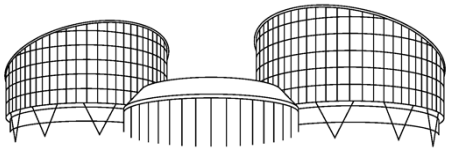

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF CARÊME v. FRANCE

(Application no. 7189/21)

DECISION

STRASBOURG

9 April 2024

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Table of Contents

The European Court of Human Rights (Grand Chamber), sitting as a Grand Chamber composed of:

Síofra O'Leary,
Georges Ravarani,
Marko Bošnjak,
Gabriele Kucsko-Stadlmayer,
Pere Pastor Vilanova,
Arnfinn Bårdsen,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke,
Darian Pavli,
Raffaele Sabato,
Lorraine Schembri Orland,
Anja Seibert-Fohr,
Peeter Roosma,
Ana Maria Guerra Martins,
Mattias Guyomar,
Andreas Zünd*, judges*,

and Søren Prebensen, *Deputy Grand Chamber Registrar*,

Having regard to the above application lodged on 28 January 2021,

Having deliberated in private on 31 March 2023 and 11 January 2024, decides as follows:

PROCEDURE

1. The case originated in an application (no. 7189/21) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Damien Carême ("the applicant"), on 28 January 2021.

2. The applicant was represented by Ms C. Lepage, a lawyer practising in Paris. The French Government ("the Government") were represented by their Agent, Mr D. Colas, Director of Legal Affairs at the Ministry of European and Foreign Affairs.

3. The applicant alleged, in particular, that France had taken insufficient steps to prevent climate change and that this failure entailed a violation of his right to life and his right to respect for his private and family life and his home. The applicant relied on Articles 2 and 8 of the Convention.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 31 May 2022 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber (Article 30 of the Convention and Rule 72).

5. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court. The President of the Court decided that in the interests of the proper administration of justice, the case should be assigned to the same composition of the Grand Chamber as the cases of *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (application no. 53600/20) and *Duarte Agostinho and Others v. Portugal and 32 Others* (application no. 39371/20) (Rule 24, Rule 42 § 2 and Rule 71), which were relinquished by Chambers of the Third and Fourth Sections, respectively.

6. The applicant and the Government each filed memorials on the admissibility and merits of the case. In addition, having been given leave by the President to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3), third-party comments were received from the European Network of National Human Rights Institutions (ENNHRI), Our Children's Trust ("OCT"), Oxfam France and Oxfam International and its affiliates (Oxfam).

7. On 11 January 2023 the Grand Chamber decided that in the interest of the proper administration of justice, after the completion of the written stage of the proceedings in the above-mentioned cases, the oral stage would be staggered so that a hearing in the present case and in the *Verein KlimaSeniorinnen Schweiz and Others* case would be held on 29 March 2023, and a hearing in the *Duarte Agostinho and Others* case would be held before the same composition of the Grand Chamber at a later stage (the hearing was held on 27 September 2023).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 29 March 2023 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr	M. COLAS,	*Agent*,
Ms	P. REPARAZ,	
Ms	M. BLANCHARD,	
Ms	C. BLONDEL,	
Ms	A. AUBERT,	
Mr	J. SEVESTRE-GIRAUD,	
Mr	A. AMADORI,	
MS	D. BARRERE,	*Advisers*;

(b) for the applicant

Ms	C. LEPAGE,	*Counsel*,
Mr	C. HUGLO,	
Mr	T. BEGEL,	*Advisers*,
Mr	D. CARÊME,	*Applicant*.

The Court heard addresses by Mr Colas and Ms Lepage, and their answers to questions put by the Court.

THE FACTS

I. THE APPLICANT'S SITUATION

9. The applicant was born in 1960. He is a politician who served as mayor of Grande-Synthe from 23 March 2001 to 3 July 2019. Since 26 May 2019 he has been a member of the European Parliament. After being elected to the European Parliament, the applicant moved from Grande-Synthe to Brussels (see paragraph 68 below).

10. Grande-Synthe is a municipality of some 23,000 inhabitants located in the Dunkirk area on the coast of the English Channel. As found by the *Conseil d'État*, Grande-Synthe is particularly exposed to risks linked to climate change, including the risk of flooding (see paragraph 28 below).

II. PROCEEDINGS INSTITUTED BY THE APPLICANT

A. The applicant's requests to the authorities

11. On 19 November 2018 the applicant, acting on his own behalf and in his capacity as mayor of the municipality of Grande-Synthe, and in the name and on behalf of the latter municipality, asked the President of the Republic, the Prime Minister and the Minister for Ecological Transition and Solidarity: (a) to take all necessary measures to curb greenhouse gas ("GHG") emissions produced on the national territory in order to comply with the relevant commitments made by France in that respect; (b) to take all necessary legislative and regulatory initiatives to "make it obligatory to give priority to climate matters" and to prohibit all measures likely to increase GHG emissions; and (c) to implement immediate climate-change adaptation measures in France.

12. The above-mentioned authorities did not reply to the requests made by the applicant and the municipality of Grande-Synthe.

B. Proceedings in the Conseil d'État

1. The applicant's legal action

13. In the absence of a response from the authorities, on 23 January 2019 the applicant, acting on his own behalf and in his capacity as mayor of Grande-Synthe, and in the name and on behalf of the latter municipality, applied to the *Conseil d'État* for judicial review (*recours pour excès de pouvoir*) of the implicit rejection decisions constituted by the authorities' failure to reply to their requests.

14. The claimants pointed to the adverse effects of climate change, which were already impacting the environment, health and economy of various States around the world. Moreover, relying on the 2018 Special report "1.5°C global warming" of the Intergovernmental Panel on Climate Change ("IPCC"), they pointed to the future risks linked to climate change and, in that respect, to the necessity of taking urgent and ambitious measures in order to progressively limit GHG emissions with a view to achieving the goal of limiting global warming to 1.5°C above pre-industrial levels. In this context, the claimants pointed to the fact that France was one of the countries in the world most affected by climate change, which had adverse consequences for the health of its citizens and the environment, most notably through the erosion of the coastline and the risk of flooding by 2030. They noted, however, that instead of keeping GHG emissions below the limit set out in Decree no. 2015-1491 of 18 November 2015, France had in fact increased its carbon budget by 6.7% in 2017 and would be unable to meet the targets set for the period 2015-18.

15. As regards the situation of the municipality of Grande-Synthe, the claimants argued that its geographical location left it particularly exposed to the risks of climate change, namely more frequent heavy rain and rising sea levels, which increased the risk of coastal and inland flooding. Moreover, heatwaves depleted the soil and aggravated pollution in the area. There was also a risk that any resulting environmental disasters would lead to significant socio-economic costs. For instance, the consequences of climate change already observed on the territory of the municipality had given rise to costs of between 100,000 and 500,000 euros (EUR) for the period between 1995 and 2010. In the claimants' view, while the municipality of Grande-Synthe was doing its utmost to address the effects of climate change, this would not be sufficient in the absence of effective action taken at national level. Against this background, the claimants argued that the municipality of Grande-Synthe had an interest in bringing proceedings in the *Conseil d'État* against any decision relating to the risks resulting from climate change on its territory.

16. As regards the applicant's situation, the claimants submitted that, having regard to his powers and responsibilities as the mayor of Grande-Synthe, as provided by Article L. 2212-2 of the General Code on Territorial Authorities (see paragraph 50 below), and the delegation given to him by the Municipal Council to pursue legal actions on behalf of the municipality, his legal action in relation to the impact of climate change on Grande-Synthe was admissible. Moreover, they argued that the legal action brought by the applicant on his own behalf as a citizen was justified under Articles 2 and 8 of the Convention.

17. As regards the merits of their legal action, relying on domestic and EU law, as well as the Paris Agreement[1], the municipality of Grande-Synthe and Mr Carême argued that the government had a positive duty to take effective measures to address climate change, including the necessary adaptation measures, which, in their view, it had failed to take. Moreover, relying on the Court's case-law in *L.C.B. v. the United Kingdom* (9 June 1998, *Reports of Judgments and Decisions* 1998-III), *Öneryıldız v. Turkey* ([GC], no. 48939/99, ECHR 2004-XII), *López Ostra v. Spain* (9 December 1994, Series A no. 303-C) and *Tătar v. Romania* (no. 67021/01, 27 January 2009), they argued that Articles 2 and 8 of the Convention imposed a positive obligation on States Parties to adopt adequate measures to ensure effective protection of the environment and human health, in particular through the establishment of an appropriate and effective legal framework. In this respect, they invited the *Conseil d'État* to follow the conclusions of the Netherlands Supreme Court in the *Urgenda* case[2].

18. Finally, the claimants asked the *Conseil d'État* to make the following order:

> "SET ASIDE the implicit rejection decisions constituted by the failure to reply of the President of the Republic, the Prime Minister and the Minister for Ecological Transition and Solidarity concerning [the claimants'] requests, first, that all necessary measures be taken to curb greenhouse gas emissions produced on the national territory, in order to comply, at minimum, with the relevant commitments made by France [in that respect]; secondly, that immediate climate-change adaptation measures be taken in France; and finally, that all necessary legislative and regulatory initiatives be taken to make it obligatory to give priority to climate matters and to prohibit all measures likely to increase greenhouse gas emissions;
>
> ORDER the Prime Minister and the Minister for Ecological Transition and Solidarity to take all necessary measures to curb greenhouse gas emissions produced on the national territory, in order to comply, at minimum, with the relevant national and international commitments made by France [in that respect], within a period of six months;
>
> ORDER the [the Prime Minister and the Minister for Ecological Transition and Solidarity] to take immediate climate-change adaptation measures in France, within a period of six months maximum;
>
> ORDER [the Prime Minister and the Minister for Ecological Transition and Solidarity] to take all necessary legislative and regulatory initiatives to make it obligatory to give priority to climate matters and to prohibit all measures likely to increase greenhouse gas emissions, within a period of six months maximum;
>
> ..."

[1] Paris Agreement, 12 December 2015, United Nations, Treaty Series, vol. 3156.
[2] The State of the Netherlands v. Stichting Urgenda, 20 December 2019, NL:HR:2019:2007.

2. The parties' submissions to the Conseil d'État

19. In its reply to the legal action before the *Conseil d'État*, the Ministry for Ecological Transition and Solidarity ("the Ministry") argued that the claimants' request to order the authorities to take the necessary legislative initiatives concerning climate change was outside the judicial competence of the *Conseil d'État*. The Ministry further argued that the municipality of Grande-Synthe and its mayor had no legal interest in bringing a legal action in the *Conseil d'État* as the issues relating to the legislation on climate change did not specifically affect the municipality. In the Ministry's view, although the municipality of Grande-Synthe was situated within the perimeter of the territory subject to a heightened risk of flooding (*Territoire à risque important d'inondation* "TRI"), it did not have direct access to the sea and the relevant TRI simulations of coastal flooding in relation to climate change did not suggest that it would affect the municipality of Grande-Synthe. Moreover, the Ministry pointed out that the scientific community did not attribute the current erosion of France's coastline to climate change and that, in any event, the municipality of Grande-Synthe would have to demonstrate a direct link between climate change and the changes that had taken place on its territory. However, even assuming that the municipality of Grande-Synthe could demonstrate with certainty that it was suffering the impacts of climate change, in the Ministry's view, it had failed to identify the exact decisions which it was challenging and its standing to bring the legal action at issue could not be established on the basis of Article L. 2212-2 of the General Code on Territorial Authorities (see paragraph 50 below).

20. As to whether the appeal lodged by the applicant on his own behalf was admissible, the Ministry was of the view that the sole fact that he was a person who had rights under the Convention did not suffice to confer on him an interest in bringing proceedings in the *Conseil d'État* concerning the issues of climate change.

21. With respect to the merits of the case, the Ministry argued that the claimants could not rely on the Paris Agreement as it was not intended to confer any rights on individuals and that, in any event, the commitments by France under the Agreement had to be viewed in the context of the collective commitments of EU member States. In this connection, the Ministry was of the view that France was compliant with the requirements and goals set out at EU level. Similarly, citing *Guerra and Others v. Italy* (19 February 1998, *Reports of Judgments and Decisions* 1998-I), the Ministry contended that by providing a comprehensive legislative and regulatory framework, France was compliant with its obligations flowing from the Convention. Lastly, the Ministry argued that the claimants had not demonstrated any relevant breach of the domestic law concerning climate change. In these circumstances, the Ministry contended that the claimants' action, as a whole, should be rejected.

22. In their reply to the Ministry's submission, the claimants argued that the municipality of Grande-Synthe was in fact directly affected by the risk of flooding. They contended that the TRI on which the Ministry had relied was outdated and not in line with the relevant IPCC and domestic predictions and studies, which showed that the municipality was at risk of coastal flooding by 2040. In this connection, the claimants submitted that the existing infrastructure to protect against such flooding had not been designed for the contemporary effects of climate change. Similarly, the claimants strongly objected to the Ministry's submission that the current erosion of France's coastline was not attributable to climate change. According to them, both the IPCC and certain domestic studies had clearly established such a link and the risk of erosion was real for the municipality of Grande-Synthe, which was a coastal territory that was extremely flat, situated in part below sea level, criss-crossed by a network of water drainage channels (*watringues*) and composed of clay soils. The claimants also argued that the possible direct and indirect adverse consequences of climate change on the interests which the municipality was obliged to protect conferred on it an interest in bringing an action in the *Conseil d'État*.

23. As regards whether the appeal lodged by Mr Carême on his own behalf was admissible, the claimants pointed to the fact that his house was located less than four kilometres from the coastline and that according to some predictions (*Coastal Risk Screening Tool*[3]) his house would be flooded by 2040 as a result of the effects of climate change. The applicant had not therefore lodged the legal action as an ordinary citizen but as someone with a concrete legal interest, since in a foreseeable future his house was at real risk of flooding linked to climate change, which would therefore affect his property and his day-to-day environment. Moreover, when discussing the applicant's interest in bringing an action in the *Conseil d'État*, it was necessary to take into account the nature of climate litigation, which was intended to protect not only current interests but also the interests of future generations.

24. As regards the merits of their legal action, the claimants reiterated their earlier arguments and disagreed with the Ministry's views concerning France's compliance with its obligations under the Paris Agreement and EU and national law in respect of the necessary measures to be taken to address the adverse effects of climate change. As regards, in particular, the arguments made under Articles 2 and 8 of the Convention, the claimants pointed out that according to the Court's case-law, in addition to the obligation to put in place a regulatory framework, the States had a duty to take preventive measures to protect the right to life (citing *Öneryıldız*, cited above, §§ 101 and 109, and *Brincat and Others v. Malta*, nos. 60908/11 and 4 others, 24 July 2014). In the claimants' view, by failing to comply with its

[3] Available at www.coastal.climatecentral.org (last accessed 11.01.2024).

duty to reduce GHG emissions, the State had failed to comply with its protective obligation under the Convention. Moreover, the claimants argued that although in its 2017 Climate Plan France had made an ambitious commitment to achieve carbon neutrality by 2050, the existing legislative and regulatory framework was insufficient to achieve that objective (citing the findings of the 2019 Report of the High Council on Climate[4]). In this connection, they also pointed out that in 2018 GHG emissions in France had remained above the set objectives (citing a report of the Climate & Energy Observatory). The insufficiency of the relevant framework was, in the claimants' view, in breach of the State's obligations to guarantee the enjoyment of the right to life (Article 2) and the right to private and family life (Article 8) under the Convention.

25. The following entities intervened in the proceedings in the *Conseil d'État*: the cities of Paris and Grenoble, the non-governmental organisations Oxfam France, Greenpeace France and Notre Affaire à Tous, and the Fondation pour la Nature et l'Homme.

3. The Conseil d'État*'s decision*

26. On 19 November 2020 the *Conseil d'État* found that the claimants' request to order the authorities to take the necessary legislative initiatives to tackle climate change related to the issue of the separation of powers in the context of a legislative process, and was not amenable to judicial review. In particular, it reasoned as follows:

> "... [T]he fact that the executive refrains from submitting a legislative proposal to Parliament concerns the relations between the constitutional public authorities and therefore falls outside the jurisdiction of the administrative courts. Consequently, the arguments set out in the legal action, in so far as they are directed against the implicit refusal of the claimants' requests for the adoption of legislative provisions, must be rejected."

27. On the other hand, the *Conseil d'État* considered that the requests to set aside the implicit rejection decisions concerning the taking of necessary measures to curb GHG emissions produced on the national territory, regulatory measures to make it obligatory to give priority to climate matters, and climate-change adaptation measures, were amenable to judicial review.

28. As regards the claimants' interest in pursuing the requests, the *Conseil d'État*, distinguishing between the municipality and the applicant, found:

> "It follows from the case file, and in particular from the information published by the National Observatory on the effects of global warming, that the Dunkirk area has been assessed as being at a very high level of exposure to climate risk. In this respect, the municipality of Grande-Synthe argues, without being seriously challenged on this point, that owing to its immediate proximity to the coast and the physical

[4] Available at www.hautconseilclimat.fr (last accessed 11.01.2024).

> characteristics of its territory, it is exposed in the medium term to high and increased risks of flooding, and an increase in episodes of severe drought, with the effect not only of a reduction and degradation of water resources, but also significant damage to built-up areas, given the geological characteristics of the soil. While these concrete consequences of climate change are likely to have full effect on the territory of the municipality only by 2030 or 2040, their inevitability, in the absence of effective measures taken quickly to prevent the causes and in view of the time frame for public policy action in this area, is such as to justify the need to act without delay. Consequently, the municipality of Grande-Synthe, in view of its level of exposure to the risks arising from the phenomenon of climate change and the direct and certain impact [of climate change] on its situation and the interests for which it is responsible, has an interest conferring on it standing to seek the setting-aside of the contested implicit [rejection] decisions. The circumstance, invoked by the Minister in support of her objection, that the effects of climate change are likely to affect the interests of a significant number of municipalities is not such as to call into question that interest.
>
> On the other hand, Mr Carême, who merely argues, in his capacity as a citizen, that his current residence is located in an area likely to be subject to flooding by 2040, has no such interest."

29. In this connection, in his conclusions on this case, the public rapporteur (*le rapporteur public*) had made the following comments on the question of the applicant's lack of interest to bring proceedings:

> "[His status as mayor] is not sufficient to confer on him an interest in bringing proceedings, nor is the fact that his current residence is located in an area likely to be flooded annually in 2040: there is no indication as to where his residence will be in the years to come, let alone in twenty years or more, so that his [personal] interest appears to be affected in too uncertain a manner on this point. We propose to dismiss the application in so far as it emanates from him for lack of interest to bring proceedings."

30. Furthermore, the *Conseil d'État* declared admissible the interventions of the cities of Paris and Grenoble noting in particular that their interest in intervening was based on the fact that those urban areas had been identified by the National Observatory on the effects of global warming as being at a very high level of exposure to climate risks. Moreover, having regard to their action to combat the adverse anthropogenic effects of climate change, the *Conseil d'État* declared admissible the above-noted non-governmental associations' interventions (see paragraph 25 above). The third-party interventions were accepted in so far as they concerned the admissible part of the action brought by the municipality of Grande-Synthe.

31. Furthermore, relying on the United Nations Framework Convention on Climate Change ("UNFCCC")[5], the Paris Agreement and EU law (2020 Climate and Energy Package)[6], the *Conseil d'État* pointed out that States

[5] United Nations Framework Convention on Climate Change, 9 May 1992, United Nations, Treaty Series, vol. 1771, p. 107.

[6] See further 2020 climate & energy package, available at www.europa.eu (last accessed 11.01.2024).

had a shared but differentiated responsibility to take the necessary measures to address climate change by reducing GHG emissions. Moreover, the *Conseil d'État* noted that although the UNFCCC and the Paris Agreement did not have a direct effect on individuals and required further measures of implementation in order to produce such effects, they had to be taken into consideration when interpreting the domestic law, in particular in relation to the environmental objectives fixed by States. In this connection, the *Conseil d'État* noted that when fixing France's objective to reduce GHG emissions by 40% by 2030, Article L. 100-4 of the Energy Code (see paragraph 40 below) referred to the UNFCCC and the Paris Agreement. Moreover, Article L. 222-1 A of the Environment Code (see paragraph 42 below) provided that the maximum level of national GHG emissions was to be fixed for the period 2015-18 and then for consecutive periods of five years thereafter. Within this framework, the Decree of 18 November 2015 fixed the carbon budget for the first period at a maximum limit of 442 Mt CO_2e per year.

32. However, from the information available in the file, the *Conseil d'État* found that for the period 2015-18 France had surpassed its first carbon budget target by 62 Mt CO_2e per year and thus reduced GHG emissions by only 1%, instead of the planned 2.2% per year. In this connection, the *Conseil d'État* noted that the 2019 and 2020 reports of the High Council on Climate had found that the policies put in place to achieve the fixed objectives concerning the reduction of GHG emissions had been insufficient.

33. The *Conseil d'État* further noted that the Decree of 21 April 2020 had significantly modified the second carbon budget (period 2019-23) initially set in the Decree of 18 November 2015, by increasing the maximum limit of GHG emissions from 399 to 422 Mt CO_2e per year. As regards the third carbon budget (period 2024-28), the Decree of 21 April 2020 had only slightly modified the maximum limit initially set in the Decree of 18 November 2015 by increasing it from 358 to 359 Mt CO_2e per year. Finally, it noted that the Decree of 21 April 2020 had fixed the fourth carbon budget (period 2029-30) at 300 Mt CO_2e per year. In the view of the *Conseil d'État*, this fourth carbon budget would allow France to achieve its final objective of reducing GHG emissions by 40% compared to 1990 levels by 2030, as required by Article L. 100-4 of the Energy Code, and by 37% compared to 2005 levels, as required by Regulation (EU) 2018/842.[7] However, globally, the modifications introduced by the Decree of 21 April 2020 had led to most of the efforts required being postponed until after 2020, in accordance with a road map which had never yet been

[7] Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) 525/2013 (OJ L 156, 19.6.2018, p. 26–42).

attained. At the same time, the most recent scientific evidence, including the reports published by the IPCC, showed that climate risks would increase if the temperature continued to rise, and therefore the European Commission was considering proposing to increase the EU's 2030 GHG emissions reduction target to -55% compared to the 1990 emissions level.

34. In view of these considerations, the *Conseil d'État* concluded that further investigations were needed as regards the part of the municipality of Grande-Synthe's submissions relating to the implicit rejection of the request to take all necessary measures to curb GHG emissions produced on the national territory. As regards the part of the legal action relating to regulatory measures to make it obligatory to give priority to climate matters, the *Conseil d'État* considered that it was insufficiently substantiated. Lastly, with regard to the need to take climate-change adaptation measures, the argument could not validly be raised.

35. Following further investigations concerning the measures taken by the authorities to curb GHG emissions, on 1 July 2021 the *Conseil d'État* set aside the authorities' implicit rejection of the municipality of Grande-Synthe's request in that respect. The *Conseil d'État* found, in particular, that the reduction in GHG emissions in 2019 had been small and that the reduction in 2020 had not been sufficient, having regard to the reduced economic activity owing to the public-health crisis. It also found that compliance with the pathway set to achieve emission reduction targets of reducing GHG emissions by 40% compared to 1990 levels by 2030, as required by Article L. 100-4 of the Energy Code, and by 37% compared to 2005 levels, as required by Regulation (EU) 2018/842 – which required a 12% reduction in emissions in the period 2024-28 pursuant to the Decree of 21 April 2020 – did not appear to be feasible if new measures were not rapidly adopted.

36. In the light of these findings, the *Conseil d'État* ordered the authorities to take additional measures by 31 March 2022 to meet the GHG emissions reduction targets set out in Article L. 100-4 of the Energy Code and Annex I of Regulation (EU) 2018/842.

C. Subsequent proceedings in the *Conseil d'État*

37. On 1 April 2022 the municipality of Grande-Synthe lodged a legal action in the *Conseil d'État* requesting that it impose a financial penalty on the State for non-execution of the *Conseil d'État*'s judgment of 1 July 2021.

38. On 10 May 2023 the *Conseil d'État* found that while the government had taken additional measures to tackle climate change and thereby demonstrated its determination to implement the *Conseil d'État*'s decision, there was still no sufficiently credible guarantee that the GHG emissions reduction pathway would actually be attained. The *Conseil d'État* therefore ordered the government to take additional measures by 30 June 2024, and to

submit, by 31 December 2023, a progress report detailing these measures and their effectiveness.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK

A. Charter for the Environment

39. The 2004 Charter for the Environment provides as follows:

"Article 1. Everyone has the right to live in a balanced and healthy environment.

Article 2. Everyone is under a duty to participate in preserving and improving the environment.

Article 3. Everyone must, under the conditions provided for by law, avoid causing damage to the environment or, failing that, limit the consequences of such damage.

Article 4. Everyone is required, under the conditions provided for by law, to contribute to the making good of any damage he or she may have caused to the environment.

Article 5. Where the occurrence of any damage, albeit uncertain in the light of current scientific knowledge, could seriously and irreversibly harm the environment, public authorities shall, in application of the precautionary principle and in the areas within their jurisdiction, ensure the implementation of procedures for risk assessment and the adoption of provisional measures commensurate with the risk involved in order to prevent the occurrence of such damage.

Article 6. Public policies must promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress.

Article 7. Everyone has the right, in the conditions and to the extent provided for by law, to have access to information pertaining to the environment in the possession of public bodies and to participate in any public decision-making process likely to affect the environment.

Article 8. Education and training on the environment shall contribute to the exercise of the rights and duties set out in this Charter.

Article 9. Research and innovation must contribute to the preservation and development of the environment.

Article 10. This Charter shall inspire France's actions at both European and international levels."

B. Energy Code

40. Article L. 100-4 of the Energy Code, as amended by Law no. 2019-1147 of 8 November 2019, reiterates the French target of a 40% reduction in greenhouse gas emissions between 1990 and 2030, in accordance with Annex I to Regulation (EU) 2018/842 of the European

Parliament and of the Council, and provides as follows: “in response to the ecological and climate emergency, the national energy policy” aims to “1. [r]educe greenhouse gas emissions by 40% between 1990 and 2030 and achieve carbon neutrality by 2050 ...”. The provision in question adds that “the pathway is set out in detail in the carbon budgets referred to in Article L. 222-1 A of the Environment Code”.

41. That Article states that “... carbon neutrality is to be understood as a balance, across the national territory, between anthropogenic emissions by sources and anthropogenic removals using greenhouse gas sinks, as referred to in Article 4 of the Paris Agreement ratified on 5 October 2016”, and that “[t]he calculation of such emissions and removals will be carried out in accordance with the same procedures as those applicable to the national greenhouse gas inventories notified to the European Commission and in the context of the United Nations Framework Convention on Climate Change, without taking into account international carbon offsets”.

C. Environment Code

42. Article L. 222-1 A of the Environment Code provides that “for the period 2015-18, and for each consecutive five-year period, a national greenhouse gas emissions ceiling known as the ‘carbon budget’ will be set by decree”.

43. Article L. 222-1 B of the same Code adds that “the decree establishing the low-carbon strategy will allocate the carbon budget for each of the periods mentioned in Article L. 222-1 A by major sectors .... It will also allocate carbon budgets in indicative annual emissions bands”.

D. Two decrees defining the national low-carbon strategy

44. A first decree of 18 November 2015 set “the carbon budgets for the periods 2015-18, 2019-23 and 2024-28 ... respectively at 442, 399 and 358 Mt CO_2e per year ...” (Article 2 of Decree no. 2015-1491 of 18 November 2015 on national carbon budgets and the national low-carbon strategy).

45. For the period 2015-18, as the original targets were exceeded by 62 Mt CO_2e per year, a second decree of 21 April 2020 (Decree no. 2020-457 on national carbon budgets and the national low-carbon strategy) was adopted providing for the raising of these ceilings.

46. For the period 2019-23 (second carbon budget), the new ceiling was set at 422 instead of 399 Mt CO_2e per year, an increase of 23 Mt CO_2e and, for the period 2024-28 (third carbon budget), at 359 instead of 358 Mt CO_2e per year. Finally, the ceiling was set at 300 Mt CO_2e for the period 2029-33 (fourth carbon budget).

47. The effect of raising these ceilings is that the average annual reduction of approximately 40 Mt CO_2e has been increased to an average annual reduction of about 60 Mt CO_2e.

E. Law no. 2021-1104 of 22 August 2021 on combating climate change and strengthening resilience to its effects

48. Law no. 2021-1104 sets out, by sector of activity, and in particular the sectors with the highest GHG emissions, the obligations imposed on the various stakeholders by Article L. 100-4 of the Energy Code in order to achieve the reduction target initially set at 40% by 2030 compared with 1990 levels. It is structured around the five themes which the Citizens' Climate Convention discussed and on which it presented proposals.

49. Section 1 of the Law reiterates France's commitment to meeting the new targets resulting from the revision of the European "effort sharing" Regulation of 30 May 2018 which sets GHG emissions reduction targets for each member State consistent with the new European target of reducing GHG emissions by at least 55% by 2030.

F. General Code of Territorial Authorities

50. Article L. 2212-2 of the General Code of Territorial Authorities (*Code general des collectivités territoriales*), taken together with Article L. 2122-24, defines the policing powers of mayors which they exercise on behalf of the municipality. It does not concern the issue of interest in bringing proceedings or the question of standing to act before the courts, which is governed by Article L. 2122-22 § 16, providing that the mayor can bring legal actions on behalf of the municipality or defend the municipality in actions brought against it.

G. Case-law concerning interest in bringing an action

51. The applicant's interest in bringing an action is one of the conditions for admissibility of an application for judicial review (*recours pour excès de pouvoir*). It follows from the domestic case-law that the administrative courts take a flexible approach to this particular condition, while consistently refusing to accept an *actio popularis*. The applicant must establish the existence of a personal interest in seeking the setting-aside of the act he or she is challenging. To this end, the interest invoked must be sufficiently direct. However, the administrative courts do not require it to be specific to the applicant. In other words, it is not necessary for the interest invoked to be specific and particular to the individual applicant, but it must be part of a circle in which case-law has accepted ever larger groups of interested parties, without however enlarging it to the dimensions of the

national community (Chenot conclusions on the *Conseil d'État* decision in *Sieur Gicquel*, 10 February 1950, no. 1743).

52. According to the domestic case-law, the mere fact of being a citizen is not sufficient to confer an interest giving standing to act in disputes concerning the setting-aside of decisions (see, for example, *Conseil d'État*, 11 December 1987, no. 76469; *Conseil d'État*, 12 March 1999, no. 192014; and *Conseil d'État*, 17 May 2002, no. 231290). For the existence of an interest to bring proceedings to be recognised, it must be linked to a particular status relied on by the applicant.

53. Similarly, the *Conseil d'État* does not accept the interest of every citizen to bring proceedings against an administrative decision likely to harm the environment (*Conseil d'État*, 2 October 1986, nos. 50893 and 50894). It has also considered that "Article 2 of the Charter for the Environment, according to which '[e]veryone is under a duty to participate in preserving and improving the environment', cannot, in itself, confer on every person who invokes it an interest in bringing an application for judicial review of any administrative decision that he or she intends to contest" (*Conseil d'État*, 3 August 2011, Mme B. no. 330566).

54. In addition, the interest invoked must not be excessively uncertain, which implies that the contested decision must be regarded as capable of prejudicing, at least in a sufficiently probable manner, the person bringing the action. For instance, an applicant's action contesting a decree banning camping in a municipality which he had not yet visited was deemed admissible (*Conseil d'État*, 14 February 1958, *Abisset*, *Recueil Lebon* p. 98). On the other hand, an applicant's interest in requesting the setting-aside of a decree creating a national park was denied on the grounds that he merely claimed to be a hiker who lived in the *département*, while he lived 200 km from the park's boundaries (*Conseil d'État*, 3 June 2009, no. 305131).

II. RELEVANT INTERNATIONAL MATERIALS

55. The relevant international materials are set out in *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], no. 53600/20, §§ 133-231, 9 April 2024.

COMPLAINT

56. The applicant alleged that France had failed to take sufficient steps to prevent climate change and that this failure entailed a violation of his right to life and the right to respect for his private and family life and his home, relating, in particular, to the risk of climate-change-induced flooding to which the municipality of Grande-Synthe would be exposed in the period 2030-40. The applicant relied on Articles 2 and 8 of the Convention.

THE LAW

57. The relevant part of Article 2 of the Convention provides as follows:

"1. Everyone's right to life shall be protected by law ..."

58. The relevant part of Article 8 of the Convention reads as follows:

"1. Everyone has the right to respect for his private and family life, his home ..."

I. THE PARTIES' SUBMISSIONS

A. The Government

59. The Government pointed out that the scientific findings were clear as regards the existence of a triple crisis: climate change, pollution and the degradation of biodiversity. The IPCC reports had established the anthropogenic origin of climate change and had shown that GHG emissions reduction measures and adaptation measures were necessary to limit the negative impact of climate change on humans and the environment. France was aware of the climate emergency and was actively engaged in addressing it through legislative initiatives and programmes,

60. At the domestic level, the issues of climate change were subject to review by the administrative courts, as seen in the *Grande-Synthe* and the "*Affaire du siècle*" cases (see also *Verein KlimaSeniorinnen Schweiz and Others*, cited above, § 240). At the same time, the issues linked to the reduction of GHG emissions were not subject to regulation under the Convention or to the jurisdiction of the Court. Neither Article 2 nor Article 8, or any other provision of the Convention, guaranteed the right to a healthy environment as such. The issues under the Convention were limited to individual cases and the specific environmental problems affecting an applicant.

61. However, the applicant in the present case was in reality seeking to obtain a review by the Court of the measures taken by France to limit GHG emissions. It was clear that the applicant's complaint was not intended to protect his individual rights but rather the general interest. This was an *actio popularis* complaint, the nature of which was demonstrated by the fact that the applicant had not complained of specific environmental problems whose cause, localisation and effects could clearly be established. He had rather complained about the effects of climate change which emanated from a whole system and entailed global risks, the materialisation of which, as regards particular individuals, was neither certain nor determinable in terms of localisation. The Government stressed that the Convention did not allow for the possibility of an abstract review of the domestic legislation or measures, including in the environmental context (citing, *inter alia*, *Caron and Others v. France* (dec.), no. 48629/08, 29 June 2010). Moreover, the

right of individual application could not be used simply in order to prevent the possible occurrence of a violation in the future (citing *Aly Bernard and Others v. Luxembourg* (dec.), no. 29197/95, 29 June 1999). In the applicant's case, in the absence of an individualised complaint, it was questionable whether he had properly exhausted the domestic remedies.

62. In any event, the Government considered that the applicant had not demonstrated that he had been, or that he would be, personally affected by the impugned effects and risks associated with climate change. While it was probable that climate change would affect different persons differently, depending on their place of residence, conditions of life and health, the applicant had not demonstrated the existence of a serious and specific risk for his health and his property. In this connection, it was not sufficient that he had relied on the risks threatening the municipality of Grande-Synthe given, in particular, that it could not be established that the applicant would still reside in this municipality or what his personal situation would be in a few years, let alone by 2040. Moreover, in so far as the applicant had argued that he suffered from asthma, that was not an issue mentioned in his initial application to the Court and nor had it been raised before the *Conseil d'État*. It was therefore beyond the scope of the present case.

63. As to the subsidiary question of a loss of victim status, the Government were of the view that the *Conseil d'État*'s judgment of 1 July 2021 had divested the applicant of any victim status he might have claimed. That judgment had effectively responded to the complaint made by the applicant before the domestic authorities and before the Court by accepting as admissible and partially granting on the merits the claim brought by the municipality. It had introduced the possibility of a "pathway review" by the administrative courts, which were now competent to examine the State's compliance with the climate objectives set out by the EU and in the national legislation.

64. Furthermore, the Government stressed that in order for Article 2 to apply there had to be a serious risk to life. This also applied in the environmental context where the danger to life had to be serious, real and imminent, and clearly identifiable (citing, *inter alia*, *Brincat and Others*, cited above, §§ 82-85, and *Budayeva and Others v. Russia*, nos. 15339/02 and 4 others, § 137, ECHR 2008 (extracts)). In the Government's view, the applicant had not in any way demonstrated that he personally faced any such serious, real and imminent risk to his life in relation to climate change.

65. As regards more specifically Article 8, the Government pointed out that in order for this provision to apply the measure complained of had to affect the applicant's Article 8 rights (private and family life and home) directly and sufficiently seriously (citing, *inter alia*, *Fadeyeva v. Russia*, no. 55723/00, §§ 68-69, ECHR 2005-IV). In the present case, the Government considered that, by merely relying on the fact that his house was located in the municipality of Grande-Synthe, which was subject to the

adverse effects of climate change, as had been recognised by the *Conseil d'État*, the applicant had not demonstrated the existence of such a direct and sufficiently serious effect on his Article 8 rights. The applicant had not shown that there was a direct link between the State's omissions in the context of GHG emissions reduction and his personal life. Moreover, he had not shown that he had already been restricted in the enjoyment of his home or that he would be personally affected by the risks of future (in ten or twenty years) climate change.

66. In any event, the Government considered that no violation of Articles 2 and 8 could be found against France. In their view, it could not be said that France had failed to meet its positive obligations under the Convention as regards the measures taken to address the effects of climate change. In particular, the Government stressed that: (a) there was a legislative and administrative framework in place which allowed for the assessment of the risks associated with climate change and achieving the objectives of GHG emissions reduction fixed by France; (b) the domestic law guaranteed the participation of, and the provision of information to, the public with regard to climate-change risks and the determination of the national mitigation policies; and (c) there were effective remedies in place allowing for a possibility of reviewing the mitigation commitments undertaken by France.

B. The applicant

67. The applicant submitted that there was a climate emergency which required ambitious reductions in GHG emissions. He contended that as a resident of Grande-Synthe he was directly and personally exposed to the major risks of coastal erosion, floods and coastal flooding. In particular, there was no doubt that the municipality would be flooded as of 2030. At the same time, the authorities of the respondent State were not taking sufficient action to address those risks. In this connection, the applicant pointed out that Article 2 of the Convention came into play to the extent that such climate-change effects could be fatal. The insufficiency of State action to address these effects prevented the applicant from serenely envisaging himself in his home in the future, which directly affected his private and family life protected by Article 8 of the Convention. In his submissions to the Grand Chamber of 17 November 2022 the applicant also submitted that since the beginning of 2020 he had developed allergic asthma, which made him particularly sensitive to air pollution caused by climate change and the effects of allergens exacerbated by it.

68. At the hearing, in reply to the Court's questions, the applicant clarified that, as a member of the European Parliament, he lived in Brussels and not in Grande-Synthe. He did not own or rent property in Grande-Synthe. He had family links with the municipality because his

brother lived there, and he would return there when his mandate in the European Parliament ended. However, he felt attached to the municipality where he had spent many years as mayor. He also explained that he had complained to the Court as the mayor of Grande-Synthe and as a citizen and resident of Grande-Synthe. He submitted that as an asthmatic he was also affected in Brussels by the effects of climate change.

69. As regards the issue of a possible loss of his victim status as a result of the judgment of the *Conseil d'État*, the applicant argued that there had been no acknowledgment of a violation of his rights at the domestic level and he had not received any redress in that respect. In particular, his legal action in the *Conseil d'État* had been dismissed and, in any event, the judgment of the *Conseil d'État* of 1 July 2021, in which the municipality had been partially successful, had still not been executed.

70. The applicant submitted that the link between human rights and climate change was well recognised in international and comparative law. Scientific studies clearly demonstrated that the right to life was at risk as a result of climate change. In the applicant's case, the right to life under Article 2 was engaged with respect to, on the one hand, his exposure to a risk of coastal flooding, and, on the other, a risk of deterioration of his health linked to his asthma.

71. With respect to Article 8, the applicant argued that the alleged inaction of the respondent State to tackle the effects of climate change exposed him to adverse consequences as regards his private life and his quality of life in his home. In particular, he could not serenely envisage the future in his home which was subject to an increasing risk of coastal flooding. At the same time, his health, already weakened by asthma, was getting worse as the effects of climate change got worse.

72. The applicant argued that France's existing legislative and administrative framework was insufficient to meet the national objectives for the reduction of GHG emissions. Against this background, having regard also to the non-execution of the *Conseil d'État*'s judgment, the applicant considered that the State had not put in place the necessary legislative and administrative framework, in breach of its positive obligations under Articles 2 and 8 of the Convention.

C. The third-party interveners

1. ENNHRI

73. Referring to its submission in the *Verein KlimaSeniorinnen Schweiz and Others* case (cited above, §§ 382-385), the intervener further submitted that the global sea-level rise, heatwaves and river floods caused by human-induced climate change increased the risk of injury and death. The increased mortality and morbidity rates in France reflected the immediate and direct impact of climate change. With regard to victim status, the

intervener submitted that a foreseeable risk of sea-level rise could seriously endanger an individual's health and quality of life at home, in violation of Article 8 of the Convention. Furthermore, increased heat-related mortality rates, particularly in France, constituted a real and immediate risk of harm caused by climate change, engaging the applicability of Article 2 of the Convention. As part of their positive obligations, States had to take appropriate mitigation measures. Implementing climate-change adaptation measures alone would not suffice to comply with the positive obligations under Articles 2 and 8.

2. OCT and Oxfam

74. The interveners made a joint submission for the *Verein KlimaSeniorinnen Schweiz and Others* case, cited above, §§ 399-401, and the present case.

II. THE COURT'S ASSESSMENT

75. The Court does not need to address all of the Government's arguments, as in any event the applicant's complaint is inadmissible for the following reason.

76. The Court refers to the general principles on the victim status of physical persons under Article 34 in the context of complaints under Articles 2 and 8 of the Convention concerning climate change set out in *Verein KlimaSeniorinnen Schweiz and Others*, cited above, §§ 487-488.

77. In the present case, it should first be noted that in the proceedings which the applicant instituted in January 2019 in the *Conseil d'État*, acting on his own behalf and in his capacity as mayor of Grande-Synthe, in the name and on behalf of that municipality, he based his complaints on the local circumstances prevailing in the area in which the municipality of Grande-Synthe is located (see paragraphs 13-18 above). The applicant pointed, in particular, to the risks of flooding which the municipality faced as a result of the inadequacy of the mitigation action taken by the government and also as a result of the insufficiency of the existing local infrastructure to protect against the contemporary effects of climate change. Moreover, he pointed out that the house in which he resided was located less than four kilometres from the coastline and that according to some predictions it would be flooded by 2040, taking into account the effects of climate change. He therefore argued that he had not lodged the legal action as an ordinary citizen but as someone with a concrete legal interest, since in a foreseeable future his house was at real risk of flooding linked to climate change, which would therefore affect his property and his day-to-day environment (see paragraphs 23-24 above).

78. The *Conseil d'État* found that the relevant area where the municipality was located had been assessed as being at "a very high level of

exposure" to climate risks and that, owing to its immediate proximity to the coast and the physical characteristics of its territory, the municipality was exposed in the medium term to high and increased risks of flooding and an increase in episodes of severe drought, with the effect not only of a reduction and degradation of water resources, but also significant damage to built-up areas, given the geological characteristics of the soil. Furthermore, the *Conseil d'État* noted that while these concrete consequences of climate change were likely to have their full effect on the territory of the municipality only by 2030 or 2040, "their inevitability", in the absence of effective measures taken quickly to prevent the causes and in view of the time frame for public policy action in this area, was such as to justify the need to "act without delay" (see paragraph 28 above).

79. At the same time, while recognising the standing of the Grande-Synthe municipality, as regards the applicant's particular situation, the *Conseil d'État* found that he did not have an interest in bringing proceedings on the basis of the mere fact that his current residence was located in an area likely to be subject to flooding by 2040. This finding was premised on the conclusions of the public rapporteur according to which there was no indication as to where the applicant's residence would be in the years to come, let alone in twenty years or more, so that his interest appeared to be affected in too uncertain a manner (see paragraph 29 above).

80. For its part, having regard to the key factors for victim status set out in *Verein KlimaSeniorinnen Schweiz and Others* (cited above, §§ 487-488), the Court finds no reason to question the hypothetical nature of the risk relating to climate change affecting the applicant, as stated by the *Conseil d'État*.

81. Furthermore, it is critical to note that, by the applicant's own admission at the hearing in reply to the Court's questions, after becoming a member of the European Parliament in May 2019, he had moved to Brussels (see paragraphs 9 and 68 above). He does not own, and no longer rents, any property in Grande-Synthe and currently his only concrete link with the municipality is the fact that his brother lives there. In this connection, the Court reiterates that according to its' well-established case-law, unless they can demonstrate additional elements of dependence – which is not the situation in the present case – adult siblings cannot rely on the family-life aspect of Article 8 (see, for instance, *Mamasakhlisi and Others v. Georgia and Russia*, nos. 29999/04 and 41424/04, § 282, 7 March 2023, with further references).

82. Moreover, the Court notes that in his initial application lodged on 28 January 2021 (see paragraph 1 above) the applicant indicated an address in Grande-Synthe, although at that time he no longer resided in that municipality but in Brussels (see paragraphs 9 and 68 above). Similarly, the applicant's belated admission concerning his actual place of residence stands in contrast to the arguments raised in his application before the Court

in which he submitted that his residence in Grande-Synthe was at a future risk of flooding and that the current situation prevented him from envisaging himself serenely in his home (see paragraph 67 above).

83. In these circumstances, having regard to the fact that the applicant has no relevant links with Grande-Synthe and that, moreover, he currently does not live in France, the Court does not consider that for the purposes of any potentially relevant aspect of Article 8 – private life, family life or home – he can claim to have victim status under Article 34 of the Convention as regards the alleged risks linked to climate change threatening that municipality. This is true irrespective of the status he invoked, namely that of a citizen or former resident of that municipality. The same considerations apply as regards the applicant's complaint under Article 2 of the Convention.

84. Holding otherwise, and given the fact that almost anyone could have a legitimate reason to feel some form of anxiety linked to the risks of the adverse effects of climate change in the future, would make it difficult to delineate the *actio popularis* protection – not permitted in the Convention system – from situations where there is a pressing need to ensure an applicant's individual protection from the harm which the effects of climate change may have on the enjoyment of their human rights.

85. As regards the applicant's argument that he complained to the Court as the former mayor of Grande-Synthe, the Court refers to its well-established case-law according to which decentralised authorities that exercise public functions, regardless of their autonomy *vis-à-vis* the central organs – which applies to regional and local authorities, including municipalities – are considered to be "governmental organisations" that have no standing to make an application to the Court under Article 34 of the Convention (see *Assanidze v. Georgia* [GC], no. 71503/01, § 148, ECHR 2004-II, and *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, § 61, 18 November 2020, with further references). Accordingly, leaving aside the fact that he is no longer the mayor of Grande-Synthe, the Court finds that the applicant had no right to apply to the Court or to lodge a complaint with it on behalf of the municipality of Grande-Synthe.

86. That said, and notwithstanding its findings under the Convention as set out above, the Court has taken note of the fact that the interests of the residents of Grande-Synthe have, in any event, been defended by their municipality before the *Conseil d'État* in accordance with national law.

87. Lastly, as regards the issue of his asthma (see paragraphs 62 and 67 above), it should be noted that this did not form part of the applicant's initial application to the Court but was raised for the first time in his submissions to the Grand Chamber of 17 November 2022. This issue constitutes a new and distinct complaint and thus cannot be regarded as an elaboration of the applicant's original complaint. In the absence of any information to show that the applicant complied with the admissibility requirements in Article 35

§ 1 of the Convention (Rule 47 §§ 3.1 (b) and 5.1 of the Rules of Court), the Grand Chamber has confined its examination to "the case" that was relinquished to it pursuant to Article 30 of the Convention.

88. In conclusion, it follows from the above considerations that the applicant's complaint, in so far as falling within the scope of the present case (see paragraph 87 above), should be declared inadmissible as being incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 April 2024.

{signature_p_2}

Søren Prebensen	Síofra O'Leary
Deputy to the Registrar	President