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Framing climate remedies in European human rights law: It is all about trust – in European democracies

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ABSTRACT

This article examines how frame analysis contributes to the analysis of remedies in the three seminal climate rulings of the European Court of Human Rights. It argues that the Court has actively shaped human rights-based climate remedies through the frame of ‘democratic trust’. This frame places democratic institutions of European states, notably, governments, parliaments, courts and civil society, at the heart of securing climate remedies, whilst marginalising two counter-frames, the ‘climate justice frame’ calling for remedies to align with European states’ fair share contributions to climate change and the ‘climate urgency frame’ requiring clear deadlines for action. The democratic trust frame has important doctrinal consequences. Whilst it diagnoses climate change as a human rights problem, it strengthens the presumption of deference to national actors in solving this problem and places significant expectations on successful political and legal mobilisation of civil society in securing effective climate action. The analysis advanced in the article demonstrates the utility of frame analysis in unearthing how key ideas are mobilised and disregarded in the making of solution and motivational frames in court judgments and how legal doctrine is shaped by framing effects.

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1. Introduction

The European Court of Human Rights (‘The ECtHR’ or ‘The Court’) delivered seminal judgments in three climate litigation cases in 2024.¹ Climate justice and human rights communities had keenly awaited these judgments against the backdrop of a rising trend of human rights-based climate litigation before domestic and international courts around the world (Peel & Osofsky, 2018; Savaresi & Setzer, 2022). In *Verein KlimaSeniorinnen v. Switzerland*, the Court found violations of two rights protected under the European Convention on Human Rights (‘The ECHR’ or ‘The Convention’). These were the right to respect for private and family life for the failure to take effective climate mitigation measures, and the right to fair trial for the Swiss domestic court’s failure to review the substance of the complaints of the applicant, *Verein KlimaSeniorinnen*, an

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association that advocates for the rights of elderly women affected by climate change. The Court thereby recognised that inadequate climate mitigation is a human rights issue under the ECHR.² In the other two cases, the Court declared the applicants' claims inadmissible. In *Carême v. France*, the Court held that Mr. Carême had failed to meet the procedural requirements under the Convention to be a direct victim of a human rights violation.³ In *Duarte Agostinho and others v. Portugal and thirty-two other states*, the Court held that the applicants, six children from Portugal, had failed to exhaust domestic remedies before Portuguese domestic courts. It also held that they did not have an arguable claim for transnational climate harms against the other thirty-two member states of the Council of Europe for their failure to take effective climate mitigation measures.⁴

These three judgments are pivotal for our understanding of how the ECtHR will address harms caused by inadequate responses by domestic governments, parliaments and courts to the climate crisis by Council of Europe member states in the years to come and, in turn, how these harms may be remedied. The doctrines employed by the Court in these judgments to label, attribute blame and consequently propose solutions and motivate action to remedy climate harms will shape and constrain future litigation in Europe. They will also be the focus of contestation in any pending and future cases.⁵ The article uses frame analysis to analyse how the ECtHR approached climate remedies in these first climate cases. It analyses the judgment texts oral and written submissions made by the litigants, governments and third-party intervenors to examine which frames have been adopted by the Court and which have been excluded.

The central arguments of this article are two-fold. First it argues that, whilst it recognises that climate harms can constitute human rights law violations under ECHR,⁶ the ECtHR has proposed solutions to remedy the problem and to motivate future action through what I call the 'democratic frame of trust'. The democratic frame of trust places the democratic institutions of European states (governments, parliaments, courts and civil society) at the heart of climate remedies. Second, it argues that the democratic frame of trust in these cases marginalises the two counter-frames – the 'climate justice frame' and the 'climate urgency frame' – pursued by the applicants and civil society actors. The democratic frame of trust has two doctrinal consequences. The first is that it strengthens the Court's procedural and remedial subsidiarity doctrines, understood as a presumption of deference to domestic decision-makers when considering the admissibility of and remedies for any human rights case.⁷ The second is that, because the Court placed a great deal of trust on domestic civic action to secure climate remedies, the Court's doctrinal understanding of victimhood has broadened to include local civil society acting on behalf of groups suffering climate harms.⁸

This focus on how the European Court of Human Rights framed solutions to remedying climate harms *qua* human rights law violations contributes to the existing literature at the intersection of human rights and climate change in three novel ways. First, much of the existing literature on human rights and climate change has focussed more on the diagnostic value of human rights law in framing climate change as human rights violations and less on what solutions courts could offer once they have found a violation of human rights as a matter of remedying such violations.⁹ Second, the emerging literature on human rights-based climate remedies so far has employed legal, doctrinal and comparative methods to document the type of remedies that have been provided by courts (Keller et al., 2022; Heri, 2024a). The frame analysis advanced here contributes to

these two bodies of literature by asking what key ideas were mobilised and disregarded to frame human rights-law based solutions and motivate future action by the ECtHR. Third, the article contributes to the literature on the utility of frame analysis to analyse solution and motivational frames in court judgments more broadly and the framing effects on the legal-doctrinal resources of courts. It proposes that frame analyses of court judgments offer important insights for developing future strategies of legal mobilisation.

In what follows I first offer an account of the analytical value of frame analysis in examining court judgments and distinguish frame analysis from doctrinal analyses of court judgments. I then provide a frame analysis of how the ECtHR proposed solutions and motivated future action to address climate change as a human rights harm in the three seminal judgments outlined above. I suggest that the Court has actively developed a 'democratic frame of trust' that places trust in democratic institutions, domestic courts and civil society in Europe when thinking about solutions to remedy climate harms and motivate future action. Next, I discuss how the democratic frame of trust marginalised the solution and motivational frames that were articulated by the applicants, namely the 'climate justice frame' and the 'climate urgency frame', which called for broader access to climate remedies before the ECtHR and more guidance from the Court to states in identifying effective climate remedies in the light of their fair share contributions to climate change. Following this, I examine the consequences of the democratic frame of trust and the spill-over effects it may have for future climate litigation before the ECtHR.

2. The added value of frame analysis in analysing court judgments

Frame analysis is derived from and builds on insights from the seminal work of Erving Goffman, who defined frames as 'schemata of interpretation' that make events or situations meaningful and organise social experience of individuals and collectives (Goffman, 1974, p. 21). Frame analysis places an important emphasis on the dynamic and analytical nature of frames and the role of agency in framing processes.¹⁰ Frames do not exist as static or pre-existing objects of discovery, instead they are processes engaging the active agency of framers. These dynamic and agency-focussed qualities of frames signal the contentious nature of framing as a continuous form of meaning construction.¹¹ Snow and Benford, in their influential work on collective action frames, distinguish between three core and distinct functions of framing processes: diagnosis, prognosis and motivation.¹² Diagnostic frames identify problems and enable attribution of blame or causality.¹³ Prognostic frames suggest solutions to particular problems and help identify strategies, targets and tactics to arrive at these solutions.¹⁴ Motivational frames provide the vocabulary for a 'call to arms or rationale for action'.¹⁵ Whilst these three functions are distinct, they are also inter-related. Solution framing flows from how problems are identified in the first place. Motivational framing relies on the solutions identified to call for action.

Frame analysis has been applied across a diverse range of fields such as social movement studies¹⁶, media studies (Dreher & Voyer, 2015), gender studies (Lombardo & Meier, 2008), international studies (Charnysh et al., 2014), and political theory (Butler, 2016). Socio-legal scholarship has also used frame analysis to better understand how individuals and groups make sense of law as a frame, through which frames they seek

to mobilise the law, and the resonance legal frames have for communities, citizens and political elites.¹⁷

Frame analysis, however, has been less used in the analyses of court judgments, which calls for approaching courts as active ‘framers’ themselves. This is surprising since the contentious nature of legal proceedings lend themselves well to frame analysis. Court judgments routinely offer diagnostic and prognostic frames of events and problems. In so doing, they exclude or provide legitimacy to the diagnostic and prognostic frames mobilised by respondents in the proceedings.¹⁸ Court judgments also provide motivational framing by specifying rationales for future legal action. In addition, frames actively employed by courts make a claim to authority and, therefore, may empower or marginalise different groups in society who turn to courts for recognition, justice and remedies. These observations equally apply to the ECtHR, a court with jurisdiction over the forty-six member states of the Council of Europe and with access to over 675 million individuals. The Court is routinely presented with competing frames concerning the labelling and the attribution of blame and the solutions for human rights violations by litigants, states and third-party intervenors. It has in turn been central in actively establishing or giving credence to a multiplicity of frames mobilised by a diverse range of individuals, communities and states in Europe.¹⁹

Focussing attention on how courts exercise active agency in diagnosing problems and proposing solutions and motivate future action through the medium of law and legal reasoning provides benefits not only for understanding the politics of law, but also the resilience and transformation of legal doctrines within the law. As Smiths says, the central focus of legal doctrine is to systematise the ‘principles, rules, and concepts governing a particular field or institution and analyses the relationship between principles, rules and concepts with a view to solving unclaritys and gaps existing in the law’.²⁰ Whilst legal doctrine produces knowledge ‘inside the legal system (Smiths, 2017, p. 210)’, this knowledge is amenable to solidification, modification or change when existing legal doctrines encounter new frames about how best to make sense of facts and ideas through the law. Competing frames mobilised by parties to the proceedings provide new insights to rethink doctrinal knowledge produced inside the legal systems. Frame analysis, therefore, enables a deeper understanding of the choices made, and choices excluded in doctrinal responses crafted through court judgments. Frame analysis thus aligns with a key insight of the critical legal studies tradition, namely that legal doctrine is not a neutral exercise of applying existing and static authoritative norms to facts (Trubek, 1984; Hunt, 1987). Instead, it underscores that diagnosing problems and proposing solutions through court judgments involves making contentious choices, however doctrinally neutral these may be presented.²¹ Courts’ first encounters with new problems, as is the case with seminal climate change cases before the ECtHR, are then ideal sites in which to examine the relationship between the frames employed and the framing effects on legal doctrine.

3. Trust in European democracies and their courts: the ECtHR’s frame for climate remedies and future action

In this section I demonstrate that, whilst its climate change judgments have diagnosed that inadequate climate action by governments and parliaments can amount to human

rights violations, the ECtHR's proposed solution is to address such violations through the democratic frame of trust, putting its faith in European governments, legislatures, domestic courts and domestic civic action. Here, the democratic frame of trust has three central characteristics. First, it idealises European states as liberal participatory democracies. Second, it does not inquire into whether these domestic actors are deserving of such trust in the specific context of climate change. It, therefore, overestimates the capacity of domestic civic organisations to mobilise for climate action and the capacity of democratic institutions and courts to act. Third, it does not address the question of the shortcomings of domestic action, even in good will, such action may merely amount to a 'tyranny of small decisions'²² given that climate change is a 'wicked' global problem, in all its complexity and interconnectedness (Incropera, 2015). The democratic frame of trust has, in turn, doctrinal effects. First, it strengthens and gives further legitimacy to the Court's subsidiarity doctrine, which embodies the presumption of deference to national authorities in human rights adjudication. The democratic frame of trust strengthens this doctrine both in its 'heads and tails' (Gerards et al., 2024) through climate changes: as a matter of admissibility, and as a matter of determining remedies. Second, it broadens the victimhood requirement to motivate civic legal action before domestic courts.

In *Carême v. France*, one of the two inadmissibility decisions delivered by the Court, the democratic frame of trust surfaces in the full trust the Court places on the Conseil d'Etat throughout the decision when assessing who can seek climate remedies and who can deliver them. In this case, the applicant, Mr. Carême first turned to the French Conseil d'Etat on his own behalf, and in his capacity as the mayor of Grande-Synthe, to complain about the failure of the French authorities to adopt mitigation and adaptation measures to protect the commune of Grande-Synthe from the ongoing and demonstrable effects of the climate crisis.²³ Mr. Carême argued that the duty to take adaptation measures was grounded in French law, EU law and the Paris Agreement.²⁴ In response to Mr. Carême's petition before the Conseil d'Etat, the French government argued that the measures concerning the climate were outside the competence of domestic courts and Mr. Carême had no tangible legal interest to bring a case.²⁵ The government further challenged the assessment provided by Mr. Carême of the risks of extreme weather events affecting the region of Grande-Synthe.²⁶ In response, the Conseil d'Etat agreed with the government that it had no jurisdiction to compel the state to take effective action,²⁷ and that Mr. Carême had no legal interest in bringing in a case under French law. It, however, also held that the commune of Grand-Synthe had such an interest and that the measures that had already been taken were inadequate in the light of the legal frameworks applicable to the government.²⁸ The Conseil d'Etat further requested the government to bring its policies in line with existing legal frameworks, which also included the international legal frameworks under EU law and the Paris Agreement.²⁹

The Court's decision in this case mirrored that of the Conseil d'Etat in its entirety. It concurred that Mr. Carême did not have any victim status under the Convention because he no longer lived in Grand-Synthe.³⁰ It also underlined that the Conseil d'Etat had handled the complaints of the commune. It stated in particular that 'the [European] 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'Etat in

accordance with national law'.³¹ The Court viewed the efforts of the French courts to compel the government to act in the French context as significant, even though the commune of Grand-Synthe has still not succeeded securing effective remedies and litigation before French courts is, at the time of writing, still ongoing.³²

This ECtHR, therefore, placed its trust in the Conseil d'État's handling of the case in two different directions: first, trust in the domestic court's handling of who can claim climate remedies, which excluded Mr. Carême, and, second, trust in the processes of claiming climate remedies in France through courts, which involves a back and forth between the Conseil d'État and the government in the form of repeated litigation to address France's failure to meet the targets it has set for itself. Mr. Carême's calls to examine the French government's failure to take effective action under the Convention, therefore, were denied with a trusting emphasis on the ongoing back and forth between the Conseil d'État and the government without any examination of the effectiveness of this process and the ability of the Conseil d'État to secure effective climate remedies. In turn, the Court also signalled that individuals who are not living in a particular climate hot spot were not procedurally fit to demand climate remedies.

The inadmissibility judgment in *Duarte Agostinho and others* further reified the trust placed in domestic courts when it decided the case against Portugal to be inadmissible because of the failure of the applicants to bring their case before domestic Portuguese courts in the first place. In so doing, the ECtHR resisted the demands of the applicants to apply its exhaustion of effective domestic remedies principle in the context of climate change, a principle which the Court had developed to address ineffective and unavailable domestic remedies in other contexts,³³ recognising that the burden of proof shifts to the government to show that there is an available and effective remedy in contested cases.³⁴ This is despite the absence of any domestic Portuguese court decision that could show that the Portuguese courts were addressing or were capable of addressing climate harms through demanding effective domestic remedies from the Portuguese government. The Court, unlike in *Carême*, placed its trust in the Portuguese courts in the abstract and simply motivated civic action by the Portuguese citizens before domestic courts. The doctrinal effects of the democratic frame of trust in this case thus weakened the 'effective domestic remedies' doctrine and strengthened a more formalistic understanding of exhaustion of the domestic remedies in the context of climate change.³⁵

Regarding the transnational remedy claims of the six children against the other thirty-two respondent states, the Court's finding of no jurisdiction also follows from the democratic frame of trust and by extension the trust placed in the ability of the domestic courts of thirty-two other European states to provide climate remedies, notwithstanding the doctrinal intricacies of the Court's case law on how jurisdiction may be established in European human rights law.³⁶ The Court, similar to *Carême*, contested the idea that anyone anywhere can claim climate remedies from European countries.³⁷ It, therefore, cemented the idea that the right to claim climate remedies may only flow from the relationship between European states and those who live in those states (and suffer from the effects of climate change) and are part of the contentious democratic processes in these states. It was, therefore, for the children in, say, Belgium or Turkey to fight for climate remedies in their own countries by placing their trust in their own governments, parliaments and courts. Portuguese children, thus, were situated as outside of the frame of democratic struggles for climate remedies in other European states. With this decision,

therefore, the Court motivated all future action towards domestic political processes, and when those fail, to litigation before domestic courts.

At first sight, and from a doctrinal perspective, the *Verein KlimaSeniorinnen* case clearly differs from *Carême* and *Duarte Agostinho*. This is primarily because it is the only judgment where the applicant, *Verein KlimaSeniorinnen*, an association acting for elderly women, won their case. In other words, the Court, diagnosed the effects of climate change as a human rights problem for the first time. The Court found two violations: a violation of the right to fair trial and a violation of the right to private life and family. The former was because domestic courts, including apex Swiss courts, did not substantively assess the claims of the applicant and, therefore, denied the association access to court and judicial examination.³⁸ The latter was because there were clear gaps in the Swiss regulatory framework in how it addressed climate mitigation measures, and the national authorities did not act ‘*in good time and in an appropriate and consistent manner*’ to comply with positive obligations required to respect the right to private and family life and home under Article 8 of the Convention.³⁹

The differences in the outcome in this case with the two inadmissibility decisions, however, do not disturb the democratic frame of trust of the Court and, indeed, strengthen it. Whilst the Court held that the Swiss government had failed to respect the rights of the applicants in the past, it also held that collective interests of those affected by climate change in European states was a matter for domestic civic actors, political institutions and domestic courts to resolve in the future. The Court found violations of the Convention, but it has returned the matter of remedying climate harms back to the institutions of the democratic polity, namely the Swiss parliament, the Swiss executive, the Swiss courts and Swiss civic organisations. The Court dismissed in full the applicant’s argument that they had been consistently disregarded over the course of eight years of litigation seeking to challenge the lack of effective climate action at home and for this reason their case called for the recognition that the Swiss courts had failed to provide an effective domestic remedy in climate cases.⁴⁰ The Court refused to recognise that the Swiss courts did not deserve to be trusted. Instead, it limited itself to a finding of a violation of the right to a fair trial in this specific case, and thus proposed that the future of securing climate remedies rested in litigation before domestic courts, if domestic political processes fail. This suggests that even when no national authority adequately examines the substance of the complaints of future climate litigants in European states, the European Court is unlikely to find it as a reason to distrust domestic courts and therefore declare them as an ineffective domestic remedy. When the Court turned to the question of how the violations it found would be remedied under Article 46 of the ECHR, it repeatedly underlined that it was not its role to specify climate remedies due to ‘the complexity and the nature of the issues involved’ and that the Swiss authorities were ‘better placed to specify than the Court to assess the specific measures to be taken’.⁴¹ The Court thus made its first violation judgment in the context of climate change as an occasion to make its deferential procedural and remedial doctrines more resilient for future claims.

In all these three cases, the Court’s motivational frame for future action directed the applicants to demand human rights-based climate remedies to contentious domestic politics and domestic litigation. This frame closely resonated with the European governments’ standard defence before the Court that, because they are sovereign and

democratic, European states are better placed to provide solutions for human rights violations at home.⁴² For the governments that appeared from the Court, there was no reason for climate change to be handled differently. For example, the Swiss Government framed climate change as a ‘complex’, ‘political’ and ‘democratic’ matter, the solution for which should be left to the national institutions of states in line with the wide margin of appreciation left to them.⁴³ The Court further nodded to the role that the Committee of Ministers of the Council of Europe, the inter-governmental body which supervises the implementation of all human rights judgments, may play in this context.⁴⁴ The Court, therefore, not only placed an unearned trust in the Swiss executive, parliament and courts, but also in the other forty-five Council of Europe member states in assessing the adequacy of domestic climate remedies. In so doing, the Court has not explained why it viewed European governments, parliaments or courts individually or as a collective trustworthy in the context of climate change. Indeed, not one of the three decisions delved into an assessment of the actual track records or the capacities of the governments and domestic courts to deliver climate remedies. In other words, when and why trust is due and when it may not be, in the unique context of climate change, figured nowhere in the judgments.

The democratic frame of trust had important doctrinal effects. It enabled the Court to strengthen its formalistic approach to the exhaustion of domestic remedies at the expense of its doctrines that call for the exhaustion of effective and available domestic remedies.⁴⁵ The remedial deference doctrine also emerged more resilient against the doctrinal developments in the Court’s case law towards specifying remedies (Donald & Speck, 2019). In addition, the Court’s motivational frame had novel doctrinal effects. The Court expanded its doctrinal conception of victimhood status to include non-governmental organisations who defend their members from the effects of climate change.⁴⁶

4. The fading of the applicants’ solution frames: climate justice and climate urgency

The democratic frame of trust which I developed in the previous section has also led to the complete dissipation of two counter frames that were mobilised in the legal pleadings by the applicants (as well as non-governmental organisations who joined the case as third-party intervenors) in the course of the proceedings: namely the climate justice frame and the climate urgency frame. These both called for the Court to closely scrutinize the effectiveness of domestic remedies and to give more remedial guidance to states based on their fair share of contributions climate change (Rajamani et al., 2021).

Many scholars have pointed out that the climate movement’s frames have been shifting towards embracing a climate justice frame both as a form of diagnosis and prognosis over the last two decades (della Porta & Parks, 2014; Gach, 2019). The climate justice frame emphasises the understanding of the climate crisis in terms of the deep and structural injustices it perpetrates both within and across societies in the world (Chapman & Karim Ahmed, 2021). It focusses attention to the fact that those that have contributed the most to the climate crisis should bear more responsibility for remedying it. The climate justice frame further emphasises the historic responsibility for carbon emissions by European colonial states not only for protecting their own citizens, but also for securing transnational remedies, by significantly reducing their carbon emissions and remedying the

harms already occurring across the world. This includes supporting adaption finance and ensuring support for loss and damage for those vulnerable communities which have contributed the least to, but are the most affected by, carbon emissions.⁴⁷ In the context of human rights-based climate remedies, the climate justice frame requires European states to purpose their climate action in due proportion to their fair share, both in terms of their historic and ongoing contribution to harm and their ability to remedy present and future harm.⁴⁸

In the three seminal climate change cases discussed here, the remedies requested by some applicants are underpinned by the climate justice frame.⁴⁹ In *Verein KlimaSeniorinnen*'s petition, the applicants asked the Court to order remedies that are proportionate and represent the fair share of Switzerland, taking due account of the Paris Agreement's 1.5°C warming limit.⁵⁰ This demand was also echoed in *Duarte Agostinho*, where the six children demanded that all thirty three countries cited needed to take action commensurate to their 'fair share of their global burden of mitigating climate change'.⁵¹ The children further argued that it was precisely for this reason that the ECtHR was the right institution to specify the climate remedies as no single democratic country in Europe could co-ordinate the remedies required.⁵² The applicants argued that:

This approach (taking action according to their fair share) is also consistent with the 'fair balance' principle. Insofar as 'climate change is a common concern of humankind', there is no distinction between the 'demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights' when it comes to the need to hold global warming to the 1.5°C target. Indeed, according to this principle the Court must take into account the impacts which climate change at its current trajectory stands to have on people throughout Europe and beyond when addressing the obligations of the Respondents towards the Applicants'.⁵³

A second frame mobilised by applicants is the climate urgency frame, focussing attention to the urgency of the articulation of effective remedies for mitigation and adaptation specified by the European Court, as the signifier suggests. In *Carême v. France*, the applicant highlighted the urgency of effective measures due to the special vulnerability of the municipality of Grande-Synthe to climate change, bringing attention to the fact that land of commune is located below sea level to the west of the city of Dunkirk. This meant that weather events induced by climate change phenomena present a heightened risk of marine flooding and flooding in the area and require immediate measures.⁵⁴ In *Duarte Agostinho*, the children also explained why they did not go the courts of each and every of the thirty-three states (who are all failing to take adequate climate action) by highlighting the urgency of the climate crisis and the immediate need to take climate action to minimise the effects of the climate crisis at the European level.⁵⁵ In *Verein KlimaSeniorinnen*, the applicants highlighted the limited time left to protect the right to life and private life of elderly women and underlined that each additional tonne of CO₂ emitted worsens climate impacts, which includes the premature death of the elderly.⁵⁶ The climate urgency frame was also underlined in third-party interventions before the Court.⁵⁷

Neither of these frames, which called for a more pronounced role for the Court and less trust for the institutions of individual European states, resonated in the Court's vision for solutions. In *Verein KlimaSeniorinnen*, for example, the applicants intentionally and explicitly called for remedies that correspond with Switzerland's equitable fair

share and requested that the Court impose time limits to monitor that the following measures are taken by the authorities:

- a. ensuring a greenhouse gas emission level in 2030 that is net negative as compared to the emissions in 1990;
- b. reducing domestic emissions by 61% below 1990 levels by 2030, and to net-zero by 2050, as the domestic component of a.;
- c. preventing and reducing any emissions occurring abroad that are directly or indirectly attributable to the Respondent, in line with the 1.5°C above pre-industrial levels limit;
- d. permanently removing greenhouse gas emissions from the atmosphere and storing them in safe, ecologically and socially sound greenhouse gas sinks, if, despite a., b., c., any greenhouse gas emissions continue to occur within the control of the Respondent, or the concentration of greenhouse gases in the atmosphere is exceeding the level corresponding to the 1.5°C above pre-industrial levels limit.⁵⁸

The Court, however, only went so far as to state that there was a legislative lacuna since the Swiss 2011 CO₂ Act neglected to specify concrete mitigation measures after 2024.⁵⁹ It then held:

‘... the Court is not convinced that an effective regulatory framework concerning climate change could be put in place without quantifying, through a carbon budget or otherwise, national GHG emissions limitations’ as set out in paragraph 550 (a) of the judgment. In doing so, the Court explicitly rejects the argument that reliance on Switzerland’s nationally determined contributions (NDCs) can compensate the lack of a carbon budget and policy.⁶⁰

This finding, however, is devoid of any substantive content with which to guide Switzerland to remedy the harms in accordance with its fair share. It also does not address the urgency to act, repeatedly emphasised by the litigants. Instead, the democratic frame of trust moved attention away from what it means for European states to be climate just and ambitious (given their historic responsibility and current capability) and the temporal urgency attached to acting. The solutions offered by the ECtHR leaves it to the governments in Europe to decide when which remedies will be taken and what targets will be established. Whilst the Court’s reference to the need for a carbon policy implies an expected direction for remedial action, its silence about the fair share argument, which is deeply embedded in the climate justice frame, means that the struggle for climate justice is also returned back to further civic action in each and every individual European state, alongside advocacy before the Committee of Ministers of the Council of Europe. This cannot be but time-consuming, if ever effective.

5. The spill-over effects of the frame of trust in European democracies

It is in no doubt that the democratic frame of trust in the Court’s first climate judgments will have effects on future litigation efforts. In this section, I focus on four areas where the spill-over effects of the democratic frame of trust would suggest an uphill struggle for successful legal mobilisation before the ECtHR seeking to ensure effective climate remedies for the citizens of Europe and for those outside of Europe.

Firstly, any case that has similar features to the three rulings discussed above are likely to be dealt with through the democratic frame of trust and the legal doctrine of subsidiarity empowered and made more resilient by this frame. That is, if individuals and groups do not trust that their governments or domestic courts will deliver climate action and therefore turn to the ECtHR, these three cases suggest that they will not succeed. If they try and fail domestically, like *Verein Klima Seniorinnen*, the ECtHR may find inadequacies in law, policy or judicial responses, but it is not likely to specify remedial solutions. The path-dependency these seminal grand chamber cases have put in motion is likely to make it harder for future litigants to convince the court that domestic remedies are either unavailable or ineffective. In a survey included in the third-party intervention by the Climate Action Network in Europe to the Court, for example, it was stated that seventeen countries out of the thirty-three respondent states in *Duarte Agostinho* did not have a commitment to the required 1.5°C target in their domestic frameworks and thirty states had no targets enshrined in climate law to ensure GHG-Emissions within the IPCC-1.5°C-pathway.⁶¹

Secondly, the trust frame may have further spill-over effects to cases that call for measures for adaptation and loss and damage. The Court held in *Verein KlimaSeniorinnen* that states have obligations to not only mitigate, but also adapt their infrastructures to protect Convention rights.⁶² Yet, whether and how measures of adaptation take place is also left to individual states and their institutions. Even if the Court expands its diagnostic framing to include the loss and damage individuals face because of the climate crisis in the future (Wewerinke-Singh, 2023), without uncoupling the prognostic framing of remedies from trusting European states, normative wins are unlikely to materialise into remedial outcomes.

Thirdly, the democratic frame of trust makes it harder to argue for distrust in future cases. This is a challenge both for countries which the ECtHR unquestioningly places in the category of trusted democracies (such as France, Portugal and Switzerland) and for those European countries that do not have democratic governments and independent and impartial judiciaries. Only perusing the other parts of the vast case law of the ECtHR, we can see that the independence and impartiality of domestic courts, the curbing of protest and non-governmental activity form significant parts of the Court's violation case law.⁶³ The decay of democratic institutions and the rule of law is no stranger to Europe (Çalı and Demir-Gürsel, 2021) and this is part of a larger trend of 'democratic backsliding on a heating planet'.⁶⁴ Given the centrality of the democratic frame of trust in the three seminal judgments, future cases will need to focus attention on reasons and evidence for distrust in European states, stemming both from shortcomings of democracies as a political system,⁶⁵ such as short-termism built into how electoral democracies work; the influence of powerful political interests on climate policy; and non-democratic ones, such as the suppression of climate activism by domestic law and courts (Glazebrook & Opoku, 2018).

Duarte Agostinho and others offered a chance for the Court to address these shortcomings given that the case was against thirty-three respondent countries, many of which had a poor record of climate action and respect for freedom of association as well as independence and impartiality of the judiciary. The Court, however, side-stepped the issue of whether its trust frame is realistic and effective for all thirty-three states, insisting that climate action groups should bring claims in their own

countries. This, in turn, means that climate action groups in non-responsive states to climate action as well as repressive European contexts will have to bear the burden of fighting for effective measures at home despite dim chances of success and the risks of persecution and criminalisation.⁶⁶

Fourthly, the democratic frame of trust may have spill-over effects into other domains of human rights-based legal mobilisation concerning climate harms in Europe, in particular climate crisis induced displacement across borders. The effects of the climate crisis on patterns of forced (as well as voluntary) migration and how to respond to such migration are central and contested issues in global climate law and governance (Vanhala & Calliari, 2022). There have been many attempts in framing climate-induced displacement through the climate justice frame and calling for extending international refugee law and human rights law protections to those affected, and addressing such displacement in the context of obligations owed by refugee receiving countries.⁶⁷ In *Teitota v. New Zealand*, a seminal case before the United Nations Human Rights Committee ('Committee'), the Committee adopted such a frame of displacement through human rights law. In the context of a claim brought before the Committee by an individual from Kiribati, who was at the time in New Zealand, it held imminent risk to life due to the effects the climate crisis can bring to a person within the protection of 'non-refoulement' under human rights law, even though it ultimately held that the individual circumstances in this case did not meet this criterion.⁶⁸

At first sight, the spill-over effects of the ECtHR's seminal judgments may seem too far-fetched for questions concerning climate induced cross border displacement as the facts of these cases only concerned the inadequacy of European law, policy and judicial responses to climate mitigation and adaptation measures. Upon deeper analysis, however, the Court's democratic frame of trust can exclude all kinds of duties owed by European states to those that are not already members of their political communities or have not suffered climate harms whilst they are not present in European states. The Court's inadmissibility decision in *Carême* already held that even a Frenchman is not owed obligations as he no longer lived in France.⁶⁹ The Court's conclusions in *Duarte Agostinho* further reified the Court's reasoning that effects that relate to activities within the territory or under the control of a European state is not itself sufficient to bring an individual that was not a citizen of that state within the jurisdiction of the Court.⁷⁰ In so doing, the Court repeatedly went back to *M.N. and Others v. Belgium*, a case that forcefully rejected the proposition that a refugee can claim their rights through the consulates of European states abroad, before embarking on dangerous journeys to Europe.⁷¹ It held that 'the Court would begin by reiterating that it has consistently rejected the idea that the fact of a decision being taken at national level which has an impact on the situation of a person abroad could in itself establish jurisdiction of the State concerned over the person'.⁷² Recently, *Duarte Agostinho* was referenced by the ECtHR when it defended the reason why states do not exercise jurisdiction in the context of pull back operations in the Mediterranean.⁷³ The inadmissibility decision in *Duarte Agostinho*, therefore, has not only closed the door to those who seek transnational climate remedies in Europe, but has also undercut ongoing efforts to challenge the 'Fortress Europe' in the context of migration and asylum.⁷⁴

6. Conclusion

This article has applied frame analysis to investigate the solution and motivational frames in the three seminal climate change judgments of the ECtHR. It has argued that the democratic frame of trust, which the Court actively employed, focussed on European states, and their idealised democratic institutions, courts and civil society to address climate change. This frame has shaped the Court's approach in determining who can demand climate remedies, who can deliver them and how they can be delivered. The Court turned away litigants who sought to make claims against European democracies without an invested democratic citizenship link to these countries. The Court also sent litigants, who argued that democratic institutions and courts in European states are neither worthy of trust nor capable of effectively addressing climate remedies back to their countries to galvanise further civic, political and legal action. The Court has also marginalised counter-frames, namely the climate justice and climate urgency frames, through which litigants and third party intervenors have attempted to disturb, rebalance and shape the Court's existing legal doctrines.

The democratic frame of trust neither challenges nor diagnoses the climate crisis as being the most significant problem of our time, nor that climate change is a human rights problem. The pathways to find solutions and motivate future action, underplay the unique challenges that democratic forms of government face in the context of climate change. These challenges concern the short-termism of election cycles, vested political and economic interests in climate inaction and the increasing threat of autocratisation in Europe, marked by the decline in the independence of judiciaries and the repression of civic action. It further sidelines the historic and present responsibility of European states towards those outside their borders. Against the backdrop of these challenges, the ECtHR has placed an arguably unrealistic expectation on local climate movements, domestic courts and national parliaments and has refused to carve out a space for itself to act as an international counter-power in the face of climate inaction of across European states.

The subsidiarity doctrine is a victor from the Court's use of the democratic trust frame. These seminal climate cases discussed here have not only failed to destabilise the Court's deference doctrines through the counter frames of climate justice and urgency, they have also enabled the Court to make the subsidiarity doctrine more resilient as the European way of handling the interpretation of human rights law in the context of climate change in the future. The Court, therefore, has not engaged with the question of whether there was anything particular about climate change as a contentious global collection action problem that should disturb its habitual resort to the subsidiarity doctrine, despite the climate justice and urgency frames calling for this.

By employing frame analysis to the ECtHR's climate rulings, this article demonstrates that court frames matter for future legal mobilisation in the context of climate change. This is because a deeper understanding of what holds the legal doctrines employed by courts to address complex social, political and economic problems together is a key step for those who seek to successfully challenge and destabilise them. Uncovered court frames are easily reified in subsequent court judgments as neutral legal reality and those who seek to challenge them risk being trapped in these frames. Closer and

critical engagement with which frames effect doctrinal responses and how, therefore, can aid future-looking thinking that asks whether European human rights law can do more than simply diagnose climate change as a human rights problem.

Notes

1. Two of the judgments are categorised by the European Court of Human Rights as decisions, but this article utilises judgments in lieu of decisions to assist with readability.
2. ECtHR, *Verein KlimaSeniorinnen v. Switzerland* [GC], App. no. 53600/20, April 9, 2024.
3. ECtHR, *Carême v. France* (dec.) [GC], App. no. 7189/21, April 9, 2024, paras. 78–83.
4. ECtHR, *Duarte Aghostino and others v. Portugal and 32 member states* (dec.) [GC], App. no. 39371/20, April 9, 2024, para. 227.
5. For a review of pending climate litigation cases before the Court, see ECtHR (2024).
6. There has been a large body of doctrinal legal analysis of these three cases: See, for example, Gerry Liston, ‘Reflections on the Strasbourg climate rulings in light of two aims behind the Duarte Agostinho case’, EJIL Talk!, comment posted May 7, 2024, <https://www.ejiltalk.org/reflections-on-the-strasbourg-climate-rulings-in-light-of-two-aims-behind-the-duarte-agostinho-case/> (accessed September 26, 2024); (Hösli & Rehmann, 2024; Heri, 2024a).
7. On the distinction between procedural and substantive subsidiarity, see Besson (2016) and Zysset and Çalı (2023). On the Court’s substantive subsidiarity doctrine, see generally, Spano (2014) and Arnardóttir (2017). On the increased emphasis on subsidiarity in the case law of the Court, in particular following the 2012 Brighton Declaration: High Level Conference on the Future of the European Court of Human Rights, see, Madsen (2018). On the features of the remedial subsidiarity of the ECtHR case law, see, Çalı (2018).
8. Savaresi (2025). Also see, *Verein KlimaSeniorinnen and others v. Switzerland*, Partly Concurring Partly Dissenting Opinion of Judge Eicke, paras 22–51.
9. Rodríguez-Garavito (2022). For some notable exceptions, see Auz (2024). Keller et al. (2022), and Heri (2024b).
10. Benford and Snow (2000), at 613.
11. Benford and Snow (2000), at 614.
12. Benford and Snow (2000), at 619.
13. Benford and Snow (2000), at 615–616.
14. Benford and Snow (2000), at 616–617. Also see Haines (1982).
15. Benford and Snow 2000, p. 617); Snow and Benford (1988), at 202.
16. Benford and Snow 2000, p. 617); Snow and Benford (1988), at 202; Smith (2020).
17. See Marshall (2003), Hilson (2012), Jodoin et al. (2020).
18. Windsor (2022); Choudhry (2016), at 411. For a detailed exploration of the use of frames and framing in law when applying legal norms to the facts of a case, see Schlag and Griffin (2020).
19. Anagnostou (2014); Helfer and Voeten (2014), at 95–96, Spano (2014).
20. Smiths (2017), at 210.
21. Koskenniemi (2007), at 7.
22. Odum (1982) at 728. Odum borrows this premise from economists Kahn and Kahn (1966).
23. *Carême v. France*, paras. 14–16.
24. *Ibid*, para. 17.
25. *Ibid*, paras. 19–20.
26. *Ibid*, para. 19.
27. *Ibid*, para. 26.
28. *Ibid*, paras. 26–35.
29. *Ibid*, para. 36.
30. *Ibid*, para. 83.
31. *Ibid*, para. 86.
32. *Ibid*, para 37–38.

33. The Court subjects the exhaustion of domestic remedies under Article 35 ECHR to an assessment of effectiveness and availability of such remedies its case law. See, ECtHR, *Ring-eisan v Austria*, App. No 2614/65, 16 July 1971, 89; ECtHR, *Sejdovic v Italy* [GC], App. No 56581/00, 1 March 2006, 46; ECtHR, *Scoppola v Italy* (No 2) [GC], App. No 10249/03, 17 September 2009, at 71; ECtHR, *Magyar Keresztény Mennonita Egyház and Others v Hungary*, App. Nos 70945/11 et al., 28; June 2016, at 50; ECtHR.
34. See, generally, ECtHR *Dalia v France*, App No 26102/95, 19 February 1998, 38; ECtHR, *McFarlane v Ireland* [GC], App No 31333/06, 10 September 2010, at 107; ECtHR, *Vučković and Others v Serbia* [GC], App. Nos. 17153/11 et al., 25 March 2014, at 77.
35. The ECtHR is not the only international body that has opted for doctrinal formalism in this case. See, also UN Committee on the Rights of the Child, *Saachi and others v. Argentina and others*, Comm. no. 106/2019, August 8, 2021.
36. On the Court's approach to jurisdiction, see, for example, Liston, 'Reflections on the Strasbourg climate rulings'; Lea Raible, 'Priorities for Climate Litigation at the European Court of Human Rights', EJIL Talk!, comment posted May 2, 2024, available at <https://www.ejiltalk.org/priorities-for-climate-litigation-at-the-european-court-of-human-rights/> (accessed September 26, 2024); Armando Rocha, 'States' Extraterritorial Jurisdiction for Climate-Related Impacts,' Verfassungsblog, comment posted April 12, 2024, available at <https://verfassungsblog.de/states-extraterritorial-jurisdiction-for-climate-related-impacts/> (accessed September 29, 2024); Kilian Schayani, 'No Global Climate Justice from this Court', Völkerrechtsblog, comment posted April 15, 2024, available at <https://voelkerrechtsblog.org/de/no-global-climate-justice-from-this-court/> (accessed September 29, 2024).
37. *Duarte Agostinho and others v. Portugal and others*, para. 208. Also see *Carême v. France*, para. 84.
38. *Verein KlimaSeniorinnen and others v. Switzerland*, paras. 633–640.
39. *Ibid*, paras. 573–574.
40. *Verein Klima Seniorinnen*; Anonymised Application to the European Court of Human Rights, 26 November 2020, para 60–62, available at https://www.klimaseniorinnen.ch/wp-content/uploads/2020/11/201126_Application_EcTtHR_KlimaSeniorinnen_extract_anonymised-2.pdf (accessed November 21, 2024).
41. *Verein KlimaSeniorinnen and others v. Switzerland*, para. 657.
42. See the oral submissions by the Swiss government (and by the intervening Irish Government) in the hearing before the Court to this effect: (*KlimaSeniorinnen* Hearing, broadcasted aired September 27, 2023, available at <https://www.echr.coe.int/w/duarte-agostinho-and-others-v-portugal-and-others-no-39371/20/> (accessed September 26, 2024).
43. *Verein KlimaSeniorinnen*, para. 654.
44. *Ibid*.
45. *Supra* note 45.
46. George Letsas, 'Did the Court create *actio popularis*?' EJIL Talk! Comment posted, 13 May 2024 available at <https://www.ejiltalk.org/did-the-court-in-klimaseniorinnen-create-an-actio-popularis/>.
47. Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, 'Ecological Crisis, Climate Justice and Racial Justice', 25 October 2022, UN Doc. A/77/549; Táíwò, 2022.
48. Also see, Tigre (2024).
49. This is also the case for a number of the third-party intervenors before the Court, see *inter alia*, the third-party intervention by Germanwatch (n.d.)
50. Observations on the facts, admissibility and the merits by *Klimaseniorinnen*, at 69–70 available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2022/20221202_Application-no.-5360020_petition-1.pdf (last accessed September 26, 2024).
51. Annex to the application by *Duarte Agostinho*, para. 29, available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200902_3937120_complaint-1.pdf (last accessed September 26, 2024).
52. *Ibid*.

53. Ibid, para. 33.
54. *Carême v. France*, para. 22.
55. *Duarte Agostinho*, paras. 128-134.
56. Annex to the application by *KlimaSeniorinnen*, para. 29, available at https://www.klimaseniorinnen.ch/wp-content/uploads/2020/11/201126_Application_ECtHR_KlimaSeniorinnen_extract_anonymised-2.pdf (last accessed September 26, 2024).
57. See, for example, the third-party intervention by CIEL, Greenpeace, and Union of Concerned Scientists underlining the urgency of the climate crisis and the risk of irreversible harm, available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210506_3937120_na-2.pdf last accessed September 26, 2024).
58. *Verein KlimaSeniorinnen*: Request for Just Satisfaction (Article 41 of the Convention) and Request for General Measures (Article 46 of the Convention), paras. 19–20 available at https://klimaseniorinnen.ch/wp-content/uploads/2021/10/UL_53600_20_Request_Just_Satisfaction_General_Measures.pdf (last accessed September 26, 2024).
59. *Verein KlimaSeniorinnen and others v. Switzerland*, paras. 555–558.
60. Ibid, para. 571.
61. The third-party intervention by Climate Action Network Europe, Annex 2, 2-6. available at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210506_3937120_na-3.pdf (last accessed September 26, 2024).
62. *Verein KlimaSeniorinnen and others v. Switzerland*, para. 552.
63. See, inter alia, ECtHR, *Juszczyszyn v. Poland*, App. no. 35599/20, October 6, 2022; ECtHR, *Tuleya v. Poland*, App. nos. 21181/19 and 51751/20, July 6, 2023; ECtHR, *Jafarov and Others v. Azerbaijan*, App. no. 27309/14, July 25, 2019; ECtHR, *Laguna Guzman v. Spain*, App. no. 41462/17, October 6, 2020.
64. César Rodríguez-Garavito and Arpitha Kodiveri, ‘Anti-green authoritarianism: Democratic backsliding on a heating planet’, Open Global Rights, comment posted September 27, 2023, available at: <https://www.openglobalrights.org/anti-green-authoritarianismdemocratic-backsliding-heating-planet/> (accessed September 26, 2024).
65. On democracies and climate action, see Amanda Machin, ‘Climate Change and Imaginaries of Democracy’ Oxford Research Encyclopaedia of Climate Science, published online on April 23, 2023, available at <https://oxfordre.com/climatescience/display/10.1093/acrefore/9780190228620.001.0001/acrefore-9780190228620-e-859> (accessed September 26, 2024).
66. Position Paper by UN Special Rapporteur on Environmental Defenders under the Aarhus Convention Michel Forst, ‘State Repression of environmental protest and civil disobedience: a major threat to human rights and democracy’, February 2024, available at https://unece.org/sites/default/files/2024-02/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf (accessed September 29, 2024).
67. Most notably, Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, ‘Ecological Crisis, Climate Justice and Racial Justice’ (see note 38).
68. UN Human Rights Committee, *Teitota v. New Zealand*, Comm. no. 2728/2016, October 24, 2019.
69. *Carême v. France*.
70. *Duarte Agostinho and others v. Portugal and others*, para. 208.
71. Ibid, paras. 184–188.
72. Ibid, para. 184.
73. ECtHR, *S.S. and others v. Italy (GC)*, App. No. App. No. 21660/18), 20 May 2025, paras 50, 79 and 107.
74. Also see, Thielen (2024).

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