Verein KlimaSeniorinnen and Others v Switzerland (Application no. 53600/20)

Observations on the facts, admissibility and the merits

"The cumulative scientific evidence is unequivocal: Climate change is a threat to human well-being and planetary health. Any further delay in concerted anticipatory global action on adaptation and mitigation will miss a brief and rapidly closing window of opportunity to secure a liveable and sustainable future for all (very high confidence)."[1]

Executive Summary

1 This application is brought by 2,038 women over sixty-four years of age under the umbrella of the Association Verein KlimaSeniorinnen Schweiz, and by four individual women over the age of 80, whose health is significantly affected by increasing temperatures caused by climate change ("**Applicants**"). The Respondent accepts the escalating seriousness of this harm (including the risks to life and health of elderly women) but has failed even to take reasonable let alone necessary steps to mitigate those risks. Its domestic courts have refused properly to determine the Applicants' challenge to that failure. The Applicants, as victims of violations by the Respondent of its obligation to guarantee the effective protection of their rights under Arts. 2, 8, 6 and 13 of the European Convention on Human Rights (**"ECHR"**) seek relief before this Court. The apex courts of the Netherlands, Germany, Belgium and France, as well as the UN Human Rights Committee (**"UNHRC"**), have already held that State inaction on climate change breaches the right to life and the right to respect for private and family life under the ECHR and the ICCPR. Accordingly, whilst the Applicants' case raises new issues for this Court, those issues have already been determined by the UNHRC and by the domestic courts of Contracting States.

2 The science is clear and an accepted fact: global temperatures are rising as a direct result of the increase in the concentration of atmospheric greenhouse gases (**"GHGs"**); there is a near-linear relationship between cumulative anthropogenic CO_2 emissions and global warming. These increases cause more frequent and intense heatwaves, including in Switzerland, where annual

[1] Inter-governmental Panel on Climate Change (**"IPCC"**), Climate Change 2022: Impacts, Adaptation and Vulnerability, Working Group II Contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (**"AR6 WGII"**), Summary for Policymakers (**"SPM"**) D.5.3 (link) *(Annex document **"doc."** 22)*.

temperatures have increased by around 2.1°C since measurements began. Swiss summer temperatures in 2003, 2015, 2018, 2019 and 2022 were the highest ever recorded. Increasing temperatures and heatwaves entail *increased mortality* and pose *serious health risks, particularly to older women*, as the Respondent accepts. Of all climate hazards, heat-related mortality in Europe, for people over 65, is by far the most significant cause of death. Swiss summer heatwaves resulted in: almost *1,000* more deaths in June and August 2003; approximately *800* more in June, July and August 2015; *185* more in August 2018; *521* more in June to August 2019; and in June to August 2022, *1,700* more people over 65 died than was statistically expected. From 1991 to 2018, of warm-season heat-related deaths in Switzerland, around 30% could be attributed to anthropogenic climate change.

3 In 2015, 196 States, including Switzerland, agreed in Paris to take, as a matter of urgency, an effective strengthened and progressive response to reduce GHG emissions, promoting and respecting human rights, with developed countries taking a lead. There is a consensus amongst them that global temperature rise should be kept to below 1.5°C above pre-industrial levels. To do that *urgent, meaningful, and ambitious action is imperative*. The Respondent's climate strategy falls far short of what is necessary in that regard. Notably, its commitment to reduce domestic emissions to 34% below its 1990 emission levels by 2030 is significantly lower than the EU's commitment to 55%, let alone Denmark's (70%); Finland's (60% with carbon-neutrality by 2035); and Germany's (65%). Moreover, the Respondent continues to fail to meet even its own inadequate targets.

4 Given the urgent need for action to mitigate risk, the Applicants ask the Court to order the Respondent expeditiously to adopt legislative and administrative measure to do its share to prevent a global temperature increase of more than 1.5°C, including *concrete emission reduction targets* and *preventing and reducing any emissions occurring abroad that are attributable to the Respondent*, particularly consumption-based and emissions linked to finance flows.

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Glossary of abbreviations

1.5°C SR	IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty, 2018
AR4	IPCC Forth Assessment Report
AR4 WGIII	Contribution of Working Group III to the IPCC Fourth Assessment Report
AR5	IPCC Fifth Assessment Report
AR5 WGII	Contribution of Working Group II to the IPCC Fifth Assessment Report
AR5 WGIII	Contribution of Working Group III to the IPCC Fifth Assessment Report
AR6	IPCC Sixth Assessment Report
AR6 WGI	Contribution of Working Group I to the IPCC Sixth Assessment Report
AR6 WGII	Contribution of Working Group II to the IPCC Sixth Assessment Report
AR6 WGIII	Contribution of Working Group III to the IPCC Sixth Assessment Report
APA	Federal Act on Administrative procedure
BAFU	Bundesamt für Umwelt (Federal Office for the Environment)
BAG	Bundesamt für Gesundheit (Federal Office of Public Health)
BBL	Bundesblatt (Federal Gazette)
CAT	Climate Action Tracker
CBDRRC-NC	Common but differentiated responsibilities and respective capabilities, in the light of different national circumstances
CDR	Carbon Dioxide Removal
COP	United Nations Climate Change Conference
COP27	27th United Nations Climate Change Conference (2022)
COPD	Chronic obstructive pulmonary disease
CO_2	Carbon dioxide
CO_2eq	CO_2 equivalent, Carbon dioxide equivalent

DETEC	Federal Department of the Environment, Transport, Energy and Communication
doc.	Reference to a document in the accompanying Annex bearing the same number
FAC	Federal Administrative Court
FOEN	Federal Office for the Environment
FOPH	Federal Office of Public Health
FSC	Federal Supreme Court
GDP	Gross domestic product
GHG	Greenhouse gas
$GtCO_2$	Gigatonne of Carbon dioxide
ICJ	International Court of Justice
ILC	International Law Commission
IPCC	Intergovernmental Panel on Climate Change
LULUCF	Land Use, Land Use Change and Forestry
NDC	Nationally Determined Contribution
NGO	Non-governmental organisations
OcCC	Organe consultatif sur les changements climatiques (Advisory body on climate change issues)
OHCHR	Office of the High Commissioner for Human Rights
OF	Observations on the Facts
OL	Observations on the Law
PA	Paris Agreement
s / ss	Section / sections
SPM	Summary for Policymakers
SR	Systematische Sammlung des Bundesrechts (Systematic collection of Swiss federal law)
SRF	Schweizer Radio und Fernsehen (Swiss radio and television)
VCLT	Vienna Convention on the Law of Treaties
TPH	Swiss Tropical and Public Health Institute
TS	Technical Summary
UNEP	United Nations Environment Programme
UNHRC	United Nations Human Rights Committee
UNFCCC	United Nations Framework Convention on Climate Change

1. The facts

1.1. Human influence has warmed the atmosphere, oceans and land

1 Increases in greenhouse gas ("GHG") concentrations since around 1750 are unequivocally caused by human activities.[2] Human-caused global surface temperature increase from 1850–1900 to 2010–2019 is 1.07°C.[3] In Switzerland, the annual temperature has increased around 2.1°C since measurements began in 1864.[4]

1.2. The Respondent's contribution to global warming

1.2.1. Domestic emissions

2 Per capita GHG emissions in Switzerland in 2020 were 5.04 tonnes of CO_2eq.[5] Total domestic GHG emissions in Switzerland in 2020 amounted to 43.40 mt of CO_2eq.[6] Switzerland's share of global cumulative CO_2 emissions is 0.18%.[7]

1.2.2. External emissions: emissions attributable to Switzerland

3 The above numbers show only GHG emissions that *occur on Swiss territory*,[8] excluding emissions attributable to Switzerland but occurring outside of its territory (**"external emissions"**) such as GHG emissions from international aviation and shipping fuels tanked in Switzerland.[9] Such GHG emissions have nearly doubled since 2004[10] and in 2019 amounted to 5.74 mt of CO_2eq,[11] which is about 13.2% of total domestic GHG emissions in Switzerland (§2).

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[2] IPCC, Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (**"AR6 WGI"**), SPM A.1.1 (link) *(doc. 23)*.
[3] IPCC, AR6 WGI (n 2), SPM A.1.3 *(doc. 23)*.
[4] As of 2021. See Federal Office of Meteorology and Climatology MeteoSwiss, Climate Change in Switzerland, last modified 14 Jan. 2022 (link).
[5] FOEN, Kenngrössen zur Entwicklung der Treibhausgasemissionen in der Schweiz, 1990–2019, Apr. 2022 (**"Kenngrössen"**), p. 58 (link).
[6] FOEN, Kenngrössen (n 5), p. 40.
[7] Our world in data, Who has contributed most to global CO_2 emissions? 1 Oct. 2019, Share of global cumulative CO_2 emissions, Table (link).
[8] FOEN, Kenngrössen (n 5), p. 4 (link).
[9] FOEN, Kenngrössen (n 5), p. 3 (link).
[10] FOEN, Treibhausgasemissionen aus dem Flugverkehr, 11 Apr. 2022 (**"Flugverkehr"**) (link).
[11] FOEN, Flugverkehr (n 10) (link).

4 They also exclude consumption-based GHG emissions.[12] Switzerland is the world's largest importer of such emissions relative to its domestic emissions.[13] In 2019, Switzerland's GHG footprint including consumption-based emissions was 109 mt CO_2eq, with 64% of those emissions occurring abroad. The GHG footprint per capita was 13 tonnes of CO_2eq;[14] well over the average for EU countries.[15] In global terms, in 2020, Switzerland ranked 18th in terms of per capita CO_2 consumption-based emissions and 39th (of 195) in terms of total CO_2 consumption-based emissions (doc. 1), despite its relatively small population. The Respondent's Federal Office (**"FOEN"**) states that "Switzerland's GHG footprint is excessively high in international comparison" and assessed the current state of affairs as "poor" and the trend "unsatisfactory."[16]

5 Further, these figures do not include indirect emissions caused by finance flows (e.g. investing, underwriting, lending, insurance).[17] A 2015 study commissioned by FOEN showed that the investments made by the largest equity funds authorised in Switzerland currently tend to *contribute to global warming of 4-6°C*.[18] In 2022, FOEN stresses: "Le marché financier présente encore un potentiel considerable."[19]

1.3. One of the main impacts: *more frequent and more intense heatwaves*

6 Human-induced global warming leads to *more frequent and more intense heatwaves*. In its recent Sixth Assessment Report (**"AR6"**), the Inter-governmental Panel on Climate Change (**"IPCC"**) concluded that it is "virtually certain that hot extremes (including heatwaves) have become more frequent and more intense across most land regions (…), with high confidence that human-induced climate change is the main driver of these changes."[20] For Switzerland as part of West and Central Europe, there is *high confidence* that observed changes in hot extremes are caused by human influence.[21]

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[12] See FOEN, Kenngrössen (n 5), p. 61; FOEN et al., Management Summary: Climate Change in Switzerland, Indicators of driving forces, impact and response, Bern 2020 (**"Management Summary"**), p. 6 (link) *(doc. 24)*.
[13] Our world in data, CO_2 emissions embedded in trade, 2019, Map (link).
[14] FOEN, Kenngrössen (n 5), p. 61 (link).
[15] FOEN, Indicator Economy and Consumption, GHG footprint, 14 Jun. 2021 (**"Indicator"**) (link).
[16] FOEN, Indicator (n 15) (link).
[17] See FOEN, Kenngrössen (n 5), p. 4 and p. 54 *e contrario* (link).
[18] OEHRI et al., Kohlenstoffrisiken für den Finanzplatz Schweiz, 23 Oct. 2015, p. 8 (link).
[19] FOEN, Le test climatique 2022 révèle le potentiel du marché financier, 24 Nov. 2022 (link).
[20] IPCC, AR6 WGI (n 2), SPM A.3.1 (link) *(doc. 23)*.
[21] IPCC, AR6 WGI (n 2), SPM Figure SPM 3 (link) *(doc. 23)*.

1.4. Intensity and frequency of heatwaves increases with every additional increment of global warming

7 In AR6 the IPCC "reaffirms with high confidence (…) that there is a near-linear relationship between cumulative anthropogenic CO_2 emissions and the global warming they cause. Each 1,000 $GtCO_2$ of cumulative CO_2 emissions is assessed to likely cause a 0.27°C to 0.63°C increase in global surface temperature with a best estimate of 0.45°C."[22] Each additional tonne of CO_2 emitted worsens climate impacts,[23] including the severity and frequency of heatwaves. Thus, the IPCC states that "with every additional increment of global warming, changes in extremes continue to become larger. (…), every additional 0.5°C of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves."[24]

1.5. Climate change-induced heatwaves have caused, are causing and will cause further deaths and illnesses to older women

8 There is no dispute that climate change-induced heatwaves have caused, are causing and will cause further deaths and illnesses to older people and particularly women. In this regard the domestic courts and Respondent[25] have never argued otherwise. On the contrary, these facts are an important pillar in the Respondent's own communication with its citizens regarding the public health impacts of climate change.[26]

Climate change-induced heatwaves increasingly cause an increase in mortality and morbidity and pose a threat to mental health and well-being

9 Switzerland is particularly affected by climate change (§1). The summers of 2003, 2015, 2018, 2019[27] and 2022 are the five warmest summers recorded in Switzerland, with that of 2003 and 2022 the first and second hottest since records began.[28]

10 There is no doubt that increasing temperatures and heatwaves have increased mortality[29] and that heat-related mortality can be attributed to human-induced

[22] IPCC, AR6 WGI (n 2), SPM D.1.1 (link) *(doc. 23)*.
[23] IPCC, AR6 WGI (n 2), SPM Figure SPM 10 (link) *(doc. 23)*.
[24] IPCC, AR6 WGI (n 2), SPM B.2.2, Figure SPM.6 (link) *(doc. 23)*.
[25] See the Respondent's Observations, 16 Jul. 2021 (link), §60.
[26] See e.g. n 27, 32 and 46.
[27] FOEN, Hitze und Trockenheit im Sommer 2018, Bern 2019 (**"Hitze"**), p. 8 (link) *(doc. 25)*; for the year 2019 see MeteoSchweiz 2020, Klimareport 2019, Zürich, p. 6 (link).
[28] MICHEL, Die Republik, Ein tödlicher Sommer, 3 Oct. 2022 (link).
[29] IPCC, AR6 WGII (n 1), Technical Summary (**"TS"**) B.5.3, p. 51 (link) *(doc. 22)*.

climate change.[30] A recent attribution study found that from 1991 to 2018, globally 37% of warm-season heat-related deaths could be attributed to anthropogenic climate change, and regarding Switzerland, *around 30%*.[31] The increase in mortality is primarily due to heat stress causing life-threatening cerebral vessel, cardiovascular and respiratory tract diseases.[32]

11 Globally, heat-related mortality in people over 65 increased by approximately 68% between 2000–04 and 2017–21.[33] Of all climate hazards, heat is by far the most significant cause of death in Europe.[34] In Switzerland more deaths occurred during hot summers than in average years.[35] As the Respondent reported, in Switzerland almost *1,000* additional heat-related deaths occurred in June and August 2003, approximately *800* in June, July and August 2015, *185* in August 2018 and *521* in June, July and August 2019.[36] In June to August 2022, *1,700* more people over 65 died than was statistically expected (though the reasons for these excess deaths have not yet been analysed).[37]

12 Increasing temperatures and heatwaves not only entail increased mortality but also pose a *serious health risk*. In high temperatures, humans regulate body temperature through sweating and increased circulation. As the Respondent accepts, excessive stress or malfunctioning of these cooling mechanisms can negatively impact health; contributing to dehydration, hyperthermia, fatigue, loss of consciousness, heat cramps and heat strokes,[38] as well as by aggravating existing diseases such as cardiovascular, respiratory, kidney or mental

[30] IPCC, AR6 WGII (n 1), SPM B.1.1 (link) *(doc. 22)*; see also MITCHELL, Climate attribution of heat mortality, Nature Climate Change 11, 467–468 (2021) (link).
[31] VICEDO-CABRERA/SCOVRONICK/SERA et al., The burden of heat-related mortality attributable to recent human-induced climate change, Nature Climate Change 11, 492–500 (2021), p. 1 and Fig. 4c. (link) *(doc. 26)*.
[32] Federal Office of Public Health (**"FOPH"**) and FOEN, Schutz bei Hitzewelle, Bern 2007, p. 1 and 3 *(doc. 27)*; FOEN et al., Management Summary (n 12), p. 9 (link) *(doc. 24)*.
[33] The 2022 report of the *Lancet* Countdown on health and climate change: health at the mercy of fossil fuels, 25 Oct. 2022 (***"Lancet* 2022"**), p. 1625 (link).
[34] IPCC, AR6 WGII (n 1), TS Figure TS.7, p. 77 (link) *(doc. 22)*.
[35] FOEN, Hitze (n 27), p. 28 (link) *(doc. 25)*.
[36] FOEN et al., Management Summary (n 12) p. 9 and Figure 5 (link) *(doc. 24)*; RAGETTLI/RÖÖSLI, Gesundheitliche Auswirkungen von Hitze in der Schweiz und die Bedeutung von Präventionsmassnahmen, Jul. 2020, p. 7 (link) *(doc. 28)*.
[37] See MICHEL (n 28) (link).
[38] FOEN, Hitze (n 27), p. 27 (link) *(doc. 25)*; FOPH and FOEN (n 32) *(doc. 27)*; WATTS et al., The 2018 report of the *Lancet* Countdown on health and climate change, Dec. 2018, p. 2484 f.; FOEN et al., Management Summary (n 12), p. 9 (link) *(doc. 24)*.

illnesses.[39] Furthermore, climate change has adverse impacts on *mental health and well-being.*[40]

13 Climate-related illnesses, premature deaths and threats to mental health and well-being are increasing.[41] Over the mid- and long-term, climate ill health and premature deaths and poor mental health, including anxiety and stress, particularly for children, adolescents, elderly, and those with underlying health conditions will significantly worsen.[42]

Heat-related mortality and morbidity is significantly more prevalent among older persons, particularly older women

14 The Applicants, as older women, are much more affected by heat-related illnesses and deaths, as the Respondent accepts.[43] This is because older persons' bodies are less able to regulate their temperatures, due to impaired thermoregulation.[44] During the 2003 heatwave, 80% of the additional deaths occurred in persons older than 75.[45] The Respondent noted that the most significant rise in mortality risk during the hot summer of 2015 was for 75 to 84-year-olds.[46] In August 2018, nearly 90% of heat-related deaths occurred in older women, almost all of whom were older than 75.[47] During the 2019 heatwave, older persons were at the highest risk of mortality, and people aged 85 and over were most affected (448 of 521).[48] Similarly, the 2022 heatwaves appear predominantly to have affected persons over 65.[49]

15 The IPCC confirms that older adults, women and persons with chronic diseases are at the highest risk of temperature-related morbidity and mortality.[50] In a

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[39] RAGETTLI/RÖÖSLI (n 36), p. 12 (link) *(doc. 28)*.
[40] IPCC, AR6 WGII (n 1), SPM Figure SPM.2, D.5.3. and TS B.5.2 (link) *(doc. 22)*; see *Lancet* 2022 (n 33), Panel 4 (link).
[41] IPCC, AR6 WGII (n 1), p. 1044 (link) *(doc. 22)*.
[42] IPCC, AR6 WGII (n 1), SPM B.4.4 (link) *(doc. 22)*.
[43] E.g. FOEN, Hitze (n 27), p. 29 (link) *(doc. 25)*; ROBINE et al., Report on excess mortality in Europe during summer 2003, Feb. 2007, Figure 5 (link) *(doc. 29)*; ROBINE et al., Death toll exceeded 70,000 in Europe during the summer of 2003, C. R. Biologies 331 (2008) 171–178, p. 174 (link); WHO, Gender, Climate Change and Health, Geneva 2014, p. 9 (link); THOMMEN et al., Gesundheitliche Auswirkungen der Klimaänderung mit Relevanz für die Schweiz, Nov. 2004, p. 33 *(doc. 30)*.
[44] FOEN, Hitze (n 27), p. 27 (link) *(doc. 25)*; FOEN et al., Management Summary (n 12), p. 9 (link) *(doc. 24)*.
[45] IPCC, Climate Change 2014: Impacts, Adaptation, and Vulnerability, Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (**"AR5 WGII"**), p. 721 (link) *(doc. 31)*.
[46] FOEN, Hitze und Trockenheit im Sommer 2015, Bern 2016, p. 84 (link).
[47] FOEN, Hitze (n 27), p. 28 *(doc. 25)*.
[48] RAGETTLI/RÖÖSLI (n 36), p. 16 (link) *(doc. 28)*.
[49] MICHEL (n 28) (link).
[50] IPCC 2018: Global Warming of 1.5°C (**"1.5°C SR"**), p. 240 f. (link) *(doc. 32)*; IPCC, AR6 WGII (n 1), p. 1073 (link) *(doc. 22)*.

research project by the Swiss Tropical and Public Health Institute (**"TPH"**)[51], supported by the Respondent, the relative increase in heat-related mortality risk in Switzerland with daily maximum temperatures of 33°C compared to a day with maximum temperatures of 22°C for different population groups has been assessed and visualized in the following table. It shows that the *group of persons over 75* and particularly *women* are at the *highest risk of heat-related mortality*:[52]

Tabelle 1: Relative Zunahme des hitzebedingten Sterberisikos bei Tageshöchsttemperaturen von 33°C im Vergleich zu einem Tag mit Höchsttemperaturen von 22°C für verschiedene Bevölkerungsgruppen.

Risikofaktor(en)	Bevölkerungsgruppe	Relative Risikozunahme in % mit Vertrauensintervall
Alter	alle Altersgruppen	+21 (17-25)
	≤74 Jahre	+11 (5-18)
	75-84 Jahre	+24 (16-32)
	85+ Jahre	+26 (19-33)
Geschlecht/Alter	Männer ≤74	+14 (6-23)
	Männer 75-84	+21 (11-32)
	Männer 85+	+16 (6-27)
	Frauen ≤74	+7 (-3-18)
	Frauen 75-84	+27 (16-38)
	Frauen 85+	+31 (23-40)
Höchste abgeschlossene Ausbildung	Obligatorische Schule oder keine	+26 (19-33)
	Sekundärstufe II	+19 (13-25)
	Tertiärstufe	+12 (2-23)
Sozioökonomischer Status	tief (1. Quantil)	+25 (16-35)
	mittel (2.-4. Quantil)	+19 (13-24)
	hoch (5. Quantil)	+18 (8-28)

Table 1: Relative increase in heat-related mortality risk at daily maximum temperatures of 33°C compared to a day with maximum temperatures of 22°C for different groups of people.

16 A recent 2021 case-crossover study conducted by SAUCY ET AL. specifically concerning cardiovascular deaths in Zurich highlighted that heat-related mortality was particularly strong *among older women (>75 years)*.[53] RAGETTLI/RÖÖSLI stated in a 2021 study on the summer 2019 in Switzerland that "the age-specific analyses of heat-related excess mortality once again confirm older persons as the largest risk group of heat-related health damage in Switzerland."[54]

17 Overall, women aged above 75, such as the Applicants 2-5, are at greater risk of premature loss of life, severe impairment of life and of family and private life, due to climate change-induced excessive heat than the general population. Thus, the Applicants are part of a vulnerable group due to their age and gender.

[51] Swiss Tropical and Public Health Institute TPH (link).
[52] Swiss TPH, Projekt A.06, Hitze und Gesundheit, Synthese vom 22 Sept. 2022 (link) *(doc. 33)*.
[53] SAUCY et al., The role of extreme temperature in cause-specific acute cardiovascular mortality in Switzerland: A case-crossover study, Science of The Total Environment, Vol. 790, 10 Oct. 2021 (link) *(doc. 34)*.
[54] RAGETTLI/RÖÖSLI, Hitzebedingte Sterblichkeit im Sommer 2019, Primary and Hospital Care 2021, 21(03):90-95, 3 March 2021 (link).

1.6. Heatwaves are causing and have caused illnesses and restrictions of wellbeing to the Applicants in the past

18 As shown above, the Applicants have been, are and will be at great risk of premature loss of life and severe impairment of their quality of life because of their age and gender. *The increase in the risk of death* on hot summer days is *particularly high* for people with *respiratory system diseases (especially chronic obstructive pulmonary disease ("COPD")* and *cardiovascular diseases*.[55] This applies to Applicants 2-5: Applicants 2 suffered and 3 suffers from cardiovascular diseases, Applicants 4 and 5 from respiratory diseases including, in the case of Applicant 4, COPD. The risk to the Applicants 2-4 has already materialized, as evidenced by their medical certificates. In addition, Applicants 2-5 have described in personal statements how their health and well-being are affected by heatwaves (doc. 2, 3, 4 and 5).

Applicant 1

19 As all members of Applicant 1 are significantly at risk due to climate change-induced heatwaves, it advocates for older women's health and their human rights in a dangerously warming world (Art. 2 and 3 statutes[56]). The average age of the members of Applicant 1 is currently around 73 years. 646 of 2'038 members are 75 years old or older (doc. 6). 46 Members of Applicant 1 respectfully submit to the Court *personal statements*, reporting their experience during this year's summer heatwave (doc. 7), as summarized hereafter.

20 Many of the women report that they suffered from shortness of breath, unusual sweating, skin rashes and inflammation, high pulse and palpitations, severe headaches, persistent fatigue, dizziness, nausea and even vomiting, even during low physical activity. Several women report that, despite taking precautions, they experienced episodes of heat exhaustion, sometimes associated with loss of consciousness. Health issues, some of which are new and some of which have increased, include painful oedema of the extremities, respiratory and cardiovascular diseases as well as worsening osteoarthritis. Some report that their doctors prescribed new medication to treat their health problems, others the need for an increase of the existing medication. Numerous women report serious problems in falling asleep and being able to sleep through the night.

[55] Swiss TPH (n 52) (link) *(doc. 33)*.
[56] Statutes of Applicant 1, 23 Aug. 2016 (link).

21 Numerous women describe how their daily routines are affected by heatwaves. Many no longer dare to leave their home during the day and evening. They limit necessary errands to the minimum. Many report keeping the shutters permanently closed. Some report seeking refuge in their cellars. Many describe light household and office work as exhausting. Many feel forced to refrain from outdoor activities, maintaining social contacts or physical exercise.

22 As a result, many women describe loneliness, feelings of sadness and dejection, severe impairment of their mood, even self-reported depression. They also mention strong fears about the future, triggered by the prospect of this happening again or getting worse every year.

Applicant 2

23 Unfortunately, Applicant 2 died on 15 July 2021, at the age of 90. She wore a pacemaker and, in the summer of 2015, she lost consciousness during a heatwave (doc. 8). Her son continues his mother's proceedings before the Court, without objection from the Respondent.

Applicant 3

24 Applicant 3 is 85. During hot summers, she cannot leave her residence and is cut off from the outside world. She has a cardiovascular illness, and heatwaves not only seriously impair her well-being, but also her physical capabilities (doc. 9). In 2019, her doctor confirmed that she has a severe intolerance to excessive heat, which confines her to her home. As a result, her medication had to be adjusted (doc. 10). In September 2021, her doctor added that she is unable to take her medication for high blood pressure and cardiac arrhythmia during hot weather, due to the effects of heat (doc. 11). That evidence is corroborated by a medical report written by Dr Michaelis Conus, Spéc. FMH Médicine Interne, dated 26 November 2022, in which she explains how excessive heat impacts the physical and mental health of Applicant 3 (doc. 12). Dr Michaelis Conus concludes that after hearing the patient and consulting the medical documents in her possession, she can confirm the negative impact of heatwaves on Applicant's physical, psychological, and social health.

Applicant 4

25 Applicant 4 is 81, has acute chronic asthma with chronic broncho-structural syndrome and chronic obstructive pulmonary disease, which are being treated. Her symptoms are exacerbated by heat (doc. 13), which also restricts her

mobility (doc. 14). Dr Michaelis Conus confirms in her medical report dated 26 November 2022 the excessive heat impacts on the physical and mental health of Applicant 4 (doc. 15), stating that the correlation between the aggravation of her respiratory pathology and climate change is highly probable.

Applicant 5

26 Applicant 5 is 80. She suffers from asthma (doc. 16).

1.7. Staying within the 1.5°C limit would significantly limit the increasing risk of heat-related excess mortality and morbidity

27 Any increase in global warming is projected to affect heat-related morbidity and mortality.[57] However, there are strong differences between mitigation scenarios.[58] A temperature rise from 1.5°C to 2°C would significantly increase the risk of heat-related mortality and morbidity.[59] The global scientific consensus is that many premature deaths and health impairments can be prevented by adhering to the 1.5°C limit.[60] Adhering to this consensus would likewise limit the increase of the risk to the lives and health of Applicants 2-5 and of the members of Applicant 1.

1.8. Knowledge of the Respondent

28 The Respondent is aware of the issues mentioned above (sections **"ss"**1.1–1.7). It is clear from the Respondent's public communications,[61] its endorsement of the IPCC's findings and its role as part of the United Nations Framework Convention on Climate Change (**"UNFCCC"**)[62] and as a signatory of the Paris Agreement (**"PA"**)[63] that the Respondent knows and acknowledges the risks and harms caused by climate change-induced heatwaves.

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[57] IPCC, 1.5°C SR (n 50), SPM B.5.2 (link).
[58] IPCC, AR6 WGI (n 2), p. 1822 (link) *(doc. 23)*.
[59] VICEDO-CABRERA et al., Temperature-related mortality impacts under and beyond Paris Agreement climate change scenarios, Climatic Change, 13 Sept. 2018, p. 395 f. Figure 1 and 2 (link) *(doc. 35)*; see also GASPARRINI et al., Projections of temperature-related excess mortality under climate change scenarios, Lancet Planet Health 2017 Vol. 1 Dec. 2017, p. 366 (link).
[60] IPCC 1.5°C SR (n 50), SPM B.5.2, p. 180 and 240 (link); VICEDO-CABRERA et al. (n 59), p. 396 (link) *(doc. 35)*.
[61] E.g. FOEN et al., Management Summary (n 12), p. 9 (link) *(doc. 24)*; FOPH and FOEN (n 32) *(doc. 27)*.
[62] UNFCCC, SR 0.814.01, ratified on 10 Dec. 1993 (link).
[63] Paris Agreement, SR 0.814.012, ratified on 6 Oct. 2017 (link).

1.9. The Respondent has failed to set binding climate targets for 2030 and 2050

29 To this day, the Respondent has failed to transpose its Nationally Determined Contributions ("**NDC**") under international law into domestic law. The Respondent's current CO_2-legislation merely contains a binding emissions reduction target for 2020 (Art. 3(1) CO_2 Act 2011[64]), and for 2024 (Art. 3(1bis) CO_2 Act 2011).

30 A new CO_2 Act 2020[65] with a binding target for 2030 was rejected in a referendum on 13 June 2021. On 16 September 2022, the Respondent submitted to Parliament a draft amendment of the CO_2 Act 2011 ("**amended CO_2 Act 2011**") which is intended to apply for the period from 2025 to 2030 (§34).[66] On 30 September 2022, the Respondent's Parliament agreed on an indirect counter-proposal to the Glacier Initiative,[67] which would apply for the period from 2031 to 2050 (§35), in respect of which a referendum is expected to take place in 2023.

1.10. The Respondent's climate strategy is not in line with the 1.5°C limit

1.10.1. The Respondent's history of failed climate action

31 **2007–2013:** Art. 3(1) CO_2 Act 2011, in force since 2013, required Switzerland to reduce its domestic GHG by 20% below 1990s levels by 2020. However, that target was inadequate: six years earlier, in 2007, the IPCC's AR4 stated that developed countries like Switzerland had to reduce their *domestic* emissions by 25%-40% below 1990 levels by 2020 to meet the (now outdated) 2°C limit with a 66% probability (see also §40);[68] and its inadequacy was recognised by the Respondent.[69]

32 **2014–2017:** In 2017, the Respondent proposed a new CO_2 Act (later the rejected CO_2 Act 2020, §30) with an overall reduction of 50% and a domestic

[64] Federal Act on the Reduction of CO_2 Emissions of 23 Dec. 2011, SR 641.71 (link).
[65] Bundesgesetz über die Verminderung von Treibhausgasemissionen (CO_2-Gesetz) vom 25. Sept. 2020, Federal Gazette, BBl 2020 7847 (link).
[66] The Federal Council, Klimapolitik: Bundesrat verabschiedet Botschaft zum revidierten CO_2-Gesetz, 16 Sept. 2022 (link) *(doc. 36)*.
[67] Glacier Initiative (link).
[68] IPCC, Climate Change 2007: Mitigation. Contribution of Working Group III to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Mitigation of Climate Change, p. 776 Box 13.7 (link) *(doc. 37)*.
[69] See Federal Gazette, BBl 2009 7433, p. 7446 (link) *(doc. 38)* and BBl 2012 2075, p. 2130 (link).

emissions reduction of 30% below 1990 levels by 2030.[70] Again, this was inadequate *ab initio* since the IPCC's AR5 published in 2014 had stated that countries such as Switzerland had to achieve *domestic* reductions of at least 40% and possibly as much as 100% by 2030 for there to be a 66% probability of remaining within the (now outdated) 2°C limit (see also §40).[71] The IPCC indicated at that time the need for an on average *domestic* reduction of 50% by 2030.[72] Thus, the Respondent's ambition at that time was 20% below even the average needed to meet the outdated 2°C limit.

33 **From 2018 onwards (consensus on 1.5°C limit):** Since the release in 2018 of the IPCC's Special Report on the impacts of global warming of 1.5°C above pre-industrial levels (**"1.5°C SR"**), the global political and scientific consensus is that a 1.5°C limit is the benchmark for countries to calibrate their mitigation efforts (§140). In 2020, the Respondent submitted an updated NDC, stating that "Switzerland is committed to follow recommendations of science in order to limit warming to *1.5 degrees Celsius*" (emphasis added), and that "in view of its climate neutrality target by 2050, Switzerland's NDC is to reduce its greenhouse gas emissions by at least 50 percent by 2030 compared with 1990 levels."[73] As part of the Glasgow Climate Pact 2021, in light of the 1.5°C limit and the PA,[74] Parties were requested in 2022 to revisit and strengthen their current emissions targets to 2030.[75] In 2022, at the 27th United Nations Climate Change Conference (**"COP27"**), the President of the Swiss Confederation urged the international community to keep the 1.5°C target in sight.[76]

34 **2018–2030 (domestic climate policy vis-à-vis 1.5°C limit):** Despite acknowledging the 1.5°C limit, the Respondent has not designed Switzerland's ambition with this limit in mind. First, Switzerland was the only State within

[70] The Federal Council proposed to the parliament in Federal Gazette, BBl 2018 247, p. 248 (link) dated 1 Dec. 2017, that of a total of 50 % emission reductions compared to 1990 60 % shall be domestic reduction. See also Federal Gazette, BBl 2018 385, p. 386 (link).
[71] IPCC, Climate Change 2014: Mitigation of Climate Change. Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change, (**"AR5 WGIII"**), p. 460 figure 6.28, p. 13 table SPM.1 (link) *(doc. 39)*.
[72] IPCC, AR5 WGIII (n 71), p. 459 (link) *(doc. 39)*.
[73] Switzerland's information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 of its updated and enhanced Nationally Determined Contribution (**"NDC"**) under the Paris Agreement (2021-2030), 9 Dec. 2020, p. 6 (link) *(doc. 40)*.
[74] Art. 3 and Art. 4 (3), (4), (5) and (11) PA.
[75] COP serving as the meeting of the Parties to the Paris Agreement, Decision 1/CMA.3, Glasgow Climate Pact, §29, 21 f. (link).
[76] COP27: President of the Swiss Confederation urges international community to keep 1.5°C target in sight, 7 Nov. 2022 (link).

Europe[77] that has submitted an "updated" NDC to the UNFCCC which does not represent a "progression", as required by, for example Art. 4(3) PA. Its "update" of its 2030 emissions reduction target in the NDC (from "-50%" to "less than -50%") was no more than a formality.[78] Second, the current and planned national climate legislation does not reflect the 1.5°C limit. Instead, the goals are such as: "(…) to less than 2 degrees Celsius";[79] "(…) well below 2 degrees Celsius and, if possible, below 1.5 degrees Celsius".[80] Third, as will be explained in detail, the emission reduction pathways are not in line with the 1.5°C limit (ss1.10.2 and 1.10.3). Fourth, for the period from 2021 onwards, the Respondent even *decreased* its *domestic* reduction pathway vis-à-vis the former reduction pathway to 2020 (§31) that had entailed a domestic reduction of *2%* per year.

– In 2021, domestic GHG emissions must be reduced by only *1.5%* compared to 1990 emissions; from 2022 to 2024 with a yearly reduction by *1.125%* the ambition is even less (Art. 3(1bis and 1ter) CO_2 Act 2011). The Respondent itself concedes that the reduction path will not be sufficient to achieve Switzerland's NDC and that compensating for the delay in emissions reduction will be a major challenge and the *share of measures taken abroad will have to be significantly higher than planned*.[81]
– For the period from 2025 to 2030 (§30), it is planned that it will be in the competence of the Respondent's Federal Council to determine the share of domestic measures within the reduction target of "at least 50%" by 2030 (Art. 3(1a) and (1ter) amended CO_2 Act 2011).[82] Its current intention is a domestic reduction of around 34% by 2030 compared to 1990,[83] i.e. *1.52%* per year.[84] However, the Respondent does not explain how the delay could be compensated with this domestic reduction path. Instead, it is likely that the Respondent will increase the share of

[77] UNEP, Emissions Gap Report 2022, The Closing Window, Climate crisis calls for rapid transformation of societies, Figure 3.1 (link).
[78] See Climate Analytics, A 1.5°C compatible Switzerland, 15 Jun. 2021 (link) *(doc. 41)*; UNEP, Emissions Gap Report 2022 (n 77), Figure 3.1 (link).
[79] Art. 1 CO_2 Act 2011 (link).
[80] Federal Gazette, BBl 2022 2652, Art. 1(1a) of the amended CO_2 Act 2011 for the period 2025–2030 (link).
[81] Federal Gazette, BBl 2021 2252, p. 2254 (link).
[82] Federal Gazette, BBl 2022 2652 (n 80).
[83] Federal Gazette, BBl 2022 2651, p. 55 (link).
[84] Calc. based on the intended 2024 domestic reductions of 24.875%: 34-24.875 = 9.125 / 6.

measures abroad[85] as with its proposed amended CO_2 Act 2011, it heavily relies on technological progress[86] that entails clear uncertainties.[87]

35 **2031–2050 (domestic climate policy vis-à-vis 1.5°C limit):** For the period from 2031 onwards, the goal "(…) in accordance with the Climate Convention of 12 December 2015"[88] is to reduce its GHG by 75% below 1990s levels by 2040 and to net-zero by 2050. These targets are not in line with the 1.5°C limit (ss1.10.2 and 1.10.3) and shall only be achieved "as far as possible" through domestic measures.[89]

36 **Overall:** Switzerland's 2020 climate reduction target was insufficient even to meet the (outdated) 2°C limit. After committing to the 1.5°C limit, the Respondent's 2030 target underwent only a superficial update. The intended reductions are not only woefully inadequate but their inadequacy has been aggravated by a reduction in domestic ambition. Neither the 1.5°C long-term temperature goal itself nor 1.5°C compatible *emission reduction targets* have been, or are intended to be, enshrined into national law (for 1.5°C compatible *emission reduction targets* see ss1.10.2 ff.).

1.10.2. No 1.5°C compatible "fair share" contribution

37 In its recent AR6, the IPCC stated that global modelled pathways with a possibility of over 50% of limiting warming to 1.5°C with no or limited overshoot require *immediate action*[90] and a reduction in net global GHG emissions from 2019 levels of 43% by 2030 and by 84% by 2050.[91] These targets are for the *global* pathway and therefore need to be achieved *collectively*. Developed country parties are expected to take greater and faster emission reduction measures: Arts. 4(1), (3) and (4) of the PA, which reflects the principle of equity in the PA. Accordingly, developed countries should move faster to enable the overall target to be met globally.[92]

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[85] Federal Gazette, BBl 2022 2651 (n 83), p. 55 (link).
[86] The Federal Council (n 66) (link).
[87] Federal Gazette, BBl 2022 2651 (n 83), p. 47 (link).
[88] Art. 1 Draft Bundesgesetz über die Ziele im Klimaschutz (link).
[89] Art. 3(3) and (4) Draft Bundesgesetz über die Ziele im Klimaschutz (n 88) (link).
[90] IPCC, Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (**"AR6 WGIII"**), SPM C.1 (link) *(doc. 42)*.
[91] IPCC, AR6 WGIII (n 90), SPM C.1.1 (link) *(doc. 42)*. See also UNEP, Emissions Gap Report 2022 (n 77), p. XVI (link): "To get on track for limiting global warming to 1.5°C, global annual GHG emissions must be reduced by 45 per cent compared with emissions projections under policies currently in place in just eight years, and they must continue to decline rapidly after 2030, to avoid exhausting the limited remaining atmospheric carbon budget."
[92] UNEP, Emissions Gap Report 2020, 9 Dec. 2020, p. 34 (link).

38 To limit the global temperature increase requires limiting the overall cumulative CO_2 emissions within a *carbon budget*.[93] To have a 67% chance of meeting the 1.5°C limit, the remaining *global* carbon budget is 400 $GtCO_2$ (and to have an 83% chance, only 300 $GtCO_2$).[94] Assuming the same per capita burden sharing for emissions from 2020 onwards,[95] Switzerland would have a remaining carbon budget of 0.44 $GtCO_2$ for a 67% chance of meeting the 1.5°C limit (or just 0.33 $GtCO_2$ for an 83% chance). In a scenario with a 34% reduction in CO_2-emissions by 2030 and 75% by 2040, Switzerland would have used the remaining budget around 2034 (or 2030 for an 83% change) (doc. 17).[96] Thus, under its current climate strategy, Switzerland plans to emit more emissions than even an "equal per capita emissions" quantification approach would entitle it to use.

39 However, an "equal per capita emissions" burden sharing approach is *not a valid approach to determine national "fair shares" in reducing GHG emissions* - a point which the Respondent seems to accept.[97] The general understanding of a *fair level of contribution* is that it reflects the "highest possible ambition" and "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (**"CBDRRC-NC"**) (Art. 4(3) PA, Art. 3(1) and 4(1) UNFCCC, Principle 7 Rio Declaration). While there is no set agreed mechanism on what constitutes a fair level of contribution, in light of the principle of CBDRRC-NC, the assessment of what the range of *fair level of contribution* should be must be informed by principles and norms of international law.

40 In both AR4 and AR5 the IPCC (§§31 and 32) presented findings on the basis of an assessment of the then-existing effort-sharing literature. The effort-sharing analysis provided by AR4 and AR5 does, however, have limitations when used to determine a State's "fair share."[98] A key problem arises when each State 'cherry picks' the equity interpretation that is most preferable to it. If all States adopt the lowest end of their "fair share" range, the temperature target will be

[93] IPCC, AR6 WGI (n 2), SPM D.1.1 (link) *(doc. 23)*.
[94] IPCC, AR6 WGI (n 2), SPM Table SPM.2 (link) *(doc. 23)*.
[95] I.e. "equal per capita emissions" with no further considerations such as the extensive per capita contribution to cumulative emissions before 2020.
[96] The budgets for CO_2 emissions can increase or decrease depending on developments in non-CO_2 emissions.
[97] See e.g. NDC (n 73), p. 13 ff. (link) *(doc. 40)*.
[98] MAXWELL/MEAD/VAN BERKEL, Standards for Adjudicating the Next Generation of Urgenda-Style Climate Cases, Journal of Human Rights and the Environment, 2 Nov. 2021, *forthcoming*, p. 21 (link).

missed by a significant margin.[99] More recent academic studies have attempted to address these limitations.[100]

41 A prominent example is a recent study by RAJAMANI ET AL.[101] Similar to the assessment in AR4 and AR5, it considers the full spectrum of effort sharing methodologies but then assesses them through the prism of the established principles of international environmental law, which also inform the interpretation of the Convention.[102] It includes methodologies that are consistent with principles and norms of international law, such as equity and CBDRRC-NC, and excludes such that are inconsistent with these principles, such as cost efficiency, small share of global emissions and emissions per GDP,[103] thus reducing the range that can be considered as "fair".[104] Finally, the study further narrows each State's "Fair share Range" of emissions reductions *to ensure that collectively the 1.5°C long-term temperature limit can be met*.[105] The authors conclude that a PA/environmental law-compliant reading of the global carbon budget leads to the conclusion that *developed States have a Paris temperature goal compatible emission level in 2030 that is net-negative*.[106] With regard to Switzerland, RAJAMANI et al. calculated that emissions needed to be similar to other European countries: net-negative in 2030, reaching a level of -98% of 2010 emissions (which translates into a reduction of 198% *below* 2010 or 199% *below* 1990 emissions)[107] in order for there to be a 66% chance of global temperature rises staying below 1.5°C in 2100 and a maximal temperature overshoot peak of 1.7°C (doc. 18).[108]

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[99] This was one of the grounds for critique on the outcome in The Hague District Court, *Urgenda v. The Netherlands*, ECLI:NL:RBDHA:2015:7196, 24 Jun. 2015 (link), see: LISTON, Enhancing the Efficacy of Climate Change Litigation: How to Resolve the 'Fair Share Question' in the Context of International Human Rights Law, Cambridge International Law Journal, Vol. 9 No. 2, pp. 241–263 (link).
[100] MAXWELL/MEAD/VAN BERKEL (n 98) (link).
[101] RAJAMANI et al., National 'fair shares' in reducing greenhouse gas emissions within the principled framework of international environmental law, Climate Policy 21:8, pp. 983–1004, 2021 (link) *(doc. 43)*.
[102] International environmental law principles assessed included: "harm prevention, precaution, sustainable development, special circumstances, equity (inter- and intra-generational), common but differentiated responsibilities, public participation, international cooperation and good faith" RAJAMANI et al. (n 101), p. 985 (link) *(doc. 43)*.
[103] RAJAMANI et al. (n 101), p. 991 (link) *(doc. 43)*.
[104] See also MAXWELL/MEAD/VAN BERKEL (n 98), p. 21 (link).
[105] See also MAXWELL/MEAD/VAN BERKEL (n 98), p. 22 (link).
[106] RAJAMANI et al. (n 101), p. 999 (link) *(doc. 43)*.
[107] The different reference years 1990 and 2010 are of little importance for Switzerland, as emissions in 1990 and 2010 are very similar.
[108] RAJAMANI et al. (n 101), Figure 5 *(doc. 43)* and supplemental material (link).

42 The fact that the Respondent's climate strategy is not in line with the 1.5°C limit is also confirmed by the Climate Action Tracker (**"CAT"**).[109] The CAT states that "if all countries followed Switzerland's approach, warming would reach up to 3°C."[110] In addition, the CAT rates Switzerland's *"fair share" target* as "Insufficient" and its climate finance as "Insufficient,"[111] indicating that "substantial improvements" are needed "to be consistent with limiting warming to 1.5°C."[112] Similar to RAJAMANI ET AL., the CAT concluded that to do its "fair share" to limit global warming to 1.5°C, *Switzerland must reduce its GHG emissions to significantly below zero by 2030 (i.e. a reduction of 160% to more than 200% below 1990 emissions* (doc. 19)).[113]

43 Finally, in its study *A 1.5°C compatible Switzerland* dated 15 June 2021, Climate Analytics[114] also concluded on the basis of an assessment of the then-existing effort-sharing literature that an overall "fair share" contribution for Switzerland would amount to a *GHG emission level significantly below zero in 2030 to limit warming to below 1.5°C in 2100 with a 50% chance.*[115]

44 Overall, the Respondent's current climate strategy falls far short of meeting a "fair share" contribution towards the global mitigation target of 1.5°C. A fair contribution would require Switzerland to strengthen domestic reductions (s1.10.3) and – through financing emission reductions in other countries – attain a *net-negative GHG emission level in 2030* with reductions of 160% and up to 200% below 1990 emissions for a 50% chance of meeting the 1.5°C limit.

1.10.3. No 1.5°C compatible *domestic* emissions reduction

45 The question remains as to what *domestic* emission reduction commitments within that "fair share" are compatible with the 1.5°C limit? The 1.5°C compatible pathways laid down by the IPCC (§37) refer to *global* pathways and therefore need to be achieved *collectively*. Certainly, as a wealthy country, the

[109] The CAT is a collaboration of two independent climate science institutes which assesses States' NDC against the PA temperature limit, see CAT, About (link). The scientific methodology of the CAT is elaborated on in GANTI et al., Fair National Greenhouse Gas Reduction Targets under Multiple Equity Perspectives - A Synthesis Framework, preliminary version dated 14 May 2021 (link).
[110] CAT, Switzerland, Country summary, 8 Jun. 2022 (link) *(doc. 44)*.
[111] CAT, Country summary (n 110) (link) *(doc. 44)*.
[112] CAT, Country summary (n 110) (link) *(doc. 44)*.
[113] CAT, Switzerland, Targets, CAT rating of targets, 8 Jun. 2022 (link).
[114] Climate Analytics is a multidisciplinary team composed of experts in climate science and impacts, including authors of the IPCC, experts in climate finance, adaptation, climate negotiation, mitigation policies and climate policy analysis, see Climate Analytics, Our team (link).
[115] Climate Analytics (n 78) states that these emission reductions should be reached through domestic emission reductions, emission reductions abroad and support for developing countries (climate finance) (link) *(doc. 41)*.

Respondent's *domestic* emissions reductions cannot be less than what is needed by the global average.

46 Using *technically and economically feasible* global mitigation pathways published by IPCC in **1.5°C SR**,[116] and applying downscaling methods, Climate Analytics derived a range of domestic GHG emissions reduction pathways for Switzerland that are 1.5°C compatible. In both Climate Analytics' 2021 study[117] and in its *1.5°C national pathway explorer,*[118] these pathways show that a *domestic emissions reduction target of more than 60% by 2030 and net-zero by 2050 below 1990 levels* is needed to limit warming to below 1.5°C in 2100 with a 50% chance (range: 53% to 67% resp. 53% to 70% by 2030 and 89 to120% by 2050). Similarly, CAT's analysis (doc. 19)[119] showed that more than *60% domestic reduction below 1990 levels* (range: 52% to 70% compared to 1990, excluding land-use, land-use change and forestry (**"LULUCF"**)) is needed for Switzerland's 2030 target to be compatible with a 1.5°C limit.

47 The Respondent's strategy of purchasing emission reductions abroad and accounting them to the national emission reduction target for 2030 would have the effect of postponing the reduction efforts Switzerland *itself* must undertake to be net-zero in 2050. Such a strategy would require Switzerland, after 2030, to reduce domestic emissions to zero within a *very short period of time with high annual emission reduction rates that become increasingly difficult to achieve*[120] This is because reductions delayed by years, not to say decades, lead to steep reduction curves that are almost impossible to manage: due to rising costs for the emission reductions then required in the short term; due to dependency on carbon emitting infrastructures; due to stranded assets and the reduced flexibility in future response options in the medium and long-term.[121]

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[116] See HUPPMANN et al., IAMC 1.5°C Scenario Explorer and Data hosted by IIASA (link).
[117] Climate Analytics (n 78) (link) *(doc. 41)*.
[118] Climate Analytics, 1.5°C national pathway explorer, Ambition gap, 1.5°C compatible pathways (link) *(doc. 45)*. The 1.5°C national pathway explorer is based on globally cost-efficient modelled pathways that limit warming to 1.5°C, but it does not provide any information on Switzerland's fair share and does also not take into account emissions occurring abroad that are attributable to Switzerland.
[119] CAT, Targets (n 113) (link). CAT uses the modelled domestic pathways to assess whether targets or policies are on track towards full decarbonisation in line with the 1.5°C limit. The modelled domestic pathways aim at providing feasible emission reduction pathways within each country, complementing the focus on fair shares. Most developing countries will need support to meet a 1.5°C modelled domestic pathway. Conversely, developed countries should be achieving at least their 1.5°C modelled domestic pathway domestically and using their own resources, see CAT, Modelled domestic pathways (link).
[120] UNEP, Emissions Gap Report 2020 (n 92), p. 34 (link).
[121] 1.5°C SR (n 50), SPM D.1.3 (link) *(doc. 32)*.

Furthermore, as set out in Art. 6(1) PA, internationally transferred mitigation outcomes should only serve "to allow for higher ambition in their mitigation (…) actions." Purchasing emission reductions abroad are therefore only a valid strategy when they are used to *enlarge* the reduction efforts of a State *beyond* the 1.5°C compatible *domestic* emissions reduction.[122]

48 Overall, the Respondent's *domestic* emissions reduction plans are *not 1.5°C compatible.* According to the evidence, agreed science and equitable burden sharing principles set out above, the Respondent would need to ensure *domestic* GHG emission reductions of more than 60% below 1990 levels by 2030.

1.10.4. No effective prevention of emissions which occur abroad and are attributable to the Respondent

49 *Most* of the GHG emissions attributable to Switzerland occur abroad (§§3 ff.). This the Respondent recognises in stating that *consumption-based emissions* should be taken into account when setting climate targets.[123] This was reflected in Art. 3(3) of the rejected CO_2 Act 2020 and its NDC of 9 December 2020,[124] but is no longer mentioned in the current proposals (§34) and has been deleted in its "updated" NDC published in 2021.[125]

50 In terms of the *finance sector* (§5), the Respondent acknowledges that today's investments can have a considerable influence on GHG emissions,[126] and admits that: the Swiss financial market continues to invest not only significantly in oil and coal production but even in their further expansion;[127] and that the share invested in high-carbon power capacity is still four times as high as the share invested in renewable capacity.[128] The Swiss National Bank has been rated in terms of fossil fuel financing as "grossly insufficient" or "insufficient" in all the examined aspects.[129] However, it will not be until 2025 that the

[122] See also New York Times, Switzerland Is Paying Poorer Nations to Cut Emissions on Its Behalf, 9 Nov. 22 (link).
[123] Federal Gazette, BBl 2018 247 (n 70), p. 286 s1.3.1 (link) where it held that it aims to compensate for consumption-based emissions particularly with additional measures abroad.
[124] NDC (n 73), p. 1 and 15 (link) *(doc. 40)*.
[125] Switzerland's information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21 of its updated and enhanced Nationally Determined Contribution (**"NDC 2021"**) under the Paris Agreement (2021-2030), 17 Dec. 2021 (link) *(doc. 46)*.
[126] FOEN, Klima und Finanzmarkt, 22 March 2022 (link).
[127] FOEN, Klimaverträglichkeit im Test, 20 Jul. 2021 (link); 2° Investing Initiative, Bridging the Gap, 2020, p. 8 f. (link).
[128] 2° Investing Initiative (n 127), p. 9 (link).
[129] TONG, Unused tools: How Central Banks are fueling the Climate Crisis, Oil Change International, Aug. 2021, p. 5 and 9 (link).

finance sector will be included in national climate law. It will then merely be subject to an obligation to regularly review *financial risks* of climate change (Art. 40*d* amended CO_2 Act 2011, (§34)), and will not be required to make financial flows compatible with a climate-compatible emissions pathway. The Respondent gives no reasons for this lack of regulation; it only asserts that measures are planned to be included in Switzerland's climate law from 2031 onwards.[130]

1.10.5. Reliance on carbon dioxide removal is a major risk in the ability to limit warming to 1.5°C

51 All IPCC GHG emission reduction pathways include net-negative CO_2 emissions (particularly Carbon Dioxide Removal, (**"CDR"**)) to remove remaining emissions, at various levels. Yet, it must be stressed that the IPCC itself recognises that "CDR deployed at scale is *unproven, and reliance on such technology is a major risk in the ability to limit warming to 1.5°C*."[131] Against that background, reliance on *CDR needs to be as small as possible*, and GHG sinks need to be *as safe as possible* to not pose a major risk in terms of the ability to limit warming to 1.5°C. This underlines the fact that the choice of emission reduction pathways is limited.

1.11. The Respondent fails to meet its own (inadequate) climate targets

52 Switzerland *missed its 2020 climate target*, despite the COVID-19 measures and the warm winter. With the end of the COVID-19 restrictions, *emissions are rising again significantly*.[132]

53 It is clear from this fact that the measures contained in the CO_2 Act 2011 were not sufficient. Also, the Respondent's application of the legislation and the supervision over the cantons was insufficient, particularly in the building and transport sector. This is of particular concern since in these sectors it is even more important to take immediate action to avoid a lock-in of carbon-intensive infrastructure. Furthermore, there were and are important GHG-relevant sectors which are not regulated, e.g. agriculture[133] and the finance sector

[130] Federal Gazette, BBl 2022 2651 (n 83), s1.1.4 (link).
[131] IPCC, 1.5°C SR (n 50), p. 34 (link).
[132] FOEN, Treibhausgasinventar 2020: Die Schweiz verfehlt ihr Klimaziel knapp, 11 Apr. 2022 (link) *(doc. 47)*.
[133] FOEN, Kenngrössen (n 5), p. 9 (link). Agriculture accounts for around 14.6% of all domestic GHG emissions but is neither included in the CO_2 Act nor in any other law. Instead, the Respondent supports

(§50), although the required transformations have to occur in all sectors in parallel.[134]

54 The (planned) emission reduction measures for 2030 are similar to the ones in the extant CO_2 Act 2011. There are, for example, no new and no higher levies than today; the amended CO_2 Act 2011 will be supplemented mainly by financial contributions for climate-friendly behaviour.[135] With these measures, the Respondent's aim of a domestic reduction of around 34% by 2030 will not be reached.[136] However, in purely arithmetical terms, the Respondent has secured the achievement of the overall 2030 target by allowing itself to flexibly choose the share of domestic reduction (§34), with the aim of purchasing carbon credits from other countries to claim that it has made the necessary reductions.

1.12. The Respondent is able to do its share, i.e. to *reduce* the risk of heat-related excess mortality and morbidity

55 The above 1.5°C compatible *domestic* pathway is *technically and economically feasible* (§46).[137] The Respondent is thus able to use its own resources to achieve full decarbonisation in line with the 1.5°C limit (§48).[138] The remaining emission reductions required in order for the Respondent to attain a net-negative GHG emission level in 2030 to meet its "fair share" (§44) can be achieved with measures abroad. Given that the Respondent is *one of the wealthiest States globally*, it can undoubtedly scale up its support to developing countries in the form of finance or other support for mitigation[139] to reduce their emissions as part of its "fair share" contribution. The Applicants stress that the Respondent has never claimed that it is *not able* to raise its ambition.

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the agriculture sector with subsidies, for example with exemptions from Mineral Oil Tax (Art. 18(2) Mineral Oil Tax Act [link]).
[134] UNEP, Emissions Gap Report 2022 (n 77), p. 38 s5.2 (link).
[135] The Federal Council (n 66) (link).
[136] See Climate Analytics, 1.5°C national pathway explorer, In brief, Economy wide, Current policy (link) *(doc. 45)* and CAT, Country summary (n 110), overview (link) *(doc. 44)*.
[137] See also CAT, Modelled domestic pathways (n 119) (link).
[138] See for example econcept, Massnahmenkatalog Klimapolitik 2030 für eine klimaverträgliche Schweiz, 8 Jan. 2016 (link), or Greenpeace, energy (r)evolution, Eine nachhaltige Energieversorgung für die Schweiz, 2013 (link); Climatestrike Switzerland, Climate Action Plan, 8 Jan. 2021 (link).
[139] See Climate Analytics (n 78) p. 5 f. (link) *(doc. 41)*; CAT, Country summary (n 110), fair share target (link) *(doc. 44)*.

2. The law[140]

2.1. Scope of the case (question A)

56 The arguments raised by the Applicants in their 2021 Observations[141] concerning GHG emissions generated abroad and attributed to the Respondent form part of the Applicants' complaints or "claims" made in the original Application[142] before the Court. Specifically, the Applicants' claim, as set out there, was that the Respondent's failure to take preventative measures to reduce emissions in line with the 1.5°C limit constitutes a violation of Arts. 2 and 8 ECHR.[143] As further explained in the 2021 Observations, the mitigation effort that the Respondent is obliged to take must be determined by reference not merely to the emissions that occur on the territory of Switzerland but also by reference to external emissions (s1.2.2).[144] The Respondent agrees that emission reductions must include those that are attributable to the Respondent (§§49 f.). That compliance with the 1.5°C limit requires not least reducing consumption emissions, has been made clear by the UNEP Emissions Gap Report 2020.[145]

57 Thus, the Applicants' arguments concerning GHG emissions that occur abroad are "not beyond the request."[146] Rather, they elaborate the original Application by eliminating any initial omissions or obscurities, which the Court is invited to take account of and which the Court could also clarify *ex officio*.[147]

2.2. Jurisdiction (question B)

58 The Applicants submit that no issue arises as to jurisdiction under Art. 1 ECHR, as it did in the cases cited by the Court. The Applicants' complaint concerns the failure of the Respondent to take the necessary measures to reduce GHG emissions *within* its territorial jurisdiction. The Applicants do not contend that the Respondent should take or have taken measures outside of the territory of Switzerland, nor that it is violating the rights of persons outside of Switzerland,

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[140] For the relevant legal framework and practice, see the Applicants' Observations on the Law to the Chamber, 13 Oct. 2021 (**"Applicants' OL"**) (link). An update is included in these Observations.
[141] Applicants' OL (n 140).
[142] Applicants' Application to the Court, 26 Nov. 2020 (link).
[143] Applicants' Application (n142), Application Form, p. 8.
[144] Applicants' OL (n 140), §§113 ff.
[145] UNEP, Emissions Gap Report 2020 (n 92), pp. 62-63.
[146] See *Radomilja and Others v. Croatia* [GC], no. 37685/10, §109.
[147] See *Radomilja* (n 146), §122, *Foti and Others v. Italy*, no. 7604/76, §44, and *K.-H.W. v. Germany* [GC], no. 37201/97, §107.

nor that it should exercise jurisdiction over persons outside Switzerland.[148] Rather, the Applicants submit that the scope of the Respondent's obligation to protect, namely its obligation "to do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial level" (§111), includes the reduction of external emissions by steps taken *within* Switzerland (s1.2.2 and §§115 ff.).

59 Thus, the alleged violation of the Convention by the Respondent is not the production of extra-territorial GHG emissions; rather it is the failure to adopt the necessary legislative framework *within* Switzerland. Thus, no extra-territorial conduct is at issue; *the impugned conduct is within the borders of the Respondent*, even if the effects may be felt in whole or in part abroad.[149] This is in line also with evolving norms of international law and the practice of the Contracting States[150] (§120). There is no dispute on this issue. The Respondent has repeatedly proposed including external emissions in its emissions reduction ambition (§§49 f.).

60 Accordingly, in answer to question B.2.1, the current case-law does not need to be further developed in order to take account of the specific characteristics of climate change.

2.3. Victim status of the Applicants (question C)

61 The Applicant Association (Applicant 1) and Applicants 2 to 5 (the individual Applicants) are direct (as well as potential) victims, of a violation of Arts. 2 and 8 ECHR within the meaning of Art. 34 ECHR on account of the ongoing failure of the Respondent to afford them effective protection against the effects of global warming. In addition, and given their participation in the domestic proceedings, all the Applicants are victims for the purposes of their complaints under Arts. 6 and 13 ECHR.[151]

62 The Applicants are victims as they are "directly affected by the impugned measures."[152] The term "victim" is an autonomous concept and must be interpreted irrespective of domestic definitions such as those concerning an

[148] See *Banković and Others v. Belgium and Others (dec.)* [GC], no. 52207/99, §66.
[149] See *Nada v. Switzerland*, no. 10593/08, §§117-123 and TILMANN ALTWICKER, Transnationalizing Rights: International Human Rights Law in Cross-Border Contexts, European Journal of International Law Volume 29 (2), Jul. 2018, p. 592 (link).
[150] Compare *M.N. and Others v Belgium* [GC], no. 3599/18, §98 and *Banković* (n148), §§59-61.
[151] See *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, §36.
[152] *Tănase v. Moldova* [GC], no. 7/08, §104; *Burden v. UK* [GC], no. 13378/05, §33.

interest or capacity to act.[153] The Court has held that the term "victim" ought to be interpreted in an "evolutive manner"[154] and not applied in a rigid, mechanical, or inflexible way.[155] Establishing victim status requires a violation to be conceivable;[156] and whether a violation exists should be decided on the merits.

63 The Preamble to the PA explicitly refers to the need for States to "respect, promote and consider their respective obligations on human rights" when "taking action to address climate change" (§143). If Applicants 2-5, as members of a most vulnerable group, are not "victims" within the meaning of Art. 34 ECHR, then it is hard to envisage who could be. The lack of any supervisory jurisdiction in the ECHR would be likely to lead to a limitation of rights that has already been recognised (s2.5.5), and would be an inacceptable consequence in the light of the Court's practice in comparable environmental law cases (cf. §111).

2.3.1. Victim status of Applicant 1 in respect of Arts. 2 and 8 ECHR

64 Applicant 1 amounts to no more than a group of individuals, as provided for in Art. 34 ECHR, albeit it has legal identity. Every single member of Applicant 1 is an individual directly affected by the failures of the Respondent in a similar way as Applicants 2-5 (who are also members of Applicant 1). Accordingly, this is not an *actio popularis*; Applicant 1 is not bringing an action in the general or public interest, even if the interests of its members align with the interests of the general public[157] since climate change mitigation measures can never benefit certain population groups exclusively. Rather, Applicant 1 is a means by which the individuals were able to bring their complaint before the Court.

65 To preclude Applicant 1's application under Arts. 2 and 8 ECHR by virtue of the fact that it is a legal person, would be to ignore the reality[158] and to adopt a

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[153] *Aksu v. Turkey* [GC], no. 4149/04, §52, *Gorraiz Lizarraga* (n 151), §35 and *Yusufeli Ilçesini Güzelleştirme Yaşatma Kültür Varlıklarını Koruma Derneği v. Turkey* (dec.), no. 37857/14, §36.
[154] *Gorraiz Lizarraga* (n 151), §38.
[155] *Micallef v. Malta* [GC], no. 17056/06, §45; *Karner v. Austria*, no. 40016/98, §25; *Aksu* (n 153), §51.
[156] *Brumărescu v. Romania,* 28342/95, §50. See also: LEMMENS in: VAN DIJK et al. (eds), Theory and Practice of the European Convention on Human Rights, 2018, p. 52.
[157] See *Bursa Barosu Başkanlığı and Others v. Turkey*, no. 25680/05, §128. An implied public interest did not preclude the applicants' complaint in *Tătar v. Romania,* no. 67021/01, nor in *Di Sarno and Others v. Italy*, no. 30765/08, nor in *Aksu* (n 153), §§50, 53-54.
[158] See *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*, no. 62540/00, §60. Contrast *Aly Bernard and Greenpeace-Luxembourg v. Luxembourg* (dec.), no. 29197/95 "(…) orsque l'atteinte au droit au respect du domicile résulte, comme allégué en l'espèce, de nuisances ou de troubles qui ne peuvent être ressentis que par des personnes physiques."

wholly formalistic approach that is not in line with the "real and effective" protection of Convention rights; a core principle of Convention jurisprudence.[159] Further, the Court should ensure that its approach to the concept of victim is in line with the access to justice requirements of Art. 9(2) Aarhus Convention. In that regard, there is nothing in the text of the Article itself that precludes a group from bringing a claim. An applicant must fall into one of the categories of petitioners mentioned in Art. 34 ECHR,[160] which include a "non-governmental organisation or group of individuals."

66 In *Gorraiz Lizarraga and Others v. Spain*, the Court considered the Coordinadora de Itoiz association to have victim status.[161] Similar to the association in that case,[162] Applicant 1 was set up for the specific purpose of bringing its members' interests before the courts (Art. 3 statutes[163]). Its members, as part of a most vulnerable group, are directly concerned by the Respondent's omissions regarding climate protection (ss1.5 and 1.6).

67 Applicant 1 enables a particularly vulnerable group of individuals to exercise their rights in the long term, *regardless of the natural age-related retirement of some of its members*. The exact membership of Applicant 1 may change, but the vulnerability of its members will not change; their *individual* and particular interests will remain. This is of particular importance in view of the average age of the members of Applicant 1 (§19). Since the beginning of the proceedings in 2016, 45 members of Applicant 1, including Applicant 2, have died. Thus, Applicant 1's nature as an association existing independently of its members is key to the ability of its individual members to bring the claim before the Court. Allowing Applicant 1 to claim victim status in respect of its individual members means ensuring that members of this particular group are able to exercise their rights in the long term. Proceedings before domestic courts and the Court can, in some instances, take up to a decade to conclude.[164]

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[159] E.g. *Folgerø and Others v. Norway* [GC], no. 15472/02, §100.
[160] *Gorraiz Lizarraga* (n 151), §35.
[161] *Gorraiz Lizarraga* (n 151), §38; see also *Yusufeli* (n 153), §39 and *Beizaras and Levickas v. Lithuania*, no. 41288/15, §81.
[162] See *Gorraiz Lizarraga* (n 151), §39.
[163] Statutes of Applicant 1, 23 Aug. 2016 (link).
[164] As established by the Court in *Nencheva and Others v. Bulgaria*, no. 48609/06, §93, in the interest of justice and to protect individual rights and freedoms, exceptional measures may be taken to ensure the public participation and representation of victims who are not in a position to defend themselves.

68 Applicant 1's involvement in this case is for many of its members essential to defend their rights effectively.[165] The present case is complex, without precedent, and therefore associated with a large expenditure of time and costs. Applicant 1 submits that bringing a standalone case of this dimension through the domestic courts in Switzerland before approaching the Court would have been prohibitively expensive for most individuals. The significant costs would have deterred the members of Applicant 1 from seeking legal redress, were it not for Applicant 1's ability to pool resources. For the Court to refuse to grant Applicant 1 victim status would be to impose an excessive burden on those who have the courage to bring a case of such complexity and novelty but do not have the financial resources to do so. Indeed, Applicants 2-5 would not have been able to bring the case to the Court if Applicant 1 had not taken responsibility for the costs.

69 Given the complexity and cost of climate litigation it is not surprising that non-governmental organisations (**"NGOs"**) have played an increasingly significant role in such cases in recent years[166] and have been more successful than individual plaintiffs in doing so. For example, in Switzerland, the ratio of successes to losses in cases brought by NGOs is nearly three times higher than for cases brought by private individuals.[167]

2.3.2. Victim status of Applicants 2 to 5 in respect of Arts. 2 and 8 ECHR

70 Applicants 2-5 are *direct victims* of Respondent's ongoing failure to take the necessary steps to reduce emissions in line with the 1.5°C limit (ss1.9, 1.10 and 1.11) because:

- they *have suffered and continue to suffer* personally from heat-related afflictions (§§18 and 23 ff.); the Applicants have explained in detail how they have been affected, in terms of their health and private life (s1.6);[168]
- with every heatwave, *they have been and continue to be* at a *real and serious risk* of *mortality and morbidity* greater than the general

[165] See *Gorraiz Lizarraga* (n 151), §38: "And indeed, in modern-day societies, when citizens are confronted with particularly complex administrative decisions, recourse to collective bodies such as associations is one of the accessible means, sometimes the only means, available to them whereby they can defend their particular interests effectively."
[166] SETZER/HIGHAM, Global Trends in Climate Change Litigation, 2022 Snapshot, p. 11 (link); see also *Collectif national d'information à l'usine Melox – Collectif Stop Melox et Mox v. France* (dec.), no. 75218/01, §4.
[167] FOEN, Statistiques et evaluation du droit de recours des organisations (link).
[168] Compare *Caron and Others v. France* (dec.), no. 48629/08 and *Di Sarno* (n 157), §80.

population[169] solely because they are women above the age of 75 (s1.5);

- the risk to Applicants 2-5 is *even higher* compared with other older women due to their respiratory and cardiovascular diseases[170] (§§18, 23 ff. and s2.3.3, answering the Court's question C.3.1);
- of the "cumulative effect" of all the consequences the Applicants already experience and will experience in the future;[171] and
- this application does not concern the general degradation of the environment.[172]

71 The Applicants note that it is beyond reasonable doubt that the *risks* posed by climate change-induced heatwaves to the particularly vulnerable group of older women will *inevitably materialise* in *individual cases.* That being so, the burden of proof lies with the Respondent to show that the Applicants' health afflictions were *not* caused by excessive heat, contrary to the medical evidence provided by them.[173]

72 Additionally, Applicants 2-5 are *potential victims* because the Respondent's ongoing failure to take the necessary steps to reduce emissions in line with the 1.5°C limit (ss1.9, 1.10 and 1.11) will significantly *increase* their risk of heat-related mortality and morbidity; the intensity and frequency of heatwaves increases with every additional increment of global warming (s1.4). Accordingly, it is beyond doubt that climate change-induced heatwaves will increasingly cause further deaths and illnesses in older women with chronic diseases, like the Applicants 2-5 (s1.5 and §18). The Applicants have established this by reference to sound and detailed evidence, namely epidemiological data and other scientific evidence, so as to demonstrate the real probability of the occurrence of further violations of their rights.[174]

2.3.3. The Applicants are members of a particularly vulnerable group (question C.3.1)

73 Globally, thousands of deaths can already be attributed to climate change[175] and hundreds of excess deaths occur during every heatwave in Switzerland (§11).

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[169] See *Burden* (n 152), §§33-35.
[170] *Open Door and Dublin Well Women v. Ireland,* no. 14234/88, §44; see also *Talpis v. Italy*, no. 41237/14, §§99, 126.
[171] *Grimkovskaya v. Ukraine*, no. 38182/03, §62; see also *Fadeyeva v. Russia*, no. 55723/00, §88.
[172] *Cordella and Others v. Italy*, no. 54414/13, §101; *Di Sarno* (n 157), §80; *Fadeyeva* (n 171), §68.
[173] Cf. *Grimkovskaya* (n 171), §§59 and 61.
[174] *Senator Lines GMBH v. Austria*, no. 56672/00, pp. 11-12; see mutatis mutandis *Cordella* (n 172), §§104-107. See also *Aly Bernard* (n 158).
[175] VICEDO-CABRERA/SCOVRONICK/SERA et al. (n 31) *(doc. 26)*.

These heat-related deaths are not distributed randomly across the population but occur, as the Respondent acknowledges (§8), much more frequently in older persons, and especially in older women (§§14 ff.). Both the members of Applicant 1 and Applicants 2-5 belong to this specific segment of the population that is particularly affected by climate change due to their age and gender. Applicants 2-5 are even more vulnerable due to their chronic diseases (§18).

74 Applicants 2-5 thus submit that they are both *personally,* and as members of the *particularly vulnerable group* of women aged above 75, especially affected by the effects of rising temperatures in comparison with the general public. *In contrast to the rest of the general population:*

- they have suffered and continue to suffer *personally* from severe heat-related afflictions (§§23 ff.);
- given their age and gender (§§14 ff.) and their respiratory and cardiovascular illnesses (§§18 and 23 ff.), they are *members of a particularly vulnerable group* and as such, they have been and continue to be at a *real and serious risk* of mortality and morbidity with every heatwave (i.e. a severe risk of premature loss of life and severe impairment of their health and quality of life).

75 Further, to evaluate the risk of climate change-induced heatwaves, epidemiological data, scientific evidence and medical certificates must be taken into account in this case, rather than spatial proximity[176] in order to do justice to the special features of the ubiquitous phenomenon of dangerous climate change.[177]

2.4. Applicability of the Convention provisions (question D)

2.4.1. Applicability of Art. 2 ECHR (question D.4(a))

2.4.1.1. How is Art. 2 ECHR engaged?

76 Art. 2 ECHR applies in the context of *any activity*, whether public or not, in which the right to life may be at stake and *a fortiori* in the case of industrial activities "which by their very nature are dangerous."[178] Thus, in the context

[176] Contrast *Caron* (n 168) where the Court held that the GM crops were not in the vicinity of the applicant's homes, farms or vineyards.
[177] Cf. mutatis mutandis *Cordella* (n 172), §§104-107.
[178] *Brincat and Others v. Malta*, no. 60908/11, §80; see *Öneryıldız v. Turkey* [GC] no. 48939/99, §71, *Budayeva and Others v. Russia*, no. 15339/02, §§130-131 and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, §140.

of a number of different kinds of activities, including the management of dangerous activities resulting in environmental disasters[179] and the exposure to asbestos in a workplace,[180] the Court has found that States are under a positive obligation to take steps to prevent and mitigate risks to life. That obligation is *preventative*; it does not require death or injuries to occur.[181]

77 In this case, Art. 2 ECHR is engaged by the failure of the Respondent to take the necessary steps to reduce emissions in line with the 1.5°C limit so as to mitigate the effect of increasing temperatures (ss1.9, 1.10 and 1.11). As a result of increasing temperatures the lives of Applicants 2-5 and the members of Applicant 1 are at *real and serious risk.*[182] The recurring[183] heatwaves have already led to heat-related excess mortality and morbidity in the group of older women (s1.5); there is evidence of the seriousness of the risk presented to the Applicants by ongoing climate change and proof that Applicants 2-5 have, due to their chronic diseases, already suffered harm and continue to be at a particularly high risk (s1.6).[184] It is beyond doubt that climate change has negative effects on the health of Applicants 2-5 and the members of Applicant 1, and poses a threat to their lives.[185] None of that is disputed.

78 The Court has referred the Applicants to *Nicolae Virgiliu Tănase v. Romania* §§140-143.[186] That case concerned the procedural obligation to investigate under Art. 2 ECHR in the context of a road traffic accident in which death had not occurred (and in circumstances where a sufficient legislative framework regarding traffic safety existed and was not at issue).[187] Accordingly, it did not concern the substantive obligations on the State under Art. 2 ECHR to adopt measures to protect life. However, at §§134-137 of its judgment, the Court set out the general principles applicable to the substantive obligations under Art. 2

[179] *Nicolae Virgiliu Tănase* (n 178), §§140-141; *Öneryıldız* (n 178); *Budayeva* (n 178).
[180] *Brincat* (n 178), §81.
[181] *Öneryıldız* (n 178), §§71, 89-90; *Nicolae Virgiliu Tănase* (n 178), §140; see also *Budayeva* (n 178), §146.
[182] *Brincat* (n 178), §82; *mutatis mutandis Tătar* (n 157), §107; *Jugheli and Others v. Georgia*, no. 38342/05, §67 and *Cordella* (n 172), §169.
[183] See *Talpis* (n 170), §122.
[184] Compare *Öneryıldız* (n 178), §100; see also *Budayeva* (n 178), §132.
[185] See e.g. *Saribekyan and Balyan v. Azerbaijan*, no. 35746/11, §61; *Ivan Atanasov v. Bulgaria*, no. 12853/03, §75; see also *Budayeva* (n 178), §146, where the Court held with a view to the occurrence of life-threatening mudslides that "The Court will begin by noting that although only one of the present applications (…) concerns the death of a family member, the circumstances of the case in respect of the other applicants leave no doubt as to the existence of a threat to their physical integrity. This brings their complaints within the ambit of Article 2 of the Convention."
[186] *Nicolae Virgiliu Tănase* (n 178).
[187] *Nicolae Virgiliu Tănase* (n 178), §§73, 80, 84 & 86-87.

ECHR, namely the obligations on the State to take appropriate steps to safeguard the lives of those within its jurisdiction. Those principles apply here.

79 As is clear from *Budayeva and Others v. Russia* all that is needed to bring the complaint within the ambit of Art. 2 ECHR is that there is a threat to the Applicants' lives.[188] There is no doubt that this requirement is met in the present case (§77). The same principles are set out in *Brincat and Others v. Malta*, to which the Court refers. There, the Court held Art. 2 ECHR to be applicable in circumstances where an individual has not died but where there is a threat to the person's physical integrity, including in the case of serious illness.[189]

80 The Applicants note that the substantive obligation under Art. 2 ECHR "entails a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life."[190] That obligation applies irrespective of whether there is any "imminent" or "immediate" risk to life. The obligation arises as part of the State's obligation to protect life where individuals are subject to a known and serious risk.

81 First, in the environmental cases of *Budayeva and Others v. Russia*[191] and *Zammit Maempel and Others v. Malta,*[192] the Court did not find that there was a requirement of a "real and immediate risk" for the aforementioned duty to arise. In *Nicolae Virgiliu Tănase v. Romania*[193] and, similarly, in *Öneryıldız v. Turkey,* the Court applied the "real and immediate risk" test only in relation to an *operational duty,* which is different from the obligation of the Respondent that is engaged in this case.[194]

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[188] *Budayeva* (n 178), §146.
[189] *Brincat* (n 178), §82.
[190] *Nicolae Virgiliu Tănase* (n 178), §135 citing numerous cases.
[191] *Budayeva* (n 178), §§128 ff.
[192] *Zammit Maempel and Others v. Malta,* no. 24202/10, §67.
[193] *Nicolae Virgiliu Tănase* (n 178), §136.
[194] *Öneryıldız* (n 178): At §101, it stated that the authorities knew or ought to have known that there was a "real and immediate risk" to a number of persons, and that the authorities had a positive obligation under Art. 2 to "take such preventive operational measures as were necessary and sufficient to protect those individuals" *(operational duty)*. In contrast, at §89, the Court stated that the positive obligation to take all appropriate steps to safeguard life for the purposes of Art. 2 entails a primary duty on the State to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life *(obligation to establish a legislative and administrative framework)*. The Court then stated that where lives have been lost in circumstances potentially engaging the responsibility of the State, Art. 2 imposes a duty for the State to ensure, by all means at its disposal, an adequate response so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished *(obligation to implement)*.

82 Second, the Court has applied a range of tests that consider, *inter alia,* whether the risk of harm is sufficiently "real" and whether the harm is sufficiently "serious" or severe (referred to above as the "real and serious risk" test, §77) in order to ascertain whether an obligation to adopt measures arises.[195]

83 Third, and in any event, the Applicants note that there is an immediate risk here. The "immediacy" of the risk of climate change related to adverse events is now a scientific known and is aggravated by the existence of climate tipping points, as identified in the relevant climate science. The risks are no longer predictions but facts. Given the evidence of climate change-related adverse events, it is clear that the risk to the lives of the Applicants 2-5 and the members of Applicant 1 is not just serious and immediate, it has in specific cases already materialised. Additionally, even assuming that there was any lack of certainty as to the effects of climate change, consistent with the principle that the ECHR cannot be interpreted in a vacuum,[196] the precautionary principle would have to be applied,[197] so as to encompass the concepts of directness, inevitability and irreversibility. This is the approach that the Dutch Supreme Court adopted when interpreting "immediacy" in *Urgenda v. the Netherlands*.[198]

2.4.1.2. Specific considerations regarding the causal link

A causal link is established

84 In their Observations on the Facts above, the Applicants demonstrated the complex yet direct causal link between the Respondent's failure to tackle climate change and the physical and psychological effects on the Applicants, based on extensive scientific evidence:

- that *human activity* is causing climate change, including global warming (s1.1),
- that *the Respondent contributed* and is still *contributing* to global warming (s1.2),
- that one of the *main impacts* of *human-induced* global warming are *more*

[195] *Tătar* (n 157), §107; *Brincat* (n 178), §82; *Jugheli* (n 182), §67; *Cordella* (n 172), §169.
[196] *Demir and Baykara v. Turkey*, no. 34503/97, §85.
[197] *Tătar* (n 157), §120.
[198] Dutch Supreme Court, *Urgenda v. The Netherlands*, ECLI:NL:HR:2019:2007, 20 Dec. 2019, §5.2.2, where it was noted that "the term 'immediate' does not refer to imminence in the sense that the risk must materialise within a short period of time, but rather that the risk in question is directly threatening the persons involved. The protection of Art. 2 ECHR also regards risks that may only materialise in the longer term," referencing the following judgments in which the Court held that the requirements set out in §5.2.2 were met: *Öneryıldız* (n 178), §§98-10; *Budayeva* (n 178), §§147-158 and *Kolyadenko v Russia,* no. 17423/05, §§165 and 174-180.

frequent and more intense heatwaves (s1.3),

– that intensity and frequency of heatwaves *increases with every additional increment of global warming* (s1.4),
– that heatwaves have caused, are causing and will cause further *deaths and illnesses to older women* (s1.5),
– that heatwaves have *already caused illnesses* to the Applicants in the past (s1.6).

85 Thus, in light of the scientific evidence (ss1.1-1.6), the causal link between GHG emissions and the harmful effects of climate change on the Applicants as members of a particular vulnerable group is established.

Test of causation

86 The fact that multiple States are responsible for GHG emissions does not absolve the Respondent of responsibility.[199] The Applicants submit that the causal test that should be applied in the context of climate change is whether there is *individual partial or joint responsibility to contribute to the fight against dangerous climate change,* which is also in line with Art. 47 of the Draft articles on Responsibility of States for Internationally Wrongful Acts, 2001. Partial responsibility arises from partial causation, even if a single State cannot prevent an outcome on its own (§91 ff.).

87 This accords with the caselaw of the Court. The Court has held that two or more States can be responsible for a given situation.[200] Also, it does not apply a strict notion of causation in the context of a violation that arises from a failure to discharge a positive obligation. In *E. and Others v. UK*[201] and *O'Keeffe v Ireland*,[202] it explicitly rejected the *"but for" test* in the context of the positive obligation to protect and adopted a more flexible notion, such as the "real prospect of altering the outcome or mitigating the harm."[203] Thus, the "test for a legally significant breach"[204] is whether a State failed to adopt reasonable

[199] NOLLKAEMPER et al., Guiding Principles on Shared Responsibility in International Law, European Journal of International Law Volume 31 (1), 7 Aug. 2020, pp. 15-72 (link), who deem that climate change is falling under Principle 4 of the Guiding Principles.
[200] As pointed out by Judge YUDKIVSKA in her concurring opinion to the case of *Sargsyan v. Azerbaijan* [GC], no. 40167/06, citing among others *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, *Furman v. Slovenia and Austria*, no. 16608/09, and *Rantsev v. Cyprus and Russia*, no. 25965/04.
[201] *E. and Others v. UK*, no. 33218/96, §99.
[202] *O'Keeffe v Ireland* [GC], no. 35810/09, §149 with reference to *E. and Others* (n 201), §99.
[203] Ibid., §149.
[204] See also MAXWELL/MEAD/VAN BERKEL (n 98), p. 7.

preventive measures with a real prospect of mitigating the harm that were available and not taken.[205] The Applicants have demonstrated above:

- that the risk of heat-related excess mortality and morbidity could be significantly reduced by limiting global warming to 1.5°C (s1.7),
- that the Respondent is not doing its share to prevent a global temperature increase of more than 1.5°C (s1.10) and that it failed to implement and enforce measures to meet its inadequate 2020 target (s1.11);
- that the Respondent is able to do its share, i.e. to reduce the risk of heat-related excess mortality and morbidity (s1.12).

88 Thus, reasonable preventive measures with a real prospect of mitigating the harm are available but have not been taken by the Respondent. Climate change is a global phenomenon and if States do not do their share but instead shift responsibility to other States, which also allow emissions to continue, then climate change would go on unabated and without effective solution.

89 Further, the cases set out below show that this is the approach adopted by other national courts of Contracting States, specifically regarding causation in relation to interferences by climate change.[206]

90 It is also notable that the issue of causality was never raised in the domestic proceedings in the instant case.

Not a defence to claim own emissions are insignificant

91 *National courts of Contracting States* have rejected arguments like those advanced by the Respondent in which States deny responsibility for the consequences of climate change by arguing their emissions are only a small contributing cause (the so-called "drop-in-the-ocean argument"). National courts have found that a State's comparatively small contribution to global GHG emissions does not absolve it of responsibility. Further, they have recognised

[205] See, for example, *Kiliç v. Turkey*, no. 22492/93, §76.
[206] E.g. The Brussels Court of First Instance, *ASBL Klimaatzaak v. Belgium, 2015/4585/A,* 17 Jun. 2021 (unofficial translation), p. 61, states that "the global dimension of the problem of dangerous global warming does not exempt the Belgian public authorities from their pre-described obligation under Arts. 2 and 8 of the ECHR. In this respect, the Court agrees with the view of the Dutch Supreme Court in the Urgenda case. Therefore, in the present case, the applicants are right to argue that Arts. 2 and 8 of the ECHR impose a positive obligation on public authorities to take the necessary measures to remedy and prevent the adverse consequences of dangerous global warming on their lives and their private and family lives." The Higher Regional Court of Hamm, *Lliuya v. RWE*, Interlocutory Decision of 1 Feb. 2018, I-5U 15/17, p. 4, stated that the presence of multiple 'disturbers' does not absolve each individual contributor from its own (partial) responsibility 'to do its part'. The Paris Administrative Court, *Association Notre Affaire à Tous* and Others, 3 Feb. 2021, p. 34 found the State liable for its contribution to climate change pursuant to the tort of ecological damage, even though the State was only responsible for one part of the damage.

that a single State's actions in combating climate change contribute substantively to creating the mutual trust necessary for other States to act. Correspondingly, they have found that States are responsible for their inaction as a contributing causal factor. Thus, "despite attempts of States to rely on the well-known "drop in the ocean" defence, *no national court has accepted this argument*"[207] (emphasis added).

92 The German Federal Constitutional Court noted in *Neubauer and Others v Germany*, a constitutional complaint against the Federal Climate Change Act, the following points on causality:

"There is a direct causal link between anthropogenic climate change and concentrations of human-induced greenhouse gases in the Earth's atmosphere (…). CO_2 emissions are particularly significant in this regard. Once they have entered the Earth's atmosphere, they are virtually impossible to remove as things currently stand. This means that anthropogenic global warming and climate change resulting from earlier periods cannot be reversed at some later date. At the same time, with every amount of CO_2 emitted over and above a small climate-neutral quantity, the Earth's temperature rises further along its irreversible trajectory and climate change also undergoes an irreversible progression. If global warming is to be halted at a specific temperature limit, nothing more than the amount of CO_2 corresponding to this limit may be emitted. The world has a so-called remaining CO_2 budget. If emissions go beyond this remaining budget, the temperature limit will be exceeded."[208]

The Court also discussed the problem of diffuse or shared responsibility and found that this was not a barrier to the applicants' claims. It held that:

"[e]ither way, the obligation to take national climate action cannot be invalidated by arguing that such action would be incapable of stopping climate change. It is true that Germany would not be capable of preventing climate change on its own. Its isolated activity is clearly not the only causal factor determining the progression of climate change and the effectiveness of climate action. Climate change can only be stopped if climate neutrality is achieved worldwide. In view of the global reduction requirements, Germany's 2% share of worldwide CO_2 emissions (…) is only a small factor, but if Germany's climate action measures are embedded within global efforts, they are capable of playing a part in the overall drive to bring climate change to a halt (…)."[209]

"The state may not evade its responsibility here by pointing to GHG emissions in other states. (…) On the contrary, the particular reliance on the international community

[207] MAXWELL/MEAD/VAN BERKEL (n 98).
[208] BVerfG, *Neubauer and Others v. Germany,* 1 BvR 2656/18, 24 March 2021, §119.
[209] *Neubauer* (n 208), §202.

gives rise to a constitutional necessity to actually implement one's own climate action measures at the national level – in international agreement wherever possible. It is precisely because the state is dependent on international cooperation in order to effectively carry out its obligation to take climate action under Art. 20a GG that it must avoid creating incentives for other states to undermine this cooperation. Its own activities should serve to strengthen international confidence in the fact that climate action – particularly the pursuit of treaty-based climate targets – can be successful while safeguarding decent living conditions, including in terms of fundamental freedoms. In practice, resolving the global climate problem is thus largely dependent on the existence of mutual trust that others will also strive to achieve the targets."[210]

93 The Supreme Court of the Netherlands in *Urgenda v. The Netherlands*, a case concerning a claim against the Dutch Government aimed at an increase of Netherlands' emission reduction targets, stated

"Partly in view of the serious consequences of dangerous climate change (…), the defence that a state does not have to take responsibility because other countries do not comply with their partial responsibility, cannot be accepted. Nor can the assertion that a country's own share in global GHG emissions is very small and that reducing emissions from one's own territory makes little difference on a global scale, be accepted as a defence. Indeed, acceptance of these defences would mean that a country could easily evade its partial responsibility by pointing out other countries or its own small share. If, on the other hand, this defence is ruled out, each country can be effectively called to account for its share of emissions and the chance of all countries actually making their contribution will be greatest, in accordance with the principles laid down in the preamble to the UNFCCC (…)."[211]

"Also important in this context is that, as has been considered (…) about the carbon budget, each reduction of GHG emissions has a positive effect on combating dangerous climate change, as every reduction means that more room remains in the carbon budget. The defence that a duty to reduce GHG emissions on the part of the individual states does not help because other countries will continue their emissions cannot be accepted for this reason either: no reduction is negligible."[212]

94 In *Milieudefensie et al. v. Shell*, the District Court of The Hague stated in a climate case based on tort law, that there is "a direct, linear link between man-made GHG emissions (…) and global warming,"[213] that "every emission of CO_2 and other GHGs, anywhere in the world and caused in whatever manner,

[210] *Neubauer* (n 208), §203.
[211] *Urgenda* (n 198), §5.7.7.
[212] *Urgenda* (n 198), §5.7.8.
[213] *Milieudefensie et al. v. Shell*, C/09/571932 / HA ZA 19-379, 26 May 2021 (English version), not yet final, at §2.3.2.

contributes to this [environmental] damage and its increase" (insertion added) and that "the (…) circumstance that RDS [Royal Dutch Shell, the respondent] is not the only partly responsible for tackling dangerous climate change (…) does not absolve RDS of its individual partial responsibility to contribute to the fight against dangerous climate change according to its ability"[214] (insertion added).

2.4.2. Applicability of Art. 8 ECHR (question D.4.b)

95 The Applicants submit that their rights under Art. 8 ECHR are engaged by the facts complained of. The Respondent does not contest that Art. 8 ECHR may be applicable in the context of climate change.[215]

96 Art. 8 ECHR applies to cases of environmental degradation associated with adverse effects to health, physical integrity or private life.[216] Art. 8 ECHR also applies to situations where mental well-being is at stake[217] and where an individual's well-being may be negatively impacted by unsafe or disruptive environmental conditions.[218] Art. 8 ECHR also includes the right of the Applicants to personal autonomy and their right to age in dignity.[219]

97 The serious threat to the Applicants' health, well-being and quality of life posed by dangerous climate change suffices to trigger positive obligations under Art. 8 ECHR; this would be so even if their state of health had not deteriorated or had not been seriously endangered.[220]

98 The Court has referred the Applicants, to *Ivan Atanasov v. Bulgaria*[221] and *Cordella and Others v Italy*[222]. As noted in *Atanasov*, in the context of pollution the Court must determine whether Art. 8 ECHR is engaged, and "the first point for decision is whether the environmental pollution (…) can be regarded as affecting adversely, to a sufficient extent, the enjoyment of the amenities of his

[214] *Milieudefensie* (n 213), §4.4.37; see also at §4.4.49 "It is also important here that each reduction of GHG emissions has a positive effect on countering dangerous climate change. After all, each reduction means that there is more room in the carbon budget."
[215] See Respondent's Observations, 16. Jul. 2021, §80 (link).
[216] *Fadeyeva* (n 171), §68; *Kyrtatos v. Greece*, no. 41666/98, §52; *Dubetska and Others v. Ukraine*, no. 30499/03, §105.
[217] See e.g. *Cordella* (n 172), §157; *Fadeyeva* (n 171), §87 f., *V.C. v. Slovakia*, no. 18968/07, §106.
[218] *Cordella* (n 172), §§157-160.
[219] See UN Secretary-General, Resolution A/66/173, 2011, §7 (link); *Koch v. Germany,* no. 497/09.
[220] See *Taşkin and Others v. Turkey*, no. 46117/99, §113. See also *Tătar* (n 157), §97; *Jugheli* (n 182), §71; *Brânduşe v. Romania*, no. 6586/03, §67.
[221] *Atanasov* (n 185).
[222] *Cordella* (n 172).

home and the quality of his private and family life."[223] As noted in *Cordella:* "*L'appréciation de ce niveau minimum dans ce type d'affaires est relative et dépend de l'ensemble des données de la cause, notamment de l'intensité et de la durée des nuisances ainsi que de leurs conséquences physiques ou psychologiques sur la santé ou la qualité de vie de l'intéressé.*"[224]

99 The Court should have regard therefore to the relevant circumstances and data, which establish the *real and serious risk*[225] posed by climate change-induced heatwaves to the Applicants' health and well-being (s1.5 and 1.6). The Respondent *knows* about the real and serious risk of harm to the Applicants (s1.8, §122). Likewise, the Applicants established the *direct causal link* between the Respondent's omissions contributing to climate change and harmful effects on the Applicants (§84 ff.).[226] However, proof of a direct causal link is not a necessary precondition for Art. 8 ECHR to be engaged. In *Tătar v Romania,* despite finding that the Applicants had not established a causal link between cyanide at the factory and their worsening asthma, the Court held that the State's positive obligations under Art. 8 ECHR were nonetheless engaged.[227]

100 It is untenable for the Respondent to take the position that increased temperatures caused by climate change should be treated as a normal part of everyday life, i.e. "Mediterranean living"[228].[229] The extreme consequences of climate change and the fact that Switzerland has bound itself under international law to take steps to mitigate its effects show that it is anything other than part of "normal life."

101 The Applicants further emphasize the "cumulative effect" of all the consequences they already experience and will experience.[230] Certainly, the cumulative effect of all the consequences of repeatedly and increasingly occurring heatwaves (including health consequences, restrictions of well-being, fear, being confined at home during heatwaves, real and serious risk to life and health, s1.6) show that the required threshold has been reached in this case.

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[223] *Atanasov* (n 185) §66.
[224] *Cordella* (n 172) §157. See also *Fadeyeva* (n 171), §69.
[225] *Tătar* (n 157), §107; Jugheli (n 182), §67-70; *Cordella* (n 172), §169.
[226] See *mutatis mutandis* *Atanasov* (n 185), §66 f.
[227] *Tătar* (n 157), §107.
[228] See the general approach on the minimum threshold in *Cordella* (n 172), §157.
[229] See Respondent's Observations (n 215), §§50 and 81 (link).
[230] *Grimkovskaya* (n 171), §62. See also *Fadeyeva* (n 171), §88.

2.4.3. Applicability of Art. 6 ECHR (questions D.4.1.a and D.4.1.b)

102 By way of introduction, the Applicants emphasise that access to a court is crucial in climate cases. However, the Applicants draw the Court's attention to the *extreme urgency of climate action*, as documented by the relevant scientific evidence.[231] In view of that *extreme urgency* the Applicants urge the Court to grapple with their complaints made under Arts. 2 and 8 ECHR rather than simply determine their Arts. 6 and/or 13 ECHR complaints. Each additional tonne of CO_2 emitted further increases the concentration of CO_2 in the atmosphere and worsens climate impacts, including the severity and frequency of heatwaves, in a practically irreversible manner. There is a *near-linear relationship between cumulative anthropogenic CO_2 emissions and the global warming they cause (s1.4); there is an exponential increase in mortality with increasing temperatures.*[232] This urgency means that requiring another set of domestic proceedings which are compliant with the Applicants' procedural rights would undermine the ECHR's protection of the Applicants from the harms at stake. Thus, the Applicants respectfully submit that the best way to protect them from the risk of harm posed by dangerous climate change would be for the Court to examine the merits of all the alleged Convention violations at issue.

103 In answer to question 4.1, the Applicants submit that the civil limb of Art. 6 ECHR is applicable in the instant case. According to the case law of the Court, the applicability of the civil limb of Art. 6 ECHR means that there must be a "dispute" regarding a "right" which can be said, at least on arguable grounds, to be recognised under domestic law.[233] The substantive right relied on by the applicant in the national courts must have a legal basis in the State concerned; the dispute in question must be genuine and serious and the outcome of the relevant proceedings must be directly decisive for that right.[234] Also, the dispute may relate not only to the actual existence of a right but also to its scope and the manner of its exercise.[235] Furthermore, where there was a genuine and

[231] IPCC, AR6 WGII (n 1), SPM D.5.3 (link); UNEP, Emissions Gap Report 2022 (n 77) (link).
[232] MITCHELL (n 30) (link) with further references.
[233] E.g. *Denisov v. Ukraine* [GC], no. 76639/11, §44; *Boulois v. Luxembourg* [GC], no. 37575/04, §90; *Zander v. Sweden*, no. 14282/88, §22; *Balmer-Schafroth and Others v. Switzerland*, no. 22110/93, §32; Grzęda v. Poland [GC], no. 43572/18, §257.
[234] E.g. *Károly Nagy v. Hungary* [GC], no. 56665/09, §§60-61; *Roche v. UK* [GC], no. 32555/96, §119; *Boulois* (n 233), §91; *Zander* (n 233), §22; *Balmer-Schafroth* (n 233), §32; *Grzęda* (n 233), §257.
[235] *Zander* (n 233), §22; *Balmer-Schafroth* (n 233), §32; Grzęda (n 233), §257.

serious dispute about the existence of such a right at the outset of the proceedings, the fact that the domestic courts concluded that the right in question did not exist cannot retrospectively deprive an applicant's complaint of its arguability.[236]

Question D.4.1(a)

104 The protection of physical integrity is a "civil right" within the meaning of Art. 6 ECHR.[237] This is not in dispute between the parties. Also, the public-law character of the CO_2 Act does not alter the civil nature of the dispute.[238]

105 The dispute concerned the right to life under Art. 10 (1) of the Swiss Constitution (**"Cst"**)[239] as well as the rights under Arts. 2 and 8 ECHR in relation to the inadequate enforcement of the CO_2 Act (s1.11) and the inadequacy of the climate targets (s1.10). Art. 10 (1) Cst and Arts. 2 and 8 ECHR[240] are substantive rights which have a legal basis in domestic law. Thus, these rights were recognised under domestic law. The dispute concerned the scope[241] of these rights. Also, the rights of the Applicants were "arguable" (ss2.5.1 and 2.5.2). The fact that the domestic courts denied the Applicants their rights – *notably in an arbitrary manner*[242] (§172 ff.) – does not deprive the Applicants' complaint of its arguability.[243]

Question D.4.1(b)

106 The dispute was *genuine and serious*, and the result of the proceedings was directly decisive for the rights in question. There was a clear connection and thus more than a "tenuous connection or remote consequences"[244] between the rights under Art. 10 Cst and Arts. 2 and 8 ECHR (arguable rights in domestic law) on the one hand, and the reduction of GHG (outcome of the proceedings) on the other.

107 In the domestic proceedings, the Applicants sought an order which would force the Respondent to take necessary action to tackle dangerous climate change, which would have gone hand in hand with a reduction of GHG emissions and

[236] *Z and Others v. UK* [GC], no. 29392/95, §§88-89.
[237] See *Taşkin* (n 220), §133.
[238] Compare *Zander* (n 233), §26.
[239] Art. 10 (1) Cst. (link) entails a positive obligation to protect similarly to Art. 2 and 8 ECHR.
[240] See *Naït-Liman v. Switzerland* [GC], no. 51357/07, §108.
[241] See *Zander* (n 233), §22 and *Balmer-Schafroth* (n 233), §32.
[242] See *Grzęda* (n 233), §259.
[243] *Z and Others* (n 236), §§88-89.
[244] *Balmer-Schafroth* (n 233), §32; *Boulois* (n 233), §90; *Grzęda* (n 233), §257.

the heatwaves linked to them (s1.4), which is in clear connection to the protection of the Applicants' rights (ss1.5 and 1.6). They did not merely complain about hypothetical consequences for the environment and human health.[245] The Applicants have always pointed to *concrete health risks from excessive GHG emissions* for them as members of a particularly vulnerable group that *have also partly materialized* amongst the Applicants.[246] Thus, the outcome of the domestic proceedings affects the very substance of their right to life and private life.[247]

2.4.4. Applicability of Art. 13 ECHR (question D.4.2)

108 The Applicants submit they had an "arguable complaint"[248] for the purposes of Art. 13 ECHR. Their claim is "arguable" in terms of Art. 13 ECHR since they are victims of Convention violations (s2.3).[249] There is no requirement that the Court finds a violation of Art. 2 and/or 8 ECHR for it to conclude that a claim is "arguable" for the purposes of Art. 13 ECHR.[250] Furthermore, even if the Court were to declare that Art. 6 ECHR is not applicable, it would still need to examine the complaint under Art. 13 ECHR, since Art. 6 ECHR is deemed to be a *lex specialis* vis-à-vis Art. 13 ECHR.[251]

2.5. Merits (question E)

2.5.1. Violation of Art. 2 ECHR (questions E.5 and E.5.1)

109 Under Art. 2 ECHR, the Court must determine "whether, given the circumstances of the case, the State did all that could have been required of it to prevent the applicant's life from being avoidably put at risk."[252] The FSC considered in an obiter dictum[253] that the Applicants' rights "are not violated."[254] On the contrary and in answer to questions E.5 and E.5.1 the

[245] Contrast *Atanasov* (n 185), §92, *Balmer-Schafroth* (n 233), §40 and *Athanassoglou and Others v. Switzerland* [GC], no. 27644/95, §§46-55.
[246] See request to the Respondent, s4.4 (link) and appeals to the Federal Administrative Court, s2.1.2 (link) and the Federal Supreme Court, s2.3.3 (link).
[247] See *Bodén v. Sweden*, no. 10930/84, §32.
[248] *Hatton and Others v. UK* [GC], no. 36022/97, §137.
[249] See *Leander v. Sweden*, no. 9248/81, §77.
[250] *Hatton* (n 248), §137.
[251] European Court of Human Rights, Guide on Article 13, 30 Apr. 2021, §143 (link).
[252] *L.C.B. v. UK*, no. 23413/94, §36.
[253] See *mutatis mutandis Mutu and Pechstein v. Switzerland*, no. 40575/10, §182.
[254] BGer 1C_37/2019, 5 May 2020, s7.

Applicants submit that there has been a violation of Art. 2 ECHR in the present case.

110 Art. 2 ECHR imposes in environmental matters a *positive obligation* on the Respondent to put in place a legislative and administrative framework to provide and ensure *effective protection* against threats to the right to life.[255] "Necessary"[256] and "appropriate"[257] measures have to be adopted to safeguard life, taking into account the specific features of the activity in question and the level of risk involved.[258]

111 The risks climate change poses to the lives of Applicants 2-5 and the other members of Applicant 1 (ss1.5 and 1.6) are comparable to, and potentially greater than, those with which the Court has been faced to date.[259] In view of the magnitude of the risks climate change poses, the clear science, the urgency of the situation and the *clear ultimate objective* of the UNFCCC (Art. 2), the Respondent has a positive obligation to take *all measures that are not impossible* or disproportionately economically burdensome with the objective of reducing GHG *to a safe level*.[260] It requires the Respondent to "do everything in [its] power."[261]

2.5.1.1. The scope of the Respondent's obligation to protect

112 The scope of the Respondent's obligation to protect derives notably from relevant rules and principles of international law as well as evolving norms of national and international law and consensus emerging from specialised international instruments and from the practice of Contracting States, as the Court regularly considers these factors when determining the obligation to protect (s2.5.4 regarding the Court's question E.5.3.2). From the harmonious interpretation of the Convention taken together with the considerations outlined above (§111), it follows that to comply with its positive obligation to protect the Applicants effectively, the Respondent *must do everything in its*

[255] E.g., *Öneryıldız* (n 178), §§89-90; *Budayeva* (n 178), §§129 and 132.
[256] See e.g. *Öneryıldız* (n 178), §101; *mutatis mutandis Cordella* (n 172), §173.
[257] See e.g. *Budayeva* (n 178), §128, *Brincat* (n 178), §79 and *Öneryıldız* (n 178), §89.
[258] *Öneryıldız* (n 178), §90; *Budayeva* (n 178), §132; see also *Jugheli* (n 182), §75.
[259] *Deés v. Hungary,* no. 2345/06*;* *Grimkovskaya* (n 171); *Bor v. Hungary,* no. 50474/08; *Fadeyeva* (n 171)*;* *Moreno Gómez v. Spain,* no. 4143/02; *Guerra and Others* [GC], no. 14967/89; *Dzemyuk v. Ukraine*, no. 42488/02; *Brincat* (n 178); *López Ostra v. Spain,* no. 16798/90; *Giacomelli v. Italy,* no. 59909/00; *Brânduse* (n 220)*;* *Di Sarno* (n 157).
[260] See VOIGT, The climate dimension of human rights obligations, Conference: Human rights for the planet (ECHR and COE), 5 Oct. 2020, p. 4 (link).
[261] See *Kolyadenko* (n 198), §§191, 216; *Öneryıldız* (n 178), §135.

power to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels. This necessarily includes establishing a legislative and administrative framework to achieve that objective.[262] The harmonious interpretation also helps to clarify the ambiguity around the Respondent's exact "fair share" of the global mitigation effort hereto required (§114), and the question whether the scope of the obligation to protect extends to emissions occurring abroad (§§118 ff.).

113 Against this background, in order to fulfil its obligation to protect the Applicants *effectively*, i.e. to adopt the necessary legislative and administrative framework to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels, the Respondent is required:

(1) to have a GHG emission level in 2030 as compared to the emissions in 1990 that is net-negative as its "fair share" of the global mitigation burden (s1.10.2 and §114);

(2) to reduce the domestic emissions by more than 60% below 1990 levels by 2030 and to net-zero by 2050 as the domestic component of (1) (s1.10.3);

(3) to prevent and reduce any emissions occurring abroad that are attributable to the Respondent in line with a 1.5°C above pre-industrial levels limit (s1.10.4 and §§115 ff.);

(4) permanently to remove GHG emissions from the atmosphere and store them in *safe, ecologically and socially sound GHG sinks,* if, despite (1), (2) and (3), any GHG emissions continue to occur within the control of the Respondent, or the concentration of GHG in the atmosphere exceeds the level corresponding to the 1.5°C above pre-industrial levels limit (s1.10.5 and §§121 ff.).

Scope of the Respondent's obligation to protect includes a 1.5°C compatible "fair share" contribution to the global mitigation effort

114 Regarding §113(1), the Applicants submit that despite the ambiguity around the Respondent's exact "fair share" of the global mitigation effort required to prevent a global temperature increase of more than 1.5°C above pre-industrial levels, the Climate Action Tracker, RAJAMANI ET AL. and Climate Analytics, in recent assessments, all came to the same conclusion, namely, that a "fair share"

[262] See *Öneryıldız* (n 178), §§89–90.

of the global burden of mitigating climate change means that the Respondent has to have a *net-negative* GHG emission level in 2030 as compared to the emissions in 1990 (s1.10.2). Interpreting Switzerland's "fair share" in line with the Climate Action Tracker and RAJAMANI ET AL.'s methodologies is consistent with the principle that "[i]n the event of any ambiguity in the terms of a [provision of international law], the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations."[263] Both methodologies involve a "directional pull" (in the words of RAJAMANI ET AL.[264]) towards more stringent measures of fairness. This is necessary to ensure the effective protection of the Applicants' rights because if all States choose less stringent self-serving measures of their "fair share", the right to live in a world where global warming has not exceeded 1.5°C would become "theoretical and illusory." Resolving the ambiguity around the meaning of equity/CBDRRC-NC[265] in this way is therefore also entirely consistent with the object and purpose of the PA (§138 ff.), the precautionary principle (§149) and the prevention principle (§146).

Scope of the Respondent's obligation to protect extends to emissions occurring abroad attributable to the Respondent

115 Regarding §113(3) the Applicants submit that to comply with its positive obligation to protect their rights effectively, the Respondent has to prevent and reduce any emissions occurring abroad that are within the control of the Respondent and thus attributable to it (s1.10.4).

116 First, this is needed to protect the Applicants *effectively*. Given that climate change impacts will ultimately affect the rights of the Applicants whether the emissions occur on Swiss territory or abroad, the Respondent has a requirement to address *all* emissions that are attributable to it as part of its obligation to do everything in its power to do its share to prevent a global temperature increase of more than 1.5°C (§111).

117 Second, the Respondent agrees that it has the power to reduce emissions occurring abroad that are attributable to the Respondent (§§49 f.).

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[263] *Al-Jedda v. UK*, no. 27021/08, §102.
[264] RAJAMANI et al. (n 101), p. 985 (link) *(doc. 43)*.
[265] That is, "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances": see Art. 2(2) PA (link).

118 Third, the PA does not contradict the interpretation that the Convention requires the Respondent to take steps to reduce emissions occurring abroad. While the reporting obligations under the PA and UNFCCC only require Parties to account for emissions that occur on their territory, this does not militate against the interpretation advanced above as the obligations are only of a procedural nature and the accounting requirement is based on practical reasons, i.e. to avoid double counting of emissions.[266] This interpretation accords with the PA's recognition that *sustainable lifestyles and sustainable patterns of consumption and production*, with *developed country Parties taking the lead*, play an *important role in addressing climate change* (Preamble, §16). It is important to note that the PA's *temperature goal* to limit the temperature increase to 1.5°C (§139) and the target to *make finance flows consistent with this temperature goal* (Art. 2(1a) and (1c)) are independent of the source of the emissions, i.e. there is no distinction between domestic emissions and emissions occurring abroad, as well as between direct and indirect emissions.

119 Fourth, including emissions that occur abroad and are attributable to the Respondent is in line with the *precautionary and the prevention principle,* entailing the full range of preventive measures (s2.5.4.2).

120 Fifth, this approach is also in line with evolving norms of international law. The 2015 Oslo Principles on Global Climate Change Obligations[267] hold that as part of the "Obligation of States, every state is required to reduce the GHG emissions *within its jurisdiction or control* to the permissible quantum within the shortest time feasible" (Art. II.B.13, emphasis added) and that "States must regulate GHG emissions *in their jurisdictions or under their control* to meet their obligations set forth in these Principles" (Art. II.B.24, emphasis added). By way of further example, in *Milieudefensie et al. v. Shell*, the District Court of The Hague ordered Royal Dutch Shell to reduce the aggregate volume of all CO_2 emissions attributable to the Shell Group, no matter whether they occurred in the Netherlands, including indirect emissions resulting from consumers.[268] Likewise, in the case of *Gloucester Resources Ltd. v Minister for Planning*, the New South Wales Land and Environmental Court held that both

[266] Decision 4/CMA.1, UN Doc. FCCC/PA/CMA/2018/3/Add.1, §§11, 14 (link).
[267] Expert Group on Global Climate Obligations, Oslo Principles on Global Climate Change Obligations, The Hague 2015 (link).
[268] *Milieudefensie* (n 213), §§2.5.4 and 5.3.

direct and indirect emissions ought to be considered in reviewing the environmental impacts of coal mining projects.[269]

Remaining emissions need to be leveled out with safe, ecologically and socially sound carbon sinks

121 With regard to §113(4) the Applicants submit that the Respondent's positive obligation to protect also entails an obligation to permanently remove GHG emissions from the atmosphere and store them in safe, ecologically and socially sound GHG sinks (s1.10.5), if, despite (§113 (1),(2) and (3)), any GHG emissions continue to occur within the control of the Respondent. The same applies if the concentration of GHG in the atmosphere exceeds the level corresponding to the 1.5°C limit.

2.5.1.2. Knowledge of the Respondent

122 The Respondent *knows* about the real and serious risk of harm posed to the Applicants by climate change, including extreme heatwaves (§8 and s1.8).[270] As a Party to the UNFCCC and the PA, and having endorsed the IPCC's findings, the Respondent is well aware of the projected severe impacts of the warming of 1.5°C or above on the life and health of the Applicants.[271]

2.5.1.3. The Respondent has failed to protect the Applicants effectively

123 In view of the above considerations, the Respondent has failed to take the necessary steps to mitigate the harm and risk caused by climate change to the Applicants. Specifically, it has done significantly less than its share to prevent a global temperature increase of more than 1.5°C.

124 Contrary to what is required (§113), the Respondent's climate strategy is not in line with the 1.5°C limit; instead, there is a long history of failed climate action (s1.10). Also, the Respondent has failed to set any domestically binding climate targets for 2030 and 2050 (s1.9) and failed to meet its (inadequate) 2020 climate target (s1.11). Instead, the mitigation potential in Switzerland remains largely unused, partly without any justification (§53), partly on the

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[269] *Gloucester Resources Limited v Minister for Planning* [2019] NSWLEC 7, §488-513.
[270] See also *López Ostra* (n 259), §§9, 11, 52, 53; *Öneryıldız* (n 178), §§100 f., 109 f.; *Fadeyeva* (n 171), §90; *Budayeva* (n 178), §§147 f.; *Brincat* (n 178), §106; *Jugheli* (n 182), §77.
[271] See *López Ostra* (n 259), §53; *Budayeva* (n 178), §148; *Kolyadenko* (n 198), §§165, 176; *Brincat* (n 178), §§105, 106.

justification of high costs (e.g. in the building sector), which is not evidenced and is – for Switzerland – not a relevant consideration (§41).

125 In this context, it should be noted that in environmental cases, the Court has found that, once an applicant has raised a *prima facie* case of breach of a State's obligations, "the onus is on the State to justify, using detailed and rigorous data, a situation in which certain individuals bear a heavy burden for the rest of the community."[272] The decision-making process must involve the carrying out of appropriate investigations and studies, so as to prevent and assess in advance the effects of activities which may harm the environment and the rights of individuals.[273] However, it is important to note that the level of climate protection in Switzerland is *not based on scientific studies*, (a point which FOEN confirmed (docs. 20 and 21), and the Respondent has recently decided to dispense with the very consultative body on climate change (**"OcCC"**)[274] that pointed out the inadequacy of the climate targets as long ago as 2012.[275] Those facts alone demonstrate that the Respondent has violated the Applicants' Convention rights.[276]

126 Further, it should be noted that national difficulties in taking measures within the democratic system of Switzerland are irrelevant for the purposes of the determination of the Applicants' complaint. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty (Art. 27 Vienna Convention on the Law of Treaties (**"VCLT"**)). Compliance with the ECHR cannot therefore be frustrated by references to democracy and the Optional referendum in Art. 141 Cst. It is trite law that domestic law can be in violation of the ECHR.[277]

127 Moreover, the Respondent's *margin of appreciation* is limited in the present case (s2.5.3 regarding the Court's question E.5.3.1).

128 Overall, the *Respondent has failed and continues to fail to protect the Applicants effectively* in violation of the Applicants' rights under Art. 2 ECHR.

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[272] *Jugheli* (n 182), §76 and *Fadeyeva* (n 171), §128; see also *Dubetska* (n 216), §155; *Cordella* (n 218), §161; *Öneryıldız* (n 178), §89; *Budayeva* (n 178), §132; *Brincat* (n 178), §110. The Dutch Supreme Court adopted this approach in *Urgenda* (n 198), §§5.3.3 and 6.5.
[273] See *Tătar* (n 157), §88; *Hatton* (n 248), §§127-128; *Taşkin* (n 220), §119; *Giacomelli* (n 259), §86 and §§92-93; *Guerra* (n 259), §60.
[274] SRF, Sommaruga verzichtet auf Beirat zum Klimawandel, 5 Sept. 2021 (link).
[275] OcCC, Klimaziele und Emissionsreduktion, Bern 2012, p. 5 (link).
[276] See e.g. *Tătar* (n 157), §118.
[277] See e.g. *Howald Moor and Others v. Switzerland*, no. 52067/10; *Beeler v. Switzerland* [GC], no. 78630/12; *Ryser v. Switzerland*, no. 23040/13.

The necessary measures have not been taken "in good time" and are ineffective.[278] Instead, the Respondent's approach is marked by delays and inadequate enforcement and, significantly, is not based on any proper assessment of what steps it is required to take.[279]

2.5.2. Violation of Art. 8 ECHR (questions E.5 and E.5.2)

129 Art. 8 ECHR imposes in environmental matters a *positive obligation* on Respondent to put in place a legislative and administrative framework aimed at the *effective prevention* of damage to the environment and human health.[280] "Necessary"[281] and "appropriate"[282] measures have to be adopted to prevent or minimise the risk of environmental harm, taking into account the specific features of the activity in question and the level of risk involved.[283]

130 In environmental matters, the scope of the positive obligations under Art. 2 ECHR largely overlap with those under Art. 8 ECHR.[284] Against this background and in view of the page limit set by the Court, the Applicants refer back to and repeat their submissions on the scope of Art. 2 ECHR (§§111–128).

131 In addition, regard must be had to a fair balance between competing interests of the individual and of the community as a whole.[285] The Applicants submit that there is no conflict of interests; on the contrary, it is in the interests of the Swiss community as a whole that the Respondent adopts preventive measures to reduce the likelihood of global temperatures exceeding the 1.5°C limit, as provided in the PA. Further, as the Respondent states, this is in Switzerland's own *financial interest*.[286]

132 Thus, in answer to question E.5 and E.5.2, the Applicants submit that the Respondent is in continuous breach of their rights under Art. 8 ECHR.

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[278] Cf. *Dubetska* (n 216), §143.
[279] *Dubetska* (n 216), §151.
[280] E.g.; *Tătar* (n 157), §88, *Budayeva* (n 178), §129.
[281] See e.g. *Cordella* (n 172), §173.
[282] See e.g. *Kolyadenko* (n 198), §212.
[283] *Jugheli* (n 182), §75; see also *Öneryıldız* (n 178), §90; *Budayeva* (n 178), §132.
[284] *Öneryıldız* (n 178), §§90 and 160; *Budayeva* (n 178), §133; see also *Kolyadenko* (n 198), §216.
[285] *Greenpeace E.V. and Others v. Germany* (dec.), no. 18215/06.
[286] The Federal Council, Switzerland's Long-Term Climate Strategy of 27. Jan. 2021, p. 5 (link); see also Federal Gazette, BBl 2021 1972, s6.5.3 (link).

2.5.3. Extent of States' margin of appreciation (question E.5.3.1)

133 The Respondent's *margin of appreciation* in this case is limited because the Applicants' complaint concerns: an issue of compliance with international standards recognised by the Respondent (s2.5.4);[287] a risk of a man-made disaster;[288] and a violation of fundamental rights protected by Art. 2 ECHR. The urgency of the situation and the risk of irreversible harm also point to a narrow margin of appreciation.

134 Thus, the Applicants submit that the Respondent's margin of appreciation is limited to determining the *measures*[289] with which to fulfil its duty to protect. There is no margin of appreciation as to *whether* to take steps to protect, nor whether to implement and enforce measures adopted to protect, since the duty to protect is plainly engaged. In this context, there can be no margin of appreciation as to the *level of ambition* that must be pursued by measures, that is, the need to keep temperatures within the 1.5°C limit and to do its share to stay within the 1.5°C limit.[290] Nor is there – particularly with a view to the precautionary principle – discretion regarding the emissions reductions necessary to do its share (§§113 ff.).[291] It follows that where the positive obligation to take measures to achieve a particular objective (keeping global temperatures below 1.5°C) is engaged, as is the case here, the Court must examine whether the measures taken are *capable* of achieving the relevant objective. If they are not, a breach of the relevant obligation arises. No additional margin of appreciation can arise.

135 Furthermore, it should be noted that what is being sought by the Applicants does not pose an excessive burden on the Respondent.[292] As outlined above (s1.12), the Respondent is able to do its share and never claimed otherwise.

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[287] See *Bor* (n 259), §§24, 27.
[288] *Budayeva* n 178), §§134-137.
[289] See *Greenpeace E.V.* (n 285) ; *Brincat* (n 178), §101, citing numerous cases making this point.
[290] See *Fadeyeva* (n 171), §§124-134; see VOIGT (n 260), p. 4 (link); and VOIGT, The climate change dimension of human rights: due diligence and states' positive obligations, Journal of Human Rights and the Environment, Vol. 13 Special Issue, Sept. 2022, pp. 152–171, p. 169 (link): "In sum, the argument can be made that Parties to the ECHR have, in fact, a narrow margin of appreciation, if any, when it comes to the climate mitigation ambitions of each state. Given the potential costs of unabated climate change and the very small window of opportunity, there is no longer any discretion as to the level of ambition required, which has to be at each Party's highest possible level, applying the maximum of available resources. Discretion therefore only applies to the choice of measures applied to reach this goal (the 'how'), but no longer to the 'what and if'."
[291] See *Pavlov and Others v. Russia*, no. 31612/09, §75; *Buckley v. UK*, no. 20348/92, §74.
[292] Cf. *Kurt v. Austria* [GC], no. 62903/15, §158.

2.5.4. Scope of the Respondent's obligation to protect is determined by the harmonious interpretation of the Convention (question E. 5.3.2)

136 In its interpretation of Convention provisions, the Court has regard to relevant rules and principles of international law applicable in relations between the Contracting Parties[293] as well as evolving norms of national and international law[294] and any trend emerging from specialised international instruments and from the practice of Contracting States, independent of whether the Respondent has ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned.[295] That approach involves the Court's recognition that its provisions cannot be interpreted in a vacuum,[296] nor as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein.[297]

137 The Applicants submit that the scope of Respondent's obligation to protect under Arts. 2 and 8 ECHR must be interpreted in light of the following international instruments, which manifest an international trend (and indeed international obligations that all Contracting States have agreed to be bound to discharge) regarding what must be done to address the serious and profound risks of climate change.[298] Notably, as the present case addresses global climate change, it deals with a problem which is of concern to the whole international community.[299]

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[293] *Demir and Baykara* (n 196), §67.
[294] *Demir and Baykara* (n 196), §68.
[295] *Demir and Baykara* (n 196), at §85: "(…) in defining the meaning of terms and notions in the text of the Convention, [the Court] can and must take into account elements of international law other than the Convention, the interpretation of such elements by competent organs, and the practice of European States reflecting their common values. The consensus emerging from specialised international instruments and from the practice of Contracting States may constitute a relevant consideration for the Court when it interprets the provisions of the Convention in specific cases," and at §86: "(…) it is not necessary for the respondent State to have ratified the entire collection of instruments that are applicable in respect of the precise subject matter of the case concerned. It will be sufficient for the Court that the relevant international instruments denote a continuous evolution in the norms and principles applied in international law or in the domestic law of the majority of member States of the Council of Europe and show, in a precise area, that there is common ground in modern societies." See also *Tătar* (n 157) §§109 and 120.
[296] See *Al-Adsani v. UK* [GC], no. 35763/97, §55 and *Demir and Baykara* (n 196), §85.
[297] *Demir and Baykara* (n 196), §67-68.
[298] See e.g. *Demir and Baykara* (n 196), §76.
[299] Cf. *Pavlov* (n 291), concurring opinion of Judge KRENC, §4.

2.5.4.1. International climate law

138 The PA as well as the UNFCCC are treaties within the meaning of the VCLT and the Convention should be interpreted in harmony with them.[300]

139 It is the ultimate objective of the UNFCCC, ratified by Switzerland in 1993, to "prevent dangerous anthropogenic interference with the climate system."[301] To reach that goal, in the Cancún Agreements 2010, Switzerland committed to "reducing global GHG emissions to (…) below 2°C." It also recognised the need to "strengthen the long-term global goal on the basis of the best available scientific knowledge."[302] Later, due to scientific advances which demonstrated that the 2°C limit is no longer considered as "safe"[303] the Parties, including Switzerland, committed in the PA to hold the increase in global average temperature to "well below 2°C" and to "pursue efforts to limit the temperature increase to 1.5°C" (Art. 2(1)(a)).

140 In adopting the PA, the Parties invited the IPCC to provide a special report on the impacts of global warming of 1.5°C.[304] The IPCC published its 1.5°C SR in 2018. Due to its results, the global political and scientific consensus is now that a 1.5°C limit is the benchmark for countries to use when calibrating their mitigation efforts.[305] The Respondent recognised the 1.5°C limit as the relevant benchmark in its NDC (§33). Eventually, the 2021 Glasgow Climate Pact "cemented 1.5°C as the primary global temperature ceiling."[306] Together with the fact that the PA expressly states that Parties must strive to limit warming to 1.5°C, there is now a *great degree of consensus* on the temperature limit of 1.5°C such that it must be taken into consideration when interpreting and applying Arts. 2 and 8 ECHR.[307]

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[300] See *Demir and Baykara* (n 196), §67; *Al-Adsani* (n 296), §55; *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, §150.
[301] Art. 2 UNFCCC (link).
[302] COP TO THE UNFCCC, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action Under the Convention, Decision 1/CP.16, §4 (link).
[303] Subsidiary Body for Scientific and Technological Advice, Report on the structured expert dialogue on the 2013-2015 review, Bonn 2015, Message 5 p. 18 (link).
[304] PARTIES TO THE UNFCCC, Adoption of the Paris Agreement. Decision 1/CP.21, §21 (link), see also §17 and Art. 4(1) PA.
[305] RAJAMANI/GUÉRIN in: KLEIN ET AL. (eds.), The Paris Agreement on Climate Change, Oxford 2017, p. 76.
[306] DEPLEDGE ET AL., Glass half full or glass half empty?: the 2021 Glasgow Climate Conference, Climate Policy, 22:2, pp. 147-157, 2022, p. 148 (link).
[307] Cf. *Urgenda* (n 198), Summary of the Decision, What, specifically, does the State's obligation to do 'its part' entail?

141 In order to achieve the long-term temperature goal, Parties aim to undertake rapid reductions in accordance with best available science and on the basis of equity, recognising that emission reductions will take longer for developing country Parties (Art. 4(1) PA). Developed countries have to "take the lead" and reduce their emissions with their "highest possible ambition" as their "fair share" of the global effort (Art. 4(3) and 4(4) PA and 3(1) UNFCCC). The general understanding of a *fair level of contribution* is that it reflects the "highest possible ambition" and "common but differentiated responsibilities and respective capabilities, in the light of different national circumstances" (CBDRRC-NC) (Art. 2(2) and 4(3) PA, Art. 3(1) and 4(1) UNFCCC, Principle 7 Rio Declaration). Regarding the recent assessments of what the range of *fair level of contribution* looks like with a view to established principles and norms of international environmental law, the Applicants refer to (§114) and (s1.10.2).

142 The Respondent cannot deny the binding nature of these substantive provisions.[308] Such an interpretation is impermissible as it would deprive the obligations set out in Art. 2(1) of the PA and Art. 2 of the UNFCCC of *effectiveness* and run counter to their entire *object and purpose* (Arts. 26 and 31(1) VCLT). Nonetheless, it is not decisive in determining the scope of the obligation to protect under Arts. 2 and 8 ECHR.[309]

143 All Contracting States of the Council of Europe are parties to the PA. Similarly, all parties to the PA belong to at least one human rights treaty. As such, "they must ensure that all of their actions comply with their human rights obligations. That includes their actions relating to climate change."[310] The interpretation of Preamble 11 to the PA,[311] read in light of the PA as a whole[312] and in light of customary human rights law, indicates that the Parties are expected to take

[308] See Respondent's Observations (n 215), §86 ff. (link).
[309] See e.g. *Demir and Baykara* (n 196), §78, with reference to *Marckx v. Belgium*, no. 6833/74, §§20 and 41; *McElhinney v. Ireland* [GC], no. 31253/96; *Al-Adsani* (n 296); *Fogarty v. UK* [GC], no. 37112/97; *Glass v. UK*, no. 61827/00, §75; *Öneryıldız* (n 178), §59; *Christine Goodwin v. UK* [GC], no. 28957/95; *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00; *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99.
[310] OHCHR, COP21: "States' human rights obligations encompass climate change" – UN expert, 3 Dec. 2015 (link).
[311] Preamble 11 of the PA explicitly refers to the need for States to "*respect*, promote and consider their respective *obligations* on *human rights*" when "taking action to address climate change" (emphasis added) (link).
[312] Especially Arts. 2, 3, 4.1 and 4.3 PA (link).

human rights implications into consideration when deciding the level of ambition of their contributions to the global response to climate change.[313]

2.5.4.2. The prevention principle and the precautionary principle

144 The *prevention principle* and the *precautionary principle*[314] are important sources in the context of determining the scope of the obligation to protect through harmonious interpretation of the Convention. The UNFCCC stipulates at Art. 3(3) that the "Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects." Further that "[w]here there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures."[315] Thus "prevention" and "precaution" are required, which covers the full range of preventive measures, whether taken in the context of scientific uncertainty or not.[316]

145 The ILC Draft Articles on Prevention of Transboundary Harm provide guidance on the relevant scope of the *customary duty of prevention*.[317] They distinguish between levels of risk deemed acceptable and levels of risk that are not acceptable.[318] The obligation to take preventive measures to avoid or manage risks applies to "risks of causing significant transboundary harm."[319] The significance of the risk is assessed on the basis of two elements of the term "risk": (1) the probability that the risk will materialise and (2) the magnitude of harm that may be caused.[320] The first element, concentrating on known consequences, distinguishes prevention from precaution. The second element makes prevention applicable only in circumstances where harm is foreseen to be "significant", which is understood as meaning more than "detectable" but not necessarily serious or substantial.[321]

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[313] CARAZO in: KLEIN/CARAZO/DOELLE/BULMER/HIGHAM (eds.), The Paris Agreement on Climate Change, Analysis and Commentary, Oxford 2017, p. 116 with further references.
[314] See *Tătar* (n 157), §120; see also *Urgenda* (n 198), §7.2.10.
[315] Art. 3(3) UNFCCC (link).
[316] See also TROUWBORST, Prevention, Precaution, Logic and Law, Erasmus Law Review, Volume 02 Issue 02, 2009, p. 124 (link).
[317] DUVIC-PAOLI, The Prevention Principle in International Environmental Law, Cambridge 2018, p. 182.
[318] DUVIC-PAOLI (n317), p. 182.
[319] International Law Commission, Draft articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, Report of the ILC on the Work of its Fifty-third session, UN Doc A/56/10 (2001), hereinafter "**ILC Draft Articles**", Art. 1 (link).
[320] ILC Draft Articles (n319), Commentary to Art. 2, §3, p. 152 (link); DUVIC-PAOLI (n317), p. 181.
[321] ILC, Draft Articles (n319), Commentary to Art. 2, §4, p. 152 (link).

146 In the present case, the *prevention principle* as defined by the ILC applies because there is a high likelihood of significant impact. There is a global consensus that climate change and its adverse effects are no longer a matter of uncertainty but of acknowledged risks.[322] The harm to the Applicants is foreseen to be serious (§§77 and 99). Thus, the Respondent must take measures to prevent such harm to the Applicants.[323] This obligation requires the State to take measures which are "appropriate and proportional" to the magnitude of the risks posed by climate change.[324] The ILC Draft Articles require the Respondent to exert "best possible efforts"[325] and "use all the means at its disposal"[326] to prevent climate change exceeding the limit of 1.5°C.

147 The *precautionary principle* has been invoked by many national courts in their deliberations on the appropriate level of action for a State to take in climate cases.[327] According to the Court's case law, the precautionary principle recommends "aux États de ne pas retarder l'adoption de mesures effectives et proportionnées visant à prévenir un risque de dommages graves et irréversibles à l'environnement en l'absence de certitude scientifique où technique."[328]

148 Climate change and its adverse effects are no longer a matter of uncertainty but of acknowledged risks (§146). The risks posed by climate change-induced heatwaves have already partly materialised (s1.6). In line with the position in *Tâtar v. Romania*, §121, given that some harms have already materialised, the Respondent's positive obligation to prevent irreversible and serious harm to the global climate and to the Applicants caused by excessive GHG emissions applies *even more so* now and in the future. The Respondent's failure to adopt the necessary legislative and administrative framework to do its share to prevent a

[322] See VIÑUALES, The Paris Climate Agreement: An Initial Examination (Part I of III) Feb. 2016 (link).
[323] See DUVIC-PAOLI (n317), at pp. 269 and 190-191: "It is precisely when harm is foreseeable but has not yet occurred that the obligation of prevention is most relevant. (…) The boundaries of the anticipatory rationale of prevention are not defined within an explicit timeframe, but it can be considered that prevention operates in the realm of 'imminence.' (..) In the climate regime, the 'near future' spans over the full twenty-first century, the time span covered by climate science and modelling. Climate change is thus considered an imminent threat irrespective of the fact that some damage might only materialize in several decades."
[324] ILC Draft Articles (n319), Commentary to Art. 3, §11 p. 154 (link).
[325] ILC (Draft Articles (n319), Commentary to Art. 3, §7 p. 154 (link).
[326] See *Pulp Mills on the River Uruguay (Argentina v Uruguay)* (Judgment) [2010] ICJ Rep 14, §101.
[327] *Neubauer* (n 208); High Court of New Zealand, *Sarah Thomson v. The Minister for Climate Change Issues*, 2 Nov. 2017, CIV 2015-485-919, NZHC 733, §88-94; Supreme Court of Colombia, *Future Generations v. Ministry of the Environment and Others,* 5 Apr. 2018, STC4360-2018, §11.1; *Urgenda* (n 198), §5.7.3, 7.2.5, 7.2.10; UN Human Rights Committee, *Daniel Billy et al. v. Australia*, 21 Jul. 2022, communication no. 3624/2019 (see Annex I, §§14, 16; Annex III, §4).
[328] *Tătar* (n 157), §§109 and 120.

global temperature increase of more than 1.5°C (and its delays in that regard) is impermissible, by reference, *inter alia*, to the precautionary principle.

149 In particular, the precautionary principle supports the position that any ambiguity as to the *necessary emissions reductions* to prevent a global temperature increase of more than 1.5°C should be resolved in favour of the Applicants (who are suffering the consequences of the absence of a clearly defined approach). The precautionary principle also limits the discretion regarding a State's reliance on measures to remove GHGs from the atmosphere at a later stage, as their large-scale deployment is not yet certain (s1.10.5).[329]

2.5.4.3. Evolving norms of national and international law

150 Further important sources in the context of determining the scope of the obligation to protect through harmonious interpretation of the Convention are evolving norms of national and international law[330] and "consensus emerging from specialized international instruments and from the practice of the Contracting States."[331]

151 Over the past decade, a wide range of judicial, quasi-judicial[332] and other institutions at the national,[333] regional and international[334] level have recognised the significant impact that climate change is already having, and will have, on the enjoyment of a wide range of human rights, including the rights to life and health.[335]

152 In that regard, the Resolution A/76/L.75 on "The human right to a clean, healthy and sustainable environment" adopted on 26 July 2022 by the UN General Assembly is a major and recent development at the international

[329] See *Urgenda* (n 198), §7.2.5; *Neubauer* (n 208), §227.
[330] *Demir and Baykara* (n 196), §68.
[331] *Demir and Baykara* (n 196), §85.
[332] E.g., in May 2022 the Commission on Human Rights of the Philippines concluded its seven-year inquiry into duties of States and responsibilities of businesses for the human rights impacts of anthropogenic climate change (link), holding that climate change is a human rights issue (pp. 26-39); it reaffirmed governments' special duties to protect human rights in the context of climate change (pp. 69-79); governments' failure to take meaningful mitigation steps may be a human rights violation (pp. 87-88); and businesses, including financial institutions, must respect those rights (pp. 132-135).
[333] See *Urgenda* (n 198), *§2.1;* Paris Administrative Court, *Notre Affaire à Tous and Others v. France*, 14. Oct. 2021*;* Brussels Court of First Instance, *ASBL Klimaatzaak* (n 206)*; Neubauer* (n 208)*;* Supreme Court of Norway, *Nature and Youth Norway and others v. Norway, HR-2020-2472-P;* Conseil d'État, *Commune de Grande-Synthe v. France,* no. 427301, 1 Jul. 2021; Irish Supreme Court, *Friends of the Irish Environment v. Ireland,* no. 205/19, 31 Jul. 2020, §3.6.
[334] See OHCHR, Joint statement by five UN human rights treaty bodies on human rights and climate change, 16 Sep. 2019, UN Doc. HRI/2019/1, §§3 and 7 (link); The Human Right to a Clean, Healthy and Sustainable Environment, Human Rights Council Res 48/13, adopted 8 Oct. 2021 (link).
[335] 103 climate cases have been filed before 15 international or regional courts and tribunals: see SETZER/HIGHAM (n 166) p. 10 (link).

level.[336] This Resolution expressly recognises "the right to a clean, healthy and sustainable environment as a human right." Moreover:

– The Resolution clearly confirms the link between the protection of the environment and human rights, by stating that "the impact of *climate change*, (…), the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy and sustainable environment and that environmental damage has negative implications, both direct and indirect, for the effective enjoyment of all human rights" (emphasis added). It recognizes that "(…) climate change, (…) constitute[s] some of the most pressing and serious threats to the ability of present and future generations to effectively enjoy all human rights." In other words, human rights and the right to a safe and stable climate are intrinsically interrelated.[337]
– The Resolution also recognizes that, while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and those segments of the population that are already in vulnerable situations, including older persons. In other words, although climate change bears human rights implications for all, it particularly threatens the human rights of most vulnerable groups including women and older persons.
– The Resolution recalls "States' obligations and commitments under multilateral environmental instruments and agreements, including on climate change" and reaffirms that "States have the obligation to respect, protect and promote human rights, including in all actions undertaken to address environmental challenges, and to take measures to protect the human rights of all, as recognised in different international instruments, and that additional measures should be taken for those who are particularly vulnerable to environmental degradation (…)." In that text

[336] See *Pavlov* (n 291), as Judge KRENC recognised in his concurring opinion, §6 ff.
[337] See *Pavlov* (n 291), Concurring opinion of Judge KRENC, §6; see also UN Human Rights Committee, *Daniel Billy* (n 327), §8.3: "The Committee further recalls that the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity."

the Resolution refers to the UNFCCC and the PA (s2.5.4.1) as well as to the precautionary principle and prevention principle, as customary principles of international law (s2.5.4.2).

153 All Contracting States voted in favour of this Resolution. That fact demonstrates that there is a clear measure of common ground between the Contracting States. Therefore, the Applicants submit that this Resolution is an important and recent development that the Court "can and must take into account."[338]

154 That common ground is also reflected in the European Climate Law (**"ECL"**)[339] which is a key element of the European Green Deal[340] and imposes the binding objective of climate neutrality in the European Union (**"EU"**) by 2050 in pursuit of Art. 2(1) PA: Arts. 1 and 2 ECL and an EU wide *domestic* reduction of net GHG emissions of at least 55% compared to 1990 levels by 2030 in order to achieve climate neutrality in 2050: Art. 4(1) and recital 26 ECL.

155 The European Climate Law represents an agreement (i.e. consensus) between 27 of the Contracting States that are also members of the EU as to the *minimum* emissions reductions that must be made. Switzerland's planned domestic emissions reduction by 2030 of 34% below 1990 levels (§34) does not, however, come close to those requirements (55%), nor to those applicable in EU countries that are structurally comparable. e.g. Denmark (70%);[341] Finland (60%, carbon-neutral in 2035);[342] and Germany (65%).[343] Even assuming the EU climate target is sufficient, and the Court should note that the CAT has found it to be "insufficient",[344] Switzerland is doing significantly less.

2.5.5. Living instrument and the need to tackle climate change (question E. 5.3.3)

156 The living instrument doctrine requires that the Convention be interpreted in light of present-day conditions, taking into account sociological, technological and scientific changes as well as evolving standards in the field of human rights.[345]

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[338] *Demir and Baykara* (n 196), §§85-86.
[339] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 Jun. 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ("European Climate Law") (link).
[340] European Commission, The European Green Deal, 11. Nov. 2019 (link).
[341] Climate Change Performance Index, Denmark (link).
[342] Ministry of the Environment, Reform of the Climate Change Act (link).
[343] Bundesministerium für Wirtschaft und Energie, Deutsche Klimaschutzpolitik (link).
[344] See e.g. CAT, European Union, Country Summary (link).
[345] *Demir and Baykara* (n 196), §§68, 85 and 122.

157 The Applicants submit that as a result of scientific developments there is now no doubt as to the catastrophic implications of climate change and the real urgency of taking the necessary measures to address it. This was recognised by the Parties as early as 1992 when they adopted the UNFCCC. Since then, however, the urgency has increased significantly, as recognised in the need for and adoption of the PA (Preamble to the PA). The scientific consensus now is that there remains very little time, if any, to prevent catastrophic temperature increases.[346] Accordingly, in construing and applying Convention rights, the Court must have regard to this scientific consensus: that climate change has existential implications for life on earth; that there is a real risk of exceeding critical further thresholds known as "tipping points" ("a tipping point is a critical threshold beyond which a system reorganizes, often abruptly and/or irreversibly");[347] and that significant climate change mitigation measures must be taken as a matter of *extreme* urgency to avoid the most catastrophic impacts, even if all impacts can no longer be avoided.

158 It is widely recognised internationally that averting climate change is an inherent part of the obligation on States to protect human rights. The UN Human Rights Committee noted in *Daniel Billy et al. v. Australia*, 21 July 2022: "the obligation of States parties to respect and ensure the right to life extends to reasonably foreseeable threats and life-threatening situations that can result in loss of life. States parties may be in violation of Article 6 of the Covenant even if such threats and situations do not result in the loss of life. The Committee considers that such threats may include adverse climate change impacts, and recalls that environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life. The Committee recalls that States parties should take all appropriate measures to address the general conditions in society that may give rise to direct threats to the right to life or prevent individuals from enjoying their right to life with dignity."[348]

[346] Emissions Gap Report 2022 (n 77) (link).
[347] IPCC, AR6 WGI (n 2), SPM Footnote 34 (link).
[348] *Daniel Billy* (n 327), §8.3. See also, «Understanding Human Rights and Climate Change, Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the Parties to the UNFCCC», p. 10 (link).

159 Similarly, domestic courts across the world and in the Contracting States have *already* recognised that climate change engages individual human rights, including the right to life, the right to protection of family and private life and the rights of future generations.[349]

160 The Applicants emphasise the importance of this development. Were the Court to decide that those domestic courts had been wrong in their analysis that the failure of States and corporate entities to take sufficient measures to mitigate climate change engaged (and indeed on the facts of those cases, violated) individual rights under Arts. 2 and 8 ECHR, that would amount to a significant set-back in tackling climate change. The Applicants submit that on that question, the Court is concerned *not* with the living instrument doctrine, but rather with the question of whether domestic courts, as set out below, were correct or incorrect in holding that a failure by the State to take all necessary steps to prevent climate change violates individual rights under the Convention. Whilst it would be open to the Court to say that domestic courts were entitled under Art. 53 ECHR to go beyond what was required by the Convention, it would undoubtedly have a significant impact if it did so, both on the courts of other Contracting States and potentially even in States where the courts have already found State omissions in the sphere of climate change action to give rise to human rights issues.

161 In *Urgenda*, the Supreme Court of the Netherlands held that the State was under a positive obligation pursuant to Arts. 2 and 8 ECHR to reduce GHG emissions because climate change poses a "real and immediate risk", and that "[t]he fact that this risk will only be able to materialise a few decades from now and that it will not impact specific persons or a specific group of persons but large parts of the population does not mean – contrary to the State's assertions – that Articles 2 and 8 ECHR offer no protection from this threat."[350]

162 In *Neubauer* the German Constitutional Court, considering the rights of future generations, ordered the government to reconsider its targets and clarify its emission reduction targets from 2031 onwards by the end of 2022.[351]

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[349] See for an overview SAVARESI/SETZER, Mapping the Whole of the Moon: An Analysis of the Role of Human Rights in Climate Litigation, 2021, available at SSRN (link); see also *Urgenda* (n 198), §2.1; *Notre Affaire à Tous* (n 333); *ASBL Klimaatzaak* (n 206); *Neubauer* (n 208).
[350] *Urgenda* (n 198), §§5.2.2 and 5.6.2.
[351] *Neubauer* (n 208), §§99, 151, 184.

163 Domestic courts have further emphasised that measures should prioritise near-term action over uncertain and unproven negative emissions technologies. In *Urgenda* the Dutch Supreme Court rejected the State's reliance on drastic measures to remove GHG from the atmosphere at a later stage, noting that "there is no technology that allows this to take place on a sufficiently large scale" and stating that taking such risks would be contrary to the precautionary principle enshrined in international law and the Convention.[352] The German Constitutional Court similarly ruled that the German State cannot delay action as it would transfer a disproportionate mitigation burden onto future generations.[353] It also held that the German State cannot rely on negative emissions technologies, as their large-scale deployment is not yet certain.[354]

164 Likewise, two apex courts in France have rejected the notion that the government's pursuit of mid-term or long-term targets could excuse its failure to meet its near-term target, given the cumulative, lasting effects of current emissions and the real risk that it would be impossible to implement the drastic GHG cuts needed if climate action is delayed.[355] Similarly, the Supreme Court of Ireland decided that the country's mitigation plan was too reliant on unproven technologies.[356]

165 There is also increased judicial recognition that developed countries have a greater role to play in preventing dangerous climate change. In its application of Arts. 2 and 8 ECHR, the Dutch Supreme Court rejected the argument that because all States are jointly responsible for climate change, no individual State can be held responsible. It also rejected the argument that the impact of the reduction of emissions sought by the plaintiff would be insignificant in light of the other States' ongoing emissions, over which the Netherlands has no control. Instead, it held that the Netherlands must "do their part" to prevent dangerous climate change, maintaining that "each country is responsible for its part and can therefore be called to account in that respect", in line with "what is adopted in national and international practice in the event of unlawful acts that give rise to only part of the cause of the damage".[357] The German

[352] *Urgenda* (n 198), §7.2.5.
[353] *Neubauer* (n 208), §§144 and 182.
[354] *Neubauer* (n 208), §227.
[355] *Notre Affaire à Tous* (n 333); *Notre Affaire à Tous* (n 206), §33; Conseil d'État, *Commune de Grande-Synthe v. France,* no. 427301, 19 Nov. 2020, §15.
[356] *Friends of the Irish Environment* (n 333), §§6.18, 6.46, 6.47.
[357] *Urgenda* (n 198), §§5.7.5 and 5.7.6.

Constitutional Court also held that Germany must reduce its share of emissions and enhance international cooperation by adopting adequate national measures.[358] Further, it held that States cannot use emissions reductions achieved in other jurisdictions to "offset" large-scale inaction in their required domestic emission reductions.[359]

166 Domestic courts have also recognised that future harms are certain due to the irrevocable and multiplying effects of historical and current GHG emissions. For example, the Administrative Supreme Court of France held that, even if the most severe consequences of climate change do not take place before 2030 or 2040, their inevitability gives rise to an urgent need to act without delay.[360] The Irish Supreme Court similarly stated that the consequences of failing to address climate change are "very severe with potential significant risks both to life and health."[361]

167 Finally, domestic courts in the Council of Europe's Member States have recognised the victim status of both individuals and organisations to bring claims based on constitutional or human rights violations due to climate change. Thus, the German Constitutional Court recognised the standing of eight young individuals to contest Germany's climate policy;[362] apex courts in Norway and the Netherlands allowed for the plaintiff organisations to plead violations of Arts. 2 and 8 ECHR in climate cases;[363] the French Conseil d'État granted standing to a municipality;[364] and the first instance court of Brussels recognised the standing of an NGO plaintiff (considering the protected role of environmental NGOs under the Aarhus Convention particularly) and of individual plaintiffs.[365]

2.6. Violation of Article 6 ECHR (questions E.6., E.6(a) and E.6(b))

168 The Applicants submit that there has been a violation of the Applicants' right to effective access to court under Art. 6 ECHR[366] because the Respondent's courts failed properly to examine the merits of their claims.

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[358] *Neubauer* (n 208), §§149, 202-204.
[359] Ibid., §226.
[360] *Notre Affaire à Tous* (n 333), §3.1.
[361] *Friends of the Irish Environment* (n 333), §3.6.
[362] *Neubauer* (n 208), §§96-112.
[363] *Nature and Youth Norway* (n 333); *Urgenda* (n 198).
[364] *Grande-Synthe* (n 333).
[365] *ASBL Klimaatzaak* (n 206), p. 46-52.
[366] See *Naït-Liman* (n 240), §113.

169 In answer to question E.6(a), the Applicants submit that they did not have an effective judicial remedy at their disposal to assert their civil rights.[367] The domestic authority declared the matter inadmissible on the grounds that the Applicants lacked standing under Art. 25*a* APA; and the Respondent's domestic courts upheld that decision. The domestic courts did not assess the Applicants' dispute or, alternatively, only did so arbitrarily.[368] Specifically, *none of the courts analysed critical questions on the merits* effectively, such as those related to: the Applicants' vulnerability to extreme heatwaves; the harm from heat-related afflictions suffered by Applicants 2-5; and the legislative and administrative framework necessary to protect the Applicants' right to life and family and private life.

170 The right of access to a court is not absolute but may be subject to limitations.[369] This applies *inter alia* where the proper administration of justice and the effectiveness of domestic judicial decisions are concerned.[370] However, those limitations must not restrict or reduce a person's access in such a way or to such an extent that the very essence of the right is impaired.[371] In addition, such limitations will only be compatible with Art. 6 ECHR if they pursue a legitimate aim and if there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.[372]

171 With regard to question E.6(b), the Applicants do not contest the limitations to the right of access to a court entailed in Art. 25*a* APA in the abstract (i.e. the standing requirements) nor the legitimate aim pursued; the principles of the proper administration of justice and maintaining the effectiveness of domestic judicial decisions.[373]

172 However, the Applicants submit that the domestic courts applied the standing requirements *arbitrarily* and in a manifestly unreasonable way,[374] impairing the very essence of the Applicants' right of access to a court.[375]

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[367] *Naït-Liman* (n 240), §113.
[368] See e.g. *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, §86: "the right of access to a court includes (…) also the right to obtain a determination of the dispute by a court."
[369] *Naït-Liman* (n 240), §114.
[370] *Ali Riza v. Switzerland*, no. 74989/11, §97.
[371] *Naït-Liman* (n 240), §114.
[372] *Naït-Liman* (n 240), §115.
[373] See *Naït-Liman* (n 240), §122.
[374] See e.g. *Naït-Liman* (n 240), §116.
[375] See e.g. *Ashingdane v. UK,* no. 8225/78, §57; *Naït-Liman* (n 240), §114.

173 At the administrative stage, the Federal Department of the Environment, Transport, Energy and Communication (**"DETEC"**) stated arbitrarily that the Applicants' rights were not directly affected in terms of Art. 25*a* APA, because "their goal is to reduce CO_2 emissions not only in the applicants' immediate surroundings, but worldwide"[376]. With respect, that statement is nonsensical, given it is technically impossible to reduce the concentration of CO_2 in the atmosphere *locally*.

174 Later, the Federal Administrative Court (**"FAC"**) and the Federal Supreme Court (**"FSC"**) both came to the conclusion that the Applicants' appeals constituted an *actio popularis,* albeit based upon different but arbitrary reasoning, impairing the very essence of the Applicants' right of access to a court.

175 The assessment of the FAC that the Applicants were not "particularly" affected by the impacts of climate change[377] is in clear contrast to best available scientific evidence and the medical certificates submitted by the Applicants (ss1.5 and 1.6).

176 Equally arbitrary and contrary to any scientific evidence was the assumption by the FSC that there was still some time available to combat dangerous climate change.[378] This finding flew in the face of the Respondent's own public communication at that time[379] and had not been raised by the DETEC in its function as a party to the domestic proceedings. The judges of the FSC made this finding having conducted their *own fact finding* exercise without the involvement of (climate) scientists and despite the fact that the FSC's appellate function is normally limited to the examination of violations of the law.[380] On the basis of that assumption the FSC then held that: the Applicants would not therefore be affected in their rights with sufficient intensity; and accordingly that their claims were aimed at an abstract examination of the domestic climate measures.[381] The FSC's finding has no proper scientific or other evidential basis. Contrary to its unevidenced finding, there is no time left to wait before States must take the necessary measures if global warming is to be limited to 1.5°C;

[376] DETEC, decision, 26 April 2017, s1.2.
[377] FAC, judment A-2992/2017, 27 Nov. 2018, ss7.4.2 and 7.4.3.
[378] BGer 1C_37/2019, 5 May 2020, s5.3.
[379] See e.g. Federal Gazette, BBl 2009 7433, s4.1.1 (link) and BBl 2018 247 (n 70), s1.1.1 (link).
[380] Arts. 95 and 96 Bundesgerichtsgesetz vom 17. Juni 2005, SR 173.110 (link).
[381] BGer 1C_37/2019, 5 May 2020, s5.5.

and the magnitude and rate of climate change and associated risks for the Applicants depend strongly on *near-term* mitigation and adaptation actions.[382]

177 Further, the FSC's decision that there is still time for Respondent to start acting is based on a false premise and is manifestly unreasonable. It implies that the only appropriate time for the Applicants to access a court would be at a moment when it is too late to redress the harm.[383] Environmental risks have to be addressed before they materialise,[384] due to "the limitations inherent in the very mechanism of reparation of this type of damage."[385] The FSC's decision is also manifestly unreasonable as it implies that the Respondent's duty of care threshold under Arts. 2 and 8 ECHR is based on the time left to achieve a global target, instead of evaluating whether climate change posed a "real and serious" risk to the lives of Applicants 2-5 and the members of Applicant 1.

178 Furthermore, the domestic courts applied the standing requirements *disproportionately*, given: their duty to consider the nature of the rights at stake (Arts. 2 and 8 ECHR); and the fact that with their interpretation of the standing requirements, acts and failures by the Respondent in fighting climate change would remain entirely outside the scope of human rights law (§63). This would be an unacceptable consequence in the light of the magnitude of the threat posed by climate change and the practice in comparable environmental law cases. It should be noted that the FSC made it explicitly clear that in its view, not only did the Applicants not fulfil standing requirements, but *the rest of the population* did not have standing either.[386]

179 Finally, it should be noted that the domestic courts' arbitrary application of standing requirements is also inconsistent with the Respondent's commitments under the Aarhus Convention. The third pillar of the Aarhus Convention concerns access to courts in environmental matters (Art. 9). It provides legal protection against decisions, actions and omissions regardless of the form of official action (Art. 9 (3)), and thus also against real acts.[387] Taking the "meaning and the spirit" of the Aarhus Convention into account speaks for generous

[382] IPCC, AR6 WGII (n 1) (link), B.4; IPCC, 1.5°C SR (n 50) SPM D.1.1 and D.1.3 and p. 34 and 61 (link) *(doc. 32)* and UNEP, Emissions Gap Report 2022 (n 77) (link).
[383] Cf. *Howald Moor* (n 277), §§74 ff.; see REICH, Bundesgericht, I. öffentlich-rechtliche Abteilung, 1C_37/2019, 5. Mai 2020, in ZBl 121/2020, 489-507, s2.1.3.
[384] See *Tătar* (n 157), §120; see also *Urgenda* (n 198), §7.2.10.
[385] International Court of Justice, *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1. C. J. Reports 1997, p. 7, §140.
[386] BGer 1C_37/2019, 5 May 2020, s5.5.
[387] BGE 141 II 233, E. 4.3.4.

provision of legal protection.[388] In this regard, it is submitted that the Court should also take account of the fact that the specific purpose of Art. 25*a* APA was to fill a serious gap in the system of legal protection.[389]

2.7. Violation of Article 13 ECHR (question E.7)

180 In answer to question E.7, the Applicants submit that there has been a violation of Art. 13 ECHR in the present case.

181 Art. 13 ECHR guarantees the availability at national level of a remedy to enforce the substance of Convention rights in whatever form they might happen to be secured in the domestic legal order.[390] It requires the provision of a domestic remedy allowing the "competent national authority" both to deal with the substance of the relevant Convention complaint and to grant appropriate relief. The remedy must be "effective" in practice as well as in law.[391] And, importantly, such a remedy must be available as soon as there is an "arguable" complaint or grievance under the Convention.[392]

182 The Applicants did not have an effective remedy at their disposal within the meaning of Art. 13 ECHR concerning the alleged violations of Arts. 2 and 8 ECHR, since no national authority effectively examined the *substance* of their complaint (§169).[393] DETEC refused to enter into the matter based on Art. 25*a* APA, still less to undertake a substantive review of the Arts. 2 and 8 ECHR complaint. The domestic courts upheld DETEC's refusal. The FSC's incidental statement that Arts. 2 and 8 ECHR were not violated[394] because they assumed that there was still some time for the Respondent to start acting does not remedy the domestic courts' failure to undertake a substantive review (§§169 and 174 ff.). The Respondent and its domestic courts' application of the standing requirements in an arbitrary manner (§172 ff.) rendered the remedy ineffective.[395] Further, when emphasising that the Applicants' complaint should

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[388] THURNHERR, Die Aarhus-Konvention in der Rechtsprechung des Bundesgerichts und des Bundesverwaltungsgerichts, Eine Spurensuche, Umweltrecht in der Praxis 2017, pp. 510 et seq., 523.
[389] HÄNER, Art. 25*a*, in WALDMANN/WEISSENBERGER (eds.), Praxiskommentar Verwaltungsverfahrensgesetz (VwVG), Zurich 2016, N 3 and footnote 9 with reference to, inter alia, BGE 121 I 87 E. 1b and BGE 128 II 156 E. 4b.
[390] *Rotaru v. Romania* [GC], no. 28341/95, §67; *Hatton* (n 248), §140.
[391] See Wille *v. Liechtenstein* [GC], no. 28396/95, §75.
[392] *Rotaru* (n 390), §67; *Mugemangango v. Belgium* [GC], no. 310/15, §130.
[393] See i.a. *Smith and Grady v. UK*, no. 33985/96, §§135-138; *Boychev and Others v. Bulgaria*, no. 77185/01, §56.
[394] BGer 1C_37/2019, 5 May 2020, s7.
[395] Cf. *Camenzind v. Switzerland*, no. 21353/93, §54; *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, no. 14134/02, §69

not be dealt with by legal action but by political means[396], the FSC defined policy issues so broadly that it was not possible for the Applicants to make their Convention points regarding their rights under Arts. 2 and 8 ECHR.[397]

183 Furthermore, there was no effective remedy at the time when the Applicants' complaint arose.[398] The time to reduce emissions for 2020 and 2030 in line with both the "well below 2°C" and the 1.5°C limit is not a matter for the future. Work should have already begun and should be continuing now. If an effective remedy is only granted when global warming approaches a certain level, as appears to be the FSC's approach, then in that case, it will be too late for Respondent to do its share, or for Applicants 2-5 and the members of Applicant 1, as older women, to benefit from these protections.

184 It should be noted that in the domestic proceedings, the Applicants did not challenge the CO_2 Act as such, but they had an arguable claim to a violation of Arts. 2 and 8 ECHR, for which the domestic regime must afford them an effective remedy.[399] Their initial 2016 request to the Respondent was a request to stop *omissions in climate protection* and to issue a ruling pursuant to Art. 25*a* APA.[400] The Applicants submitted that to put an end to the unlawful omissions (i.e. "real acts" in terms of Art. 25*a* APA), the Respondent should undertake effective and preventive actions to protect them from the effects of increasing temperatures, i.e. more frequent and stronger heatwaves. All such acts of the State fall within the scope of Art. 13 ECHR.[401]

185 Overall, the scope of review by the national authorities in the present case was not sufficient to comply with Art. 13 ECHR. There has therefore been a violation of Art. 13 of the Convention.

186 This is not altered by the fact that domestic law includes provisions for State liability. Financial compensation cannot be an alternative *effective* remedy against the *risk* of heat-related mortality or the future impairment of the Applicants' health, as it does *not lead to the elimination of the unlawful situation or the risks to the Applicants*.[402]

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[396] BGer 1C_37/2019, 5 May 2020, s7.
[397] Cf. *Hatton* (no 248), §140 f.; *Smith and Grady* (n 393), §§135-39. Compare *Neubauer* (n 208) and *Urgenda* (n 198).
[398] Cf. *Khider v. France*, no. 39364/05, §§142–145.
[399] See *Hatton* (n 248), §138.
[400] See request to the Respondent (link).
[401] *Al-Nashif v. Bulgaria*, no. 50963/99, §137; *Wille* (n 391), §§76-78.
[402] KELLER/CIRIGLIANO, Grundrechtliche Ansprüche an den Service Public: Am Beispiel der italienischen Abfallkrise [Constitutional rights' requirements for the Service Public: the example of the

2.8. Considerations that should guide the Court in indicating general measures to be taken by the Respondent State (question E.8)

187 The Applicants submit that the following considerations should guide the Court in devising the general measures (Art. 46 ECHR) to be taken by the Respondent.

188 In the present case, the Court should regard the fact that from the initiation of the domestic proceedings to date, the Respondent has not been interested in: evaluating whether and to what extent it had a positive obligation to protect the Applicants; in examining the question whether its climate policy is in line with limiting global warming to 1.5°C; in fulfilling its positive obligation towards the Applicants by adopting an adequate climate policy. For example:

- In the domestic proceedings the Respondent's authorities and courts *avoided answering these questions, by applying the standing requirements arbitrarily* (§172 ff.).
- Although hundreds of excess deaths are recorded in every heatwave in Switzerland, particularly amongst older women (s1.5), the Respondent has *clearly demonstrated that it does not take seriously the threat caused by climate change to older women and to society as a whole*. The Respondent continues to maintain that the Applicants were merely asserting some "subjective sensitivities,"[403] and has sought to blame the Swiss people's vote on the referendum for its failure to tackle climate change (§30).[404]
- The Respondent has failed to adequately inform its Parliament and the public about the human rights impacts of climate change; notwithstanding the alleged "review of constitutionality" contained in its dispatches to Parliament.[405] Since Switzerland does not have constitutional jurisdiction, such review would have been of particular importance.
- The Respondent continues to assert - *without providing any studies* or other evidence at any point (§125) and *contrary to independent studies*

Italian waste crisis], URP 2012, p. 831-853, 844; *Di Sarno* (n 157), §87; cf. *Macready v. the Czech Republic*, no. 4824/06, §48. Indeed, a person affected by a real act may *even be required* to submit a request under Art. 25*a* APA in order to avoid being held responsible in a later State liability procedure for not complying with his or her duty to limit damages, see KIENER/RÜTSCHE/KUHN, Öffentliches Verfahrensrecht [Public procedural law], 3rd edition 2021, N 436.

[403] See Respondent's Observations (n 215), §51 (link).

[404] See Respondent's Observations, (n 215), e.g. §103 (link).

[405] See e.g. Federal Gazette, BBl 2018 247 (n 70) (link), p. 368 s5.1.

- that its climate targets are in line with the 1.5°C limit;[406] relying on *global* pathways laid down by the 1.5°C SR[407] to be achieved *collectively*, maintaining untenably that these reduction targets could even be met to a significant extent by purchasing emission reductions abroad. The Respondent has failed throughout to demonstrate what its "fair share" would be and how, as a wealthy country, its *domestic* emissions reductions could be reduced to meet what is required in terms of emission reductions in the global average. Also, contrary to its NDC, the Respondent has no short term or long-term plan to enshrine the temperature limit of 1.5°C into national legislation.

– Having failed to meet its (inadequate) 2020 target (s1.11), the Respondent's strategy is to *forego potentially unpopular but effective domestic measures*[408] *and to focus on buying emissions reductions abroad*.

– Rather than pursue its highest possible ambition, the Respondent's climate strategy postpones the reduction efforts necessary for Switzerland *itself* to be net-zero, hoping the State will benefit financially (§131) from the emission reductions of *other* countries (which in this context is a classic situation of the prisoner's dilemma).

189 Overall, the present case shows a *clear lack of interest*[409] and a *systematic failure* of the Respondent to take all necessary measures to secure the Applicants' rights under Arts. 2 and 8 ECHR. In view of this, a simple declaration that the Applicants' rights have been violated would, at best, result in a promise by the Respondent to undertake feasibility studies rather than to take concrete measures, thus prolonging the violations of the Applicant's rights as well as a breach of the obligation on the Respondent to abide by the Court's judgment in accordance with Art. 46(1) ECHR.[410]

190 It is clear that to limit global warming to 1.5°C, *urgent, meaningful, and ambitious action is imperative*.[411] If inaction continues and only insufficient

[406] See e.g. Federal Gazette, BBl 2021 1972 (n 286), p. 8 s2.1 and p. 45 s6.6.2 (link) and CAT, Switzerland, Targets, NDC updates (link), noting that "without any meaningful increase in ambition, Switzerland maintains that its 2030 target puts it on an emission development pathway in line with (…) 1.5°C. It does not provide any citation to demonstrate this point."
[407] Federal Gazette, BBl 2021 1972 (n 286), p. 8 s2.1 (link).
[408] The Federal Council, Klimapolitik: Der Bundesrat stellt die Weichen für eine neue Gesetzesvorlage, 17 Sept. 2021 (link).
[409] Cf. *mutatis mutandis* Selahattin Demirtaş *v. Turkey (no. 2)* [GC], no. 14305/17, §440.
[410] Cf. Selahattin Demirtaş (n 409), §442.
[411] UNEP, Emissions Gap Report 2022 (n 77).

measures are taken, then global warming will - with a high degree of certainty - exceed the 1.5°C threshold in the next few years. Such a scenario will further intensify the breach of the Applicants' rights.

191 The Applicants submit that the nature of the violations is such as to leave no real choice as to the measures required to remedy them; thus, the Court is urged to indicate that the Respondent complies with specific general measures.[412] Any such measures must be compatible with the conclusions and spirit of the Court's judgment.[413] If the Court concludes that the Respondent has violated Art. 2 and/or Art. 8 ECHR due to its failure to adopt the necessary legislative and administrative framework to protect their rights, then the Applicants submit that the only way to ensure the effective protection of their rights is for the Court to order *concrete emission reduction targets*, as requested.[414]

192 Accordingly, the Applicants respectfully request the Court to order general measures, as follows:

(1) the Applicants request the Court to order the Respondent to adopt the necessary legislative and administrative framework to protect their rights, so as to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels;[415]

(2) the Applicants request the Court to further specify the scope of the Respondent's obligation to protect their rights, namely:

a. ensuring a GHG emission level in 2030 that is net-negative as compared to the emissions in 1990;

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[412] As it did e.g. in *Selahattin Demirtaş* (n 409), §442; *Assanidzé v. Georgia* [GC], no. 71503/01, §§202-03; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §490; *Aleksanyan v. Russia*, no. 46468/06, §§239-40; *Fatullayev v. Azerbaijan*, no. 40984/07, §§176-77; *Del Río Prada v. Spain* [GC], no. 42750/09, §§138-39; *Şahin Alpay v. Turkey*, no. 16538/17, §§194-95 and *Kavala v. Turkey* [GC], no. 28749/18, §240.

[413] Cf. *Selahattin Demirtaş* (n 409), §441.

[414] Cf. decisions in *Urgenda* (n 99), s5.1: "orders the State to limit the (…) annual GHG emissions, or have them limited, (…) by at least 25% at the end of 2020 compared to the level of the year 1990, (…)"; *Notre Affaire à Tous* (n 333), p. 31: "Il est enjoint au Premier ministre et aux ministres compétents de prendre toutes les mesures utiles de nature à réparer le préjudice écologique et prévenir l'aggravation des dommages à hauteur de la part non compensée d'émissions de gaz à effet de serre au titre du premier budget carbone, soit 15 Mt CO2eq, et sous réserve d'un ajustement au regard des données estimées du CITEPA au 31 janvier 2022. La réparation du préjudice devra être effective au 31 décembre 2022, au plus tard" and *Milieudefensie* (n 213), s.5.3: „orders RDS, (…), to limit or cause to be limited the aggregate annual volume of all CO_2 emissions into the atmosphere (Scope 1, 2 and 3) (…) to such an extent that this volume will have reduced by at least net 45% at end 2030, relative to 2019 levels."

[415] Cf. *Greens and M.T. v. UK*, no. 60041/08, §§110-115, and *Oleksandr Volkov v. Ukraine,* no. 21722/11, §202.

b. reducing domestic emissions by more than 60% below 1990 levels by 2030, and to net-zero by 2050, as the domestic component of a.;

c. preventing and reducing any emissions occurring abroad that are attributable to the Respondent, in line with the above pre-industrial levels limit;

d. permanently removing GHG emissions from the atmosphere and storing them in safe, ecologically and socially sound GHG sinks, if, despite *a., b., c.*, any GHG emissions continue to occur within the control of the Respondent, or the concentration of GHGs in the atmosphere exceeds the level corresponding to the 1.5°C above pre-industrial levels limit;

(3) moreover, given the Respondent's continued failures, the Court is invited to set a time-limit which is adequate in view of the urgency of the issues at stake (s3) for the Respondent to implement such a framework.[416]

193 Such general measures are necessary to enable the Committee of Ministers to verify that *timely* and necessary measures are taken to protect the Applicants' rights and that there is *sufficient* implementation of the Court's judgment in the present case. It is submitted that a failure to order these measures would, considering the violation of the Applicants' rights, their elderly age, the urgency of the situation and the Respondent's history of inaction, likely result in a continued breach of the Applicants' rights.

[416] *Greens* (n 415), §115.

3. Requests to the Court

The Applicants hereby respectfully request the Court to declare that:

(1) All the Applicants are victims for the purposes of Art. 34 ECHR and that each of their claims is admissible under Arts. 34 and 35 ECHR, respectively.

(2) The Respondent failed to protect the Applicants' rights to life and private life under Arts. 2 and 8 ECHR, by failing to adopt the necessary legislative and administrative framework to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels. This includes:

   a. ensuring a GHG emission level in 2030 that is net-negative as compared to the emissions in 1990;

   b. reducing domestic emissions by more than 60% below 1990 levels by 2030, and to net-zero by 2050, as the domestic component of *a.*;

   c. preventing and reducing any emissions occurring abroad that are attributable to the Respondent, in line with the 1.5°C above pre-industrial levels limit;

   d. permanently removing GHG emissions from the atmosphere and storing them in safe, ecologically and socially sound GHG sinks, if, notwithstanding *a., b., c.*, any GHG emissions continue to occur within the control of the Respondent, or the concentration of GHG in the atmosphere exceeds the level corresponding to the 1.5°C above pre-industrial levels limit.

(3) The Applicants' right of access to court under Art. 6 ECHR, and their right to an effective remedy under Art. 13 in conjunction with Arts. 2 and 8 ECHR, have also been violated.

The Applicants also request the Court:

(4) to award just satisfaction and costs and expenses under Art. 41 ECHR, as per the separate claim submitted by the Applicants.

The Applicants further request the Court to order general measures under Art. 46 ECHR, as follows:

(5) to order the Respondent to adopt the necessary legislative and administrative framework to do its share to prevent a global temperature increase of more than 1.5°C above pre-industrial levels,

(6) to specify what this entails, namely:

   a. ensuring a GHG emission level in 2030 that is net-negative as compared to the emissions in 1990;

   b. reducing domestic emissions by more than 60% below 1990 levels by 2030, and to net-zero by 2050, as the domestic component of *a.*;

   c. preventing and reducing any emissions occurring abroad that are attributable to the Respondent, in line with the 1.5°C above pre-industrial levels limit;

   d. permanently removing GHG emissions from the atmosphere and storing them in safe, ecologically and socially sound GHG sinks, if, despite *a., b., c.*, any GHG emissions continue to occur within the control of the Respondent, or the concentration of GHG in the atmosphere is exceeding the level corresponding to the 1.5°C above pre-industrial levels limit;

(7) to set a binding time-limit for the Respondent to implement such a framework which is adequate in view of (5 and 6) above.

Zurich, London and Lausanne, 2 December 2022

Yours faithfully,

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