

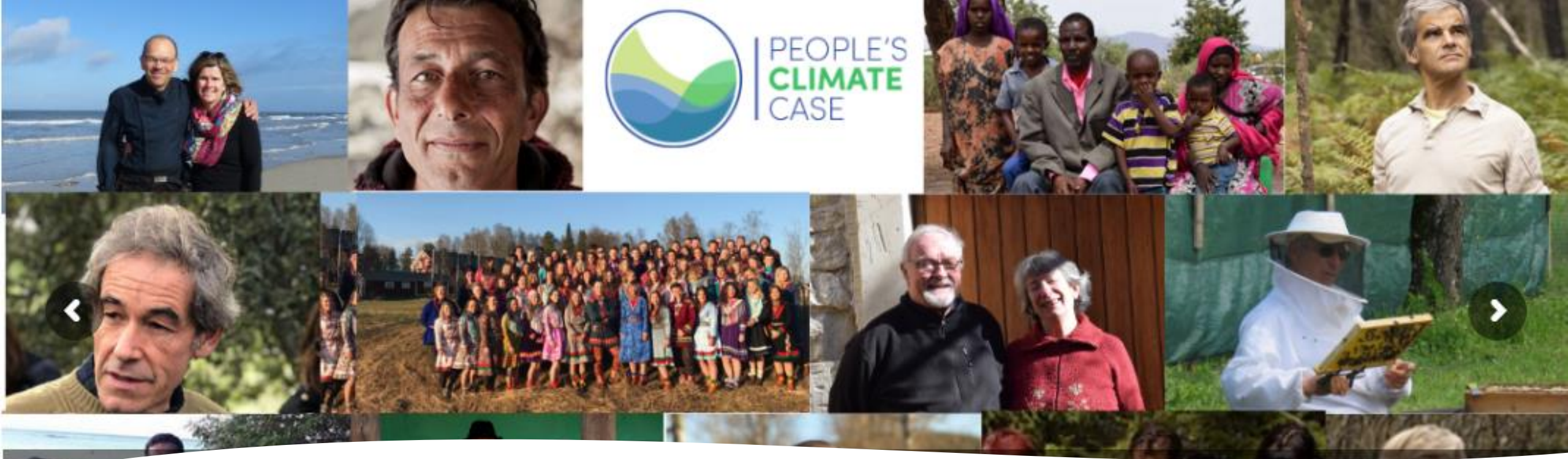
Revisiting the Plaumann Criteria in the Face of the Climate Emergency

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Introduction

- Climate emergency declared by European Parliament and several EU member states
- Strategic litigation cases have multiplied
 - 2,180 ongoing climate litigation cases worldwide
 - 2.5 times higher than five years earlier
- Rights-based climate litigation aims to fill gaps in accountability and implementation
 - Difficulties: access to courts





- Civil society brought two climate litigation cases: Both dismissed for inadmissibility
 - Biomass case: lawsuit seeking partial annulment of Directive on promotion of renewable energy
 - Carvalho case (People's climate case): Ten families sought partial annulment of EU legislative acts related to CO2 emissions
- Failed to meet Plaumann requirements: direct and individual concern
 - Plaintiffs not individually affected by contested acts
 - Effects of climate change do not confer right to challenge general measures

Tension between climate emergency and inadequate legal framework: **need to recognize standing for NGOs**

An Evolving Interpretation of the Plaumann Criteria

- Interpret the Plaumann criteria in light of the **nature and characteristics of climate change – climate change as a constitutional issue**
- Existential and urgent threat to humankind and non-human species
 - Affects human rights and peace
 - Six planetary boundaries already crossed
 - Urgent action required as scientific data have shown

An Evolving Interpretation of the Plaumann Criteria

- Climate emergency declarations adopted worldwide
 - Typically political resolutions: no applicability of emergency powers
 - Need to rely on an ecological constitutional parameter
- EU founding treaties: environmental protection
 - Art. 3 TEU: objective of the Union
 - Art. 191 TFEU: policy of the Union
 - Art. 37 Charter of Fundamental Rights: "A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development."

An Evolving Interpretation of the Plaumann Criteria

- Interpret the Plaumann criteria in light of the **rise of climate litigation in Europe**
- Climate litigation at the national level
 - Common constitutional tradition (art. 6 TEU) may be forming
- Interplay with the ECtHR: the KlimaSeniorinnen case and art. 6 TEU
 - Recognition of standing for NGOs
 - "an evolution in contemporary society concerning the recognition of the importance of associations"



A Teleological Interpretation of Art. 9 of the Aarhus Convention

- EU is a party to the Aarhus Convention on access to information, public participation in decision-making, and access to justice in environmental matters
 - Art. 9: access to justice in environmental matters
- Implementation at EU level through the Aarhus Regulation
 - Teleological interpretation of Art. 9 of the Aarhus Convention at the *Member State level*: so as not to significantly restrict, and effectively bar access to courts for NGOs and individuals
 - Paradoxical situation and uneven standards on the implementation of the Aarhus Convention at the state and European levels
 - CJEU's position indeed significantly restricts the access of NGOs and individuals to EU courts

Conclusions

- CJEU stands alone with its restrictive approach
- Need to adopt a more relaxed interpretation of the Plaumann case in relation to climate matters
 - No need to amend treaties or existing legislation
 - Goal is to avoid the perverse effect whereby "the more severe the damage and, consequently, the more people affected, the less their access to the courts" (Gerd Winter)