of the EU, the ruling is important to identify the **protection to be granted to all EU citizens in climate matters**, by virtue of **art. 6 TEU** and the aforementioned *principle of non-discrimination*. In practice, the "*Urgenda*" decision adopts all the ECHR guidelines just listed. In particular, it establishes that the requirement of the **threshold of seriousness of** the threat must be interpreted in the light of the **context of climate change**, stressing that, in this context, the injury must not be "*imminent*" but "*foreseeable*" and "*serious*", so that even "*the mere existence of a sufficiently real possibility that this threat will materialise means that appropriate measures must be taken*" (§§ 5.6.2). Similar reasoning is followed with regard to the scope of the State's positive obligations *under* Art. 2 and 8 ECHR, which the Court interpreted in the light of the UNFCCC and the Paris Agreement, recognizing that the State has an "*individual responsibility*" to mitigate climate change and eliminate greenhouse gas emissions according to its "*fair share*" arising from the provisions of the UNFCCC and the scientific findings contained in the IPCC reports on emission reductions (§§ 5.3.2, 5.6.2, 5.7.1, 5.7.3, 5.8, 5.3, 6.5, 7.2.5, 7.2.10, 7.4.6). Applying the case law of the EDU Court, the Dutch Supreme Court held that the Dutch State "*must adequately demonstrate that ... pursues a policy through which it remains within its fair share*" (§ 6.5). Noting that the

State failed to demonstrate that the emission reduction measures taken were adequate, the Supreme Court concluded that the State had breached its positive obligations under Articles 2 and 8 ECHR (§§ 7.3.4, 7.5.1, 7.5.3).

THE RIGHT TO INFORMATION AND THE RIGHT TO ENJOY SCIENTIFIC PROGRESS

V.22 The link between the substantive dimension of the "benefits" of the present and future generations, on the one hand, and procedural rights, on the other, is established by the UNFCCC in art. 6, with regard to state information obligations. These obligations are addressed to the public and not only to other States and consist in providing scientifically documented feedback not only on the state of the national climate context and future scenarios but also on the effects of decisions taken or planned. These obligations are therefore specular to other fundamental human rights, with procedural content: the right to "***enjoy the benefits of scientific progress and its applications***", recognized by **art. 15** of the UN Covenant on Economic, Social and Cultural Rights of 1966, in force in Italy and specular to articles 9 and 33 of the Italian Constitution; the right to environmental and climate information, including the right to know the ***benefits of scientific progress. The right to "enjoy the benefits of scientific progress and its applications", recognized by art. 15 of the above-mentioned*** **UN Covenant on Economic, Social and Cultural Rights of 1966**, in force in Italy and specular to articles 9, 33 of the Constitution; the right to **environmental and climate information**, including the right to know the **danger**, even if only **potential**, of **emissions**. The intertwining of the right to enjoy progress of science and information can be inferred from the ECHR, EU and Italian constitutional jurisprudence.

V.23 The EDU Court has repeatedly recognised that States' positive obligations under Articles 2 and 8 ECHR also have a procedural content (*Hatton* § 99, *Kolyadenko* § 203, *Oneryildiz §* 118, *Taskin* § 118). In particular, in assessing whether the State's conduct constitutes a violation of Article 8 in particular, the Court examines whether the authorities have conducted sufficient studies to assess the risks of a potentially dangerous activity (*Hatton* § 128, *Giacomelli* § 86, *Tatar v. Romania,* app.no. 67021/01, § 112, *Taskin* § 119) and whether the individuals affected by the decision in question were provided with relevant

and appropriate information, or whether they were provided with " essential information " necessary to assess the risks to their life and health (*Tatar* § 124 and 122, *Vilnes, Harby and Maile* § 245, *Di Sarno* § 107, *Giacomelli* § 83, *Taskin* § 119).

The same preventive function is recognized by the EU Court of Justice, especially with reference to Article 6 of EU Regulation No. 2013/1367, where the matter of emissions is qualified as "*public interest*" overriding any other interest or right (as such, therefore, not balancing). The Court specified that such right also includes the right to know the nature, composition, quantity, date and place of emissions as well as the effects even only "*potentially dangerous*" (thus excluding "*those merely hypothetical*") of emissions in the medium and long term.

V.24 Also for the Constitutional Court the right to be informed (right to passive information) translates a "*preliminary condition*" of the democratic State (Constitutional Court n.151/2003) as well as an "*interest of the community*" (Constitutional Court n.225/1974).

V.25 Ultimately, state neglect of procedural information rights betrays the "*warning function*" that it is incumbent on the public power in any event to perform so that individuals can "*regulate their future conduct accordingly, for example in order to prevent possible harm*" (CJEU Case C-420/11, Adv. Gen. Kokott, nos. 50-51).

V.26 The **Italian State** has **betrayed this "warning function"** with respect to several actors in this case. In fact, the **initiatives** of **generalized civic access (the so-called FOIA) on climate issues,** promoted by the plaintiffs with regard to state decisions in the context of international commitments on climate as well as during the construction of infrastructure or works on the territory (such as the TAP pipeline or the TAV Turin-Lyon line), **have never had positive feedbacks** corresponding to the requirements of **prevention**, required by the cited European and national case law. The State either did not respond (Exhibit **F**) or responded by confessing the total absence of scientific climatic information on prevention (**Exhibit G**).

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VI. THE CLIMATE LIABILITY OF THE ITALIAN STATE

EXTRA-CONTRACTUAL LIABILITY *PURSUANT TO* ART. 2043 C. C.

VI.1 The factual circumstances and legal elements illustrated in the previous chapters establish the extra-contractual liability of the **Italian State** pursuant to **article 2043 of the Civil Code.** It has not adopted actions, nor has it taken adequate measures to achieve **climate stability** through a reduction of anthropogenic CO2-eq emissions compatible with the objectives set out in international agreements. In particular, the Italian State has not implemented, nor planned, the necessary measures to contain the global temperature increase to **+1.5°C** compared to pre-industrial levels, identified by the 2018 *Special Report*, later confirmed by the acquisitions of the best science, as a **threshold of** tolerability and safety for the climate system, an insurmountable **limit** to ensure the protection of natural ecosystems, health, welfare of humankind (see Chap. II).

VI.2 The persistent **inertia** of the State in pursuing the objective of climate stability, given the link between climate change and the fundamental rights of the human being, integrates the case of the tort *pursuant to* **art. 2043 c.c., in the light of the constitutionally oriented interpretation of the rule and the general clause of neminemedere contained therein.** in light of the constitutionally oriented interpretation of the rule and the general clause of *neminem laedere* contained therein.

VI.3 For some time, the **Constitutional Court**, with its pronouncements, in particular with **sentence no. 641/1987**, has recognised the "***new value***" given to article 2043 Civil Code following the coming into force of the Constitution, recognising in the former the "*instrument for the protection of the values which it foresees and ensures*". The principle of *neminem laedere* - (which the subsequent sentence of the **Constitutional Court, no. 16/1993** places in the "*framework of values on which the rule of law is built*") - in the dutiful relation with the principle of solidarity *ex* art. 2 Const. and with the constitutional precepts placed to protect goods of absolute and primary value, "*assumes a new and different importance and above all a different content*". What, therefore, allows the actionability of article 2043 Civil Code not only in the function of patrimonial reintegration of the damaged party, but also of **prevention of** the illicit action, so as to avoid "*the entire range of harmful consequences*", deriving from the violation of the rights of the injured party, precepts placed

to protect primary and absolute goods, such as health and healthy environment. From the need for their (full) protection it follows, according to the judgment, that "*the type of civil liability may well assume, at the same time, preventive and sanctioning tasks*".

VI.4 The Constitutional Court has crystallized, with regard to the general clause of *neminem laedere ex* art. 2043 Civil Code, a trend line of the legal system already pointed out, in fact, by **Civil cassation no. 5172/1979, which identified the sense of configuring "even a right to health as a "social right", understood as the right of the private individual to a positive activity of the Public Administration". SS.UU. no. 5172/1979**, which identified it in the sense of configuring "*even a right to health as a "social right", understood as the right of the private individual to a positive activity of the Public Administration in favour of health, both in a preventive way and in a recuperative way*" (in terms, **Civil cassation no. 5172/1979). SS.UU. no. 2999/1989**, **Cass. civ. SS.UU. n.400/1991**, **Cass. civ. SS.UU. n.7318/1991**, **Cass. civ. SS.UU. n.2092/1992**). **Cass. civ. n. 12133/1990** is in the same vein. **SS.UU. no. 12133/1990** which, referring to **Cass. civ. SS.UU. no. 5626/1988**, reiterates in the grounds the possibility of qualifying as illicit a fact, "*insofar as it produces a danger of damage to a subjective right*", e.g. right to health and environmental healthiness.

VI.5 In the following years, the *dictum of* the Constitutional Court expressed by judgment no. 641/1987 has been punctually recalled and enhanced by the civil jurisprudence, legitimacy and merit, which has reiterated the *ratio* and further specified the purposes and the scope of application. In fact, the Supreme Court has ruled that the constitutional protection granted to goods of absolute and primary value, is able to anticipate the threshold of the judicial protection which the owners can benefit from, given that - as stated by **Cass. civ. sez. III. n.9893/2000** - the related rights "*do not tolerate external interferences which call into question their integrity*" (cf. compliant **Cass. civ. SS.UU. no. 4908/2006**, **Cass. civ. SS.UU. no.6218/2006**, **Cass. civ. SS.UU. no.23735/2006**, **Cass. civ. SS.UU. no.17461/2006**, **Cass. civ. sez. III no.15853/2015**). Therefore, in the presence of other people's conduct, whether they are actions or omissions, such as to endanger those assets, exposing them to the risk of concrete impairment, it is possible to invoke the protection *under* article 2043 of the Civil Code in **advance**, to prevent the threatened impairment from taking place, resulting in definitive and irreversible damage, susceptible only to the risk of damage to the assets.

patrimonial reintegration. Deeming otherwise would mean, according to the argumentative structure of the above mentioned case law, irreparably vulnerable goods to which the legal system recognizes primary and absolute value, which would be substantially denied any **effective** protection, since (contradictorily) limited only to the phase subsequent to the lesion. **Vice versa**, the primary rank of the goods authorizes the owner to **take action against** anyone who exposes them to danger, then invoke art. 2043 Civil Code to obtain a measure that, through the inhibition of a conduct or the imposition of a *deed*, puts an end to the unlawful conduct of others, preventing the occurrence of damage or its perpetuation, depending on the different circumstances. On this point, it is worth recalling the recent **Civil cassation. SS.UU. n.8092/2020** that, in the recomposition of the jurisprudential framework relating to the operation of art. 2043 Civil Code, reaffirms the prior availability in the presence of situations of proven danger, to eliminate (prevent) **potential damage** to health or other fundamental rights of persons, through the sentence to the adoption of the necessary measures, pronounced against the author of facts made or about to be made in violation of *neminem laedere*. The Supreme Court - recalling numerous precedents (**Supreme Court of Cassation Civ. SS.UU. n.2338/2018, Cass. civ. SS.UU. n.11142/2017, Cass. civ. SS.UU. n.20571/2013, Cass. Civ. SS.UU. n.10186/1998**) - has therefore (again) resolutely affirmed that protection through inhibitory *action* and compensation for damage in a specific form assumes, with reference to the right to health of constitutional rank, "*a priority and proper character with respect to the general compensation action under article 2043 Civil Code*". In the direction of substantial confirmation of the same principle, **Cass. civ. SS.UU. no. 23908/2020,** which establishes the jurisdiction of the O.G. on the request of a private individual who, alleging the danger to health or other fundamental rights of the person resulting from the omission of dutiful conduct of the P.A. in violation of the general principle of *neminem laedere under* article 2043 of the Civil Code, asks for the condemnation to adopt the necessary measures to eliminate not only the current **damage**, but also **potential damage**. Equally numerous, moreover, are the judgments of merit that have applied art. 2043 Civil Code in the peculiar preventive function to avoid damage to the primary goods of health or healthy environment, in the face of their exposure to a

dangerous situation **(see *ex plurimis*, Trib. Milan 7 October 1999, Trib. Reggio Calabria 30 January 2001, Trib. Bologna 1 August 2006, Trib. Salerno 28 April 2007, Trib. Nola 29 November 2007, Trib. Salerno 4 July 2007, Trib. Palermo 12 November 2008, Trib. Salerno 11 May 2008 2009).**

VI.6 Now, the inertia of the Italian State in the (rightful) implementation of actions and measures to contain the increase in global temperature within the indicated limit of +1.5°C, is punishable pursuant to **article 2043 of the Civil Code**. In the case in point, the fundamental **presupposition** that enables the prior availability of aquilan protection, as identified by the granitic jurisprudential teaching illustrated above, which has undeniably become living law, is met.

And indeed:

VI.6a The **link** between **climate problems** and **damage** to **primary and absolute goods**, essential for the survival of the human person, the object of his inviolable and fundamental rights recognised by a plurality of sources, *first and foremost* the Italian Constitution, is **incontrovertible.** It concerns not only the right to **health** and to a **healthy environment** of constitutional rank, but also includes numerous others, expansion and projection of the former (such as the right to life, to food, to water, to the pursuit of the superior interest of the minor, etc.), all fully protected and unquestionable.), all of which are fully protected and unconditionally recognised by the Italian Constitution and by the findings of the constitutional jurisprudence on the interconnected interpretation of article 32, as well as by other equally binding and unbreakable sources, such as the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights of the European Union (see *back* chapter V.). The link in question is ascertained by the best scientific acquisitions available, recognized by numerous international institutions, to which Italy belongs. Moreover, it is acknowledged and formalized by the UNFCCC itself, to which the Italian State is bound, which attributes to climate change harmful consequences for the ecosystems, the health and the welfare of mankind (see *back* Chap. IV.4a).

VI.6b The increase in global warming due to artificial anthropogenic emissions of CO_2-eq, thus climate change and the associated instability of the climate system, resulting in (intolerable) *external interference*, undoubtedly define the **situation of danger** for the *integrity of* the above-mentioned primary and absolute goods, presupposed by the above-mentioned case law. This point has been discussed at length in Chapters I and II. Therefore, it will now suffice, on the one hand, to reiterate the nature of the "*urgent and potentially irreversible threat*" of climate change, declared in 2015 by the UNFCCC with Decision 1/CP21; on the other hand, to recall the multiple, unequivocal and concordant scientific evidence, which also outlines the scenarios, dramatic to say the least, for the hypothesis of an increase in global temperatures beyond the limit of +1.5°C with respect to pre-industrial levels, which are at the basis of the declarations of the climate emergency.

VI.6c The reported **dangerous situation** manifests itself with particular intensity and force in the Italian climatic context, which is the living space of the actors. As ascertained, documented and declared by national and international scientific institutions, it is a climatic *hot-spot*, characterised by peculiar fragility and vulnerability, and therefore particularly exposed to the negative effects of anthropogenic climate change (see *below*, Chap. III.1-6).

VI.7 The conduct of the Italian State not only keeps the exponents in the dimension of "*urgent threat*" represented by climate change, but feeds and aggravates it *die in die* (also) because of the climate emergency. Therefore, it can be framed in the scheme of the **permanent offense**, considered:

a) the dynamic and complex processes of functioning of the climate system, structured according to cumulative and circular causal chains, articulated in actions, reactions and retroactions, so that every new atmospheric emission of CO2-eq alters the already compromised situation, irreversibly damaging the entire climate system and its single components (see *back*, Chap. I);

b) the unstoppable contraction of the margins for implementing measures to contain the increase in global temperatures, given the inexorable approach of the date 2030, which closes the time frame within which it is possible to act effectively to ensure

the stability and security of the climate system in the climate emergency (see *overleaf*, Chapters II and IV).

Hence the need to sanction the conduct of the Italian State in order to remove its unlawfulness and stop its damaging effects, resulting in it being ordered to *do something pursuant to* **art. 2058, paragraph 1, Civil Code.** The Italian Government is obliged to take appropriate measures to eliminate the causes of the damage to the climate stability in progress, while preventing their recurrence.

VI.8a In this pursued perspective, it is noted that his conduct is consummated in the clear violation of the **duty to act** for the (preventive) protection of primary and absolute goods, subject of fundamental human rights, as exactly defined by a plurality of rules, principles and legal values, also of international and supranational derivation, operating in the domestic system.

VI.8b The obligation to act derives, first of all, from the **UNFCCC** and its subsequent "legal instruments" (Paris Agreement 2015, *Special Report* 2018), which define the **climate obligation**, articulated in primary and secondary duties, incumbent *ratione loci on* the Italian State (see *below*, Chap. IV.2-21). The incorporation of the UNFCCC into EU law as a result of the accession of the EU to the Framework Convention of 1992 and its peculiar position in the system of sources of the domestic legal system, qualify it as a multilevel source, *lex specialis* supplementary to domestic regulations, with triple constitutional coverage *ex* art. 10 c.1, 11, 117 c.1 Cost. (see *back*, Chap. IV.2-21). Therefore, there is no doubt that the Italian State **must** intervene, by implementing the actions and measures to reduce $CO_{2\text{-eq}}$ emissions as exactly defined in the objectives, times and ways by the unitary *body of* law referred to, to achieve and maintain climate stability, thus protecting human rights, negatively affected by climate change. Nor can there be any doubt, on the other hand, of the right and duty of citizens to take legal action in the event of violation of the climate obligation and to invoke compliance in the courts, given the *pro homine* content of the obligation in question,

to be fulfilled in the duty of solidarity *according to* Art. 2 of the Constitution, therefore in respect of the *neminem laedere* (see VI.8c *below*).

VI.8c The State's obligation to intervene also derives from the **ECHR and in** particular from **Articles 2** (*right to life*) and **8** (*right to respect for private and family life*), which place **positive obligations on** States to **protect** individuals. The jurisprudential specification of these articles, made by the ECHR drawing on a plurality of external sources in an auxiliary function - including the UNFCCC itself and the relevant legal instruments - charges (obliges) States with the adoption of "*appropriate measures*" as well as "*a legislative and administrative framework*" capable of achieving an effective prevention of damage to the environment, life and health of persons, when these goods are exposed to a threat, even more so if urgent (see *below*, Chap. V.17-21). It should be noted that the reference to the ECHR as interpreted by the Strasbourg Court, which substantiates the content of the ECHR by defining at the same time the **parameters** for assessing the occurrence of the obligations as well as those governing their application (*seriousness*, *knowledge*, *reasonable and adequate measures*, etc.: see *below*, Chapter V.17-21), is fully in line with the teaching of the **Constitutional Court**. In addition, the State's obligation to intervene also derives from **Article 14 ECHR**, in conjunction with Articles 2 and 8, which prohibits all forms of discrimination in the enjoyment of Convention rights on the basis of membership of certain categories, including age.

VI.8d Finally, the obligation of state intervention derives from the **Italian Constitution.** In particular, from the **principle of solidarity** that **art. 2** of the Italian **Constitution** defines in the duty to recognise, protect and guarantee inviolable rights, therefore in the protection of the wellbeing of the human person, also through the prohibition of conduct that contradicts it (**art. 32, paragraphs 1 and 2 of the Italian Constitution**), preventing the harmful effects even beyond the formal standards and parameters of the law, thus removing what impedes, in fact, the freedom and equality of the human person (**art. 3, paragraph 2 of the Italian Constitution**). The State (which art. 2 of the Constitution places at the service of the person so that it recognizes, guarantees and protects his inviolable rights) evidently identifies the **only** juridical subject which has at its disposal all the instruments to control

and eliminate any increase in emissions and influence all human conduct within its territory. It is therefore up to the State to remove the facts that are the source of the damage in order to guarantee the stability of the climate system, for the "benefit" of the present and future generations. The assumption is confirmed by the constitutional jurisprudence, where it pacifically affirms that only the State is able to guarantee "*full and adequate protection*" of both the environment and the ecosystem, in order to ensure its preservation for the present and future generations, imposing impassable limits for their benefit (**Corte Cost. n.378/2007**, n.**30/2009,** p.3.2 considered in *law*, **n.12/2009,** p. 2.3 *considered in law*). This imputation exists all the more when the duties of protection derive, as in this case, (also) from obligations established by international sources (**Constitutional Court n.1002/1988**) and has also been reaffirmed in the context of actions on the control of CO_2 emissions (**Constitutional Court n.224/2012**).

Therefore, there can be no doubt as to the recurrence, in this case, of the prerequisites legitimizing recourse to article 2043 of the Italian Civil Code against the defendant State, considering, on the one hand, the dangerous situation - implying a serious emergency without scientific doubts - to which climate change exposes the plaintiffs in every dimension of their lives (from the existential and personal ones to the relational ones with others and the natural ecosystems); on the other hand, its inaction in adequately and effectively tackling the emergency itself. In fact, the **jurisprudence of legitimacy** has clarified on several occasions that the above-mentioned norm (article 2043 Civil Code) identifies, from time to time, "***duties and rules of action***", in consideration of the characteristics of the concrete case and of the peculiar and specific position held by the subjects involved. These derive from the combined and synergic operation of article 2043 Civil Code with the principle of solidarity *pursuant to* article 2 of the Constitution, or with general principles inferable from the system, as well as with the general clause of correctness and good faith (articles 1175, 1375 Civil Code), also operating in the field of civil liability.

The violation of said "*duties and rules of action*", even though lacking explicit and formal recognition in positive law, justifies the imputation of responsibility to the subject identified as their addressee, in our case, the defendant Italian State.

In this sense, *ex plurimis,* **Cass. civ. sez. III. n.23344/2014**, **Cass. civ. sez. II n.3876/2012**, **Cass. civ. SS.UU. no.24406/2011**, Cass. civ. sez. **III no.20328/2006**, **Cass. civ. sez. III no.12111/2006**, **Cass. civ. sez. III no.13892/2005**, **Cass. civ. sez. III no.13957/2005**, **Cass. civ. sez. III no.14484/2004**).

Moreover, the **Constitutional Court** itself (nos. 202/1991, 399/1996, 361/2003, 59/2006) has repeatedly acknowledged that the condition of exposure to a danger or threat determines the emergence of a (substantial) priority. (**nos. 202/1991, 399/1996, 361/2003, 59/2006**) has repeatedly recognized how the condition of exposure to a danger or threat determines, in any case, the emergence of a priority (substantial) duty of *neminem laedere* on the part of those who have the power, legal or factual, to put an end to the threat. **Not only**: in the presence of a situation of serious emergency without scientific doubts, such as the one deduced in court, its teachings apply (**Corte Cost. n.418/1992** p. 5 *Considered in law*, **n.127/1995** pp. 2-5 *Considered in law* and *therein* other jurisprudence) regarding the duty that is not "irrational", when the environment, goods, and life itself are in danger and threatened, to act immediately to avoid greater damage to persons or things and to adopt **measures that are** proportionate to the quality and nature of the events (in this case, those aimed at containing the increase in temperature within +1.5°C compared to pre-industrial levels in order to avoid the worst).

VI.8e The profiles illustrated in points **VI.8a/b/c** above are valid as a basis for the responsibility of the defendant State, both individually, each one appreciated in its autonomy and absolute independence with respect to the others, and cumulatively, in their mutual concurrence and in their converging operativeness and binding force. In substance, they establish (replicate) the **identical** duty to act on the part of the State to achieve the quantitative and temporal objectives for the containment of CO2-eq emissions, contemplated and provided for by international agreements; the same objectives that the most advanced scientific acquisitions have confirmed as necessary and urgent, also providing to specify and further detail their content. The Italian State has negligently failed to comply strictly, accurately and punctually with its obligations to act. Hence, the described dangerous situation, implying the (irreversible) damage of primary and absolute goods.

VI.9a Such an injury is undoubtedly illicit: it is characterized by the requirement of **injustice** because it concerns **fundamental rights of the human person**, pre-existing to Law and re-acknowledged by it through a plurality of sources, the Italian Constitution above all, which it seems superfluous to even recall. In fact, when the human person is at stake, identifying the normative foundation of his protection in the field of civil law seems almost useless: the right is inherent to the **existence** of persons, finding there its full foundation and absolute and unconditional justification.

VI.9b The foregoing is self-explanatory and does not call for further considerations; for the sake of completeness, it should be noted, where necessary, that the **injustice** of the damage that the present action intends to prevent occurs even if it refers directly to the damage to **climate stability**, identified by the UNFCCC as an objective to be pursued "*for the benefit of the present and future generations*". Its achievement is preordained by the obligations regarding the limitation (reduction) of emissions, imposed *ratione loci* on States Parties to the Convention (see *below*, Chap. IV.2-21). This is clearly a "*legally relevant interest*" in the sense admitted by **Supreme Court of Cassation, Civ. SS.U. no. 500/1999 for** the purposes of the protection of third parties, since it is related to primary and absolute goods, worthy of protection in the light of the legal system. They are interconnected, summed up and subsumed in the **human right to a stable and safe climate**, which has been discussed *below* (chapters V.8-16).

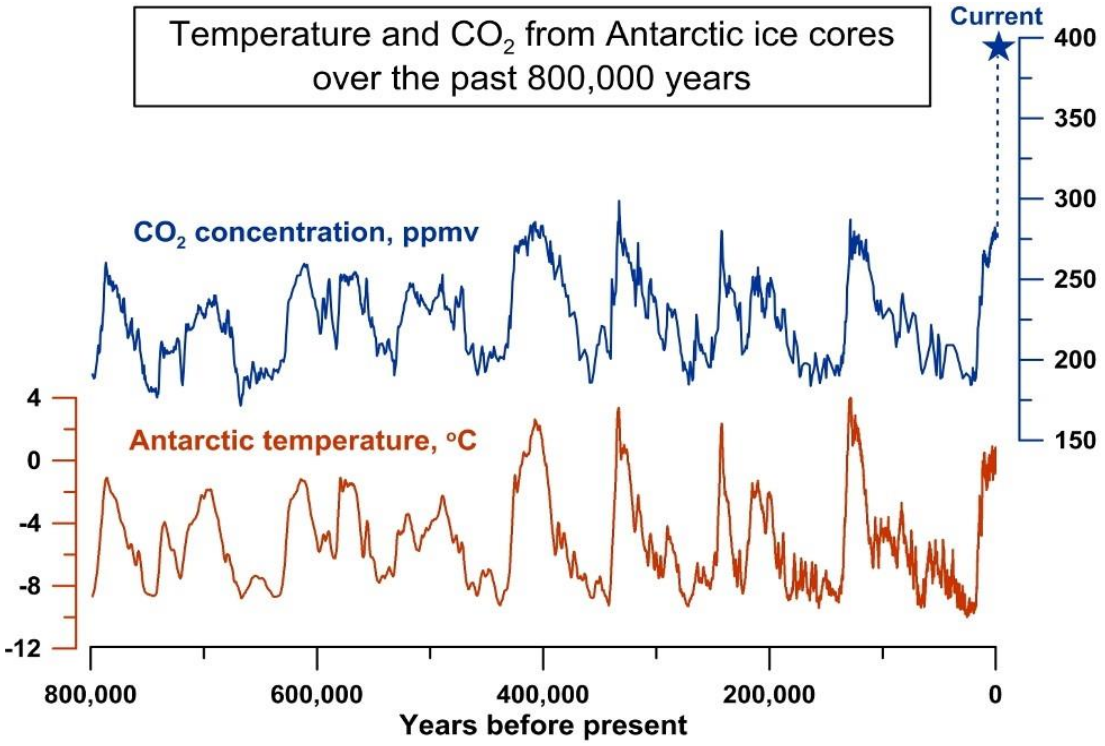
VI.10a The (guilty) inertia of the Italian State in implementing the actions and measures, suitable to reduce $CO2\text{-}eq$ emissions to contain the increase in global temperature within the limit of +1.5°C, is a **determining condition** of the (persistent) dangerous situation implied by climate change, which must be removed to prevent, according to the lexicon of **Corte Cost. n.641/1987**, "*the whole range of harmful consequences*", which otherwise will derive with a degree of probability that science considers by now close to certainty (also considering the worldwide denunciation of the climate emergency).

VI.10b In **Chap. I** we gave an account of the functioning processes of the climate system and of the (anthropogenic) **causes** that alter its entropic balance. They are identified in CO_2-eq emissions dependent on human activity, whose persistence lifetime in the atmosphere

Induces the raise of their concentration in the atmosphere compared to pre-industrial levels. This has generated (generates) an amplification of the natural greenhouse effect, giving rise to the global warming that is the basis of current climate change. The latter is affected by internal feedback mechanisms (*feedback loops* and pathogenesis), which activate further and interconnected circular causal chains, each with a different spatial and temporal projection depending on the component of the climate system involved from time to time, which accumulate the initial cause (the anthropogenic emission of CO2-eq), amplifying or dampening its effects.

The complex and articulated causal process, now summarized, can be subsumed within **scientific laws**, which provide, as we know, the *nomological parameter* of observation of the facts and their concatenation, required by the jurisprudential specification for the ascertainment of the causality relevant for the purposes of the imputation of responsibility. The IPCC *Reports* assume the anthropogenic emissions of $CO_{2\text{-eq}}$ as the initial cause of climate change in progress, on the basis of **statements** that meet the requirements that give value to scientific laws: the *generality*, *controllability*, the *degree of confirmation*, as well as the *widespread acceptance* by the international scientific community, the latter the most pregnant among the requirements required, since its relevance "*is such as to mark the dividing line between affirmation and denial of the causal link*" (see **Criminal Cass. section IV n.26568/2019**). Therefore, there is no doubt that, having regard to the procedures governing the preparation, approval, adoption and dissemination of the above-mentioned *Reports* (see *below*, Chap. II. 9-15), that **the anthropogenic emission of Co2-eq constitutes the causal antecedent of the ongoing climate change**. The conclusion, justified by scientific statements, is significantly integrated (corroborated) by the consideration and examination of the factual evidence and ontological data of the peculiar anthropogenic change in progress, which exclude the possible interference of alternative causal factors and recognize the existence of a direct and linear relationship between greenhouse gas emissions (largely caused by burning fossil fuels) and global warming.

This relationship is very clearly illustrated by the findings of the EPICA project (*European Project for Ice Coring in Antarctica*), which correlates the trend in atmospheric CO_2 concentration and the trend in global average temperature over the last 800,000 years:



Finally, it is worth reiterating how the complex causal sequence underlying the ongoing climate change, with the identification of its origin in artificial human activities emitting greenhouse gases, has been transposed by the positive standard of the UNFCCC (see *below*, Chapters I.17-19 and VI.5a), in order to derive (justify) the obligations of the Parties, identify their purpose, define their content and how to implement them.

VI.10c The foregoing confirms the operativity of the conduct of the Italian State as a **condition determining** the causal process of the immanent situation of danger: the latter, in fact, constitutes an obvious concretization of what the (**violated**) state duties of intervention, involving the abatement of anthropogenic emissions of CO_2-eq, were **intended** to avoid. Identical conclusion, where it is assumed as realized the (prescribed) abatement of greenhouse gas emissions in the eventual so-called counterfactual judgment

aimed at ascertaining the etiological link. Indeed, the same statements that identify anthropogenic emissions of $CO_{2\text{-eq}}$ as the cause of climate change, excluding alternatives, plainly require - since supported by scientific laws, nonetheless integrated by a judgment of inductive type developed on the analysis of the characteristics and peculiarities of the concrete case - the **conclusive finding** that the timely reduction of emissions would have prevented with *preponderant evidence* (or according to the criterion of "*more likely than not"*), the emergence of the dangerous situation in place or at least would have mitigated or significantly reduced (**Cass. Civil cassation, section III, no. 23197/2018**). Therefore, the abatement of emissions to a level compatible with the increase in global temperatures within the threshold of +1.5°C is necessary to put an end to the dangerous situation (i.e. the "urgent threat" in the planetary climate emergency), even in the evident awareness (in the light of which, however, it is necessary to carry out any possible judgement of a c. d. counterfactual type) that the causal process, triggered by the original antecedent of the previous CO2-eq emissions and their accumulation in the atmosphere, will not immediately stop due to the further ulterior factors.d. counterfactual) that the causal process, triggered by the original antecedent of previous $CO_{2\text{-eq}}$ emissions and their accumulation in the atmosphere, will not stop immediately because of the further and interconnected circular cumulative causalities that integrate it (*feedback loop* and pathogenesis).

VI.10d It should be noted, where appropriate, that the measures envisaged in the NIPEC are unsuitable and ineffective for achieving, in the timeframe up to the year 2030, the containment of the increase in global temperatures in accordance with the limit of +1.5°C compared to pre-industrial levels (the best way to avoid *global tipping points*). Even if implemented, they will not be able to remove the "*urgent and potentially irreversible threat*" in the presence of the climate emergency, thus keeping the actors in the reported situation of danger for the integrity of their fundamental rights. Moreover, the Minister of the Environment Sergio Costa himself, in his statement of 12 February 2020, admitted the inadequacy of the Plan, noting its insufficiency with a view to achieving the prescribed climate objectives. This confirms the responsibility of the Italian State.

VI.10e Nor would it be worthwhile for the defendant State to argue that the '*urgent and potentially irreversible threat*' in the presence of the climate emergency depends on the overall conduct of the generality of States, in order to deny that liability can be imputed to it on the assumption that its own individual conduct is ineffective; thus (claiming to) evade strict and timely compliance with the obligations to abate emissions in order to remove the dangerous situation. Indeed, the analysis of the functioning processes of the climate system, of the described local-planetary-global dimensions of its interconnections, verifies the causal efficiency of every **single** $CO_{2\text{-eq}}$ emission. Each local emissive behaviour affects the **planetary** climate system and undermines its stability, since it increases the atmospheric concentration of greenhouse gases and activates interconnections among its different spheres and within them, which then fall, in *feedback loop* and pathogenesis mode, on individual local contexts (see *back*, Chap. I. 14-18). Well, in the presence of a plurality of conducts causing a **single** damaging fact, each of these is worth founding the liability of the individual author, without it mattering, on the contrary, the heterogeneity of the violated norms, the different nature of the illicit conducts, the simultaneity or the pre-existence of one with respect to the others, the different gravity of each or the different entity of the consequences that derive from each. What counts is the uniqueness of the damaging fact, to be understood as a damaging event; in our case, the damage to the climate stability, constituting a danger ("*urgent and potentially irreversible threat*") for the integrity of the goods of the human person having primary and absolute value. The principle, consistent with the rule *ex* **art. 41 c.2 penal code, according to which "the imputability of the damaging fact to one of the authors of the illicit conduct is to be excluded exclusively in the case in which only one of the antecedents must be recognised as having decisive and absorbing efficiency. The principle, consistent with the rule under article 41, paragraph 2 of the penal code**, according to which "the *imputability of the harmful event to one of the authors of the illicit conduct* is to be excluded *exclusively in the case in which only one of the antecedents must be recognised as having decisive and absorbing efficiency, such as to exclude the etiological link between the harmful event and the other facts*" (**Civil cassation, section III, no. 22154/2019**), finds positive and unequivocal recognition in

article 2055 of the civil code. The norm states in the first paragraph the responsibility jointly and severally of each **co-author**, since more than one action or omission can contribute to producing the same damaging fact, therefore in the subsequent case it limits (relegates) the evaluation of the *gravity* and *entity of* the individual conduct to the possible recourse, to which the damaged parties remain extraneous. *The* same principle is transposed by the **PETL** (*Principles of EuropeanTort Law*), an expression of general European principles of civil law, at number **3.105** entitled "*partial uncertain causation"*: "*In the case of multiple activities, when it is certain that none of them caused the entire damage or any determinable part of it, all those that probably contributed [even minimally] to causing the damage are presumed to have caused it in equal measure*". This is, moreover, a corollary of the other European principle of "**loyal cooperation**" within the EU (**art. 4 n.3 TEU**), which is also the basis of the non-contractual liability of the State towards its own citizens for failure to comply with EU rules, including also the obligation to avoid risks *that* "*endanger the achievement of the Union's objectives*". It should be added that the legal relevance of individual state conduct comes directly from the **UNFCCC**, which incorporates (normalizes) the scientific truth of the aetiological incidence of each individual conduct where, on the one hand, it reconnects the actions and individual state measures to limit emissions to the achievement of "*global benefits*", i.e. of the planetary climate system, and on the other hand it introduces the principle of the "*common but **differentiated** responsibility*" of each Party. In addition, the **Paris Agreement** commits Parties to plan for and achieve "***nationally** determined emission reduction contributions*" and affirms each Party's **individual** responsibility, (even) when acting within regional organizations (see *back*, Ch. IV.7c).

VI.11 In this case, there is the further subjective element of **guilt**, which is able to fully integrate the tort of the Italian State *pursuant to* **Article 2043 of the Civil Code.** In fact, while it is certain that the conduct of the State is legally unseemly due to the violation of rules, duties and regulations aimed at avoiding the occurrence of the harmful event, it cannot be doubted that the State has long been fully **aware of** the phenomenon of climate change;

of its seriousness, raised to the level of "*urgent and potentially irreversible threat*"; of the particular vulnerability and fragility of the Italian climate system as a *hot-spot*; of the need to implement drastic and timely measures to contain the increase in global temperature within the +1.5°C threshold; of the further and irreversible effects that, failing this, will be detrimental to the climate system, with damage to primary and absolute goods that are the subject of fundamental human rights.

Ample evidence of this is provided by the decisions (see cited **Decision 1/CP21 UNFCCC** of **2015**, *back*, Chap. II.6-10) and declarations made at international and national level by the Italian State together with the manifestations of science and environmental and scientific information of organs and bodies of the State itself or referable to it in any case, such as the IPCC whose *Reports* have all been approved and signed by the defendant.

Therefore, the "**dangerous situation**" whose immanence justifies today's recourse to article 2043 of the civil code as a preventive measure to obtain its removal, was *foreseeable*, representable and avoidable by the State. This further qualifies as **culpable** the substantial (and enduring) inertia which marks its conduct (see **Civil cassation, section III, no. 2790/2019, Civil cassation, section III, no. 17084/2017**).

From another point of view, it is noted that the measures and measures contained in the instruments adopted by the State (SEN, PNIEC, etc..), however, insufficient to achieve the objectives to ensure climate stability, reflect the violation of principles and canons of conduct, whose failure to comply is symptomatic of **guilt**, as a structural element of the offense under Article 2043 Civil Code. The instruments referred to do not satisfy the framework of maximizing the level of protection of the rights at stake under **Article 53** of the Nice-Stasbourg Charter, which is relevant in light of the operation of the UNFCCC as a source of European law, directly applicable in the domestic law of States (see *below*, Ch. IV.13). In addition, they violate fairness, diligence and good faith *under* **Articles 1175** and **1176 of the Civil Code**, which instead, (duly) declined and applied in the light of the principles of **prevention** and **precautionary principle - reaffirmed** by the UNFCCC -

and **precautionary principle - reaffirmed** by the UNFCCC - would have required far more drastic measures to effectively combat climate change.

Moreover, in the field of climate change, **scientific acquisitions**, considering the relative level of conclusiveness and certainty, are such as to reduce within very narrow margins the **discretion of** the State and its organizations, also because they are bound by the aforementioned "**scientific reserve**". Hence, the aptitude of scientific acquisitions to conform, in an unequivocal and binding manner, the contents of the parameters of correctness, diligence and good faith of the State in the fight against climate change, in the sense of the necessary adoption of incisive, drastic and unavoidable measures to contain the increase in global temperature within the threshold of +1.5°C compared to pre-industrial levels (see *below*, Chapters III and IV.16-21). Therefore, also in this regard, the defendant is guilty of misconduct, whose conduct is consumed in the obvious and macroscopic violation of the above parameters. After all, it is worth recalling the authoritative teachings of the doctrine that recognizes the **guilt** in the violation of the duty of social solidarity, on the assumption that a behavior should be considered diligent only when, with respect to a given activity, ensures a socially useful result, or in a behavior such as to imply exposure to risk of subjects whose interest in not being harmed is protected by the system. In the case at hand, both hypotheses are true, considering the inadequacy and insufficiency of the State's conduct in the fight against climate change, as well as the finalization of the protection of climate stability for the benefit of present and future generations (UNFCCC) and, in any case, the primary and absolute value of the assets exposed to risk, as such protected by the legal system.

VI.12 The foregoing legitimizes the defendants in their request for a jurisdictional measure imposing on the Italian State the elimination of the causes **of** the reported **dangerous situation** ("*urgent and potentially irreversible threat*", made dramatic by the anthropogenic climate emergency in progress). The continuation of the same, its inexorable worsening and intensification, will finally cause the irreversible, nor otherwise remedial, damage of goods having primary and absolute value, object of inviolable and fundamental

human rights of the plaintiffs, recognized, protected and safeguarded by the Italian Constitution, as well as by other international and supranational sources, of which we have extensively referred to above. The global awareness of this dramatic situation has matured definitively (also for the actors) in 2018, with the publication of the cited. *Special Report* of the IPCC. It is no coincidence that, since then, organized forms of denunciation - international or national - of state inertia have intensified everywhere. Well, the removal of the denounced dangerous situation requires the adoption by the defendant State of the appropriate and sufficient **measures** to contain the increase in global temperature within the threshold of **+1.5°C** compared to pre-industrial levels, as exactly defined in the **Report** of ***Climate Analytics*** paid in acts (**All. C**), in accordance with the objectives set by the Paris Agreement and the assessments of Global *Equity* (*back* CAP. III).

EXTRA-CONTRACTUAL LIABILITY *PURSUANT TO* ART. 2051 C. C.

VI.13 In the **alternative,** the conduct of the Italian State can be included in the paradigm of the responsibility of the custodian, since the elements of the abstract case contemplated by **article 2051 of the Italian Civil Code are** present.

VI.14 As is well known, matter and energy are the constitutive element of the **climatic system** and of every single sphere that composes it. The climatic system, therefore, identifies the "***thing***" envisaged by the aforesaid regulation, which adopts an extremely generic and broad notion, referable - as emerges from the examination of the application jurisprudence - to an infinite variety of cases: inert and moving things, dangerous and non-dangerous things, movable, immovable and universality of movable, liquid, solid, gaseous things etc.. Therefore, the climatic system, characterised by a constant flow of energy and matter, capable in its development of modifying (altering) the entropic balance of the same system, is to be understood, as far as it is now relevant, as a "**dynamic thing**".

VI.15 Examination of the case law relating to the further constituent element of "custody", the criterion that identifies the subject whose custody of the thing is a source of liability, reveals the prevailing trend that recognises the **custodian** as the subject who has an effective

and dynamic power over the thing - "*the "power of **governance**" to be understood as the power to control it and to eliminate the situations of danger that have arisen*" (see *ex multis*, **Cass. civ. sez. III, n.15779/2006**) - also characterized by the requirement of exclusivity, as, inter alia, recently confirmed by Article 67 of Law No. 221/15 with reference to natural capital. The Italian State has the *status* that entrenches its responsibility as the custodian of the thing *pursuant to* art. 2051 of the Italian Civil Code. In fact, as seen in paragraph VI.8cd of this Chapter, it is the holder of the functional competences to control and eliminate any increase in emissions and to influence all human conduct within its territory, therefore in the Italian climatic context. **State custody**, in addition to being **qualified** by the specific *status of* the subject to whom it is attributed, is also **titled** by the UNFCCC itself, which expressly places on the State the duty (obligation) of custody of the climate system, articulated in the primary and secondary duties constituting the "complex" obligation of protection (see *below*, Chap. IV.3). Italy, like any other State signatory to the Convention, has legally bound itself to protect the climate system "*for the present and future generations*". Well, on the basis of the canons of interpretation of the Vienna Convention, the meaning of this legal self-binding is not clear. Vienna Convention, the meaning of this legal self-binding can only be that of the custody, by each State, of its own climate system, i.e. its own territory on which the State exercises, in fact and in law, the "lordship" and the "precaution" (cf. **Cass. civ. sez. III n.2481/2018**), with an exclusive decision-making competence or at most concurrent with other entities, but never absent (as can be inferred from the letter of art. 117 c.2/c.4 Cost.).

VI.16 Finally, there is a **causal link** between the **thing** under custody (*rectius*, its instability) and the **situation of danger** for the goods of primary and absolute value, the object of the fundamental human rights of the plaintiffs. **The link is incontrovertible**. It is ascertained by the best available scientific acquisitions as well as recognized by numerous international institutions, to which Italy belongs (see *below*, Chapters II and III.1-6). **Moreover**, it is formalized by the legal schemes of the UNFCCC and of the other "legal instruments" enabled by it; such schemes completely exclude, *ex lege et scientia*, that the damages caused by the climatic system "thing" are to be attributed to the "fortuitus event",

that is, caused by autonomous, unforeseeable, absolutely exceptional, human or natural events, therefore capable of eliminating the responsibility of the custodian according to the jurisprudential elaboration on the subject of *fortuitous events.*

VI.17 It follows that the State is responsible for the fact that it has evidently failed - it is worth noting in any case - in its duties of custody of the climate system, a "dynamic thing" of energy and matter, with respect to which custody **means**: not abandoning its preservation to the detriment of the environment and collective health; preserving it as a set of assets to be handed over to future generations, therefore in the meaning of art. 1177 c.c. and in the observation that the "duty to hand over" implies the need for all the components of the climate system to be preserved in the present in order to remain in the future.

VI.18 Ultimately, the defendant State is liable for the instability of the Italian climate system implying the reported situation of danger ("*urgent and potentially irreversible threat*"), in its capacity as a decision-maker on territory and natural resources, therefore in the meaning of **article 2051 of** the **Civil Code, framed in the constitutionally oriented interpretation offered by the Constitutional Court no. 156/1999, pp. 3.1 and 3.3-3.5 considered in law, as well as no. 82/1995, where the duty of custody is interpreted as a duty of care. Therefore, in** the meaning of article 2051 of the civil code, framed by the constitutionally oriented interpretation offered by the **Constitutional Court no. 156/1999,** pp.3.1 and 3.3-3.5 *considered in law*, as well as **no. 82/1995**, where the duty of custody is declined as absolute respect for human health and environmental healthiness. It is worth, moreover, the teaching of the Supreme Court of Cassation, according to which "*in terms of civil liability under Article 2051, the custody takes shape not only in the completion on the thing of the subsequent remedial measures, designed to neutralize, within a reasonable time, the dangerous elements not foreseeable, which have occurred anyway,* ***but also in a preventive activity,*** *which, based on a judgment of foreseeability ex ante, prepare what is necessary to prevent damage etiologically related to the thing in custody*" (**Civil cassation. sez. III n.1725/2019**).

In the light of the above, the request to order the Italian State to adopt the necessary measures pursuant to article 2058, paragraph 1, of the Italian Civil Code for the adoption of the measures to be taken against the defendant, also under this deduced (**subordinate**) profile of responsibility based on **article 2051 of the Italian Civil Code,** appears fully justified. the request for a sentence *pursuant to* **article 2058, paragraph 1, of the civil code** against the defendant, the Italian State, for the adoption of the appropriate and sufficient **measures** to limit the global temperature increase to within **+1.5°C** above pre-industrial levels, as precisely defined in the ***Climate Analytics*** **Report** on file (**Attachment C**), in accordance with the objectives of the Paris Agreement and global *equity* assessments. (*back* Chapt. III 23).

LIABILITY FOR "QUALIFIED SOCIAL CONTACT" *PURSUANT TO* ART. 1173 AND 1218 C. C.

VI.19 In subordinate to the profiles of extra-contractual responsibility, the Associations *A Sud Ecologia e Cooperazione Onlus*, *Medici per l'Ambiente ISDE Italia onlus*, *Coordinamento Nazionale No Triv* and *Biblioteca di Sarajevo* deduce the responsibility from "qualified social contact" *ex* articles 1173 and 1218 c.c., which arose with the adoption of the cited PNIEC, a single fragment of the mosaic that identifies the overall conduct of the Italian State in the field of climate (see below, Chap. III. PNIEC, a single fragment of the mosaic that identifies the overall conduct of the Italian State in climate matters (see *below*, Chap. III).

VI.20 The PNIEC, prepared by the Ministries of Infrastructure and Transport, Economic Development, Environment and Protection of Land and Sea, was adopted after the public consultation procedure (SEA) pursuant to Articles 13 c.5 and 14 of Legislative Decree no. 152/2006, in compliance with EU Regulation no. 2018/1999, which obliges States to ensure the **public** "*effective opportunities to participate in the preparation*" of national plans (Article 1 n.1). The procedure, initiated by a notice of the President of the Council of Ministers published on August 3, 2019 in the Official Gazette, was attended by the above-mentioned Associations, submitting their **Comments** (**Annex D**). Therefore, meeting the requirements, they have activated the report required for the purposes of the emergence of a relationship framed in the liability of contractual type, according to the scheme of the so-

called "qualified social contact", understood as "*fact capable of producing obligations in accordance with the legal system*" (art. 1173 Civil Code).

VI.21 The **prerequisites of** this category, according to the evolutionary process of doctrinal and jurisprudential matrix that has determined its existence, are unquestionably identified in the following:

a) the pre-existence of behavioural obligations "*whatever their source*" borne by a subject, or of specific behavioural duties voluntarily assumed, aimed at protecting the interests of other subjects;

b) the performance of the service subject to the obligations and duties undertaken *spontaneously*, i.e. in the absence of an original contractual bond between the person burdened and the other holders of the protected interests, whose legal sphere is destined to be affected by the same service;

c) the legitimate expectation that the obligations and duties will be correctly carried out and correctly discharged, generated in the persons holding the interests whose protection constitutes the justifying reason for the prescriptions themselves. In fact, according to **Civil Cassation. SS.UU. no. 12477/2918**: "the *so-called theory of qualified social contact* [is] *recognisable whenever the legal system imposes on a subject to behave in a certain way, suitable to protect the trust placed by other subjects on the proper performance by him of pre-existing, specific duties of protection that he has voluntarily assumed*" (see **Civil cassation, section I no. 21054/2019**; **Civil Cass. sez. I n.21053/2019**; **Civil Cass. sez. I n.14188/2016**; **Civil Cass. sez. I n.11642/2012**; **Civil Cass. SS.UU. no.14712/2007; Cass. civ. sez. III no.589/1989**, as well as **Court GUE Case C- 261/91** referred to by **Cass. civ. sez. III no.14188/2016**).

VI.22 If these conditions are met, the relationship between the parties gives rise to an **obligatory relationship** *pursuant to* **Art. 1173 of the Civil Code, which binds the party who has undertaken to perform the service in accordance with fairness and good faith, so as to protect the other** party whose legal sphere is affected by the service, protect (effectively) his interests. which binds the party who has undertaken to perform the service to do so in accordance with **fairness** and **good faith**, so as to protect the other party whose legal sphere is affected by the service, to (effectively) protect his interests, to respect his legitimate expectations. The object of the obligation does not therefore consist in the service undertaken, which remains extraneous to the content of the established relationship, but in the ***protection of*** the person to whom it is addressed, to be implemented through the fulfilment of the obligations of fairness and good faith enshrined in **Articles 1175 and 1375 of the Civil Code.** in implementation of the principles of solidarity *under* **article 2 of the** Italian Constitution and, in the case in point, of good performance and impartiality *under*

article 97 of the Italian Constitution. In this regard, **Cass. civ. sez. III n.24071/2017** applies, according to which from "*qualified social contact, understood as a fact capable of producing obligations under Article 1173 of the Civil Code, derive, for the parties, not obligations of performance under Article 1174 of the Civil Code, but mutual obligations of good faith, protection and information, right under Articles. 2 Const., 1175 and 1375 Civil Code* "(conform **Cass. civ. sez. I n.21054/2019; Cass. civ. sez. I n.21053/2019; Cass. civ. sez. III n.20285/2019; Cass. civ. SS.UU. no.22437/2018; Cass. civ. sez. I no.19775/2018; Cass. civ. SS.UU. n.12477/2018; Cass. civ. sez. III n.24071/2017; Cass. civ. sez. n.14188/2016; Cass. civ. sez. I n.11642/2012; Cass. civ. sez. III n.15992/2011; Cass. civ. SS.UU. n.14712/2007; Cass. civ. sez. III n.589/1999**).

VI.23 The case in *question* is unquestionably attributable to the paradigm of the so-called "qualified social contact", considering that:

a) the Italian State is burdened by **obligations** and **duties of** conduct in climate matters arising, as illustrated in paragraphs VI.8a/b/c, from the UNFCCC and its subsequent "legal instruments" (Paris Agreement, *Special Report* of 2018), to which the State has voluntarily (sovereignly) adhered, from the ECHR (in particular articles 2, 8 and 14), from the Italian Constitution (articles 2, 3, 32 c.1 and 2 Const.);

b) The PNIEC constitutes the **implementation by the** State of the **performance** subject to the aforementioned obligations and duties in the field of climate; the same Regulation (EU) 2018/1999 makes express and precise reference to the obligations and objectives set by the UNFCCC and the Paris Agreement, to which the EU has adhered;

c) The obligations and duties of the State in climate matters are aimed at safeguarding and protecting the intergenerational interest in the stability and climate security of mankind, therefore the **interest of** the **community**. The circumstance has been explicitly recognized by the above-mentioned **Cons. St. Ad. Plen. n.9/2019**, which qualifies "*as preeminent interest of the community*" the "*gradual reduction of the atmospheric carbon dioxide component*";

d) the **trust** of Italian citizens on the full, punctual and correct fulfilment of obligations and duties in climate matters has been consolidated and strengthened (also) by the conduct of the State itself through several statements by the Head of State and the Government

which, in the acknowledged *knowledge of* the climate emergency situation, have expressed the will, the need and the urgency to initiate actions, adopt measures, implement measures and actions to combat climate change, in compliance with the commitments made at international and supranational level and to protect rights.

The importance of **trust,** for the purposes of the so-called "qualified social contact", has been emphasised by the most recent jurisprudence of legitimacy, which has reaffirmed its nature as a fundamental principle of the Community system, with which the activity of public authorities must comply. In fact, **Cass. civ. In fact, Supreme Court of Cassation no. 8236/2020** (as well as Supreme Court **of Cassation no. 615/2021**) has adopted the teachings expressed in numerous decisions of the **European Court of Human Rights**, which recognizes the right to rely on the principle "*to any person in whom an institution of the Union has given rise to well-founded hopes*" as well as the suitability of "*precise, unconditional and consistent information coming from authorized and reliable sources*" to give rise to well-founded expectations "*regardless of the form in which they are communicated*". *It has* also been observed that "*the citizen expects a greater effort, in terms of correctness, loyalty, protection and protection of trust, compared to what he would expect* from *the quisque de populo*" from those who exercise activities subject to the principles of good progress and impartiality *under* Article 97 of the Constitution. (Civil Cassation **SS.UU. n.8236/2020**), stating that they postulate "*a behavior of public authorities aware of the impact that the administrative action always produces in the sphere of citizens*". (Civil cassation, **SS.UU. no. 615/2021**).

VI.24 However, the national targets for the reduction of greenhouse gas emissions by 2030 identified by the PNIEC are insufficient and inadequate to contain the increase in global average temperature within the threshold of +1.5°C compared to pre-industrial levels, an objective derived from the Paris Agreement, the conclusions of the 2018 *Special Report* and the best available scientific evidence. The actions and measures envisaged in the NIPEC will reduce $_{CO2\text{-}eq}$ emissions by (**only**) **36%** by 2030 compared to 1990 levels. The reduction quota, correctly defined according to the *normative method* based on *equity*-"fair share" (see *back*, Chapters III.27- 28, IV.5e/g, IV.6e, V.3 and V.10) identifies **92%** as necessary to contain the global temperature increase within the +1.5°C limit.

VI.25 There is no doubt, therefore, that the State has violated, at the time of the definition of the PNIEC, the duties of fairness, good faith and protection *pursuant to* Articles 1175 and 1375 of the Civil Code as well as the principles of impartiality and good performance *pursuant to* Article 97 of the Constitution, which are the subject of the obligatory relationship established *pursuant to* Article 1173 of the Civil Code with the above-mentioned associations. Therefore, they are legitimately entitled to bring an action against the State for exact performance *pursuant to* **article 1453 of the Italian Civil Code, which is a general remedy provided for in the case of the** State. which is a general remedy for breach of obligation. As stated by **Civil cassation, section III no. 589/1999**, which was the first to accept the legal category of the so-called "qualified social contact", the obligation of protection "*can be subject to the rules of the contractual obligation, even if the generating fact is not a contract*". Excluding the application of the codified rules governing the contract as an "agreement", since the obligation does not originate from a contract, but from "*another act or fact*" *under* article 1173 of the Civil Code, the applicability of those governing it as a "relationship" is therefore affirmed, understood, according to the teaching of doctrine, as "*the whole of the reciprocal rights and obligations that arise from the contract*". It should be added that the **Supreme Court of Cassation**, **Civ.** In addition, the Supreme Court of Cassation, **SS.U. no. 8236/2020** and **no. 615/2021**, emphasising the fact that "qualified social contact" can be included in the scheme of contractual liability, reiterated that this **framework** refers to "*the obligatory relationship, even when it does not have its source in a contract*". Therefore, the applicability of the remedies that the codified system links to the pathological phase of the obligation is certain, including the action for exact fulfilment *under* article 1453 of the Civil Code. To opt otherwise, considering that the non-fulfilment can be sanctioned only with the action for compensation, would be tantamount to the (unreasonable) **denial of** the referred jurisprudential direction, whose foundation is undeniably rooted in the clear **distinction** between the obligation ***of protection***, hinged in an obligatory relationship between subjects pre-existing the injury, on the one hand; the ***indemnity obligation***, arising as a result of the injury, without an underlying and pre-existing relationship between the damaged party and the damaging party, on the other hand.

In this inescapable perspective, it is worth reporting, for its expositive clarity, nonetheless for logical-legal linearity and systematic coherence, the arguments of the **Supreme Court of Cassation** delivered in the grounds of the well-known **judgment n.14188/2016**.

On **the one hand**, the decision warns of an undue (inadmissible) overlap of identity between the two obligations, underlining the (ontological) diversity between them since, as we can read: "***The existence of*** *an obligatory structure, a typical event of the obligation without performance, marks, therefore, the difference with the liability in tort, at the basis of which there is no specific obligation*". *"The "non-relationship" characterises, therefore, the civil liability of third parties, in which the legal relevance of the simple contact between subjects comes to light only at the time of the injury, generating the obligation of compensation, whereas* ***in the relationship of "qualified social contact" there is a relationship characterised by obligations already upstream of the injury***, ***even if it is*** *not a* ***matter of*** *obligations of performance (art. 1174 Civil Code), but* ***of obligations of protection related to the obligation of good faith (articles 1175 and 1375 Civil Code)***". **On the other hand**, the decision highlights the autonomy of the obligations of protection, noting how their violation, according to the scheme of contractual liability - (which **must** include that of "qualified social contact", see **Civil cassation nos. 589/1999, 8236/2020, 615/2021** cited above) - justifies the availability of remedies *under* article 1453 of the Civil Code, which contemplates as alternatives the action for termination and that for the performance of the obligation. In fact, we read in the judgment: "*in the same perspective - to further highlight how the contractual liability can be, in practice, anchored not only to the violation of obligations of performance, but also to the violation of duties of protection, which are relevant first and apart from the others - this Court has also ruled that the violation of the general clause of good faith and fairness, as per Articles. 1175 and 1375 Civil Code, can become relevant, for the purposes of termination of the relationship for breach, if, affecting the substantive conduct that the parties are obliged to take to preserve the mutual interest in the exact performance of their respective services, undermines the economic*

of their respective services, undermines the economic and legal effects of the contract (Cass. 11437/2002)".

VI.26 In the case in point, the exact fulfilment of the *obligation of protection* deriving from the "qualified social contact" is resolved in the conformity of the PNIEC with the measures suitable for achieving a reduction in emissions in the percentage of 92%, which alone can contain the increase in global temperatures within the threshold of +1.5°C with respect to pre-industrial levels. In this sense, the request of the above-mentioned plaintiffs' associations for the condemnation of the Italian State to the exact fulfilment *ex* art. 1453 c.c. of the obligations of good faith, correctness and protection *ex* art. 1175 and 1375 c.c. as well as of impartiality and good progress *ex* art. 97 Const.

VI.27 The non-fulfilment by the State of the obligations of "qualified social contact" also establishes the right of the same associations to claim compensation for the resulting damage. The violation of the obligations of good faith, correctness, protection *ex* articles 1175 and 1375 c.c. and of good progress and impartiality *ex* art. 97 Cost. marked the (guilty) behaviour of the State in the adoption of the PNIEC, inadequate and insufficient to contain the increase in global temperatures within the threshold of +1.5°C compared to pre-industrial levels. The resulting **consequences** (including those of a financial nature) are **detrimental** to the plaintiff's legal position, especially considering the peculiar vulnerability and fragility of the Italian climate. For the sake of brevity, reference should be made to the observations made in Chapter III above on the impacts of climate change, as well as to the attached *Reports* by *Climate Analytics* (**Attachments B** and **C**), the content of which is deemed to be fully reproduced and transcribed herein.

Obviously, this is **future damage that is** immediately compensable since there is "*the well-founded expectation that it will occur according to the normality and regularity of the causal development (*ex multis, *Court of Cassation nos. 1637/2000, 1336/1999, 495/1987, 2302/1965*)": thus **Court of Cassation, section III no. 10072/2012**, according to which "*the significant probability of prejudicial consequences can be configured as future damage that is immediately compensable".*

indemnifiable" whenever they appear "*as the natural development of facts that have been concretely ascertained and are unequivocally symptomatic of that probability, according to a criterion of normality based on the circumstances of the concrete case*".

VI.28 In **addition to** any other request formulated, the plaintiff requests that the defendant State be sentenced to compensate for damages by means of specific reinstatement *pursuant to* **Article 2058, paragraph 1, of the Italian Civil Code, which is unquestionably applicable to contractual obligations, i.e. those arising from "qualified social contact", which can be classified as contractual liability.** This provision is unquestionably applicable to contractual obligations, i.e. obligations arising from "qualified social contact", which can be classified as contractual liability. The sentence must refer to the execution of "*a service that is completely analogous, in its specificity and integrity, to that which the debtor was obliged to provide under the contractual obligation*", as stated by **Civil cassation, section II no. 1186/2015,** which clarifies that, unlike compensation for the equivalent, compensation in a specific form is "*aimed at achieving the eadem res due*". It follows, also from this graduated profile, that the compensation invoked must (equally) consist in the compliance of the PNIEC with the measures suitable to ensure adequacy and sufficiency with respect to the objective of containing the increase in global temperatures within the threshold of +1.5°C, achievable (only) through a reduction of emissions in the percentage of 92%.

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In the light of the foregoing, the plaintiffs, as represented and defended:

SUMMON

the **Italian State and on its behalf the Presidency of the Council of Ministers in the person of the Prime Minister** (fiscal code 80188230587), electively domiciled at the Attorney General's Office in Rome at Via dei Portoghesi no. 12, P.E.C. ags.rm@mailcert.avvocaturastato.it, to appear before the Single Judge of the Court of Rome at the hearing of **4 November 2021 at the** usual time, with an invitation to appear within the terms and in the forms set forth in art. 166 c.p.c. with an express warning that appearing beyond the time limits will trigger the forfeitures referred to in articles 38 and

167 of the c.p.c., or, in the event of failure to appear before the court, the following will be assessed *in absentia:*

C O N C L U S I O N S

- **Principally**, declare, for the reasons set out in points VI.1 to VI.12 of the application, that the Italian State and, on its behalf, the Prime Minister's Office, in the person of the President of the Council of Ministers, is liable *under* **Article 2043 of the Civil Code;**
- consequently, order the defendant, *pursuant to* Article 2058, paragraph 1, of the Italian Civil Code, to take all necessary steps to reduce, by 2030, the artificial national emissions of CO_2-eq to 92% compared to 1990 levels, or to such other greater or lesser extent as may be ascertained in the course of the proceedings.
- in the **alternative**, find and declare, for the reasons set out in points VI.13 to VI.18 of the application, that the Italian State and, on its behalf, the Prime Minister's Office, in the person of the President of the Council of Ministers, is liable *under* **Article 2051 of the Civil Code;**
- consequently, order the defendant, *pursuant to* Article 2058, paragraph 1, of the Italian Civil Code, to take all necessary steps to reduce, by 2030, the artificial national emissions of CO_2-eq 92% compared to 1990 levels, or to such other greater or lesser extent as may be ascertained in the course of the proceedings.
- Ordered to pay the costs and fees of the proceedings, to be divided in favour of the undersigned public prosecutors.

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- In **the further alternative**, to grant the request submitted by the associations A Sud Ecologia e Cooperazione Onlus, Medici per l'Ambiente ISDE Italia onlus, Coordinamento Nazionale No Triv and Biblioteca di Sarajevo, *to* ascertain and declare, for the reasons set out in points VI.19 to VI.26 of the narrative, the failure of the Italian State and, on its behalf, the Presidency of the Council of Ministers, in the person of the President of the Council of Ministers, to fulfil its obligation to protect the rights deriving from the qualified social contact established;
- consequently, order the defendant, *pursuant to* Article 1453 of the Civil Code, to bring the PNIEC into line with the provisions capable of achieving the reduction of national

CO_2-eq emissions by 2030 to the extent of 92% over 1990 levels, or such other greater or lesser extent as may be determined in the course of the proceedings.

- In **an even more graduated manner**, again in acceptance of the request made by the associations A Sud Ecologia e Cooperazione Onlus, Medici per l'Ambiente ISDE Italia onlus, Coordinamento Nazionale No Triv and Biblioteca di Sarajevo, *to* ascertain and declare, for the reasons set out in points VI.27 to VI.28 of the narrative, the liability of the Italian State and, on its behalf, of the Presidency of the Council of Ministers, in the person of the President of the Council of Ministers, for qualified social contact;

- consequently, order the defendant, *pursuant to* Article 2058, paragraph 1, of the Civil Code, to conform (adapt) the PNIEC to the appropriate provisions to achieve the reduction, by 2030, of artificial national CO_2-eq emissions to the extent of 92% compared to 1990 levels, or such other greater or lesser extent as may be ascertained in the course of the proceedings.

- Ordered to pay the costs and fees of the proceedings, to be divided in favour of the undersigned attorneys-in-fact.

Submit:

A) proxies;

B) Climate Analytics Report: *Climate Impacts in Italy*

C) Climate Analytics *Report*: *Italy's climate targets and policies in relation to the Paris Agreement and global equity considerations*

D) Report of A Sud: *Acts of the Italian Parliament on climate emergency*

E) Comments to the NIPEC

F) FOIA citizens without state feedback

G) FOIA citizens and state findings of no climate assessments

The value of this dispute cannot be determined and therefore the unified contribution to be paid is € 518.00.

Lawyer Raffaele Cesari **Lawyer Luca Saltalamacchia** **Prof. Lawyer Michele Carducci**
alongside