# A Cyclical, Foreseeable, Worsening Threat

## Heatwaves are a Cyclical Human Rights Risk and States Must Provide a Preventive Public-Law Response

**Didac Amat & Ignacio Portela Giráldez**

29.07.2026 doi: 10.59704/fe7ea292b1245ec3

During the first two decades of the twenty-first century, approximately 489,000 heat-related deaths occurred yearly. Europe is no exception. Thousands of deaths have been reported in the continent just in the June 2026 heatwave. European legal systems must provide redress and ensure future prevention; in court if necessary. Under the premise that heatwaves can no longer be distinguished from any foreseeable, cyclical event beyond their control, states are required to adopt all reasonable measures to keep the catastrophic impacts to a minimum, as mandated by the European Court of Human Rights (ECtHR).

Against this backdrop, (and building upon insights by Kumar and Hilson) this blogpost explores the extent to which Article 2 (right to life) of the European Convention on Human Rights (ECHR) provides legal protection against heatwaves and examines the level of due diligence required from state parties. Thus, litigating state responsibility for heatwaves emerges as an opportunity to circumvent some of the admissibility limitations of climate litigation and shows potential in reinforcing adaptation and mitigation efforts.

### Admissibility: Heatwave Litigation as Emerging Climate Litigation

Standing and admissibility are among the central challenges of climate litigation. AsBenoit Mayer argues, individuals find it particularly difficult to meet the stringent victim-status threshold under Article 34 ECHR. In the context of complaints concerning harm or the risk of harm arising from climate change, individual applicants must prove that they will be personally and directly affected by the respondent State's failures. This requires two criteria. First, a high intensity of exposure to the adverse effects of climate change; and second, a pressing need for individual protection owing to the absence or inadequacy of reasonable measures capable of reducing the harm. In both respects, the Court emphasised that the threshold for satisfying these criteria is especially high (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], 2024, §§ 487-488).

In assessing whether this threshold had been met, the Court took into account the likelihood and timing of the adverse effects of climate change, the specific impact on each applicant's life, health, and well-being, the magnitude and duration of the harmful effects, the scope of the risk, and the applicants' particular vulnerability. Consequently, none of the individual applicants was considered a victim for the purposes of Article 34 ECHR in *KlimaSeniorinnen* (§§ 527-536). This turns climate change into one of the largest "victimless" crimes, in which everyone is a victim, yet no one is. The complexities of climate litigation admissibility are further explored here and here.

However, current heatwave-related cases may not fall squarely within this line of case law and may be particularly well placed to satisfy the victim-status requirement under Article 34 ECHR. Thousands of deaths associated with the 2026 heatwaves demonstrate that we are not dealing with potential victims of a future 2°C warming scenario, but with present victims of increasingly unavoidable climatic conditions. Moreover, while climate change is a global phenomenon with multiple systemic consequences affecting virtually everyone, heatwaves are localised meteorological events with more limited consequences and identifiable victims. Future heatwave litigation may therefore be analysed less through the victim-status framework developed in *KlimaSeniorinnen* and

more through the Court's well-established jurisprudence on foreseeable natural hazards such as floods and earthquakes.

In this sense, the ECtHR has ruled on different occasions that the obligation to protect life under Article 2 ECHR arises where human lives have been jeopardised by a natural disaster with an imminent, clearly identifiable danger. However, the status of victim requires certain material and subjective elements; to invoke Article 2, an applicant must either have lost their life or have been exposed to a considerable risk of death (*Kolyadenko and Others v. Russia*, 2012, §§151-155 and 191;*Budayeva and Others v. Russia*, 2008, §146). This risk must be serious (*Brincat and Others v. Malta*, 2014, §82), real, and immediate (*Fadeyeva v. Russia* (dec.), 2003;*Ledyayeva and Others v. Russia* (dec.), 2004).

In addition, the *Fliegenschnee* case showed that applicants must substantiate how their respondent state had failed to devise a necessary regulatory framework, rendering them particularly vulnerable. (*Fliegenschnee and Others v. Austria* (dec.), 2025, §34). Therefore, to be admissible, claimants must adequately frame what can be required from states as regards these naturally occurring phenomena, check the compliance with their domestic systems, and show how such lack of due diligence put their lives at risk. All of these elements are capable of being satisfied in a heatwave-related case.

## Due Diligence Obligations Under Article 2 ECHR

Commitments to prevent and adapt to environmental harm are generally understood as obligations of due diligence rather than obligations of result. (ICJ, *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, 2010, §101; and Obligations of States in Respect of Climate Change, 2025, §135 and 241). Environmental damage may arise from factors that lie outside the sphere of control of states. Accordingly, public authorities are not required to prevent such harm under all circumstances. Rather, states are obliged to take all appropriate measures to prevent or minimise the risks associated with it. That such measures failed to prevent the harm do not, in themselves, prove a violation. (*Kurt v. Austria* [GC], 2021, §160).

Similarly, the ECtHR has characterised subsidiary environmental obligations arising from Article 2 as *obligations de moyens* (*Erdal Muhammet,* §128). Accordingly, the possible death of a citizen during an extreme heatwave is not the sole, or even the primary, focus of judicial review. Rather, the ECtHR will examine whether states acted with due diligence by doing what is required to prevent an applicant's life from being avoidably put at risk (*Cannavacciuolo and Others v. Italy*, 2025, §379).

As a general rule, states enjoy a wide margin of appreciation in determining and implementing policies and measures to reduce environmental risks. Since heatwaves are not, at least entirely, the result of human activities, this margin of appreciation may be even wider (*Budayeva*, §135). However, the Court has also made clear that this margin is not unlimited. The policies and measures adopted by contracting states must comply with a minimum standard of due diligence (*KlimmaSeniorinnen*, §538).

According to the ECtHR, the determination of this standard requires an *in concreto* assessment. Thus, the scope of the obligation to protect citizens' lives from heatwaves depends on the individual and collective risks concerned, the extent to which those risks are susceptible to mitigation, and the available scientific evidence (*Cannavacciuolo*, §394; *KlimmaSeniorinnen*, §546 and 552). As heatwaves are now a recurring pattern, and foreseeability is one of their main elements, state's obligations are increased, and the margin of appreciation narrowed where authorities knew or ought to have known of the exposure to such mortal danger. (*Brincat*, §§105-106; and *Cannavacciuolo*, §378). However, given that heatwaves are meteorological phenomena which, as such, lie beyond direct human control, the Court has also clarified that, when assessing compliance with this standard of diligence, Article 2 cannot impose an impossible or disproportionate burden on the authorities (*Budayeva*, §135).

## What Can Be Required of States: Specific Obligations

Although the case-law has not yet addressed the specific issue of heatwaves, the ECtHR has established that, in cases concerning comparable natural phenomena, compliance with the requisite standard of diligence requires positive action by states. Applying this jurisprudence by analogy, states confronted with heatwaves should undertake five distinct courses of action.

First, states must adopt legislative and administrative frameworks aimed at preventing heat-related mortality (*Erdal Muhammet Arslan*, §126). These frameworks, which must be effectively implemented, should guarantee the right of individuals to obtain relevant information concerning heatwave risks, particularly those persons most exposed to life-threatening dangers (*KlimmaSeniorinnen* §538(b) and 554).

Second, in addition to legislative and administrative frameworks, the scientifically documented increase in the frequency and intensity of heatwaves requires states to adopt and implement heatwave action plans and heatwave crisis-management plans that provide a rapid response when heatwaves approach (*Erdal Muhammet Arslan*, §132-3). In the analogous cases of natural recurring phenomena as earthquakes, the ECtHR has clarified that states must have special consideration as regards urban planning and development (*M. Özel and Others v. Turkey*, 2015, §174). This must inform building permits and even heat-resistant constructions to avoid "heat-trap" apartments, schools, hospitals, etc. In this regard, the procedural safeguards established by the ECHR require states to ensure public participation in the decision-making processes associated with the adoption of such plans (*KlimmaSeniorinnen*, §554).

Third, states must adopt measures aimed at reducing the effects of heatwaves and minimise their potentially catastrophic impact, particularly by strengthening the state's capacity to address their life-threatening consequences (Budayeva, §128). This includes measures to mitigate global warming as the anthropogenic driver of the increasing frequency and intensity of heatwaves (*KlimaSeniorinnen*, §545 and 552). However, it also requires states to adopt measures to adapt to those heatwaves that remain unavoidable despite mitigation efforts. Thus, measures such as the establishment of climate shelters, early-warning systems, public support for cooling residential buildings, and healthcare systems capable of responding effectively to heat-related emergencies – among many others – may contribute significantly to compliance with the required standard of diligence.

Fourth, one general characteristic of environmental due diligence obligations is that states must not only implement these frameworks, plans, and measures, but must also take the necessary steps to ensure that private operators comply with them (*Pulp Mills*, §197). As the ECtHR holds, these commitments may involve the authorities' adopting measures "in the sphere of the relations of individuals between themselves" (*Dées v. Hungary*, 2010, §21-3). This obligation is particularly relevant in the field of occupational health and safety. As temperatures continue to rise, working conditions in certain sectors will need to be adapted to heat-related risks, and states will be required to monitor and enforce compliance with the relevant legal and administrative requirements.

Finally, as part of this due diligence, the case law has also established a procedural safeguard. Where deaths occur in circumstances potentially engaging state responsibility, Article 2 entails a duty to ensure an adequate response, whether judicial or otherwise, capable of securing the effective implementation of the legislative and administrative framework protecting the right to life and of holding those responsible for any breaches to account (*Durdaj and Others v. Albania*, 2024, §183). As a general rule, though, this judicial response is not necessarily a criminal one, and can be satisfied if civil, administrative or even disciplinary remedies are available.

## Conclusion

This short piece has explored how heatwaves can no longer be understood as mere natural events, as public powers must address them as foreseeable, cyclical, worsening human rights risks. The ECtHR has not ruled on the matter yet, but there is available jurisprudence on other naturally recurring phenomena beyond

the state's control that apply by analogy. Upholding Article 2 ECHR must surpass after-the-fact redress, as it requires a preventive public-law response. Thus, heatwave litigation emerges as a plausible human-rights route to compel states to act before the next seasonal environmental and climatic emergency (be it heatwaves, floods, or wildfires) arrives.

## ABOUT THE AUTHORS

**Didac Amat**
Didac Amat holds a Ph.D. in International Climate Change Law from Pompeu Fabra University and is Director of Research at CEI International Affairs, University of Barcelona.
**Ignacio Portela Giráldez**
Ignacio Portela Giráldez is a Ph.D. candidate at the University of New South Wales, focusing on climate litigation pathways in the special overseas territories of the European Union.Ignacio Portela Giráldez is a Ph.D. candidate at the University of New South Wales, focusing on climate litigation pathways in the special overseas territories of the European Union.

## SUGGESTED CITATION

Amat, Didac; Giráldez, Ignacio Portela: A Cyclical, Foreseeable, Worsening Threat: Heatwaves are a Cyclical Human Rights Risk and States Must Provide a Preventive Public-Law Response, Verfassungsblog, 29.07.2026, doi: 10.59704/fe7ea292b1245ec3.

Licensed under CC BY-SA 4.0.

Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260730-145219-0.