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**Climate Change Litigation:
Determinations of the Supreme Court of Ireland
on the National Mitigation Plan**

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ABSTRACT

The case of Friends of the Irish Environment CLG v. the Government of Ireland, Ireland and the Attorney General was initially instituted in 2017 in the High Court of Ireland and finally decided by the Supreme Court of Ireland in 2020 as a matter of general public importance. The Applicant in this matter alleged that Ireland’s National Mitigation Plan violated the country’s Climate Action and Low Carbon

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Development Act 46 of 2015, the Constitution of Ireland, and the European Convention on Human Rights. The Supreme Court's decision marks a rare occasion on which the highest court of a country decided that the government has a legal obligation to reform certain environmental policies in order to prevent dangerous climate change. Within the aforementioned framework, this Article explores Ireland's National Mitigation Plan of 2017, the country's Climate Action and Low Carbon Development Act of 2015, and the related Amendment Bill of 2020. The main objective of this Article is to examine the validity of Ireland's National Mitigation Plan of 2017, as framed by the Supreme Court. The Supreme Court determined that Ireland's National Mitigation Plan of 2017 is invalid, based on the specificity requirement of section 4 of the Low Carbon Development Act of 2015.

INTRODUCTION

The case of *Friends of the Irish Environment CLG v. the Government of Ireland, Ireland and the Attorney General* (Supreme Court case) was initially instituted in 2017 in the High Court of Ireland.¹ The Applicant (FIE) alleged that Ireland's National Mitigation Plan of 2017 (Mitigation Plan) was in violation of a number of legal obligations contained in Ireland's Climate Action and Low Carbon Development Act 46 of 2015 (Climate Act), the Constitution of Ireland (Constitution), as well as certain human rights contained in the European Convention on Human Rights (ECHR).²

Ireland, whose per capita greenhouse gas emissions are the third highest in the European Union (EU),³ is currently experiencing an increase in average temperatures and ocean acidification due to climate change.⁴ Future impacts of climate change in Ireland are projected to

¹ *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att'y Gen.* [2019] 793 JR (H. Ct.).

² FIE is an Irish nonprofit company working to bring relevant cases to courts in Ireland. For more information, see generally *About Us*, FIE, <https://www.friendsoftheirishenvironment.org/aboutus> [<https://perma.cc/JNK3-87Y2>] (last visited Feb. 11, 2022).

³ As averred in the affidavit on which the application to the High Court is based. *Friends*, [2019] 793 JR (H. Ct.) para. 31. See generally *Friends* [2019] 793 JR (H. Ct.) paras. 12, 70, 85, 91; Phillip Alston, Victoria Adelmant & Matthew Blaney, *Litigating Climate Change in Ireland*, J. HUM. RTS. PRAC. (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=362595 [<https://perma.cc/D57L-ZK4T>].

⁴ *What Impact Will Climate Change Have for Ireland?*, ENV'T PROT. AGENCY, <https://www.epa.ie/environment-and-you/climate-change/what-impact-will-climate-change-have-for-ireland/> [<https://perma.cc/65B6-ZBRC>] (last visited Feb. 11, 2022). Current ocean acidification, in particular, also presents a significant risk to marine ecosystems, marine

include a rising sea level, changes to precipitation, an increase in the severity of storms, increased flooding, deterioration in water quality, water shortages, concerns regarding the distribution of certain species of flora and fauna, and ocean warming.⁵ Based on these climate change impacts, the Applicant in the Supreme Court case argued that Ireland must meet appropriate 2020 and 2030 greenhouse gas emission targets and meet further long-term emission targets and that the Mitigation Plan of the country forms a key component in meeting these targets.⁶ FIE requested that the court a quo quash the decision of the government to approve the Mitigation Plan and that the plan be revised to reduce greenhouse gas emissions sufficiently.⁷ However, the court refused, stating that it would be inappropriate for a court of law to judicially review what it viewed as a government policy document.⁸ On September 19, 2019, the court a quo ruled in favor of the government and declared the Mitigation Plan valid, but, on appeal, the decision was overturned on July 31, 2020, by the Supreme Court of Ireland, and the Mitigation plan was quashed by the court.⁹

The decision of the Supreme Court is significant as it marks the second instance in which the highest court of a country has ruled that the government has a legal obligation to reform certain governmental environmental policies to prevent dangerous climate change.¹⁰ The first instance was in the case of *Urgenda Foundation v. The Kingdom of the Netherlands* (Ministry of Infrastructure and the Environment), which

biodiversity and the long-term sustainable management of marine resources along the Irish coast. *Nutrients and Ocean Acidification (OA)*, FORAS NA MARA MARINE INST., <https://www.marine.ie/Home/site-area/areas-activity/marine-environment/nutrients-and-ocean-acidification-oa> [<https://perma.cc/6NNW-LL27>] (last visited Feb. 11, 2022).

⁵ Paul Nolan et al., *Impacts of Climate Change on Mid-Twenty-First-Century Rainfall in Ireland: A High-Resolution Regional Climate Model Ensemble Approach*, 37 INT'L J. CLIMATOLOGY 4,347 (2017); *What Impact Will Climate Change Have for Ireland?*, *supra* note 4.

⁶ *Friends*, [2019] 793 JR (H. Ct.) para. 31.

⁷ As averred in the affidavit on which the application to the High Court is based. *See id.* paras. 12, 70, 85, 91.

⁸ *Id.* paras. 84–85, 117, 141, 146.

⁹ *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att'y Gen.* [2020] 205/19 (SC).

¹⁰ Dana Drugmand, *Historic Supreme Court Verdict Means Ireland's Government Must Increase Climate Ambition*, DESMOG (July 31, 2020, 7:25 AM), <https://www.desmogblog.com/2020/07/31/climate-case-ireland-wins-historic-verdict-supreme-court> [<https://perma.cc/58KG-7F48>].

was decided in 2019 by the highest court of the Netherlands.¹¹ Further supporting the significance of the decision of the Supreme Court of Ireland is that the court allowed for a leapfrog appeal directly from the High Court to the Supreme Court, pursuant to article 34.5.4 of the Constitution.¹² The leapfrog appeal signifies the presence of “exceptional circumstances” and indicates the Supreme Court considers this issue to be “a matter of general public importance” and/or in “the interests of justice.”¹³ In addition, the Supreme Court case was also heard by seven Supreme Court judges, which constitutes a rare court configuration usually reserved for complicated or important legal matters.¹⁴

This Article will consider the Climate Act and the proposed amendments to the Climate Act contained in the Climate Action and Low Carbon Development Amendment Bill 2020. The main objective of this Article is to examine the validity of Ireland’s Mitigation Plan, as framed by the Supreme Court. Therefore, this Article will set out how the Supreme Court determined that the Mitigation Plan is invalid in terms of the specificity requirement of section 4 of the Carbon Act. Finally, this Article will provide some related comments on the findings of the Supreme Court pertaining to the ancillary issues of locus standi and separation of powers in this matter, which is of general importance in matters of climate change litigation.

I

CLIMATE ACTION, LOW CARBON DEVELOPMENT ACT, AND THE AMENDMENT BILL

This section of the Article will provide a brief overview of the Climate Act and the envisaged amendments of the Climate Action and Low Carbon Development Amendment Bill 2020 (Amendment Bill). The Mitigation Plan was drafted in accordance with article 3(1) of the

¹¹ *Urgenda Found. v. The Kingdom of the Neth.* [2019] 19/00135 (HR); *Urgenda Found. v. The Kingdom of the Neth.* [2018] 200.178.245/01 (Gerechtshof Den Haag); *Urgenda Found. v. The Kingdom of the Neth.* [2015] C/09/456689 / HAZA 13-1396 (Rechtbank Den Haag).

¹² *Friends*, [2020] 205/19 (SC) para. 2.2.

¹³ CONSTITUTION OF IRELAND 1937 art. 34.5.4.

¹⁴ *Composition of the Court*, THE SUP. CT. OF IR., <http://www.supremecourt.ie/supremecourt/sclibrary3.nsf/pagecurrent/36C4492DCD6C52E780257315005A419C?openDocument&l=en> [https://perma.cc/2KTT-FGPD] (last visited Feb. 11, 2022); Brendan Montague, *Historic Win for Climate Case Ireland*, THE ECOLOGIST, (Aug. 5, 2020) <https://theecologist.org/2020/aug/05/historic-win-climate-case-ireland> [https://perma.cc/34W5-LVDJ].

Climate Act to “pursue, and achieve, the transition to a low carbon, climate resilient and environmentally sustainable economy” by 2050, which is explained below as Ireland’s National Transition Objective.¹⁵ The Mitigation Plan was also developed according to section 4 of the Climate Act, which outlines the Mitigation Plan’s necessary contents.¹⁶ The Climate Act is accordingly considered the statutory instrument that gives rise to the Mitigation Plan.¹⁷ The proposed amendments to the Climate Act, by means of the Amendment Bill, provide a good indication of the future form that the Mitigation Plan or a similar plan may take in Ireland.

The Climate Act specifically describes the purpose of the Act as providing for “the approval of plans by the Government in relation to climate change for the purpose of pursuing the transition to a low carbon, climate resilient and environmentally sustainable economy.”¹⁸ The purpose of the Act, therefore, includes providing for the approval of the Mitigation Plan for the purpose of facilitating Ireland’s transition

¹⁵ Climate Action and Low Carbon Development Act 2015 § 3(1) (Act No. 46/2015) (Ir.).

¹⁶ Climate Action and Low Carbon Development Act 2015 § 4 (Act No. 46/2015) (Ir.) states:

A national mitigation plan shall: (a) specify the manner in which it is proposed to achieve the national transition objective, (b) specify the policy measures that, in the opinion of the Government, would be required in order to manage greenhouse gas emissions and the removal of greenhouse gas at a level that is appropriate for furthering the achievement of the national transition objective, (c) take into account any existing obligation of the State under the law of the European Union or any international agreement referred to in [section 2], and (d) specify the mitigation policy measures (in this Act referred to as the “sectoral mitigation measures”) to be adopted by the Ministers of the Government, referred to in [subsection (3)(a)], in relation to the matters for which each such Minister of the Government has responsibility for the purposes of (i) reducing greenhouse gas emissions, and (ii) enabling the achievement of the national transition objective.

¹⁷ As provided in the preamble of the Climate Act, it is an “Act to provide for the approval of plans by the Government in relation to climate change.” Climate Action and Low Carbon Development Act 2015 pmb. (Act No. 46/2015) (Ir.). Furthermore, section 4 of the Climate Act deals specifically with the so-called National low carbon transition and mitigation plan. Climate Action and Low Carbon Development Act 2015 § 4 (Act No. 46/2015) (Ir.).

¹⁸ Climate Action and Low Carbon Development Act 2015 pmb. (Act No. 46/2015) (Ir.).

toward a low carbon and climate resilient economy.¹⁹ The specificity requirement contained in the Climate Act is discussed below.²⁰

Following the Supreme Court's decision, the government published the Amendment Bill.²¹ The Amendment Bill serves to amend the Climate Act to ensure that it identifies specific greenhouse gas emission targets that will contribute to meeting Ireland's net-zero emission target and reaching a "climate neutral economy" by 2050.²² By establishing specific targets, such as achieving net-zero emissions by 2050, the Amendment Bill addresses a recognized shortcoming of the Climate Act.²³ The Amendment Bill also addresses further shortcomings of the Climate Act by including amendments pertaining to the Climate Change Advisory Council of Ireland, instituting a specific reporting process for Ministers of the government, providing for carbon budgets, and determining decarbonization targets for certain sectors of the Irish economy.²⁴

Of particular relevance to this Article, the Amendment Bill deals with so-called climate action plans and strategies²⁵ and includes provisions that replace the Climate Act's Mitigation Plan.²⁶ The climate action plans and strategies include an annual update to the Climate Action Plan²⁷ and an instruction that a National Long Term Climate Action Strategy²⁸ is to be prepared at least once every ten years. The Amendment Bill further provides that the relevant "sector specific actions" will be determined to contribute to meeting net-zero emissions by 2050.²⁹

¹⁹ See *id.* pmb1., § 4.

²⁰ See discussion *infra* Section II.B.2. For a discussion of the specificity requirement by the Supreme Court, see *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att'y Gen.* [2020] 205/19 (SC) paras. 1.1–1.2, 2.3–2.4. Section 4 of the Climate Action and Low Carbon Development Act 46 of 2015 contains the specificity requirement. Climate Action and Low Carbon Development Act 2015 § 4 (Act No. 46/2015) (Ir.).

²¹ Climate Action and Low Carbon Development (Amendment) Bill 2020 (Ir.).

²² *Id.*; Gavin Blake, *The Climate Action and Low Carbon Development (Amendment) Bill 2020*, LEXOLOGY (Oct. 14, 2020), <https://www.lexology.com/library/detail.aspx?g=b0496676-cd0f-4ff9-b4dc-8757024f981d> [<https://perma.cc/4VD5-M2EQ>].

²³ Blake, *supra* note 22.

²⁴ Climate Action and Low Carbon Development (Amendment) Bill 2020 (Ir.).

²⁵ Section 4 of the Climate Action and Low Carbon Development (Amendment) Bill 2020 is entitled "Climate action plans and strategies." Climate Action and Low Carbon Development (Amendment) Bill 2020 § 4 (Ir.).

²⁶ For the Climate Act's Mitigation Plan, see Climate Action and Low Carbon Development (Amendment) Bill 2020 § 4(1)(a)–(b) (Ir.).

²⁷ Climate Action and Low Carbon Development (Amendment) Bill 2020 § 4(1)(a) (Ir.).

²⁸ *Id.* § 4(1)(b).

²⁹ *Id.* §§ 4(2)(b)(i)–(ii), 4(3).

The proposed legislative amendments envisaged by the Amendment Bill are aligned with the Supreme Court decision and potentially constitute a valuable addition to the legal climate change framework in Ireland, specifically in the context of the country's Mitigation Plan. However, the Amendment Bill stipulates that the government will “pursue” the “transition to a climate resilient and climate neutral economy” by 2050, instead of creating a firm duty on government to achieve this transition by 2050.³⁰

II

NATIONAL LOW CARBON TRANSITION AND MITIGATION PLAN

A. National Transition Objective

The National Transition Objective (NTO) is contained in section 3(1) of the Climate Act.³¹ The NTO concerns the transition of Ireland toward a “low carbon, climate resilient and environmentally sustainable economy” by 2050.³² To reach this goal, section 3(1) of the Climate Act requires the government to approve a Mitigation Plan and a national adaptation framework—the former being at issue in this Article.³³

In a broader context, and as a component of reaching the NTO, section 3(2) of the Climate Act states that in preparing the Mitigation Plan, the government must consider the issue of climate justice.³⁴

³⁰ *Id.* §§ 3–4; Diarmuid Torney, *Climate Bill a Landmark Moment but Questions Remain*, THE IRISH TIMES (Oct. 9, 2020), <https://www.irishtimes.com/opinion/climate-bill-a-landmark-moment-but-questions-remain-1.4375855> [<https://perma.cc/TBS6-35MF>].

³¹ Climate Action and Low Carbon Development Act 2015 § 3(1) (Act No. 46/2015) (Ir.) (“For the purpose of enabling the State to pursue, and achieve, the transition to a low carbon, climate resilient and environmentally sustainable economy by the end of the year 2050 (in this Act referred to as the “national transition objective”) the Minister shall make and submit to the Government for approval (a) a national mitigation plan, and (b) a national adaptation framework.”).

³² *Id.*; Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att’y Gen. [2020] 205/19 (SC) para. 5.18.

³³ Climate Action and Low Carbon Development Act 2015 § 3(1) (Act No. 46/2015) (Ir.) (“For the purpose of enabling the State to pursue, and achieve, the transition to a low carbon, climate resilient and environmentally sustainable economy by the end of the year 2050 (in this Act referred to as the “national transition objective”) the Minister shall make and submit to the Government for approval (a) a national mitigation plan, and (b) a national adaptation framework.”).

³⁴ *Id.* § 3(2) (“When considering a plan or framework, referred to in subsection (1), for approval, the Government shall endeavour to achieve the national transition objective within the period to which the objective relates and shall, in endeavouring to achieve that objective, ensure that such objective is achieved by the implementation of measures that are cost

Therefore, FIE's submission pertaining to future generations becomes relevant in considering the validity of the Mitigation Plan, which was formulated in terms of section 3(1) of the Climate Act. FIE submitted that the government failed to take the required action to protect the world's climate for present and future generations in approving the Mitigation Plan.³⁵ A full exposition of climate justice is not found in the judgments of the court a quo and the Supreme Court. However, the case indirectly promotes climate justice, as action to slow the emission of greenhouse gasses is affected by the Supreme Court's ruling on the validity of the Mitigation Plan, which is discussed below.³⁶

Furthermore, in formulating the Mitigation Plan to reach its NTO, section 3(2) of the Climate Act stipulates that the government regard the objective contained in the United Nations Framework Convention on Climate Change (UNFCCC), which includes Article 2 of the Convention pertaining to the stabilization of greenhouse gas emissions at a level that would prevent dangerous climate change.³⁷ Section 3(2) of the Climate Act also stipulates that the Irish government shall act with due regard to the commitments of the European Union (EU) in

effective and shall, for that purpose, have regard to (a) the ultimate objective specified in Article 2 of the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 and any mitigation commitment entered into by the European Union in response or otherwise in relation to that objective, (b) the policy of the Government on climate change, (c) climate justice, (d) any existing obligation of the State under the law of the European Union or any international agreement referred to in section 2, and (e) the most recent national greenhouse gas emissions inventory and projection of future greenhouse gas emissions, prepared by the Agency.”).

³⁵ Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att’y Gen. [2019] 793 JR (H. Ct.) para. 13.

³⁶ Climate Justice includes many different considerations such as justice, human rights, setting ambitious targets to reduce greenhouse gas emissions, emphasizing adaptation as a component to action, transforming industries and systems responsible for producing large quantities of greenhouse gas emissions, making inclusive international decisions on climate change, and involving developed and developing countries in the fight against climate change as well as the general public. BARBARA ADAMS & GRETCHEN LUCHSINGER, U.N. CONF. ON TRADE & DEV., CLIMATE JUSTICE FOR A CHANGING PLANET: A PRIMER FOR POLICY MAKERS AND NGOS (2009), https://unctad.org/system/files/official-document/ngls20092_en.pdf [<https://perma.cc/S9D5-8GSL>].

³⁷ Paris Agreement to the UN Framework Convention on Climate Change No. 16-1104 (Dec. 12, 2015) (“The ultimate objective of this Convention and any related legal instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.”).

formulating the Mitigation Plan required to reach its NTO.³⁸ Ireland did adopt various climate change mitigation measures on an EU level,³⁹ which serve to facilitate EU member states' adherence to international law in the context of climate change. Relevant international law in this context includes the UNFCCC and the Paris Agreement, which were the principal sources of international law considered by the court a quo.⁴⁰ Ireland's EU commitments included committing to the reduction of greenhouse gas emissions under the EU Effort Sharing Decision and Effort Sharing Regulation.⁴¹ Without needing to undertake an extensive

³⁸ Climate Action and Low Carbon Development Act 2015 § 3(2) (Act No. 46/2015) (Ir.) ("When considering a plan or framework, referred to in subsection (1), for approval, the Government shall endeavour to achieve the national transition objective within the period to which the objective relates and shall, in endeavouring to achieve that objective, ensure that such objective is achieved by the implementation of measures that are cost effective and shall, for that purpose, have regard to (a) the ultimate objective specified in Article 2 of the United Nations Framework Convention on Climate Change done at New York on 9 May 1992 and any mitigation commitment entered into by the European Union in response or otherwise in relation to that objective, (b) the policy of the Government on climate change, (c) climate justice, (d) any existing obligation of the State under the law of the European Union or any international agreement referred to in section 2, and (e) the most recent national greenhouse gas emissions inventory and projection of future greenhouse gas emissions, prepared by the Agency.").

For various EU climate change mitigation measures, see generally *EU Climate Action and the European Green Deal*, EUR. COMM'N, https://ec.europa.eu/clima/policies/eu-climate-action_en [<https://perma.cc/BVY3-4PEB>] (last visited Feb. 11, 2022).

³⁹ For measures, see generally *The Environment: Ireland's Green Deal*, EUR. COMM'N, https://ireland.representation.ec.europa.eu/strategy-and-priorities/key-eu-policies-ireland/environment-irelands-green-deal_en [<https://perma.cc/S9ER-V9TW>] (last visited Feb. 11, 2022). For a specific example, see Decision 406/2009, of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, 2009 O.J. (L 140).

⁴⁰ The court a quo considered the Paris Agreement as an extended component of the UNFCCC. *Friends*, [2019] 793 JR (H. Ct.) para. 18. The Paris Agreement, as an instrument of international law, is deemed effective in domestic climate change litigation. Lennart Wegener, *Can the Paris Agreement Help Climate Change Litigation and Vice Versa?*, 9 TRANSNAT'L ENV'T L. 17, 35 (2020). However, the Paris Agreement did not play a significant role in the decision of the Supreme Court of Appeal.

⁴¹ *EU and International Climate Action*, DEP'T OF THE ENV'T, CLIMATE & COMM'N (June 12, 2020), <https://www.gov.ie/en/policy-information/428b3c-eu-and-international-climate-action/> [<https://perma.cc/S9ER-V9TW>]. The decision on effort-sharing of the European Parliament and Council of 23 April 2009 concerns the effort of Member States of the EU to reduce greenhouse gas emissions in order to meet the European Community's commitment until 2020. Council Decision, 406/2009, 2009 O.J. (L 140). After 2020, Ireland's EU effort sharing obligations are governed by the EU Effort Sharing Regulation of the European Parliament and of the Council of 30 May 2018. Regulation 2018/ 842, 2018 O.J. (L 156). The Regulation concerns the effort of Member States of the EU to reduce

examination of Ireland's international and EU law commitments, the Supreme Court considered Ireland not to be in breach of any international or EU legal obligations.⁴²

Having set out the meaning and context of the NTO, the section below discusses the Mitigation Plan, specifically the Supreme Court's decision to declare the Mitigation Plan invalid as a component in reaching Ireland's NTO.

B. National Low Carbon Transition and Mitigation Plan

1. Constitution, ECHR, and Unlawful Government Action

The Supreme Court introduced this case as pertaining to the question of whether or not the government, in adopting the Mitigation Plan, acted unlawfully and in breach of rights contained in the Constitution of Ireland or the ECHR.⁴³ The question pertaining to the Constitution and the ECHR has been addressed by this Article's discussion on the court's findings on locus standi. As included above, the Supreme Court submitted that FIE did not have standing to rely on constitutional rights, and it was unlikely that FIE could then rely on analogous rights contained in the ECHR.⁴⁴ It follows that the Supreme Court decided that FIE did not have standing to rely on the rights contained in the Constitution or in the ECHR in this matter.⁴⁵

The Supreme Court also considered whether or not the government, in adopting the Mitigation Plan, acted unlawfully.⁴⁶ FIE submitted that the Mitigation Plan contemplates that in striving to obtain net-zero emissions by 2050 and reach the NTO, there will be an initial increase in greenhouse gas emissions in Ireland before there is a decrease.⁴⁷ In this regard, FIE contended that an initial increase in greenhouse gas emissions will cause a greater increase to the overall amount of greenhouse gas emissions, even if the end goal to achieve net-zero

greenhouse gas emissions in order to meet the European Community's commitment for the period 2021 to 2030.

⁴² Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att'y Gen. [2020] 205/19 (SC) para. 4.7.

⁴³ *Id.* paras. 1.1–1.2, 2.3–2.4.

⁴⁴ *Id.* para. 7.23.

⁴⁵ Christopher Borucki, *Irish Supreme Court Quashes Climate Mitigation Plan: Environmental Rights Caught Between Redundancy and Vagueness*, KU LEUVEN (Sept. 2020), <https://lirias.kuleuven.be/3275751?limo=0> [<https://perma.cc/63UN-3G7E>]; Friends, [2020] 205/19 (SC) para. 7.24.

⁴⁶ *Friends*, [2020] 205/19 (SC) para. 4.5.

⁴⁷ *Id.* para. 4.3.

emissions by 2050 is realized.⁴⁸ Therefore, FIE argued that the government acted unlawfully in adopting the Mitigation Plan, which allowed for an initial increase in greenhouse gas emissions.⁴⁹ In addition, FIE submitted in the court a quo that the adaptation of a Mitigation Plan, which lacked specific detail on how to achieve Ireland's NTO, was unlawful.⁵⁰ The Supreme Court addressed FIE's allegations of unlawfulness by deciding that there is indeed a statutory basis and determined that there ought to be specific detail included in the Mitigation Plan on how the government expects and plans to reach the NTO.⁵¹ This component of the Supreme Court's decision is explained below in examining the validity of the Mitigation Plan.

2. *Validity of the National Mitigation Plan*

This section determines the validity or the legality of the adoption of the government of Ireland's Mitigation Plan, the full title of the plan being the "National Low Carbon Transition and Mitigation Plan."⁵² More specifically, this section considers the Supreme Court's findings related to FIE's argument that the adoption of the Mitigation Plan did not conform with the specific provisions in section 4 of the Climate Act.⁵³

FIE did not challenge the Climate Act in the court a quo but challenged the Mitigation Plan specifically, contending that the Mitigation Plan was ultra vires the Climate Act.⁵⁴ The Supreme Court, therefore, dealt with the question of whether the Mitigation Plan was ultra vires the Climate Act and considered if the Mitigation Plan should be quashed and if a new plan of action, which is in line with the Climate Act, should be formulated by the government.⁵⁵

In addressing the question of whether or not the Mitigation Plan is ultra vires the Climate Act, the Supreme Court stipulated that the Mitigation Plan is a compulsory requirement in terms of the Climate

⁴⁸ *Id.*

⁴⁹ *Id.* para. 4.5.

⁵⁰ *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att'y Gen.* [2019] 793 JR (H. Ct.) paras. 4.5, 6.19.

⁵¹ *Id.* paras. 6.19–6.20.

⁵² *Friends*, [2020] 205/19 (SC) paras. 2.3–2.4.

⁵³ *Id.* paras. 1.1–1.2, 2.3–2.4.

⁵⁴ *Id.* paras. 5.39, 5.44. In this regard, the government submitted that FIE's challenge to the Mitigation Plan relates to a challenge to the Climate Act. *Id.* para. 5.39.

⁵⁵ *Id.* para. 5.60.

Act, in particular of section 4(2)(a) of the Act.⁵⁶ In terms of the Climate Act, the “overriding requirement” of the Mitigation Plan is that it must “specify the manner in which it is proposed to achieve the national transition objective” by 2050.⁵⁷ As further stipulated in section 4(2) of the Climate Act, the Mitigation Plan is also required to outline the “policy measures” that must be instituted to reach the NTO by 2050.⁵⁸ The Supreme Court confirmed that the Mitigation Plan must therefore contain specific provisions or “sufficient information” on how the NTO will be met by 2050.⁵⁹

According to the Climate Change Advisory Council of Ireland (Advisory Council), established pursuant to the Climate Act, the Mitigation Plan is intended to provide a “transparent and coherent framework” directing the various sectors of the economy on how to reach the 2030 and 2050 targets and goals related to the NTO of the country and its international obligations.⁶⁰ In trying to ascertain if the Mitigation Plan was specific enough, the Supreme Court duly considered the Advisory Council’s opinion in making this determination, although the court admits that it was not bound to the Advisory Council’s opinion.⁶¹ The Advisory Council criticized the effectiveness of the measures contained in the Mitigation Plan and considered the measures inadequate in meeting Ireland’s climate goals for 2030.⁶² A recent Review Report of the Advisory Council states that “Ireland is unlikely to meet its 2020 targets” and that this will have an effect on its 2030 targets.⁶³

⁵⁶ *Id.* para. 5.18.

⁵⁷ Climate Action and Low Carbon Development Act 2015 § 4(2)(a) (Act No. 46/2015) (Ir.); *Friends*, [2020] 205/19 (SC) para. 5.18.

⁵⁸ *Friends*, [2020] 205/19 (SC) paras. 5.19, 5.20. The introduction of Ireland’s National Mitigation Plan of 2017 reads as follows: “Under the [Climate Act], each National Mitigation Plan must specify the policy measures that Government consider are required to manage greenhouse gas emissions and the removal of emissions at a level that is appropriate for furthering the [NTO].”

⁵⁹ *Friends*, [2020] 205/19 (SC) paras. 5.20–5.21, 6.38.

⁶⁰ CLIMATE CHANGE ADVISORY COUNCIL, PERIODIC REVIEW REPORT 2017 at 21 (2017), https://www.climatecouncil.ie/media/climatechangeadvisorycouncil/contentassets/documents/news/CCAC_REVIEWREPORT2017.pdf [<https://perma.cc/DAQ9-43QK>].

⁶¹ *Friends*, [2020] 205/19 (SC) para. 6. Section 8 of the Climate Action and Low Carbon Development Act 46 of 2015 establishes the Advisory Council. Climate Action and Low Carbon Development Act 2015 § 8 (Act No. 46/2015) (Ir.). Section 11 of the Climate Action and Low Carbon Development Act 46 of 2015 sets out the functions of the Advisory Council to include advising the relevant minister and government on the Mitigation Plan. Climate Action and Low Carbon Development Act 2015 § 11 (Act No. 46/2015) (Ir.).

⁶² Alston, Adelmant & Blaney, *supra* note 3.

⁶³ CLIMATE CHANGE ADVISORY COUNCIL, *supra* note 60, at 10.

Section 4 of the Climate Act stipulates that the Mitigation Plan will set out how the NTO will be achieved;⁶⁴ the Mitigation Plan will set out which policies are required to manage and remove greenhouse gas emissions at a level that will contribute to achieving the NTO;⁶⁵ and the Mitigation Plan will take into account commitments under international and EU law.⁶⁶ As mentioned above, the Supreme Court found that section 4 of the Climate Act, requiring that the Mitigation Plan “specify the manner in which it is proposed to achieve the national transition objective,” is clearly a “statutory obligation,” and is considered to be law and not policy.⁶⁷ The Supreme Court moved on to consider the legal question of whether the Mitigation Plan complies with the aforementioned statutory obligation to “specify” the manner in which the NTO will be achieved.⁶⁸ In other words, the Supreme Court explicitly considered the question of whether the Mitigation Plan is specific enough to adhere to section 4 of the Climate Act.⁶⁹

The Supreme Court determined the level of specificity required in the Mitigation Plan. It explained that the Mitigation Plan should enable “a reasonable and interested member of the public” to consider the Mitigation Plan, and based on the information the plan contains that member of the public should be certain of how the government plans to achieve the NTO, and that member of the public should be able to take action (for example, political action) on the basis of the information.⁷⁰ The court found that the requirement of the Mitigation Plan to “specify,” as included in section 4 of the Climate Act, does therefore require “some sort of general indication of the specific

⁶⁴ Climate Action and Low Carbon Development Act 2015 § 4(2)(a) (Act No. 46/2015) (Ir.).

⁶⁵ *Id.* § 4(2)(b).

⁶⁶ *Id.* § 4(2)(c).

⁶⁷ Climate Action and Low Carbon Development Act 2015 § 4(2)(d) (Act No. 46/2015) (Ir.); *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att’y Gen.* [2020] 205/19 (SC) para. 6.27.

⁶⁸ *Friends*, [2020] 205/19 (SC) para. 6.27.

⁶⁹ *Id.* paras. 6.32–6.49. Concerning the specificity of the Mitigation Plan, the Supreme Court clearly states that, should the Mitigation Plan be found to lack the specificity that is required by section 4 of the Climate Act, this would not necessarily mean that the Climate Act is inconsistent with the Constitution. This point refers to the so-called collateral attack argument that was forwarded by the government in the court a quo and addressed also by the Supreme Court. The collateral attack argument is not discussed in this Article. *Id.* paras. 6.30–6.31.

⁷⁰ *Id.* paras. 5.20–5.21, 6.38.

measures” to be instituted in order to meet the NTO.⁷¹ Furthermore, these specific measures are to pertain to the five-year period of the Mitigation Plan and also to the entire period leading up to 2050, including future measures after the five-year plan, which may be slightly less detailed than the immediate measures.⁷²

The Supreme Court found that the Mitigation Plan did not adhere to the level of specificity required by the Climate Act, meaning that the government did not clearly specify how it plans to reach Ireland’s NTO in the Mitigation Plan.⁷³ In other words, the court found that the Mitigation Plan did not allow the Irish public to know how the government currently plans to meet the NTO by 2050.⁷⁴ In its decision, the Supreme Court highlighted certain components of the Mitigation Plan as being “excessively vague or aspirational.”⁷⁵ Accordingly, the Supreme Court concluded that because the Mitigation Plan does not include the level of specificity required by section 4 of the Climate Act, it must be quashed.⁷⁶

This means that the government must now proceed in line with the decision of the Supreme Court and create a new Mitigation Plan that specifies how it will reach the NTO in a manner that is clearly described to the public and in line with section 4 of the Climate Act.⁷⁷ However, the Amendment Act, as discussed above, may also affect the court decision and the future formulation of a new plan of action for mitigation in Ireland.

⁷¹ *Id.* para. 6.45; Section 4(2)(a) of the Climate Action and Low Carbon Development Act 2015 states that the Mitigation Plan should “specify the manner in which it is proposed to achieve the national transition objective.” Climate Action and Low Carbon Development Act 2015 § 4(2)(a) (Act No. 46/2015) (Ir.).

⁷² *Friends*, [2020] 205/19 (SC) para. 6.45.

⁷³ *Id.* para. 6.46.

⁷⁴ David Kenny, *Opinion: The Supreme Court’s Ruling on the Government’s Climate Plan Is a Watershed Moment*, THEJOURNAL.IE, <https://www.thejournal.ie/readme/supreme-court-ruling-government-climate-plan-impact-5165222-Aug2020/> [<https://perma.cc/KT4A-CEZ7>] (last visited Feb. 11, 2022); *Friends*, [2020] 205/19 (SC) paras. 6.46–6.47.

⁷⁵ *Id.* paras. 6.43–6.44.

⁷⁶ *Id.* para. 6.48.

⁷⁷ Climate Action and Low Carbon Development Act 2015 § 3(1) (Act No. 46/2015) (Ir.); *Friends*, [2020] 205/19 (SC) para. 5.18.

III

ANCILLARY COMPONENTS OF THE SUPREME COURT DECISION

A. Locus Standi

The issue of locus standi or standing is included in this Article as an ancillary component since it does not affect the main objective of the Article, which is to examine the validity of Ireland's Mitigation Plan. Nevertheless, it remains an important component to the decision of the Supreme Court and to climate change litigation in general.

Two issues of standing are relevant to this case and had to be decided by the Supreme Court. Firstly, FIE submitted that certain governmental decisions concerning the plan for reducing greenhouse gas emissions in Ireland, which FIE admitted falls within the realm of governmental discretion, impede certain rights contained in the Constitution and the ECHR.⁷⁸ Accordingly, the Supreme Court addressed the standing of FIE, specifically in regard to these claims made by FIE in connection with personal or individual rights contained in the Constitution and in the ECHR.⁷⁹ Secondly, the case also concerns the question of the standing of FIE to challenge the validity of the Mitigation Plan in terms of the Climate Act. In the latter regard, it was decided by the High Court and confirmed by the Supreme Court that FIE did have the required standing to bring this claim before the court, and this component is discussed further below in the section discussing separation of powers.⁸⁰

Since it was determined that FIE did not have standing based on certain rights contained in the Constitution and the ECHR, important related considerations of the Supreme Court are briefly included in this Article to serve the general interest of climate change litigation research.⁸¹ In its decision, the Supreme Court highlighted the importance of considering standing for purposes pertaining to the institution of similar future environmental claims by relevant corporate entities or

⁷⁸ *Friends*, [2020] 205/19 (SC) para. 5.25.

⁷⁹ Standing is discussed by the Supreme Court in paragraphs 7.1–7.25. *Id.* paras. 7.1–7.25.

⁸⁰ *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att'y Gen.* [2019] 793 JR (H. Ct.) para. 82; *Friends*, [2020] 205/19 (SC) paras. 5.6, 5.32; For a more extensive discussion in this regard, see the High Court's decision. *Friends*, [2019] 793 JR (H. Ct.) para. 82; For more information on locus standi, as discussed by the Supreme Court, see *Friends*, [2020] 205/19 (SC) paras. 7.1–7.25.

⁸¹ *Friends*, [2020] 205/19 (SC) para. 5.25.

nongovernmental organizations (NGOs).⁸² The Supreme Court emphasized the significance of the strict rules pertaining to standing and stated the necessity of relaxing these rules when it may be judicially sound to do so and in the interest of serving fundamental rights, such as constitutional rights and rights contained in the ECHR.⁸³

The relevant constitutional rights in this matter included the right to life and to bodily integrity.⁸⁴ The question before the Supreme Court was whether FIE, as a corporate entity, enjoyed standing when relying on constitutional rights.⁸⁵ This consideration is based on an exception in Irish law under which it may be possible for a corporate entity to formulate a claim based on individual or personal rights where a right does not belong to the corporate entity.⁸⁶ The Supreme Court found that FIE, taking into consideration its nature as a corporate entity, showed no justification why it should be allowed to bring these claims before the court.⁸⁷ The court further explained that allowing FIE to have standing in regard to these specific claims would amount to an unjustifiable relaxation of the rules on standing in Ireland and could not be allowed.⁸⁸ In summation, the Supreme Court decided that FIE did not have standing to rely on constitutional rights in their claims before the court.⁸⁹

Other relevant rights included rights contained in the ECHR—namely, the right to life and the right to respect for private and family life.⁹⁰ The question before the Supreme Court in this context was whether or not FIE, found not to have standing before the European Court of Human Rights, would have standing before the Supreme Court

⁸² *Id.* para. 6.49.

⁸³ Standing is discussed by the Supreme Court in paragraphs 7.1–7.25. *Id.* paras. 7.1–7.25. The court a quo deemed FIE to have standing to challenge the Mitigation Plan based on the gravity of the environmental concerns that the case raised and the importance of these concerns to the general public. Alston, Adelmant & Blaney, *supra* note 3; *Friends*, [2019] 793 JR (H. Ct.) para. 82.

⁸⁴ This Article does not include a discussion on the existence of a constitutional right to a healthy environment. For such a discussion, see *Friends*, [2020] 205/19 (SC) paras. 8.1–8.17.

⁸⁵ *Id.* para. 7.5.

⁸⁶ *Id.*

⁸⁷ *Id.* para. 7.22.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Article 2 deals with the right to life and article 8 deals with the right to respect for private and family life. European Convention on Human Rights, Sept. 3, 1953, E.T.S. No. 005, 213 U.N.T.S. 221.

when basing its claims on the ECHR.⁹¹ The court submitted that it was unlikely that FIE could be found unable to rely on constitutional rights but able to rely on analogous rights contained in the ECHR.⁹² The Supreme Court decided that FIE did not have standing to rely on the rights contained in the ECHR.⁹³ However, the Supreme Court was not of the opinion that reliance on constitutional rights and rights contained in the ECHR could not form a component of climate change litigation in the future,⁹⁴ but rather that, in this instance, it would not be appropriate to allow standing to FIE based on these rights.

Therefore, the Supreme Court has decided that FIE has standing to challenge the validity of the Mitigation Plan based on the stipulations of the Climate Act, but importantly not based on an infringement suffered by the corporate entity in terms of the Constitution or the ECHR.⁹⁵

B. Separation of Powers

As with locus standi discussed above, the issue of separation of powers is included in this Article as an ancillary component since it does not affect the main objective of this Article, but it does remain an important component of the decision of the Supreme Court and to climate change litigation research in general.

The constitutional importance of the doctrine of separation of powers is that it provides for a separate allocation of power to the appropriate bodies and puts in place a system of checks and balances, which prevents abuse of power by these bodies.⁹⁶ In addition to locus standi, the doctrine of separation of powers often presents a significant

⁹¹ *Friends*, [2020] 205/19 (SC) para. 7.6.

⁹² *Id.* para. 7.23.

⁹³ *Id.* para. 7.24.

⁹⁴ Borucki, *supra* note 45.

⁹⁵ *Friends of the Irish Environment CLG v. The Government of Ir., Ir. and the Att’y Gen.* [2019] 793 JR (H. Ct.) para. 82; *Friends*, [2020] 205/19 (SC) paras. 5.6, 5.32; Standing is further discussed by the Supreme Court in paras. 7.1–7.25. *Friends*, [2020] 205/19 (SC) paras. 7.1–7.25.

For a more extensive discussion in this regard, see the High Court’s decision. *Friends*, [2019] 793 JR (H. Ct.) para. 82.

For more information on locus standi, as discussed by the Supreme Court, see *Friends*, [2020] 205/19 (SC) paras. 7.1–7.25.

⁹⁶ Aileen Kavanagh, *The Constitutional Separation of Powers*, in *PHILOSOPHICAL FOUNDATIONS OF CONSTITUTIONAL LAW* (David Dyzenhaus & Malcolm Thorburn eds., 2016).

stumbling block in climate change litigation globally.⁹⁷ Like the discussion of locus standi, the Supreme Court briefly dealt with the doctrine of separation of powers within the context of determining the validity of the Mitigation Plan and within the context of determining FIE's standing.⁹⁸

The government submitted that the Mitigation Plan, which was drafted in terms of the Climate Act, consists of policy choices,⁹⁹ which meant that this matter fell within the ambit of the National Parliament of Ireland (also referred to as the Oireachtas) and the Executive, and thus the matter is not able to constitute the subject of litigation in the courts of Ireland.¹⁰⁰ In response, FIE submitted that it was not aiming

⁹⁷ Laura Burgers, *Should Judges Make Climate Change Law?*, TRANSNAT'L ENV'T L., 55 (2020); Suryapratim Roy & Edwin Woerdman, *Situating Urgenda v the Netherlands Within Comparative Climate Change Litigation*, 34 J. ENERGY & NAT. RES. L. 165 (2016); Phillip Paiement, *Urgent Agenda: How Climate Litigation Builds Transnational Narratives*, 11 TRANSNAT'L LEGAL THEORY 121, 139 (2020); DAVID ESTRIN & PATRICIA FERREIRA, ADVANCING CLIMATE JUSTICE: THE NEW IBA MODEL STATUTE FOR PROCEEDINGS CHALLENGING GOVERNMENT FAILURE TO ACT ON CLIMATE CHANGE (2020), https://www.researchgate.net/publication/349621697_Advancing_Climate_Justice_the_New_IBA_Model_Statute_for_Proceedings_Challenging_Government_Failure_to_Act_on_Climate_Change.

⁹⁸ The High Court deals with the matter of separation of powers in greater detail than the Supreme Court, and the decision of the Supreme Court is the focus of this Article.

⁹⁹ The term "policy matters" within the context of the case includes pertinent environmental considerations related to climate change. *Friends*, [2019] 793 JR (H. Ct.) para. 89; *Friends*, [2020] 205/19 (SC) para. 5.21.

In this context, the Supreme Court confirmed that the science concerning the source and effect of climate change is not disputed by the parties on the case, and the parties also do not dispute the complex problem that climate change presents nationally and internationally. *Friends*, [2020] 205/19 (SC) paras. 2.3–2.4.

In this regard, criticism against courts based on separation of powers, wherein courts are urged to refrain from delivering climate change decisions as they may lack scientific expertise, becomes a moot point. See generally Sheila Jasanoff, *Science, Common Sense & Judicial Power in U.S. Courts*, 147 DAEDALUS 15, 15–27 (2018); Joana Setzer & Lisa C. Vanhala, *Climate Change Litigation: A Review of Research on Courts and Litigants in Climate Governance*, WILEY INTERDISCIPLINARY REVS.: CLIMATE CHANGE 1 (2019).

Referring to the current knowledge on the impacts and future risks associated with climate change globally and in Ireland, the court a quo refers to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) as representing a reliable source of scientific information. *Friends*, [2019] 793 JR (H. Ct.) paras. 2, 27, 28, 56, 76.

The decision of the Supreme Court also takes into account some of the specific environmental challenges that Ireland will face due to climate change, such as sea-level rise, precipitation changes, flooding, water shortage, and impacts on water quality. *Friends*, [2019] 793 JR (H. Ct.) para. 5.

¹⁰⁰ *Friends*, [2019] 793 JR (H. Ct.) para. 89; *Friends*, [2020] 205/19 (SC) para. 5.21. See generally Tom Hickey, *Judges and the Political Organs of State*, in THE OXFORD HANDBOOK OF IRISH POLITICS (David Farrell & Niamh Hardiman eds., 2020).

to “prescribe a policy” that must be executed by the government.¹⁰¹ Further, FIE also submitted that it does not dispute that the government has a “wide discretion” to implement measures serving the reduction of greenhouse gas emissions.¹⁰² Rather, FIE argued that the government’s submission that it will reduce greenhouse gas emissions by 2050, by measures adopted in the Mitigation Plan, is insufficient in mitigating climate change in terms of the Climate Act and impedes certain rights contained in the Constitution and the ECHR.¹⁰³

In response to the arguments submitted by both parties within the context of separation of powers, the court a quo stated that the court “has no role in the formulation of policy or the direction in which policy should or should not proceed.”¹⁰⁴ The court a quo further described the content of the Mitigation Plan as an “activity of government”¹⁰⁵ and accordingly a matter of policy. Therefore, separation of powers presented a stumbling block to FIE in challenging the validity of the Mitigation Plan in the court a quo.

Following FIE’s leapfrog appeal to the Supreme Court, the Supreme Court also considered the measure to which the court should review the policy decisions of government (and accordingly the validity of the Mitigation Plan), also in the context where these policy decisions may impede certain rights contained in the Constitution and ECHR.¹⁰⁶ The

Article 6 of the Constitution of Ireland forms the basis for separation of powers within the country. Article 6 of the Constitution of Ireland reads as follows:

All powers of government, legislative, executive and judicial, derive . . . from the people, whose right it is to designate the rulers of the State and . . . to decide all questions of national policy, according to the requirements of the common good. . . .

These powers of government are exercisable only by or on the authority of the organs of State established by this Constitution.

Articles 15 to 27 of the Constitution of Ireland bestow the power to make laws on the national parliament or the Oireachtas, while article 28 designates the government as the executive power. Articles 34 to 37 designate the Irish courts as the Judiciary. *Main Institutions of the Irish State*, CITIZEN’S INFO., https://www.citizensinformation.ie/en/government_in_ireland/irish_constitution_1/main_institutions_of_the_state.html#lce020 [<https://perma.cc/K5EE-3XA4>] (last visited Feb. 11, 2022).

¹⁰¹ *Friends*, [2019] 793 JR (H. Ct.) para. 85.

¹⁰² *Friends*, [2020] 205/19 (SC) para. 5.25.

¹⁰³ *Friends*, [2019] 793 JR (H. Ct.) paras. 8, 13. In this regard, FIE also argues that the measures to be instituted by government fail to consider that current greenhouse gas emissions will remain in the atmosphere for a certain time.

¹⁰⁴ *Id.* para. 62.

¹⁰⁵ *Id.*

¹⁰⁶ *Friends*, [2020] 205/19 (SC) paras. 5.23, 5.25. In this regard the issue of standing may also be considered. The High Court found that FIE has standing based on case law, and

Supreme Court differed from the court a quo in finding that FIE did have standing to challenge the validity of the Mitigation Plan in terms of the stipulations contained in the Climate Act.¹⁰⁷ More specifically, as was discussed in section II(B)(2) of the Article, the Supreme Court found that section 4 of the Climate Act, requiring that the Mitigation Plan must “specify the manner in which it is proposed to achieve the national transition objective,”¹⁰⁸ is clearly a “statutory obligation”¹⁰⁹ and falls within the category of law and not policy.¹¹⁰

CONCLUSION

The decision of the Supreme Court comprised three components that were considered relevant for the purposes of this Article. Firstly, and most important to serving the objective of this Article, the Supreme Court considered the statutory obligation imposed on the government by the Climate Act in relation to the Mitigation Plan and determined the validity of the Mitigation Plan in this context.¹¹¹ Secondly, the Supreme Court set out the locus standi of FIE in relation to claims made based on the Constitution and the ECHR.¹¹² Thirdly, the Supreme Court included some considerations relevant to the doctrine of separation of powers.¹¹³

The main objective of this Article concerned the first component of the Supreme Court decision. This component includes a discussion on the validity of the Mitigation Plan, specifically in light of the specificity requirements of the Climate Act. The Supreme Court addressed three questions in this context: the existence of a rights-based obligation in

the High Court specifically found that FIE brought to court constitutional issues (which have an effect of the members of FIE and on the broader public) and environmental issues (which are considered to be in the interests of justice). *Friends*, [2019] 793 JR (H. Ct.) para. 132; *Friends*, [2020] 205/19 (SC) para. 5.37.

¹⁰⁷ *Friends*, [2019] 793 JR (H. Ct.) para 82; *Friends*, [2020] 205/19 (SC) paras. 5.6, 5.32.

Standing is further discussed by the Supreme Court in paragraphs 7.1–7.25. *Friends*, [2020] 205/19 (SC) paras. 7.1–7.25.

For a more extensive discussion in this regard, see the High Court’s decision. *Friends*, [2019] 793 JR (H. Ct.) para. 82.

For more information on locus standi, as discussed by the Supreme Court, see *Friends*, [2020] 205/19 (SC) paras. 7.1–7.25.

¹⁰⁸ Climate Action and Low Carbon Development Act 2015 § 4 (Act No. 46/2015) (Ir.).

¹⁰⁹ *Friends*, [2020] 205/19 (SC) para. 6.27.

¹¹⁰ For more information on locus standi, as discussed by the Supreme Court, see *Id.* paras. 5.21–5.25, 6.23–6.27, 8.9, 8.16.

¹¹¹ *Id.* para. 9.3.

¹¹² *Id.* para. 9.4.

¹¹³ *Id.* paras. 6.24, 8.16.

the Climate Act on the government to act, the extent of such an obligation, and whether or not the Mitigation Plan complies with such an obligation.¹¹⁴ The court found that the Mitigation Plan does not contain the level of specificity required by section 4 of the Climate Act. Therefore, the Supreme Court declared the Mitigation Plan invalid and that it should be quashed.¹¹⁵

Moving forward, the Amendment Bill amended the Climate Act to ensure that specific greenhouse gas emission targets are identified and reached in the future, in order to meet Ireland's net-zero emission target by 2050.¹¹⁶ The Amendment Bill builds on the decision of the Supreme Court and constitutes a valuable addition to the legal climate change framework in Ireland, specifically in the context of the country's future plan for mitigation or its climate action plans and strategies, as described in the Amendment Bill.¹¹⁷

In regard to the second component of this Article, the Supreme Court determined that FIE did not have standing to institute claims based on personal and individual rights contained in the Constitution and the ECHR.¹¹⁸ However, the Supreme Court confirmed that FIE did have the required standing to bring the claim related to the validity of the Mitigation Plan in terms of the Climate Act before the court.¹¹⁹

Pertaining to the third component of this Article, the doctrine of separation of powers, the Supreme Court found that section 4 of the Climate Act, requiring that the Mitigation Plan be specific in how the NTO will be achieved, is clearly an obligation found in the statute.¹²⁰ It follows that the doctrine of separation of powers could be circumvented as a stumbling block in this particular climate change litigation matter.¹²¹

¹¹⁴ *Id.* para. 5.16.

¹¹⁵ *Id.* para. 9.3.

¹¹⁶ Climate Action and Low Carbon Development (Amendment) Bill 2020 (Ir.); Blake, *supra* note 22.

¹¹⁷ Climate Action and Low Carbon Development (Amendment) Bill 2020 § 4(1)(a)–(b) (Ir.).

¹¹⁸ *Friends*, [2020] 205/19 (SC) paras. 7.22–7.24.

¹¹⁹ *Friends*, [2019] 793 JR (H. Ct.) para. 82; *Friends*, [2020] 205/19 (SC) paras. 5.6, 5.32.

¹²⁰ *Friends*, [2020] 205/19 (SC) para. 6.27.

¹²¹ *Id.* para. 24.

