Summary of the arguments put forward

The subject of the lawsuit

1. The lawsuit filed by the non-profit organisation Klimaatzaak has two legal grounds: the defendants' breach of Civil Code articles 1382 and 1383 and their breach of articles 2 and 8 of the European Convention on Human Rights and of articles 6 and 24 of the UN Convention on the Rights of the Child.

   The liability suit based on Civil Code articles 1382 and 1383 refers to inappropriate conduct. This legal ground is purely national, invoking the classic regime of the non-contractual liability of public authorities.

   The defendants – the Belgian State, the Brussels-Capital Region, the Flemish Region and the Walloon Region – have neglected their duty to exercise due caution and diligence. In developing their climate policy, they have not behaved as public authorities should do, guided by caution and diligence. Their negligence is not only contributing to global warming, but also to an acceleration towards a dangerous level thereof. This negligence is harming the legitimate interests of the claimants. Given that it is within the power of the defendants – both technically and financially – to adequately do their part - and, moreover, that it is reasonable for them to do such, the claimants call on the court to hand down injunctions to this effect.

   Through their negligence, the defendants are also violating the claimants' right to life and their right to private and family life – rights protected by the ECHR and the UN Convention on the Rights of the Child. As the defendants have the obligation to uphold these fundamental rights, the claimants call on the court to similarly hand down injunctions to this effect.

   The requested injunctions are for emissions of greenhouse gases ('GHGs') to be reduced, with targets set for 2025, 2030 and 2050.

2. The claimants develop their case in several stages, dedicated to the facts (**Facts Section**), the admissibility of the case (**Admissibility Section**), the argumentation (**Grounds Section**) and the requested injunctions (**Injunctions Section**).

The relevant facts

3. The section on the facts relevant to the case has two strands: the first concerns global warming (**Chapter 1. Global Warming**), while the second lists Belgium's climate-related commitments and failures (**Chapter 2. Belgium's commitments and failures**).

   Though the section listing the facts is long, the information contained therein is indispensable. Indispensable for establishing the case's admissibility, from the perspective of both Klimaatsaak and the co-claimants; indispensable, when demonstrating the violation of Civil Code articles 1382 and 1383, for establishing the gross negligence of the defendants, the damage caused, and the causal link between the two; indispensable for demonstrating the violation of fundamental rights; and, last but not least, indispensable for justifying the requested injunctions.

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Global warming

4. A presentation on the Intergovernmental Panel on Climate Change ('IPCC') – its creation and structure, its *modus operandi*, its reports and the language used in them – introduces the chapter dedicated to global warming. It has a key role to play in proving the vast majority of data subsequently reported.

5. Following the IPCC presentation we find further information essential for understanding global warming: the greenhouse phenomenon; the role played by GHGs; the increase in the concentration of GHGs in the atmosphere due to anthropogenic GHG emissions; the properties of the various GHGs, and in particular those of carbon dioxide (CO_2); the continuing global warming and the time it takes for the climate system to react to the increase in the concentration of GHGs in the atmosphere; the need for rapid and decisive action. We are currently experiencing global warming of 1°C. If the past level of GHG emissions is maintained, we are heading towards 4°C in 2100.

   Three facts need to be highlighted:
   - The longevity of CO_2 in the atmosphere: CO_2 is the only GHG that persists for centuries, if not millennia. This characteristic is leading to increasingly high concentrations of this GHG in the atmosphere, thus causing global warming.
   - The virtually linear relationship between increases in the concentration of CO_2 in the atmosphere and global warming. This relationship makes it possible to set budgets.
   - GHG emissions cause creeping and latent damage: month after month, year after year, the damage progressively follows the increase, itself progressive, in the concentration of GHGs in the atmosphere, with a time lag of around 40 years between the emissions and the resultant damage; current warming is the result of GHG emissions produced between 1750 and 1980.

6. The notion of dangerous anthropogenic global warming is also examined. This notion is at the heart of the United Nations Framework Convention on Climate Change ('UNFCCC') adopted on 9 May 1992 in New York, a convention aimed above all at preventing such warming (cf. Art. 2 of the UNFCCC) and a cornerstone of the policies fighting global warming.

   For several decades, climate science and the diplomatic consensus based on this science have defined a global warming level endangering all life on our planet as that exceeding 2°C, with 1990 as the base year. Since 2007, however, this threshold has been questioned. The 2015 Paris Agreement sets it 1.5°C. It is now considered that, to avoid global warming endangering life on our planet, 1.5°C must not be exceeded globally.

7. The consequences of dangerous global warming are to a large extent known. They have been studied in various scenarios in which the 2°C and 1.5°C thresholds are surpassed in 2100. The results were published in a special report by the IPCC in October 2018. This report contains a clear message: above 1.5°C, all dangers caused by global warming will increase substantially. We are compiling a picture of these consequences at global, European and Belgian levels. It turns out that they affect all aspects of daily life and that the impacts in other regions and other countries will also have negative effects here. Due to the time it takes for the climate system to react, the consequences currently being observed are those caused by GHG emissions up to 1980. The damage already incurred is much more serious: in the period between 1980 and now, GHG emissions have increased greatly. One consequence of global warming between 1°C and 2°C is alarming: the increasing probability of '*tipping points*' being reached. Once these points are reached, their effects will uncontrollably and irreversibly impact all life on our planet.

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Belgium is already suffering and is set to suffer even more from the direct and indirect consequences of global warming.

Belgium's commitments and failures

8. The chapter on Belgium's commitments and failures looks at three levels: the international, European and national levels.

   These commitments are examined in light of the two grounds stated. The claimants point out that the possible violation of a standard belonging to the international legal regime governing the climate or of an obligation of European law is not part of the arguments raised.

9. At international level, the claimants look at Belgium's involvement in the international climate regime (the 1992 UNFCCC, the 1997 Kyoto Protocol with its 2012 Doha amendment, the 2015 Paris Agreement) and in the decision-making processes and declarations at the various '*Conferences of the parties*' (COPs') in which the concept of dangerous global warming was defined. What commitments has the country entered into? When did this occur? What are the implications of its status as a UNFCCC Annex I and Annex II country? What did the Belgian State, the Brussels-Capital Region, the Flemish Region and the Walloon Region know at what time about the 'dangerous' global warming threshold? What have we recognised as a critical danger? When did this occur? On the basis of this analysis, it also seems that the defendants have been well aware of the climate problem for decades and are committed to fighting it, taking on a *leadership* role. The UNFCCC provides for an individual national responsibility for all Annex I countries to achieve its ultimate goal: to prevent dangerous anthropogenic global warming.

10. Turning to the European level, the analysis is limited to the EU's climate policy of the last twelve years, with its 2020, 2030 and 2050 GHG reduction targets.

    It is demonstrated that the EU, as a party to the UNFCCC, decided in 2007 and in 2011-2014 on targets respectively for 2020 and 2030. Even at the time of taking these decisions, the EU itself stated that the targets were insufficient for preventing dangerous global warming, understood as warming exceeding .... 2°C. As stated above, this threshold has been revised downwards and now stands at 1.5°C. The European targets are thus doubly insufficient.

    In relation to other Member States, Belgium is dragging its heels when it comes to fulfilling the binding obligations incumbent on the country by virtue of the legislation adopted to achieve these doubly insufficient targets. According to the European institutions, Belgium is gravely ignoring all these obligations. Contrasting Belgium's performance with that of the other Member States reveals that the latter are not only fulfilling their European obligations but also going further.

    Belgium's laggard performance in this European context is thus a contributory factor in establishing the country's climate negligence, its failure to fulfil its duty of acting with care, incumbent on it on the basis of Civil Code articles 1382 and 1383 and the violation of the fundamental rights of the claimants.

11. Looking at the national level, the claimants basically analyse climate governance within Belgium.

    In each country, climate governance must take account of the cross-competence character of the issue, cutting through the majority of traditional fields: from industry to town planning and international relations, via mobility, energy, housing, agriculture, teaching and many more. In Belgium itself, further account must be taken of the division of powers in the country's federal

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set-up. To clarify the situation, the claimants start by taking a quick look at the division of climate-governance-related powers between the federal and devolved levels. Belgian climate governance is an extremely shared competence.

The claimants then go on to examine how climate governance is organised within Belgium.

They find that a widely shared consensus exists among politicians and socio-economic players as to the need to reform the institutional framework established in 2002, as it has proved to be low-performing. They also note that, to this day, nothing has been done in this field, despite the many strong signals confirming not only the system's lack of effective performance over the years, but also despite the drafting – as of 2016 – at European level, of EU Regulation 2018/1999 on the Governance of the Energy Union and Climate Action. In force since the end of 2018, this regulation requires much more intense collaboration between the State and the devolved levels than was previously the case.

They further note that the defendants have abstained from concluding within a reasonable period of time the cooperation agreements indispensable for the country's climate governance. The claimants cite as an example of this low performance the cooperation agreement which was supposed to implement the second commitment period under the Kyoto Protocol for the period 2012-2020 ... but which was only concluded and became operational in July 2018.

A third strand of analysis looks at the binding European target of reducing GHGs in non-ETS sectors, i.e. sectors not covered by the European Emissions Trading System. This European obligation allows a country's climate performance to be measured. Indeed, the reduction of GHG emissions is at the heart of global climate policy. The claimants go on to analyse the findings of the European and Belgian institutions on how Belgium is fulfilling this obligation. Even back in 2011, these were negative, leading to calls to invest more effort and to better coordinate the efforts of the various authorities concerned. The competent Belgian authorities have received a string of warnings to this effect.

The claimants end with a very negative finding: the failure, knowingly, to do what is necessary to play their part to avoid dangerous global warming and, moreover, the failure to meet European obligations which themselves are totally insufficient to prevent this warming, are crowned by a failure to improve the deficient intra-Belgian governance where it was known that it was urgent and possible to do so.

Admissibility

12. The case brought by Klimaatzaak and the co-claimants is admissible. Both have the interest required by law. The claimants refer to the norms of international law (the Aarhus Convention) and of domestic law, as well as to the latest case law which has strengthened access to the courts, especially on environmental issues.

The grounds: 1
Violation of the duty to act with due care and diligence, as enshrined in Civil Code articles 1382 and 1383

13. The argumentation of the violation of Civil Code articles 1382 and 1383 is borrowed from the common law of civil liability, as applied to the public authorities in the latest case law. The three criteria for establishing liability, i.e. negligence, damage and the causal link between the two, are met in this case.

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The claimants use five strands of argumentation to justify the facts leading them to conclude that, in their climate governance, the defendants have not behaved with due care and diligence and continue not to do so. Backed by abundant evidence, these facts are as follows:

1) The threat of dangerous global warming is a very serious threat;
2) The defendants are well aware of this threat and, in fact, have known it for a long time;
3) There is an extremely high probability that the threat will materialise, as known by the defendants for a long time;
4) It is possible to take effective preventive measures – measures which are reasonable in light of the danger;
5) However, the defendants have taken no action, have not done what is necessary.

The damage being caused to Klimatzaak and the co-claimants through the defendants' negligible behaviour is sufficiently grounded in law. It is backed by increasingly informed and precise scientific literature, referred to in the Facts section, in particular the IPCC reports but also those of other reputable sources in the fields of economics and health. This damage is partly in the future and certain to happen.

Finally, the causal link between the negligence claimed by the claimants and the damage caused by the defendants is established.

The grounds: 2
Violation of ECHR articles 2 and 8 and of articles 6 and 24 of the UN Convention on the Rights of the Child

14. Protecting the right to life, ECHR article 2 applies to threats to the environment at a level of severity constituting a danger for the lives of individuals. The threat to life is real and identifiable. The protective measures which people under the jurisdiction of a state are entitled to expect are dependent on the context in which they are adopted. Backed by the case law of the European Court of Human Rights and by the case facts, the claimants establish that the defendants are violating their right to life.

15. Protecting the right to respect for private and family life, ECHR article 8 applies to threats to the environment at a level of severity likely to harm the private and family life of individuals. The absence of quantifiable damage is no obstacle to recognising a sufficient level of severity. The authorities must take sufficient measures necessary to protect this right. Backed by the case law of the European Court of Human Rights and by the case facts, the claimants establish that the defendants are similarly violating this fundamental right.

16. It is indisputable that young children and adolescents will disproportionately bear the brunt of the consequences of dangerous warming. Without GHG emissions being urgently and decisively reduced, they will experience the transition from 1°C warming to 4°C warming within their lifespans, something that has never happened before in the history of the planet as documented for the past 800,000 years. The violations of their right to life and of their right to respect for private and family life thus receive particular attention. We make the link between respect of ECHR articles 2 and 8 and articles 6 and 24 of the UN Convention on the Rights of the Child, as children's rights in particular are being violated by the defendants.

The injunctions requested

17. The power of a judge to establish the responsibility of the public authorities and the violation of fundamental rights guaranteed by the ECHR and the UN Convention on the Rights of the Child

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entails the power to formulate the injunctions on what to do and what not to do in this respect, provided that he respects their discretionary power.

The claimants request an injunction covering the obligations to reduce GHG emissions originating on Belgian territory by 2025, 2030 and 2050. More particularly, the request is to order the defendants to take or have taken the necessary measures to reduce the net emissions originating on Belgian territory:

- by 48% (at least 42%) compared to 1990 by 2025
- by 65% (at least 55%) compared to 1990 by 2030
- with zero net emissions reached in 2050.

18. The claimants establish why such injunctions are compatible with the principle of the separation of powers. They motivate the desired changes to the injunctions requested in the 2015 citation in light of the best available state of science and diplomatic consensus, *inter alia* expressed by the defendants themselves. In particular, they demonstrate that European climate policy is no obstacle to a Belgian climate policy more ambitious than the European one, a policy which the EU itself has admitted to be too little ambitious with regard to the current targets for 2020 and 2030. Several EU Member States, including Germany, Denmark, Sweden and the United Kingdom, have for years pursued national climate policies going beyond the EU targets, in both ETS and non-ETS sectors, while maintaining their economic performance. Denmark has just adopted a target of reducing GHG emissions by 70% compared to 1990 by 2030.

19. Given the sustained inertia, the persistent unwillingness of the defendants and the severity and urgency of the threat, the request for injunctions is supplemented by a reasoned request for penalty payments.

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