KlimaSeniorinnen Schweiz GREENPEACE

# Transcript
# Hearing 29 March 2023

Verein KlimaSeniorinnen Schweiz and Others v. Switzerland (no. 53600/20) - Grand Chamber hearing - 29 March 2023

https://www.echr.coe.int/Pages/home.aspx?p=hearings&w=5360020_29032023&language=lang&c=&py=2023

Transcript commissioned by Verein KlimaSeniorinnen Schweiz and Greenpeace Schweiz, May 2023

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**President O'Leary:** Please be seated. I declare open the public hearing on the admissibility and merits in the case of «Verein Klimaseniorinnen Schweiz and Others against Switzerland». The application was lodged with the court on the 26th of November 2020 under Article 34 of the Convention by a Swiss association «Verein Klimaseniorinnen Schweiz and others» and four of its members. The application was allocated to the third section of the Court pursuant to Rule 52 paragraph 1 of the Rules of Court. The application was communicated to the Government on the 17th of March 2021. On the 26th of April 2022, a Chamber of the third section decided to relinquish jurisdiction in favour of the Grand Chamber.

Leave to intervene and to submit written comments as a third party under Article 36 para. 2 of the Convention and Rule 44 paragraph 3 of the Rules of Court was granted to the Governments of Austria, Ireland, Italy, Latvia, Norway, Portugal, Romania, and Slovakia. To the United Nations High Commissioner for Human Rights from 2018 to 2022, Michelle Bachelet, the United Nations Special Rapporteurs on toxics and human rights Marcos A. Orellana, and on human rights and the environment David R. Boyd, and the independent expert on the enjoyment of all human rights by older persons, Claudia Mailer, International Commission of Jurists, European Network of National Human Rights Institutions, International Network for Economic, Social and Cultural Rights, Human Rights Centre of the Ghent University, a group of scholars from the University of Lausanne, Sonia I. Seneviratne and Andreas Fischlin, Global Justice Clinic, the Climate Litigation Accelerator at New York University School of Law, Christina Voigt, ClientEarth, Our Children's Trust, Oxfam, Centre for Climate Repair at Cambridge and Centre for Child Law at University of Pretoria, a group of scholars from the University of Bern, Center for International Environmental Law, Margaretha Wewerinke-Singh, Sabin Center for Climate Change Law, Germanwatch, Greenpeace Germany and Scientists for Future.

The European Network of National Human Rights Institutions and the Irish Government were, in addition, granted leave to take part in this hearing.

The Respondent Government are represented by their agent, Mr. Alain Chablais and Mr. Franz Perrez, Ambassador, assisted by Ms. Maya Beeler, Ms. Lydie-Line Paroz, Mr. Reto Burkhard, Mr. Sébastien Nguyen-Bloch and Ms. Ingrid Ryser, Advisers.

The Applicants are represented by Ms. Cordelia Bähr, Ms. Jessica Simor KC, Mr. Marc Willers KC, Mr. Martin Looser, Mr. Raphaël Mahaim, Counsels, assisted by Mr. Richard Harvey and Ms. Louise Fournier, Advisers. The Applicants are also present.

The European Network of National Human Rights Institutions, a third party, is represented by Ms. Jenny Sandvig, Counsel, assisted by Ms. Katalin Sulyok, Ms. Hannah C. Braenden and Mr. Peter William Dawson, Advisers.

The Irish Government, also a third party, are represented by their agent, Mr. Barra Lysaght and Ms. Catherine Donnelly, Senior Counsel and Mr. David Fennelly, Junior Counsel, assisted by Mr. Micheál Corry and Ms. Emer Griffin, Advisers.

I welcome all the representatives in the name of the Court. Having consulted /. I also welcome two groups of judges and prosecutors from the Netherlands and from the French Court of cassation, who are on a study visit to the Court.

Having consulted the agent of the Government and the representatives of the Applicants and the representatives of the third parties, I've determined the order of addresses as follows: Mr. Chablais for the Government will speak first, and then Mr. Perrez. Ms. Simor and Mr. Willers for the Applicants, Ms. Donnelly for the Irish Government, and finally Ms. Sandvig for the European network of national human rights institutions. The Government and the Applicants will have thirty minutes each, and the third party interveners ten minutes. And I will ask you please to stick to your time in order to give ample opportunity to the judges to ask questions. And, as you know, we have another hearing scheduled for this afternoon in Carême against France.

Mr. Chablais, vous avez la parole.

**Mr. Chablais :** Madame la Présidente, Mesdames et Messieurs les Juges, le réchauffement climatique est un phénomène global, qui constitue l'un des plus grands défis de notre temps. La justice peut-elle apporter une solution à cet immense défi ? La formule magique n'existe pas. En vérité, seule une action résolue de l'ensemble des Etats, qui implique en particulier les grands émetteurs, associée à des changements en profondeur des comportements des entreprises et de l'ensemble des citoyens permettront de trouver des solutions globales et durables. Les mesures d'atténuation ne pourront porter leurs fruits qu'avec l'adhésion de celles et ceux qui y sont soumis. Or, de tels changements ne se décrètent pas par une décision de justice. L'élaboration des politiques climatiques, énergétiques et environnementales demeurera un exercice essentiellement politique et démocratique.

En guise d'introduction, je voudrais souligner deux évidences. En premier lieu, la Suisse, pays alpin où le réchauffement progresse deux fois plus vite que la moyenne mondiale, reconnaît depuis longtemps l'importance de ce problème et les dangers qu'il représente. En second lieu, la Suisse dispose de longue date d'un cadre législatif et administratif visant à réduire les émissions de gaz à effet de serre. En particulier grâce à l'adoption d'une loi fédérale sur la réduction des émissions de $CO_2$, adoptée le 8 octobre 1999 déjà. Ce cadre a été adapté au fil du temps.

La politique climatique de la Suisse n'est donc pas figée. Elle élève constamment le niveau de ses ambitions, comme en témoigne la stratégie visant l'objectif de zéro émissions net de gaz à effets de serre d'ici à 2050, qui a été approuvé par le gouvernement le 27 janvier 2021. En somme, il relève du procès d'intention que d'affirmer ou de suggérer que la Suisse fait preuve d'inaction en matière de lutte contre le réchauffement, qu'elle refuse de se doter d'objectifs de réduction suffisamment ambitieux ou qu'elle n'est pas capable d'atteindre les objectifs qu'elle s'est fixés.

Pour terminer mon propos liminaire, je souhaiterais souligner que si votre Cour n'a jamais eu à se prononcer sur une question en lien avec le climat, elle a déjà examiné à de nombreuses reprises des affaires portant sur les droits de l'Homme et l'environnement. Dans l'arrêt Hatton et autres, paragraphe 96, la Cour a posé le principe que la Convention ne reconnaît pas expressément le droit à un environnement sain et calme. Toutefois, lorsqu'une personne pâtit directement et gravement du bruit ou d'autres formes de pollution, elle a admis qu'une question peut se poser sous l'angle de l'Article 8.

Le gouvernement est d'avis qu'il n'est pas possible de déduire de la Convention un droit individuel à la protection contre le changement climatique. Les instruments internationaux contraignants dans ce domaine ne permettent pas de franchir ce pas, puisqu'ils se bornent à imposer des obligations horizontales aux Hautes Parties Contractantes. Arrêtons-nous maintenant sur les caractéristiques de la présente requête. Au plan national, les requérantes ont bénéficié, suite au rejet de leur demande initiale, d'un examen approfondi par une double instance judiciaire. Les procédures menées au niveau interne n'ont toutefois jamais rempli les conditions permettant d'effectuer un examen sur le fond des garanties du droit à la vie et du droit au respect de la vie privée et familiale des requérantes.

En d'autres termes, la présente affaire concerne la question du droit d'accès à la justice en matière climatique à la lumière des Articles 6 et 13 de la Convention. C'est donc bien sur cet aspect qu'une décision de votre Cour doit porter.

Cette affaire ne saurait en revanche se prêter à un examen judiciaire par votre Cour des différentes mesures prises par la Suisse, qui sont susceptibles de protéger les droits des requérantes au titre des Articles 2 et 8. Il s'agit, en effet, d'une question matérielle qui dépasse l'objet du litige tel qu'il a été délimité par les juridictions internes. Vu la complexité et le caractère évolutif du sujet, il serait extrêmement hasardeux pour la Cour de se livrer elle-même, à la manière d'un tribunal de première instance, à un tel exercice.

Les requérantes ont d'ailleurs, elles-mêmes, perçu la difficulté juridique à justifier que la Cour procède à un examen du respect du droit à la vie et du droit à la vie privée et familiale. Au paragraphe 102 de leurs observations, elles ne font que se référer à l'extrême urgence de la question climatique en général pour légitimer cette entorse flagrante au principe de subsidiarité sur lequel est basé le système de la Convention.

Le fait est que les autorités suisses devraient se voir donner la possibilité de remédier à une éventuelle violation de la Convention en menant une nouvelle procédure nationale, qui ouvrirait alors le droit à un examen au fond des garanties invoquées par les requérantes. Les caractéristiques de la présente affaire se reflètent enfin dans l'établissement des faits. Les tribunaux suisses ont posé les faits pertinents tels qu'ils se présentaient au 27 novembre 2018, et uniquement pour déterminer si les requérantes avaient qualité pour agir.

En tout état de cause, le gouvernement conteste l'énoncé des faits formulés par la partie requérante en tant qu'ils s'écartent de l'état de fait qu'il a lui-même produit à la demande de la Cour. Cela concerne notamment les émissions externes prétendument attribuables à la Suisse, le fait que la Suisse aurait échoué à se doter d'objectifs climatiques pour 2030 et 2050, le fait que la stratégie climatique de la Suisse ne respecterait pas la trajectoire d'un réchauffement limité à 1,5°ou encore le fait que la Suisse ne réussirait pas à atteindre ses propres objectifs en matière climatique. Venons-en maintenant aux questions de recevabilité. Le gouvernement a soulevé plusieurs exceptions d'irrecevabilité qui méritent toutes un examen attentif de votre Cour. Pour éviter les redites, je me permets de renvoyer aux observations écrites concernant la tardiveté de la requête.

Concernant les émissions de gaz à effet de serre produites à l'étranger, le gouvernement maintient qu'elles ne font pas partie du litige. Ce point n'a, en effet, jamais été abordé par la

partie requérante dans sa requête initiale du 26 novembre 2020, ni d'ailleurs dans la procédure menée au niveau national. Contrairement à ce que suggèrent les requérantes, le fait que la Suisse cherche également à réduire les émissions produites à l'étranger ne permet pas d'étendre l'objet du litige devant la Cour à cette question. Quoi qu'il en soit, de telles émissions ne relèvent pas de la juridiction de la Suisse et ne sauraient engager sa responsabilité au titre de la Convention.

La question centrale posée par cette requête au niveau de la recevabilité concerne l'éventuel statut de victime des requérantes au sens de l'Article 34 dans le contexte des violations alléguées de l'Article 2 et de l'Article 8. Arrêtons-nous dans un premier temps sur la situation de l'association. Comme votre Cour l'a rappelé de manière très claire au paragraphe 41 de sa décision Yusufeli İlçesini, certains droits de la Convention, notamment les Articles 2, 3 et 5, ne sont pas susceptibles, de par leur nature, d'être exercés par une association, mais uniquement par ses membres. Dans sa décision Asselbourg et Greenpeace Luxembourg, la Cour a par ailleurs jugé qu'une association non gouvernementale ne peut se prétendre victime d'une violation de l'Article 8 lorsque l'atteinte à ce droit résulte de nuisances ou de troubles qui ne peuvent être ressentis que par des personnes physiques. Ainsi, de l'avis du gouvernement, l'association « Klimaseniorinnen » n'est pas personnellement lésée et ne saurait être considérée comme une victime de violations des Articles 2 et 8 de la Convention.

Qu'en est-il maintenant des quatre requérantes individuelles en tant que personnes physiques ? Le gouvernement rappelle que la notion de victime énoncée à l'Article 34 doit être interprétée de façon autonome. Cette notion se réfère essentiellement aux victimes directes, même si dans certains cas exceptionnels, la Cour a accepté qu'un requérant puisse être une victime potentielle de l'ingérence alléguée. En tout état de cause, les requérantes doivent établir un lien de causalité. Elles doivent soit démontrer qu'elles ont, elles-mêmes, subi directement les effets de la mesure litigieuse, c'est-à-dire produire des indices raisonnables et convaincants de la probabilité de réalisation d'une violation les concernant personnellement, voir les décisions Caron et Le Mailloux. À cet égard, contrairement à ce que les requérantes soutiennent dans leurs observations, la charge de la preuve n'incombe pas au gouvernement (voir l'arrêt Fadeïeva, paragraphe 88). En l'occurrence, les requérantes n'ont pas démontré qu'il existe un lien de causalité suffisamment direct entre les omissions reprochées à la Suisse et le préjudice qu'elles font valoir ou qu'elles craignent de subir à l'avenir.

Le gouvernement rappelle à cet égard que la part historique des émissions de la Suisse ne représente que quelque 0,2 % du total. Quant à la part des émissions de gaz à effet de serre de la Suisse en 2020, elles ne représentent qu'environ 0,1 % des émissions mondiales. Et les émissions par habitant de la Suisse, soit 5,04 tonnes d'équivalents CO2 par habitant, étaient inférieures à la moyenne internationale. Les requérantes font, certes, valoir des impacts concrets sur leur état de santé pour établir qu'elles sont personnellement affectées par les vagues de chaleur successives. Mais ni leurs déclarations personnelles, ni les certificats médicaux qu'elles produisent ne permettent d'établir que ces atteintes à la santé, qu'il s'agisse de problèmes cardio-vasculaires ou de maladies respiratoires, sont la conséquence des omissions reprochées au gouvernement. De simples suspicions ou conjectures ne suffisent pas.

Les requérantes cherchent, enfin, à fonder leur qualité de victime sur le fait qu'elles sont âgées de plus de 75 ans et qu'elles appartiennent dès lors à une catégorie de personnes particulièrement vulnérables. Le gouvernement réfute l'idée que le simple fait d'appartenir à une catégorie plus vulnérable suffirait à donner la qualité de victime à ces personnes, qui seraient en quelque sorte dispensées de démontrer qu'elles sont directement touchées à titre individuel. Il existe d'ailleurs de nombreuses autres catégories de personnes qui sont tout aussi vulnérables aux effets des canicules, comme les femmes enceintes, les enfants en bas âge ou encore les personnes souffrant de maladies chroniques.

Le gouvernement n'est évidemment pas insensible à la souffrance que peuvent ressentir les requérantes face aux vagues de chaleur qui peuvent se produire durant l'été en Suisse. Mais la présente requête relève manifestement de l'action populaire. Car tant l'association « Klimaseniorinnen » que les requérantes 2 à 5 visent en réalité la protection des intérêts collectifs de toute une génération et du public en général. Or, de jurisprudence constante, votre Cour a systématiquement rappelé que le mécanisme de contrôle de la Convention ne saurait admettre l'*actio popularis* et que ni l'Article 8, ni aucune disposition ne garantit une protection générale de l'environnement en tant que tel (voir l'arrêt Di Sarno, para. 80). C'est ce même raisonnement qu'a suivi le Tribunal fédéral dans son arrêt du 5 mai 2020, lorsqu'il a conclu que les requérantes n'étaient touchées, avec l'intensité requise, ni pour être considérées comme des victimes au sens de l'Article 34, ni pour avoir le droit à une décision sur le fond en droit interne.

Qu'en est-il maintenant de la qualité de victime en lien avec les Articles 6 et 13 ? Le gouvernement ne la conteste pas, les requérantes 2 à 5 ayant eu la qualité de partie dans la procédure interne. Applicabilité des garanties invoquées. Pour que la Convention trouve à s'appliquer, les requérantes doivent démontrer que les prétendues omissions de la Suisse ont un effet causal direct et matériel sur leur droit au titre des Articles 2 et 8.

Le gouvernement a déjà exposé, dans le cadre de l'analyse de la qualité de victime, qu'un lien de causalité suffisant n'avait pas été établi dans cette affaire. À cet égard, le principe de responsabilité partagée entre les Etats, auquel les requérantes se réfèrent, ne trouve pas d'assise dans la jurisprudence de la Cour. Les affaires qu'elles citent, en particulier E et autres et O'Keeffe, paragraphe 149, ne sont pas comparables car elles portent sur la prévention d'abus à l'égard d'enfants. Elles montrent en outre qu'un Etat doit avoir « une chance réelle de changer le cours des événements ou d'atténuer le préjudice causé » pour que sa responsabilité soit engagée. Or, cela n'est pas le cas de la Suisse compte tenu du caractère global du réchauffement climatique et de la contribution très faible de la Suisse à ce phénomène global.

Concernant l'Article 2, le gouvernement considère que les requérantes n'ont pas réussi à démontrer l'existence d'un risque réel et imminent pour leur vie. Cette disposition n'est donc pas applicable à la présente affaire.

Concernant l'Article 8, le gouvernement n'exclut pas complètement qu'il puisse trouver à s'appliquer dans le contexte du changement climatique, puisque ce phénomène peut impacter la qualité de vie des individus, même si leur santé n'est pas gravement mise en danger. Cela dit, il convient en l'espèce de ne pas perdre de vue que des mesures relativement simples permettent de se protéger efficacement des effets des canicules. Le gouvernement laisse toutefois à l'appréciation de votre Cour l'applicabilité de l'Article 8 dans le cas d'espèce.

Qu'en est-il maintenant de l'applicabilité de l'Article 6 dans son volet civil ? De jurisprudence constante, il faut pour cela qu'il y ait eu une contestation sur un droit de nature civile. Mais cela ne suffit pas. Il faut également pouvoir prétendre, au moins de manière défendable, que ce droit est reconnu en droit interne. Le gouvernement souligne que ni la Constitution fédérale, ni la législation fédérale ne consacrent un droit individuel à un environnement propre, sain et durable. Les requérantes se sont donc référées au droit à la vie, tel que le garantit l'Article 10, alinéa 1 de la Constitution, ainsi qu'aux Articles 2 et 8 de la Convention, pour en déduire une prétention subjective à faire cesser les omissions reprochées à la Suisse. Or, comme on l'a vu, elles ne sont pas touchées avec l'intensité requise dans leur droit à la vie, ni dans leur droit à la vie privée et familiale. Force est dès lors de constater, à la suite du Tribunal fédéral, qu'elles ne peuvent pas prétendre de manière défendable qu'il existe une contestation sur un droit reconnu en droit interne. Enfin, le lien entre la décision initiale de non-entrée en matière sur la demande des requérantes et les droits invoqués par celles-ci est trop ténu et lointain au sens de la jurisprudence de votre Cour, à l'image du

constat posé dans les affaires Athanassoglou et Balmer-Schafroth.

Par conséquent, le gouvernement est d'avis que l'Article 6 de la Convention n'est pas applicable dans la présente affaire.

Pour des raisons largement identiques, l'Article 13 n'est pas non plus applicable à la présente affaire. Là aussi, les requérantes n'ont pas élevé de griefs défendables devant les autorités nationales et l'issue de la contestation n'était pas directement déterminante pour les droits invoqués. Sur le fond, le gouvernement soutient que les requérantes disposaient d'une voie de droit effective, permettant de défendre leurs droits de nature civile.

Le droit d'accès à un tribunal selon l'Article 6 n'est en effet pas absolu et il se prête à des limitations, de sorte que le succès n'est jamais garanti. Les requérantes reprochent aux autorités judiciaires suisses d'avoir appliqué de manière arbitraire les conditions relatives à la qualité pour agir, rendant impossible un examen au fond de leur demande. Le gouvernement ne partage pas cette appréciation. Il estime, au contraire, que les arrêts des juridictions nationales ont précisément expliqué, au terme de raisonnements exempts d'arbitraire, pourquoi les requérantes ne remplissaient pas les conditions de recevabilité. Et ce malgré le fait que l'Article 25a de la procédure administrative leur permettait d'attaquer des omissions et de réclamer l'exécution d'actes matériels.

Leur démarche s'apparentait en réalité à une action populaire. Contrairement au domaine de la protection de l'environnement ou du paysage, le droit suisse ne prévoit pas de droit de recours pour les organisations à but idéal en matière de protection du climat. Mais le gouvernement estime avoir amplement démontré, dans ses observations, que les tribunaux suisses sont régulièrement saisis de recours portant sur des questions liées aux risques pour l'environnement découlant d'activités humaines. Par exemple dans les domaines de l'énergie nucléaire ou la pollution atmosphérique. Or ces moyens sont efficaces, comme en attestent les nombreux exemples cités.

Il n'en va pas autrement de la violation de l'Article 13 alléguée par les requérantes. Là aussi, on ne voit pas d'arbitraire dans la façon de procéder des juridictions internes. Y compris dans l'indication du Tribunal fédéral selon laquelle les demandes revêtant le caractère de travaux préparatoires préalables à des dispositions législatives nouvelles devraient plutôt s'effectuer par le biais d'instruments de démocratie directe ou semi-directe. Ce faisant, le Tribunal fédéral s'est efforcé de distinguer clairement le travail du législateur de celui du juge. Le gouvernement rappelle en outre que l'Article 13 n'impose pas aux Etats de permettre aux individus de dénoncer devant une autorité interne les lois nationales comme contraires à la Convention.

Permettez-moi maintenant, Madame la Présidente, de terminer avec quelques mots au sujet des mesures générales.

La présente affaire ne démontre ni un manque d'intérêt, ni des manquements systématiques du gouvernement pour prendre les mesures nécessaires à la protection des droits des requérantes. En réalité, c'est sur l'appréciation du rôle de la Convention pour appréhender la question climatique que les parties divergent. C'est-à-dire sur une question de droit assez fondamentale.

Pour sa part, le gouvernement suisse est convaincu que le défi du changement climatique ne peut pas se régler par une liste de mesures générales fondées sur l'Article 46. Le système de la Convention n'a, en effet, pas vocation à devenir le lieu où se décident les politiques nationales de protection du climat.

Il est vrai que, dans certaines circonstances particulières, la Cour a jugé utile d'indiquer à l'Etat défendeur des mesures générales. Elle ne donne cependant de telles indications que

de manière exceptionnelle, et elle ne l'a jamais fait jusqu'ici dans des affaires liées à l'environnement. Dans l'affaire Cordella, paragraphes 179 ss, elle a notamment souligné la complexité technique des mesures en jeu. Elle s'est ensuite abstenue d'adresser à l'Etat concerné des recommandations détaillées de nature contraignante et a expressément écarté celles qui avaient été proposées par les requérants. Pour les mêmes raisons, le gouvernement suisse est d'avis qu'aucune circonstance particulière ne justifie en l'espèce l'indication de mesures générales par la Cour.

La présente affaire ne révèle aucun problème systémique en Suisse. La complexité technique des mesures à prendre ainsi que l'équilibre subtil qui doit être trouvé entre les différents intérêts en jeu pour atteindre les objectifs climatiques tout en tenant compte des droits individuels plaident clairement contre l'indication de mesures générales. Des objectifs chiffrés de réduction ou des délais de réalisation engageraient la Cour dans une fonction quasi législative, qui ne pourrait que gripper la saine interaction entre les pouvoirs de l'Etat au niveau national. Conformément au principe de subsidiarité, c'est en effet aux Etats qu'il incombe de concevoir, d'adopter et d'adapter des mesures générales si la Cour constate une violation de la Convention.

Ce libre choix des moyens à mettre en œuvre est d'ailleurs inhérent au droit international de l'environnement. Ainsi, les requérantes se trompent lorsqu'elles affirment que la nature des violations est telle qu'elles ne laissent pas de véritable choix quant aux mesures correctrices requises. Ce choix existe bel et bien et il est essentiel de le respecter, en particulier dans le cadre du suivi de l'exécution des arrêts.

Pour conclure, je souhaiterais brièvement aborder la question de la satisfaction équitable. Concernant l'existence d'un préjudice moral, le gouvernement renvoie à ses observations écrites et maintient sa position. Un constat de violation constituerait en soi une satisfaction suffisante. Au titre des frais et dépens, les requérantes réclament un montant total de plus de 511 000 francs suisses. Le gouvernement est d'avis que ce montant est manifestement excessif. Il convient également de rappeler que selon les informations figurant sur son site web, l'association « Verein Klimaseniorinnen » est soutenue par Greenpeace Suisse, qui garantit les frais de procédure. De sorte qu'il n'y a aucun risque financier pour l'association et ses membres. Enfin, le gouvernement conteste la nécessité, pour la partie requérante, de se faire représenter dans la présente affaire par cinq avocats. Le gouvernement invite donc la Cour à ne pas allouer de montant au titre des frais et dépens ou, à titre subsidiaire, un montant maximum de 13 000 francs.

Voilà, Madame la Présidente, Mesdames et Messieurs les Juges, les raisons pour lesquelles le gouvernement suisse invite la Grande Chambre, à titre principal, à déclarer la présente requête irrecevable. Et, à titre subsidiaire, à dire qu'il n'y a pas eu de violations des garanties invoquées par les requérantes.

Je vous remercie de votre attention et suggère, Madame la Présidente, que la parole soit maintenant donnée à Monsieur Franz Perrez, Ambassadeur pour l'environnement et chef négociateur de la Suisse à la Conférence des parties à l'Accord de Paris. Je vous remercie.

**La Présidente :** Merci beaucoup Monsieur Chablais. Monsieur Perrez, vous avez la parole.

**Monsieur Perrez :** Madame la Présidente, Mesdames et Messieurs les Juges, permettez-moi maintenant d'expliquer en quoi la politique climatique de la Suisse ne viole pas, mais respecte et assure les droits des requérantes. En substance, celles-ci reprochent à la Suisse d'avoir failli à protéger leur droit de vie et au respect de leur droit privé et familial en vertu des Articles 2 et 8 de la Convention en n'adoptant pas le cadre législatif et administratif nécessaire pour faire sa part dans la prévention d'une augmentation de la température mondiale de plus de 1,5 degrés.

D'emblée, il faut relever qu'il n'y a pas de lien de causalité entre l'objectif climatique et les émissions de la Suisse d'une part, et les atteintes aux droits invoqués des requérantes d'autre part. Dans les situations où seule l'action combinée de nombreux acteurs conduit à d'éventuelles restrictions de droits de l'Homme, il n'est pas possible de se plaindre d'une violation en se focalisant de manière isolée sur un seul acteur à la contribution limitée. L'approche des droits de l'Homme ne suffit pas en cas de sources multiples et diffuses. Il faut plutôt des instruments qui responsabilisent l'ensemble des acteurs, en particulier ceux qui contribuent le plus à la crise. Il s'agit donc d'une différence fondamentale par rapport aux autres requêtes en matière de droits de l'Homme dans le domaine de l'environnement, où l'inaction de l'Etat conduit à une mise en danger directe de la vie des requérantes.

Sur le fond maintenant, le gouvernement suisse remplit son devoir d'assurer la protection des droits de l'Homme des requérantes sur plusieurs plans. Premièrement, par son engagement pour des règles climatiques internationales ambitieuses, robustes et efficaces. Deuxièmement en mettant en œuvre des mesures d'adaptation au niveau national. Et enfin, troisièmement, en adoptant une politique nationale ambitieuse, en ligne avec l'objectif 1,5 et conforme à ses obligations sous l'Accord de Paris.

Comme évoqué, seule une réduction des émissions globales par l'implication de tous les pays, en particulier les grands émetteurs, permettrait de protéger les requérantes des pires conséquences du changement climatique. C'est pourquoi la Suisse s'engage activement, depuis de nombreuses années, dans des négociations internationales, pour un régime climatique international ambitieux, efficace, qui engage les plus grands émetteurs. Au niveau national, la Suisse peut contribuer à la protection de la vie des requérantes en mettant en œuvre des mesures d'adaptation afin de prévenir les pires effets du changement climatique. La Suisse s'acquitte de cette obligation par son plan d'action concret sur l'adaptation pour 2020 à 2025.

Enfin, avec la politique climatique nationale de réduction des émissions, la Suisse accomplit déjà ce que l'on est en droit d'attendre d'elle. Comme indiqué, les émissions de la Suisse sont trop faibles pour avoir un impact sur les droits de l'Homme des requérantes. La Cour a montré dans la jurisprudence, notamment Çiçek et autres c. Turquie, que pour qu'il y ait violation des droits de l'Homme, il faut un certain niveau d'intensité et de proximité entre source et effet, ce qui n'est pas le cas en l'espèce. De plus, une prévention totale des risques n'est pas possible et n'est pas non plus exigée par la Convention. Votre Cour a ainsi souligné, à de nombreuses reprises, par exemple dans l'arrêt Binişan c. Roumanie, que l'Article 2 de la Convention ne saurait être interprété comme garantissant à toute personne un niveau absolu de sécurité pour la vie et pour le droit à la vie, mais un niveau minimum raisonnable de risque étant exigé par les Etats.

Par ailleurs, les mesures pour protéger le climat poursuivent différents buts et doivent, en même temps, assurer la protection des droits et des libertés d'autrui. Elles doivent répondre, d'un côté, aux intérêts des individus à la protection de leur vie et de leur santé, mais de l'autre côté elles doivent aussi prendre en compte les intérêts de ces mêmes individus au développement personnel, à l'autonomie, à la propriété ou encore à la liberté de mouvement, qui sont toutes des libertés également protégées par la Convention. L'exercice d'ensemble est donc très délicat. Enfin, son objectif climatique et sa politique nationale, notamment son objectif de neutralité climatique pour 2050, la Suisse contribue à sa part équitable à l'atténuation globale.

Les requérantes indiquent que les dispositions de l'Accord de Paris font partie de la base juridique internationale qui doit être prise en compte pour déterminer la portée de l'obligation positive de protéger le droit à la vie et au respect de la vie privée et familiale. Or, la Suisse respecte pleinement ses engagements à ce titre, comme nous allons vous le démontrer en quatre points.

En premier lieu, la Suisse respecte toutes les obligations de l'Accord de Paris qui, il faut le rappeler, sont de nature procédurale uniquement. Elle a notamment été le premier pays à formuler et à soumettre une contribution prévue déterminée au niveau national, car elle voulait ainsi créer un standard de robustesse et de clarté. Ce qu'elle a réussi à faire. La Suisse a ensuite répondu positivement et rapidement à chaque appel de renforcer ses contributions.

Deuxièmement, l'objectif suisse visant à réduire les émissions d'au moins 50 % d'ici 2030 est aligné avec les recommandations de la science et l'objectif 1,5. Après que le GIEC a élevé ses exigences pour l'objectif climatique de 1,5, la Suisse a augmenté, en 2020, son objectif pour 2050 de –70 % à –85 % à la neutralité climatique. Les réductions d'émissions suisses se situent ainsi sur une trajectoire permettant d'atteindre 0 émission nette en 2050. Les évaluations comme celles du Climate Action Tracker et du Climate Analytics sont toujours basées sur des hypothèses subjectives et elles ne permettent pas d'affirmer que cette trajectoire ne pourra pas être atteinte.

Troisièmement, la Suisse a atteint ses objectifs et a rempli toutes ses obligations sous le Protocole de Kyoto et son amendement. L'argument selon lequel la Suisse n'aurait pas atteint ses objectifs est, dès lors, incorrect.

En quatrième lieu enfin, selon l'Accord de Paris, les pays ont la possibilité de recourir aux réductions d'émissions à l'étranger. En outre, sous le régime climatique international et l'Accord de Paris, les Etats sont responsables uniquement des émissions qui se produisent sur leur territoire.

Madame la Présidente, Mesdames, Messieurs les Juges, à quelques exceptions près, la protection des droits de l'Homme n'est pas absolue. La politique climatique de la Suisse intègre une pesée de nombreux intérêts en jeu et combine la protection des différents droits de l'Homme qui peuvent, parfois, s'opposer. La recherche du meilleur équilibre passe également par la participation du peuple au moyen des instruments de la démocratie directe. Mais si le peuple a rejeté, en 2021, la révision de la Loi sur le CO2, cela n'empêche pas la Suisse de développer des mesures plus consensuelles pour atteindre ses objectifs climatiques.

En conclusion, je ne peux que réaffirmer devant vous que le gouvernement suisse s'engage avec sincérité et avec vigueur pour une politique climatique ambitieuse, équitable et conforme à ce que demande la science tant sur le plan international que national. Il a adopté le cadre législatif et administratif nécessaire et continuera à l'avenir de le développer. Je vous remercie de votre attention.

**Madame la Présidente :** Merci beaucoup Monsieur Perrez. I call Ms. Simor for the Applicants.

**Ms. Simor:** Madame President, Members of the Court,

«The world has never seen a threat to human rights of the scope presented by climate change. This is not a situation where any country, any institution, any policy-maker can stand on the side-lines. The economies of all nations; the institutional, political, social and cultural fabric of every State; and the rights of all … people – and future generations – will be impacted.»

Members of the Court, these are not our words; they are the words of the UN Commissioner for Human Rights, Madame Michelle Bachelet.

She chose her words carefully. Language is inadequate to express – to render «real» – the dangers we face: their imminence, their severity, and their irreversibility. Madame Bachelet

wanted to emphasise that faced with this existential threat, we must respond to the scientific facts with action. Weariness – 'defeatism'; neither is an option: every country, every institution, policy maker must meet their responsibility to do all that is necessary to mitigate the impending harm.

We all know the near-linear relationship between global temperature increases and concentrations of human-induced greenhouse gases in the Earth's atmosphere. As the IPCC recalled in its synthesis report released in Switzerland last week: «[e]very increment of global warming will intensify multiple and concurrent hazards.» As temperatures rise, tipping points or «critical threshold[s] beyond which [the earth's] system reorganises, often abruptly and irreversibly» may take place. The IPCC put it as follows: «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.» It emphasised that «reductions this decade largely determine whether warming can be limited to 1.5 or 2 degrees.»

Members of the Court, our submissions will proceed as follows:

First, we touch on the failure of the Swiss Courts to determine the Applicants' case at all, that is, their complaints to you under Articles 6 and 13.

Secondly, we address victim status and positive obligations explaining the direct effect on the Applicants of the Respondent's ongoing failures.

Thirdly, we consider Switzerland's obligations under the Convention and its failure to take even plausibly adequate steps to mitigate climate change.

Fourthly, we explain what we say Articles 1, 2 and 8 of the Convention requires Switzerland to do, to contribute its fair share of global emissions reductions and we respond to the Court's question 1.

And finally, we address Switzerland's overall defences and relief.

Dealing first with Article 6 and 13, the Applicants are here because the Swiss Courts refused to determine their claims, finding that there was still time before the Paris Agreement temperature thresholds were reached and that accordingly the Applicants could not yet claim that their rights were affected. The Swiss Courts ignored the real effect on the Applicants today. To suggest that until one reaches the moment of catastrophe, one's rights are not affected is to ignore the reality. It undermines the entire object and purpose of effective protection of Convention rights – and indeed climate mitigation measures. Members of the Court, the very essence of the Applicants' right of access to court was impaired. And the same applies in relation to Article 13.

Now this morning, Monsieur Chablais appeared to concede this breach, suggesting that the Swiss Courts should be given a chance to reexamine the case. However, he then argued that no civil rights recognised in Switzerland were an issue, such that Article 6 did not apply. This is not correct. The Swiss Courts said that the right to life applied under the Swiss Constitution, but found that it was not violated. And you find that in section 7 of the Federal Supreme Court decision.

Turning to issue 2, victim status and positive obligations. Members of the Court, the Applicants before you today are already suffering from the effects of climate change. As elderly women, the excessive and sustained high temperatures of increasingly frequent and severe heatwaves pose an extremely serious threat, not just to their health and well-being, but to their very existence. No one before this Court disputes that heat kills and that women

over 65 are at real risk not only of severe physical and mental impairment from heat-induced illness, but of death.

Switzerland has already experienced an average temperature increase of 2.1 degrees. That is twice the global average. In the past 20 years, it has had the five most extreme heatwaves ever recorded, with four in the last 8 years. In summer 2003 there were 975 premature deaths; 800 in summer 2015; and 521 in summer 2019. During the 2003 heatwave, 80% of premature deaths were in persons older than 75, in August 2018 nearly 90% of heat-related mortality was in people older than 75. The 6th IPCC synthesis report states: «every additional 0.5 degrees of global warming causes clearly discernible increases in the intensity and frequency of hot extremes, including heatwaves». These are virtually certain to increase in every region in Europe with «[h]eat stress due to both high temperature and humidity, affecting morbidity [and] mortality».

A report commissioned by the Swiss Federal Office of Public Health concluded that on average, day-time temperatures above 33 degrees increase the risk of mortality by 25% compared with day-time temperatures of 22 degrees. This overwhelmingly affects the elderly.

But Members of the Court, death is but one measure of heat impact. Exposure to extreme heat increases the risk of acute kidney injury, heat stroke, asthma attacks, respiratory, cardiovascular, immune and nervous system diseases and disorders. Heat illness causes serious symptoms that are particularly acute in elderly people – and specifically in elderly women. This is because as we age, our body's ability to regulate its temperature becomes less effective. None of this is disputed by the Respondent. Indeed, its own public health agency warns its citizens of these effects.

As regards the first Applicant, Switzerland accepts that each member of the Verein KlimaSeniorinnen belongs to a group that is at serious risk from heat but argues their claim must nevertheless be rejected as an actio popularis. This is wrong. The first Applicant is a 'group of individuals', each one of whom is directly affected, and which Article 34 of the Convention expressly includes as a 'victim'. And so when we refer today to the Applicants, we are referring to all 2038 individuals, which includes the four named Applicants.

Turning to the second to fifth Applicants: Mesdames Volkoff, Molinari and Budry, they are highly vulnerable during heatwaves; Madame Volkoff suffering cardio-vascular disease and Mesdames Molinari and Budry, respiratory diseases and chronic obstructive pulmonary disease, putting them at a particularly high risk of death on hot summer days. The Court has before it, four medical reports concerning the situation of Madame Volkoff, who provides an example of the kind of suffering at issue.

The Respondent accepts that heat significantly aggravates the Applicants' conditions and renders these individuals at risk of death. Moreover, Switzerland accepts that the effect of heatwaves is sufficient potentially to engage its obligations under Article 8 and «it is beyond question that there is a need to act now». And I refer the Court to paragraphs 74 and 55 of the Government's observations. It's difficult then to see why it does not also accept that Article 2 is potentially engaged, and, centrally, that the Applicants meet the victim requirement under Article 34.

Switzerland argues in line with the Federal Supreme Court, that the Applicants cannot be victims until the global average temperature exceeds 1.5º to 2.0ºC. Secondly, it says that only then will the harm suffered be sufficiently serious; that the third to fifth Applicants cannot be victims because they are unlikely still to be alive by the time global temperatures reach 1.5, and that the Applicants are asserting «subjective sensitivities».

The Court should unequivocally reject those arguments.

On current trajectories, announced by the IPCC last week, 1.5 degrees will be reached by the first half of the 2030s, or even, possibly late this decade. All 2038 Applicants hope and expect to be alive at that time.

More relevantly, neither victim status, nor the engagement of Articles 2 or 8 depends on whether the harm or real risk to life could be even more serious in the future. Decisive is whether the individual is detrimentally affected or at real risk today from a failure to act now. And this, the Respondent largely accepts.

The risks faced by the Applicants are current and real. They are comparable to, and potentially greater than, those with which the Court has been faced to date.

And following this Court's case law, the Dutch Supreme Court correctly held in the case of Urgenda that the State's positive obligations under Articles 2 and 8 apply to activities, whether public or private, which contribute to climate change on the basis that climate change is known to involve a «real and immediate» threat to human life and well-being; that is, a risk that isboth genuine and imminent.

And the Court will be aware of the international scientific consensus on the risk to life and harm of climate change, as well as the international legal consensus that these harms fall within the corpus of human rights protection.

To conclude on this part of our submissions: this is the first time that the Court has been asked to determine the duties of Contracting States under the Convention to safeguard life, health and well-being from the consequences of climate change.

It is not, however, the first time this question has been considered. Contracting State Courts, applying this Court's jurisprudence, have already held that their governments must, in line with their international commitments, do all that is necessary to prevent climate change, in order to guarantee effective protection for individuals' rights. They saw no need for recourse to the 'living instrument' doctrine; the principles were sufficiently clear and well-established. Nor did they consider that the particular legal challenges of causation or attribution, which arise in the context of climate change, provided any basis for disapplying the existing jurisprudence.

We submit that this Court should in the same way hold that, pursuant to Articles 1, 2 and 8, Switzerland is under a positive obligation to take the necessary steps to guarantee effective protection for the Applicants' lives, health and well-being. The retrogressive impact of a ruling that undermined those judgments would be extreme. And the impact would not be confined in our submission to the Contracting States.

We now turn to our third issue: Switzerland's failure to take mitigation measures.

Switzerland rightly accepts that in interpreting its obligations under the Convention, the Court can and should take into account relevant rules and principles of international law applicable between the parties. Switzerland also agrees that its commitments under the Paris Agreement, in its words, are «positive obligations and standards of conduct, which are likely to shed some light on the reasonable and appropriate measures» that it «must take to effectively protect the rights set out in Articles 2 and 8». And you find that in paragraph 99, last bullet, of the Government's observations.

Switzerland is correct to make those concessions. The Paris Agreement is an international treaty adopted by the parties to prevent dangerous climate change and all the breaches of human rights that entails. Far from negating, removing or replacing human rights protection, it constitutes international recognition of the necessity of – and attendant obligation on – States to take urgent, significant coordinated measures. This is underlined by the eleventh

recital to the Paris Agreement, which states that parties are expected to take human rights implications into consideration, including the rights of those in vulnerable situations (such as the Applicants), in setting the level of ambition. Further, in numerous international resolutions, States have recognised that the consequence of climate change is potentially to negate all rights, including the right to life.

Again, Switzerland accepts this. It states that as a party to the Paris Agreement it has «a duty of due diligence and, in order to act swiftly, must take all appropriate measures to progressively achieve the protection of the interest or rights concerned». And you find that in paragraph 99, 7th bullet.

Nonetheless, to avoid the consequences of those important concessions, Switzerland then mischaracterises the Applicants' case. It says that the Applicants are asking the Court to apply not the Convention, but rather, «norms of international law». Indeed, it says that the Applicants are trying to «circumvent» the Paris Agreement by seeking to construct an international judicial review of its climate measures. It then argues that the Court cannot do that because that would involve it assigning to itself the role of: «supreme environmental court».

Members of the Court. You are not being asked to determine whether Switzerland is in breach of any of its commitments under the Paris Agreement. You are being asked to rule only on whether Switzerland has violated the Applicants' rights under the Convention.

Applying the normal interpretative approach, we say that to protect the rights of the Applicants, the Respondent must «do everything in its power to do its share to prevent a global temperature increase of more than 1.5 degrees above pre-industrial levels». This necessarily means the adoption of a legislative and administrative framework to achieve that objective.

Switzerland's actions come nowhere close:

First, Switzerland failed to legislate for the minimum possible requisite emissions reductions for 2020. And then failed to meet that inadequate target.

Secondly, Switzerland 2030 proposed target is manifestly inadequate and has not been given legislative effect.

Thirdly, Switzerland's 2050 proposed target is also inadequate in so far as it does not commit Switzerland to net zero domestic emissions and this too, has also not been given any legislative effect.

Dealing first with the 2020 target, the 2007 IPCC AR4 report provided that countries should reduce domestic emissions by a minimum of between 25 and 40% below 1990 levels by 2020. Now, at that time, of course, generally a 2-degree limit was in mind. Despite the Government expressly stating in 2009, by reference to new studies that industrialised countries needed to reduce emissions by at least 40% by 2020, Switzerland, one of the wealthiest and most developed countries in the world, then, in its 2011 Climate Act, provided only for a 20% reduction by 2020, that is, only half of what Switzerland had itself recognised was necessary of industrialised countries.

Switzerland accepts before this Court that it did not, therefore, meet the minimum obligation, saying that «the Federal Council was aware that greater reduction efforts were needed». And you find that in 1.2.1 of the annex to the [Government's] submissions. Members of the Court, the 2011 Act gave the Federal Council the power to raise the target to 40%, as Switzerland had envisaged it was necessary. And they chose not to use that power.

Switzerland then failed even to meet that inadequate 20% reduction target, achieving only a 19% in 2020 and only because of the mild winter and Covid.

Turning to our second point: the 2030 reduction target. In its 2014 synthesis report (AR5), the IPCC provided that for the average of all burden-sharing methods, the average domestic emissions reduction required was approximately 50% of 1990 levels. Again this was at the time of the 2-degree limit. Significantly, the IPCC concluded that to reflect responsibility, capability, and need OECD countries such as Switzerland, needed to meet a negative emissions target; they had to reduce emissions by between minus 106% and minus 128% below 1990 levels by 2030. Now, one means of meeting negative emissions targets would be for example to assist other countries in reducing their emissions for example through, perhaps, finance or renewables projects.

Switzerland did not do so. Instead, it did two things:

First, in November 2017, three years after AR5, it confirmed under the Paris Agreement its 2015 commitment to reduce emissions by 50% of 1990 levels by 2030 but stated that it would do so by purchasing foreign emission reductions. It did not therefore commit even to a full 50% domestic reduction by 2030, let alone to an overall negative emissions reduction to reflect equity.

Secondly, in December 2017 the Federal Council proposed a new Climate Act to give effect to that commitment. However, that act provided only for a 30% reduction in domestic emissions by 2030. Staggeringly, this was still 10% lower than what Switzerland had said in 2009 industrialised countries needed to achieve by 2020 within the now outdated 2 degree limit. Even now, eight years later, no legislation at all has been enacted.

Moreover, after 2018, Switzerland should have redetermined its emissions reduction targets, having regard to a fair share approach, to meet the steeper emissions reductions pathway required by the 1.5 degree temperature limit. There is no evidence that it ever did so. Indeed, its 2030 target remained unchanged. Against this background, its current intention is a woeful 34% domestic emissions reduction by 2030, by way of extensions to the 2011 Act.

Switzerland’s failure is particularly stark when viewed in the light of the EU position, which provides for an EU-wide domestic reduction of at least 55% by 2030.

Finally, turning to the 2050 target. Switzerland has committed to net zero in its NDC but not to net zero domestically and has failed even to give that commitment domestic legislative effect.

In summary, Switzerland has failed to adopt sufficient emissions reductions to meet even the outdated 2 degree limit. It necessarily follows that Switzerland’s climate policy is not in line with the 1.5 limit. Indeed Switzerland has carried out no studies or due diligence in relation to 1.5 degrees, and has not attempted to argue compliance before you, simply expressing a «willingness to be within the range» and that «it is fully aware that it needs to take action swiftly to ensure climate protection.» That’s at [paragraph] 117 of the Government’s observations. Professors Seneviratne and Fischlin, both renowned IPCC authors, state in their intervention that «it appears obvious that Switzerland is currently not contributing sufficiently to limit global warming to 1.5 degrees.» The same point is made by renowned academics from the University of Bern.

Switzerland has no answer to its failures. Instead, it falls back on the fact that it has taken adaptation measures and pleads for a wide «margin of appreciation».

The Applicants agree that adaptation is crucial. It is not an answer, however, to what Switzerland should have done to mitigate climate change and must do. Moreover, even with

adaptation measures, there will be overall increases in heat-related mortality, and with increasing temperatures, the potential for adaptation becomes more and more limited.

As to margin of appreciation, Switzerland says that the unprecedented and complex issues and challenges of climate change, as well as Switzerland's democratic system warrant it being given an «ample margin of appreciation». We accept that it is for Switzerland to decide what measures to take to give effect to targets; to that extent it has a margin of appreciation. But no such margin exists in relation to the fixing of the targets themselves, nor the need for legislation to give them effect. This is because there is only one way to prevent the 1.5 degree limit from being breached and that is for global emissions not to exceed the remaining carbon budget. That budget must be fairly shared between States, which Mr. Willers will now deal with.

**President O'Leary:** Thank you very much Ms. Simor. Mr. Willers, you have the floor.

**Mr. Willers:** Thank you Madam President, Members of the Court. I'm now going to address your question 1 and the Respondent's duty to protect the Applicants. In relation to your question 1(a), for just a 67% chance of the average global temperature increase not exceeding 1.5 degrees, the remaining carbon budget is 400 GT of CO2. Distributing this remaining carbon budget on a per capita basis from 2020 onwards, Switzerland will use up its remaining share by 2034 on its current proposed approach. It follows that Switzerland cannot have assessed a budget compatible with 1.5 degrees – and we note that in its written pleadings it does not argue that it has done so.

We say the Swiss budgetary position is even more egregious if the remaining global carbon budget is distributed fairly on the basis of the principles of international environmental law, such as common but differentiated responsibilities and respective capabilities. On that basis, Switzerland is already using other countries' shares of the small remaining global carbon budget. Members of the Court, this is carbon theft.

Switzerland claims to agree to a fair share approach. It says it is important that «efforts to combat global climate change [should be] shared in a fair and equitable manner,» and that «the effort to reduce greenhouse gas emissions must be differentiated according to a Party's responsibility and capacity.» And you find that in the Government's updated nationally determined contribution or NDC. Further, before you it states that «the concept of the highest possible level of ambition» in the Paris Agreement reflects «a standard of conduct that the parties must comply with» and that this entails a «duty of due diligence in designing the NDCs». And for that reference you'll find the Respondent's observations at paragraph 99 applicable.

In answer to the Court's question 1(b), we say that Switzerland has an obligation pursuant to Articles 2 and 8 to reduce its emissions beyond 100% of 2010 levels by 2030. This means that it must, in addition to domestic reductions, achieve emissions reductions abroad, for example, as my learned friend explained, through financial support. We based this on a fair share approach to emissions reduction, which derives from principles of international environmental law as we explain in paragraphs 39 and 41 to 46 of our observations. Specifically, we refer and rely on two globally recognised studies, which assess the full scope of the scientific literature on the application of fair share principles: And I'm talking there about the study by Professor Rajamani and her esteemed fellow authors and the Climate Action Tracker.

These studies present the scientific «common ground» on the calculation of 'fair share' emission reduction contributions. There is a small difference between the emission reduction requirements for Switzerland in 2030 in those studies; the CAT, the Climate Action Tracker, requires a reduction of between 160% to 200% from 2010 levels. Professor Rajamani's study requires a reduction of 198% from 2010 levels. As we said earlier, the IPCC AR5 report in

2017 required a reduction of between 106% to 128% of 2010 emissions from OECD countries. And that was for a 2-degree temperature limit. It's on this basis that we seek an order requiring Switzerland to achieve at least net negative emissions by 2030.

A minimum quantity of reductions must be made domestically. We refer the Court to paragraph 46 of our observations, Climate Analytics reports and, indeed, the Climate Action Tracker, which sets out the analysis of this issue.

Accordingly, we say:

First, that Switzerland must, as a minimum, reduce its domestic emissions by more than 60% by 2030 and achieve net zero domestically by 2050 as compared with 1990 levels and that it must not purchase emissions reductions from abroad in order to do so. And I refer you to paragraph 47 of our observations in that regard.

Secondly, we say to discharge its global mitigation burden, Switzerland's overall emissions reduction from 2030 should be net negative.

I now turn to address our fifth issue, Madame President. That's Switzerland's overall defences.

First, the Respondent says that its actions alone will not prevent or avoid the risks that climate change poses to the Applicants and that its failures cannot therefore be considered causative of the relevant harm and risk. You've heard what my learned friend for the Swiss Government said today about that and you'll also note that it is said in the Respondent's observations at paragraphs 62 to 64.

Members of the Court, this argument has been roundly rejected by Contracting State Courts, including the Dutch Supreme Court in the Urgenda case. And for very obvious reasons. It is common sense that the temperature goal in the Paris Agreement cannot be achieved without mutual trust between Contracting States. If a State as rich and technically advanced as Switzerland does not do its fair share – taking the lead as well as pursuing its highest possible ambition – then other States will also fail to do so. It follows that when a State such as Switzerland fails to do its share to meet the objectives of that agreement, it directly increases emissions and it also discourages other States from doing their share.

Moreover, it should not be forgotten that every degree – indeed every fraction of a degree of temperature increase – matters. Even today's global temperature increase of 1.13°C is causing enormous damage, and a 1.5°C global temperature increase will exacerbate that harm.

Secondly, Switzerland argues that it cannot be held responsible for its failures because the 2020 Climate Law was rejected in a referendum. This is plainly a bad argument.

Switzerland is responsible for its Convention violations irrespective of how they came about. As the Swiss Federal Court has itself said, legislation adopted by a popular vote can itself violate the Convention. And there we refer you to a decision of the Supreme Court: BGE 139 I 16. Contracting States are not subject to different Convention obligations depending on the technical operation of their democratic system. Moreover, the level of ambition foreseen in the rejected 2020 Climate Act would have violated the Applicants' rights under the Convention had it been enacted.

I now turn to relief and then the conclusion.

The Applicants submit at this late stage the finding of a violation alone will not be sufficient to remedy the breach. The Respondent's actions to date have been woefully inadequate and

there are no signs that this will change. There is no longer any scope for delay. For the adoption of the requisite climate mitigation measures required, 2030 is imminent. We respectfully say that in light of the failures to date, it is essential that this Court, as other Courts have done, order Switzerland to take the necessary measures. This includes concrete emission reductions, as we have requested.

Members of the Court, as I've said, there is no time left; dangerous climate change is with us, with us all. And the Applicants are suffering and fear the future. Switzerland has no excuse for its failures to protect the Applicants' rights. It has known about the harm that inadequate action would cause and, despite that knowledge, it has failed to act with sufficient urgency and application, undermining global efforts and mutual trust. If a country as rich and technologically advanced as Switzerland cannot do its fair share – I go further, does not even take the trouble to assess what its fair share should be – then what hope is there that other countries will step up to the challenge we face?

The case before you is of momentous importance. I finish by asking you to grant the Applicants the relief they seek. Thank you Madame.

**President O'Leary:** Thank you Mr. Willers. I now call on Ms. Donnelly for the Irish Government, intervening as a third party.

**Ms. Donnelly:** Madam President, Members of the Court, this case raises fundamental questions about the role of the Convention and the Court in addressing the challenge of climate change. Ireland recognises the severe threats that climate change poses for the international community. Ireland also recognises the necessity for urgent action to address this threat and Ireland acknowledges the important role of individual citizens and groups of citizens in mobilising for climate action.

But in Ireland's respectful submission, there are three insuperable difficulties with the application before the Court. First, it asks the Court to extend in a fundamental way the scope of the Convention and the role of the Court under the Convention. Second, in so doing, it seeks to bypass the democratic process through which climate action must take place if it is to be legitimate and effective. And third, the application is inconsistent with the dedicated international framework governing climate change to which the contracting parties have long been committed.

Turning first to the scope of the Convention and the role of the Court, the Applicants ask this Court to engage in a detailed substantive assessment of the Respondent's climate action on the basis that it violates Convention rights and, on that basis, to direct the Respondent to adopt legislative and administrative measures to do its share to prevent global temperature increase of more than 1.5°C, including emission reduction targets, and measures reducing emissions abroad. In asking the Court to undertake this task, the Applicants invite this Court to embark on a far-reaching expansion of its case law on admissibility and merits.

On admissibility, the Applicants urge the Court to go significantly beyond its current case law on victim status and jurisdiction. Ireland supports the Respondent's observations on these issues. In particular, recognition of jurisdiction in respect of emissions generated abroad would run contrary to the primarily territorial character of jurisdiction under Article 1 of the Convention and would not fall within with any of the exceptions to territorial jurisdiction recognised in this Court's case law to date.

On questions of the applicability in breach of Convention rights, the Applicants propose an even more radical expansion of the Courts case law. It is true that the Court has applied the Convention to environmental matters, but it is well settled that the Convention does not guarantee a standalone right to a clean, healthy and sustainable environment. That is why the Court has recognised that the Article 2 right to life may apply in environmental matters.

The Court has emphasised that it is only so engaged to exceptional circumstances where there is a real and immediate risk to life as a result of the act or omission of the State as held for example Öneryildiz and Turkey.

Unless such a risk is established, the primary positive obligation on States is to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life as held in Boudaïeva in Russia and Brincat in Malta.

Similarly, the Court has recognised that the right to respect for private and family life guaranteed by Article 8 may apply in the context of environmental matters. However, that right does not apply to the general deterioration of the environment. Rather, it applies only in cases of severe environmental pollution that have a direct and immediate impact on an individual's private and family life such as arose in Guerra and Italy. And even in such cases, the primary positive obligation on States is to take reasonable and appropriate measures to secure the rights guaranteed under Article 8 striking a fair balance between the competing interests of the individual and the community as a whole, as set out in Hatton and the United Kingdom.

Moreover, when the Court has applied the Convention to environmental matters, the Court has afforded a wide margin of appreciation to States because, as was recognised in Boudaïeva and Russia, this is a difficult social and technical sphere. In this case, however, the nature, scope and effect of the obligations contended for by the Applicants go far beyond the Court's case law. In particular, asking this Court to set concrete emission reduction targets to order the Respondent to do everything that is neither impossible nor disproportionately burdensome to reduce to a safe level, or to order the Respondent to do everything in its power to do its share reduces to a vanishing point the margin of appreciation, which has long been recognised by the Court in this context.

This leads to my second point. If this application were upheld, this would bypass in a very real and significant way the democratic process through which climate action must take place if it is to be legitimate and effective.

As the preamble to the Convention recognises, effective political democracy is one of the foundations on which the fundamental freedoms in the Convention are maintained. Indeed, this is why, in accordance with the principle of subsidiarity, it is the States that have the primary responsibility for securing Convention rights and that enjoy a margin of appreciation in so doing, subject to the supervisory jurisdiction of this Court.

The scale of the challenge of climate change and the action necessary to tackle it cannot be underestimated. It requires a complex range of legislative policy, scientific and technical responses. It demands far-reaching and unprecedented mitigation and adaptation measures which affect all sectors of society. It involves very difficult choices, socially, economically, and politically, which affect communities, companies, and individuals in significant ways. And inevitably, it entails the balancing of the rights and interests of different groups in society.

In other words, putting in place an appropriate legislative and administrative framework to combat climate change and strike in a fair balance between the interests of the individual and the community in so doing is one of the most complex, multifaceted and sensitive challenges facing States today. It follows that it is necessary for climate action to enjoy democratic legitimacy. Indeed, because climate action depends on the contribution not only of the Government, but also the private sector and communities and citizens more broadly, it will only be effective with democratic support. In this regard, Ireland agrees with the Statement of the Court in Fadeïeva and Russia, at paragraph 105, that the complexity of environmental protection renders the Court's role primarily a subsidiary one.

In Ireland's submission, upholding the present application would run contrary to the principal

of subsidiarity whin underpins the Convention, it would also run contrary to the democratic principles that lie at the heart of the Council of Europe system as a whole.

This brings me to Irelands third and final point. As well as bypassing the democratic process and contrary to what has been suggested by the Applicants this morning, the Applicants do seek to use the Convention to bypass the detailed and dedicated international framework for combatting climate change. No single State alone can effectively address the problem of climate change. The global nature of the problem requires an effective global response.

This is why Ireland fully subscribes to the global framework for combatting climate change, which is found in the UNFCCC and the Paris Agreement and which is informed by the scientific evidence in the reports of the IPCC. It is through this framework and decisions taken at annual conferences of the parties to implement it, as well as actions taken at regional, national and local levels thereunder, that the international community of States can most effectively respond to climate change.

It is settled case law that in interpreting the Convention, the Court is entitled to take account of any relevant rules and principles of international law applicable in relations between contracting parties, particularly where international cooperation is required, as held in Demir and Turkey and X and Latvia. International consensus limits this Court's interpretation of the Convention also, as was seen in Shindler and the United Kingdom. This Court has also expressly held in Atanasov and Bulgaria, paragraph 77, that other international instruments are better suited to address such issues as environmental protection.

In this case, while the Applicants rely on elements that the UNFCCC framework, the actual effect of their case would be to impose on contracting parties obligations regarding climate change that are not consistent with that framework. The Applicants' demand that the Respondent be compelled to do its share to prevent a global temperature increase of more than 1.5°C is not even formulated consistently with Article 2(1)(a) of the Paris Agreement. The Applicants would disrupt the territorial basis on which the Paris Agreement mandates emission attribution by holding the Respondent accountable for emissions generated abroad by reference to consumption and finance flows.

As is evident from the Court's questions to the parties for the oral hearing, the Applicants even asked this Court to determine the Respondent's share, notwithstanding that this would conflict with the mechanisms in the Paris Agreement which assess and reassess the parties' shares on the basis of the principle of progressive ambition. Moreover, by asking this Court to impose an individualised and forceable legal obligation on the Respondent, again something which the Paris Agreement does not do, the Applicants effectively seek to establish this Court as a new international court of environmental oversight and enforcement.

In short, the Applicants are asking the Court to design, impose and supervise a parallel and in certain respects inconsistent framework for Convention parties. Far from ensuring that Convention is interpreted in line with the contracting parties' international obligations, the application if upheld could undermine our total framework.

In conclusion, Ireland submits that the challenge of climate change, critically important though it is, does not justify the very significant expansion of the scope of the Convention and the Court's case law proposed by the Applicants. Ireland reiterates that it recognises the severe threat facing the international community as a result of climate change and the necessity of urgent action to address that threat. But with great respect, the Convention is not the appropriate framework through which to address a problem of such scale, complexity, and sensitivity. Thank you for your attention.

**President O'Leary:** Thank you Ms. Donnelly. I call now on Ms. Sandvig for the European Network of National Human Rights Institutions.

**Ms. Sandvig:** Madam President, Members of the Court, few people have it in their power to change the course of History. You do.

On behalf of all national human rights institutions in Europe, ENRI urges the Court to use its power to protect vulnerable individuals against escalating and irreversible climate harm. The facts are simple. Greenhouse gas emissions cause heat extremes that kill. Science shows that heat deaths are «immediate and direct» impact of emissions. In Switzerland, in the canton of Zurich alone, more than 1700 individuals have already lost their lives to heat attributed to climate change. A disproportionate number of these were elderly women. They die because their bodies, just like the bodies of infants, are less able to withstand heat.

The Applicants have called on the Respondent State to reduce emissions to protect their right to life and wellbeing. In ENRI's view, it would be consistent that the proper role and the function of the Court to review the adequacy of emission reductions on three grounds.

First, the Convention is relevant to climate harm because it is interpreted in light of present-day conditions. Today, all contracting States agree that climate change is one of the most pressing threats to all human rights. Based on ECHR case law, apex courts in Germany and the Netherlands have applied the right to life and physical integrity to require States to cut emissions. Beyond Europe, a consensus is forming in courts that climate change poses a real and immediate threat to human lives. This Court is not asked to break new ground but to confirm what is already human rights law in Karlsruhe and the Haag.

Second, scrutiny of the emission cuts would strengthen democracy. By requiring the Respondent State to substantiate that it is in fact cutting emissions as necessary to which temperature target adopted by the State itself, the Court would enable democratic accountability and inform public debate. At any rate, the Court must uphold basic rights. Given the irreversibility of climate change, allowing a present majority to use up the remaining carbon budget inevitably limits the rights and the decision-making ability of younger generations. Preservation of equal democratic rights and respect for fundamental rights over time requires scrutiny of emission cuts. Now.

Third, scrutiny of emission cuts would be consistent with international law. It would further the object and purpose of the UN Framework Convention on Climate Change and the Paris Agreement to prevent dangerous anthropogenic interference with the climate system from having significant harmful effects on human health and welfare. It would accelerate emission cuts. According to the IPCC, successful court cases can increase State ambition to tackle climate change.

I turn now to ENRI's three views on the law.

First, courts worldwide confirm that individual States may be held to account for harm caused on its territory by climate change because any reduction in emissions matters for the IPCC. The responsibility under the Convention logically extends to all emissions under the Respondent States' effective control, also those that happen to be released abroad because greenhouse gas emissions cause equal harm within the State's territory regardless of distance.

Second, individuals who are directly or lightly affected by climate harm can be victims for the purposes of Article 34 even though countless others are similarly affected. In Pavlov vs. Russia, half a million residents were equally exposed to air pollution. In [unintell.][1], entire populations of States were potentially affected. It is because, as the US Supreme Court has pointed out, to deny standing simply because too many others are also affected would mean

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[1] [unintell.] unintelligible speech / parole inintelligible

that the most injurious and widespread Government action could be questioned by nobody.

Third, Articles 2 and 8 apply to life threatening climate harm such as extreme heat. Cordella and Pavlov confirm that it is not necessary to prove individual causality when an environmental situation had a direct influence on morbidity rates. Now, climate attributed heat has a direct influence on both morbidity and mortality rates. Absent immediate emission cuts, an exponential increase in heat mortality is not only foreseeable but certain.

As is, this Court does not interpret imminence «so narrowly as to require a State to wait for catastrophe to strike before taking measures to deal with it». The risk of exceeding 1.5 and even 2 degrees is imminent now. To fulfil Articles 2 and 8, the Respondent State must therefore take all appropriate steps to protect life and wellbeing. In the context of harmful emissions, Jugheli and Pavlov confirm that the Court can assess whether a State has acted with due diligence to cut emissions. The same obligation applies here.

According to the IPCC, reduced emissions will have a strong impact on heatwaves in Europe. And the duty will be violated in at least three instances.

First, as German and Dutch courts have already pointed out, it would be a violation if the State relied on adaptation measures without adequate mitigation. Adaptation is already insufficient to protect against a significant burden of heat related mortality in Switzerland. And according to the IPCC, widespread breaches of adaptation limits are expected if warming exceeds 1.5 degrees.

Second, there would be a violation if the State pursued policies, for instance fossil fuel licensing or financing, that undermine efforts to limit warming to 1.5°. It is scientifically proven that any warming above 1.5° would make extreme and deadly heat commonplace in Switzerland in summer. 1.5° is also the likely threshold for several tipping points, including the collapse of ice sheets that would result in more than ten meters higher seas, an abrupt thaw of permafrost releasing methane. This again could set off a tipping cascade leading to a 4° warmer cataclysmic [unintell.] earth. Now in Brincat and Malta, the Court relied on objective scientific research as the basis for its conclusions even where it went further in international treaty law. In this case, such research confirmed the 1.5° target of the Paris Agreement as the maximum limit to safeguard human health and life. And at any rate, since even a carbon budget to limit warming to 1.5° with a 50% probability holds a considerable probability of exceeding even the 2° limit, the well below 2° target in the policy we are making can only be kept by aiming solely for 1.5°.

Third and relatedly there would be a violation if the State failed to substantiate that it is cutting emissions according to its fair share of the remaining global carbon budget to limit warming to 1.5°. The fact that there is no agreed method for converting a global carbon budget to a national one does not mean that the Convention obligation is limitless. This is all the more so since all available scientific approaches suggest that the Respondent State must cut far more than it currently plans to do. Even an equal *per capita* approach, as applied by the German Constitutional Court, suggests that the Respondent State is on course to deplete its fair share between 2030 and 2034, leaving no room for emissions from that point onwards. As in Neubauer, this could give rise to future impairments of fundamental rights for younger generations.

Now in the alternative: if the Court wishes to refrain from defining fair share, the domestic legal framework should as a minimum define clearly three components: a national carbon budget aimed at 1.5°, a specified reduction rate to net zero and independent oversights. The national carbon budget must be based on science and not overuse emissions at the expense of younger generations. This is necessary to secure the rights of the Convention equally over time, in line with Article 14.

Two, the specified reduction rates must lead to net neutrality without relying on speculative or uncertain carbon removal technologies or unverifiable offsets. This is necessary to ensure transparency and precaution.

To conclude, it follows from the Court's established case law that Articles 2 and 8 logically apply to climate attributed heat, death, and sickness, requiring emission cuts to prevent irreparable harm. According to the IPCC, the window of opportunity to safeguard a liveable future for all is rapidly closing. It would be appropriate for the Court to uphold individual rights at this critical juncture in history. After all, this is a Court set up within of Council of Europe to protect individuals for the «preservation of human society and civilisation». Thank you for your attention.

**President O'Leary:** Thank you Ms. Sandvig and I thank all of the parties and the third party interveners for their submissions. I now invite Judges of the Grand Chamber wishing to do so to put their questions to the parties. Judge Bårdsen

**Judge Bårdsen:** Thank you very much Madam President. I have two questions if you allow. My first question is addressed to the Applicant. As you are well aware of, this Court is of course set to deal with individual cases based on a Convention addressing individual rights and the Court has always been very careful, both when it comes to admissibility, but also when it comes to substance, to carefully carry out the assessment of the case based on the concrete case of the applicant. Now, the Applicants in this case are inviting the Court to carry out, in reality, what can be described as a rather full-fledged assessment of domestic policy in a member State, legislation, the administrative measures taken, etc. And also, even to tell the Government what kind of policy choices they have to take. This is probably a rather provocative question that I now ask, but we are somehow at the Court core when it comes to the role of this institution. My question to the Applicants would be: «What is the legal base, the legal justification for this Court in this case and within this particular area to take on this, one might argue, new task, new responsibility carrying out this rather extensive assessment of domestic policy choices?»

Deuxièmement, j'ai une question à poser au gouvernement suisse sur le principe de précaution et la nécessité d'une équité intergénérationnelle. Dans ses observations écrites, le gouvernement suisse a souligné que le statut du principe de précaution en droit international n'est pas clair, que la question de savoir si ce principe est établi comme règle de droit international ou non est controversée, et que ce principe est de toute façon trop vague pour qu'il puisse véritablement orienter la prise de décision sur le fond. Et, en ce qui concerne le principe d'équité intergénérationnelle, le gouvernement souligne qu'il n'est pas établi, qu'il ne constitue pas une règle de droit international. J'aimerais que le gouvernement explique plus en détail sa position sur ces deux principes, et le fondement juridique de sa position. Ce faisant, il serait utile que le gouvernement explique sa position à la lumière des conclusions de la Cour dans des affaires telles que Tătar contre Roumanie, où la Cour, pour sa part, a rappelé l'importance du principe de précaution. Dernier point, Madame la Présidente, je renvoie à cet égard à l'annexe de la recommandation numéro 20 du Comité des Ministres du Conseil de l'Europe de 2022, aux Etats membres sur les droits de l'Homme et la protection de l'environnement, en particulier le numéro 1 de l'annexe, qui se lit comme suit: « Dans la mise en œuvre de la présente recommandation, les Etats membres devraient veiller au respect des principes généraux de droit international de l'environnement [le juge répète l'expression à deux reprises], tels que le principe d'absence de dommage, le principe de prévention, le principe de précaution et le principe du pollueur-payeur, et tenir compte de la nécessité d'une équité intergénérationnelle. » Je vous remercie.

**President O'Leary:** Thank you very much. Judge Pastor Vilanova.

**Judge Pastor Vilanova:** Merci beaucoup Madame la Présidente. J'ai une simple question à poser au gouvernement, et bien entendu les requérants peuvent intervenir s'ils l'estiment

opportun. Ma question est formulée de la façon suivante au gouvernement : «Pouvez-vous expliquer, s'il vous plaît, l'apparente contradiction qui existe, me semble-t-il, entre d'une part le jugement du Tribunal fédéral, qui considère qu'il reste encore du temps pour empêcher le réchauffement climatique fatal, et d'autre part les déclarations de certains cantons et villes suisses déclarant l'urgence climatique ?» Je vous remercie.

**President O'Leary:** Merci beaucoup. Judge Seibert-Fohr.

**Judge Seibert-Fohr:** Thank you Madam President. I have three questions to ask with respect to the rights claimed and about the measures to be adopted as well to the victim status. My first question is to the Applicants, but of course the Respondent Government may feel free to address this issue as well. As pointed out by the Applicants Counsel this morning, the Applicants are claiming a violation of positive obligations. My question is: «Is it a failure to take action in the past or the future that the Applicants are claiming?» In other words, what exactly are the emissions that have given rise to the violations of the Applicants rights to life and private life? My second question is addressed to both parties. It is about the measures to effectively protect the Applicants' lives and to avert the imminent hazard that is being claimed by the Applicants. As stated by the Applicants' Counsel, the EU Commission has increased its emission reduction target for 2030 to 55%. Should the Respondent State do so equally to protect the Applicants? To what extent will these measures which seek to reduce the emissions so as to achieve the Paris Agreement target of global warming by 2050 have an effect on the Applicants' life and health? Third: «Are there alternative measures, such as additional health care or other adaptation measures during the heatwaves, including early warning systems? Is this only the responsibility of the Applicants, as suggested this morning by the Respondent Government, or, if not, which such measures are in place to protect the Applicants during heatwaves? Finally, Madam President, if you allow, I would like to ask a question related to the Applicants' victim status. In which way does the Applicants claims differ from that of other vulnerable persons living in Switzerland? In other words, would other persons suffering from health diseases not have equal standing, and where do we draw the line? Thank you.

**President O'Leary:** Thank you. Judge Bošnjak.

**Judge Bošnjak:** Thank you very much. I have a question first to the Applicants, and then also to the Respondent Government, but of course both parties are welcome to comment from each side if they feel it beneficial or necessary. My first question is somehow similar to the question that was already asked by Judge Bårdsen, namely assuming that our Court could and should assess whether the regulatory framework adopted by the Respondent State is sufficient, what should the Convention criteria be in that assessment? And how and why, if at all, should the standards of international environmental law penetrate or usefully inform the Court's criteria in this respect? And furthermore, whether the Court should, in addition to this assessment of adequacy of legal framework, also assess the pathways leading to achievement of the targets set by that regulatory framework. And, if so, how should that assessment of adequacy of pathways leading to the achievement of the targets play out? Then, my second question goes to the Respondent Government, but again the Applicants are welcome to comment if they so wish. Now, it is a rather well accepted principle that each and every Government or State should do its fair share in reducing emissions in their fight against global warming and climate change, and that the argument that emissions stemming from a particular State are just a drop in the ocean does not fly. Now, I wonder whether the Respondent State subscribes to this principle, and if so, how does this principle sit with your argument that there exists no causal link between the alleged omissions by the Swiss Government and the alleged consequences for the Applicants. Thank you very much.

**President O'Leary:** Thank you very much. Judge Ravarani.

**Judge Ravarani:** Merci. J'ai deux questions pour les parties requérantes. Tout d'abord une question dans le cadre de l'applicabilité de l'Article 6, qui exige un droit reconnu en droit interne. Je sais que les requérantes se sont basées sur l'Article 10 de la Constitution suisse et aussi sur les Articles 2 et 8 de la Convention, qui font partie du droit interne. Est-ce qu'il y aurait d'autres dispositions de droit interne qui pourraient caractériser ce droit interne ? Deuxième question : les requérantes pourraient-elles imaginer des mesures alternatives plus ciblées que celles demandées, qui sont générales et globales, pour subvenir à leur plainte ? Merci.

**President O'Leary:** Thank you. Judge Pavli.

**Judge Pavli:** Thank you. I have a question each for the Government and the Applicants, but of course they may comment on each other's responses on the question. First, for the Government, in the last round of questions to the parties that the Court sent to the parties before the hearing, there was a question about the national carbon budget. And forgive me if I missed something, but I am not sure that we have received the response on that. So, the question is simply: Does Switzerland today have a calculated national carbon budget between now and the 2050 net neutrality horizon? And if so, does that include any, let's say carbon credits from abroad and use of other countries' budgets? And, if not, then on what basis does the Swiss Government estimate the pathways and the reductions that would be necessary between now and 2050 to reach net neutrality? The question for the Applicants is the following: You have argued that it is not appropriate for the Swiss authorities to rely on credits or what is known as internationally transferred mitigation outcomes from other countries in meeting its self-imposed targets. My question is: Why is that so? Why is that not appropriate if whatever Switzerland or any country does for the better or for the worse affects the entire planet, why does it matter where those reductions are made? Thank you.

**President O'Leary:** Thank you. Judge Guyomar.

**Juge Guyomar :** Merci Madame la Présidente. J'ai une question qui s'adresse aux deux parties, la partie requérante et l'Etat défendeur. S'agissant du statut de victime, vous avez, aussi bien pour aller à son soutien que pour le contester, l'une et l'autre des parties, traité ensemble de la question de l'association et des requérantes, personnes physiques. Je voulais vous interroger sur la question de savoir si vous pensez qu'il y aurait une possibilité de traiter au regard de la condition de l'intérêt digne de protection, dans l'ordre interne suisse, différemment les deux catégories de requérantes, notamment compte tenu de la dimension interindividuelle et intergénérationnelle que vous avez mise en avant s'agissant des conséquences du changement climatique. Merci.

**Madame la Présidente:** Merci beaucoup. Judge Zünd.

**Juge Zünd :** Merci Madame la Présidente. J'ai une question d'abord pour les requérantes. Les aînées sont plus touchées par les vagues de chaleur que la moyenne de la population. Est-ce que les femmes aînées sont encore plus touchées que les hommes ? Si oui, pourquoi ? Puis, une question pour le gouvernement: La loi sur la réduction du $CO_2$ prévoit que jusqu'en 2022, il devrait y avoir une réduction de gaz à effet de serre de 23 %. Est-ce que ce but a été atteint ou non ?

**President O'Leary:** Merci beaucoup Juge Zünd.I have a question which is a follow up question to that posed by Judge Guyomar. According to our case law, and I am citing from Gorraiz Lizarraga, decided in 2004, the term victim in Article 34 must be interpreted in an evolutive manner in the light of conditions in contemporary society. And indeed, in modern 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. In 2009 in Greenpeace e.V., the Court held that an association is not, in

principle, in a position to rely in health considerations in violation of Article 8. We are in the Grand Chamber this morning, this afternoon and later this year in the case of Duarte Agostino, several other cases against several other States are stayed pending the outcome of these proceedings. My question for both parties, but in particular for the Government is: Should we, in this specific context, either of environmental cases or of climate change, and given the vast majority of Council of Europe's States of parties to the Aarhus Convention, which gives specific rights to environmental associations, should we now, in 2023, review our existing case law in relation to the victim status of associations in such cases? And, if not, why not? The Court will now withdraw for approximately thirty minutes, reconvening at 11.40, following which the parties will be able to submit their brief observations in reply to the other submissions and reply to the many questions posed by the Judges. May I also draw your attention to the fact that the Judges will have the possibility, after hearing the answers to their questions, to ask for clarifications concerning questions. We will not, however, at that stage, pose any additional questions. The hearing is stopped.

[Break]

**President O'Leary:** Please be seated. The hearing is resumed. Mr. Chablais, vous avez la parole.

**Alain Chablais :** Madame la Présidente, Mesdames et Messieurs les Juges, nous allons tenter de répondre aux nombreuses questions qui nous ont été adressées par la Cour, dans l'ordre suivant : je vais répondre aux questions posées par le Juge Pastor Vilanova, puis, à la deuxième partie de la deuxième question posée par le Juge Bošnjak, puis aux questions posées par le Juge Guyomar et par vous, Madame la Présidente. Je proposerai ensuite que la parole soit donnée à mon collègue, Monsieur Franz Perrez, pour répondre aux questions posées par le Juge Bårdsen, par la Juge Seibert-Fohr, à la première partie de la deuxième question du Juge Bošnjak, à la question du Juge Ravarani, du Juge Pavli et du Juge Zünd.

Je commence par répondre à la question posée par le Juge Pastor Vilanova au gouvernement. À la question de savoir s'il existe une contradiction entre l'arrêt du Tribunal fédéral, qui relève qu'il reste du temps avant qu'un effet puisse être perceptible sur la santé des requérantes, et les actions et les déclarations de villes et de cantons en Suisse, qui ont déclaré une urgence climatique ou qui ont pris des mesures en faveur du climat, je dirais que de l'avis du gouvernement, il ne s'agit pas d'une contradiction. Le Tribunal fédéral a eu à examiner la recevabilité d'un recours. Il l'a fait en 2020 sur la base d'un état de fait qui date de 2018. Il s'agissait donc, pour le Tribunal fédéral, de se pencher sur la protection juridique individuelle telle qu'elle est possible par l'exercice d'un recours. Les cantons, les villes mais aussi bien sûr la Confédération, agissent, définissent des politiques et des actions pour protéger le climat. Nous l'avons dit également, cette nécessité d'agir, cette urgence d'agir pour les collectivités publiques est reconnue et elle se manifeste en effet par différents objectifs de réduction des émissions de gaz à effet de serre qu'ont pris certains cantons, par exemple par des plans canicule qu'ont pris d'autres cantons, et donc c'est une action, ou plutôt des politiques en faveur du climat et nous ne voyons pas de contradiction entre ces deux éléments.

Concernant la deuxième partie de la deuxième question du Juge Bošnjak: «Does Switzerland subscribe to the fair share principle? How does it fit with the fact that there is no causal link, allegedly no causal link, and consequences for the Applicants?» The dilemma is there. A causal link between greenhouse gas emissions from Switzerland and the health of the Applicants has not been established and could probably not be established by the Applicants. This is the result of the current case law of the Court and this question regarding victim status. That being said, Switzerland does not contest that it has to do its share to reduce its greenhouse gas emissions, as my colleague Franz Perrez will explain to you in a moment.

En réponse à la question du Juge Guyomar, qui est celle de savoir si pour une association, il pourrait y avoir un intérêt digne de protection au sens du droit suisse pour obtenir une entrée en matière et une décision d'un tribunal suisse sur la question qui nous intéresse, et pourquoi pas pour une association qui s'intéresserait à la dimension et à l'équité intergénérationnelles. La question posée est, à vrai dire, assez difficile. Il est difficile d'y répondre *in abstracto*, sans qu'on ait véritablement une jurisprudence sur cette question. Je l'ai dit tout à l'heure, il n'existe pas de possibilité de recours idéal dans la législation suisse pour des associations qui défendent le climat. Cela existe pour les associations qui défendent la protection de l'environnement, la protection de la nature, mais cela n'existe pas - en tout cas pas pour l'instant - pour des associations qui défendent le climat. Il existe une possibilité de recours dit « égoïste » pour les associations qui agissent en tant que telles lorsqu'une majorité de leurs membres est directement, elle-même, touchée. Majorité des personnes physiques qui la composent est directement touchée. Cette question, et cette qualité pour agir a été laissée ouverte par le Tribunal fédéral dans l'arrêt qui nous occupe. Donc, il est difficile d'apporter une réponse spécifique à cette question en l'état.

À la question posée par vous, Madame la Présidente, en rebondissant sur la tierce intervention du Gouvernement d'Irlande, qui nous rappelait que la qualité de victime doit être interprétée de manière évolutive, là aussi en ayant en tête le rôle des associations en matière de lutte contre le réchauffement climatique, vous mettiez également dans la balance la question de la Convention d'Aarhus, pour savoir s'il n'y aurait pas éventuellement une nécessité de faire évoluer, précisément, la jurisprudence sur la question de la qualité de victime dans le domaine qui nous intéresse.

Nous laissons évidemment à la Cour le soin de décider si la qualité de victime, dans le domaine climatique, mérite de faire l'objet d'une interprétation plus large. Le gouvernement suisse souligne simplement qu'il faut être conscient qu'il sera alors très difficile de refuser à l'avenir, si cela est fait, à toute personne de saisir les tribunaux et de demander une décision sur le contrôle de la politique climatique d'un Etat. Il deviendra très difficile de distinguer entre les individus ou les associations qui auraient ce droit et les individus ou les associations auxquels ce droit devrait être refusé. Sur la Convention d'Aarhus, le gouvernement rappelle que cette Convention règle l'accès à l'information, à la participation du public au processus décisionnel et à l'accès à la justice en matière d'environnement. Le gouvernement relève qu'au cœur des prétentions de l'association requérante ne se trouve pas la question du droit à l'information ni à la participation au processus décisionnel en matière d'environnement. Ce qui était au cœur de la requête, c'est bien le droit à la vie et le droit à la vie privée et familiale. Donc il nous semble que cette Convention d'Aarhus, pour ce cas-ci, n'est pas d'une grande aide pour la question qui nous intéresse.

Je vous remercie et je vous suggère de donner la parole à mon collègue Franz Perrez.

**Madame la Présidente:** Merci Monsieur Chablais. Monsieur Perrez.

**Monsieur Perrez:** Merci beaucoup, Madame la Présidente, Messieurs, Mesdames les Juges. J'ai essayé tout d'abord brièvement de toucher les questions qui ont été soumises par écrit il y a deux, trois semaines. Concernant la question : «Est-ce que la Suisse a adopté un budget carbone national ?»

Voici la réponse à la question du Juge Bošnjak. La Suisse n'a pas adopté un budget national pour la période jusqu'à l'année 2050. Mais la Suisse a adopté, pour chaque période de son objectif climatique, de national contribution under the climate change convention, la Suisse a toujours adopté tout d'abord un objectif pour une année, où on veut atterrir et, en plus, un objectif moyen. Et cette combinaison avec un objectif moyen crée *de facto* un budget pour cette période. Donc on a *de facto* un budget pour la période de 2020 à 2030. Et, pour revenir à la question du Juge Bošnjak, we will also use that budget in order to compensate the offsets. This will be the offset approach, with emissions reduction also in Switzerland that

feeds into that budget approach to compensate if we are not meeting the target of the budget. Having said this, Switzerland was really very very strong with national negotiations, making sure that there is additionality, there is no double claim counting and that there is [unintell.] of these offsets.

Pour la deuxième question, pardon, concernant comment est-ce qu'on devait calculer la contribution équitable. C'est la question qui avait été soulevée notamment par le Juge Bårdsen je crois, pardon. En tout cas, la question est importante: comment est-ce que la Suisse juge que c'est équitable ? I would like to underline for Switzerland equity has always been one of the key principles of the Paris Agreement. Also, of the national policy. We are also making Switzerland-internal assessment what would be our equitable share both towards mitigation, but also towards financing for example. Because we think the international regime works only if each party delivers its fair share.

There are many criteria that are relevant for the fair share or for an assessment of that. And there is no internationally agreed set of criteria. Therefore, Switzerland was insisting, in order to be able to judge and compare each other, we need transparency. And Switzerland was insisting that each country has to explain, when submitting its national [unintell.] contribution, how it calculated its fair share contribution and why it thinks its contribution is a fair share. Switzerland did that in its submissions. Switzerland set the precedent for that and in the negotiations Switzerland also succeeded that this has now become an obligation. And that's an approach of the Paris Agreement. Each party has to explain what is its fair share that allows it to compare, that allows to push and pull each other to do more. But there are no agreed criteria what are we to define [as] fair share. Switzerland did apply certain criteria, namely its responsibility with regard to past, present and future emissions. Secondly also, its capacity. And thirdly also the potential of available, cost effective, rapidly available measures to reduce your emissions.

Switzerland is in a very special situation. We do not have many potentials for rapidly reducing our emissions. So, we need a little more time. We want to achieve net zero by 2050. And just to pick up on some of the questions: we want to achieve net 50 by internal measure. Not with offsets. However, net 50 net 0.50 cannot be achieved only through mitigation measures. There will be some measures, negative emissions, carbon capture technologies will be needed, also the IPCC says that. And Switzerland will. [unintell.] there will be some remaining emissions that cannot be avoided. And for those emissions, we will use carbon offset and negative emissions. But all emissions that can be avoided will have to be reduced by 2050 intern Switzerland.

En ce qui concerne la deuxième question concernant le calcul d'une répartition équitable, j'ai déjà indiqué qu'il n'y a pas de critères d'objectivité sur ça. La transparence est importante. Les études qui ont été soumises font (sic!)[2] certaines approches, mais elles sont toujours basées sur des jugements personnels ou individuels. Ce ne sont pas des jugements objectifs, clairement, qui comptent pour tout le monde.

En ce qui concerne le référendum de la Suisse, l'impact de ça, c'est important: le référendum en Suisse n'était pas un référendum sur l'objectif. L'objectif de la Suisse reste en vigueur. C'est un référendum sur certaines mesures. Et dès lors, la Suisse a déjà soumis de nouvelles propositions. C'est maintenant c'est maintenant législer le Parlement de législer (sic!) On va adopter ça j'espère dans le référendum cet été. On est en train de proposer maintenant d'autres mesures pour réaliser nos objectifs. Nous sommes très confiants. On va développer des mesures pour réaliser nos objectifs. Le référendum n'a pas mis en question cet objectif.

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[2] The abbreviation [sic] (Latin for sīc erat scriptum) stands for 'so it was written'. It is used in direct quotations to indicate mistakes.

Maintenant, coming to some specific questions with regard to the precaution principle by Judge Bårdsen. Let me first say that the precaution principle creates a right to act in the light of a scientific uncertainty. It does not create an obligation. However, in this case here, this is not a case of precaution. Because here, the scientific information is clear. We are not in a situation of lack of sufficient scientific certainty. Science is clear, IPCC [unintell.], here we are a situation where it is clear: each country has to act on that. [unintell.] principle of equity and intergeneration equity, these are principles that are relevant, that guide our actions, but that cannot be translated into something that is very specific and allows us to quantify the reduction that each country has to be done. By IPCC outlines what we all have to be together, and the Paris Agreement established a mechanism where the countries submit their objectives every five years we come together, make an assessment, challenge each other, based on how we have explained what is a fair share. And we are motivated to raise our NDCs for the next period.

Then, turning to the question of Judge Seibert-Fohr: If Switzerland would increase its NDC and follow for example the example of the European Union, what could be the impact on the balance? It would be nothing. Just to be clear. If Switzerland would increase its NDC, that would change nothing in the situation on the ground. The temperature [unintell.] would not change at all. That is a perspective from the human rights perspective. But of course, on the Paris Agreement, that's something else. On the Paris Agreement, we all have to increase and to do our share.

Judge Ravarani, I think, said that what happens with the idea that it is a drop in the ocean. From the climate change perspective, we have established a regime that collects all the drops together. Each drop is relevant, and therefore also, the contribution of Switzerland is relevant. But we have established that bottom-up approach when we come together every five years to see if the drops are sufficient and pushing each other to do more. So, we should do more, increasingly, also on the climate change perspective, but there, we have also to look at the different situations. For example, between the European Union and Switzerland. The European Union has much higher *per capita* emissions than Switzerland. And Switzerland, in comparison to the EU, different to the EU, we do not have fossil energy supplies. And these are areas, that’s an area where you can rapidly decrease your emissions. Our basic emissions are in the building sector. That needs time to do that. We want to tackle that; we want to achieve net zero by 2050. Traffic, they were dependent of what is going on in Europe. So, we want to achieve 2050, but we cannot do that in the next years.

Let me also say something about has been said about what would be a fair share. The argument that the fair share would be to reduce your emissions by 160 or 210% by 2030, this is simply not possible. A fair share cannot be something that is not feasible technically and economically without hampering fundamentally other human rights. I think asking for a fair share, that is not technically feasible, economically feasible, that is not sustainable, that does not help us here. We need to develop our fair share push each other, but we have to do something that is feasible.

Then, to the last question by Judge Zünd: Can we already say whether we have achieved our target 2022? No, we cannot do that. We will be able to say that in two years. That's because the inventory of the greenhouse gas emissions for Switzerland, they are reported it takes a certain delay. And it will be reported only two years afterwards, so in 2024 we will be able to say whether we have met the 2022 target. I hope that I have answered all the questions. Thank you very much.

**President O’Leary:** Thank you very much. Ms. Simor you have the floor.

**Ms Simor:** What is the basis for this Court ruling on domestic policy choices and, we say, policy failures? The basis, Members of the Court, is the harm and the risk of harm that

derives from Switzerland's failures and the obligation to prevent, protect and correct. And this, we say, is not an extension of the Court's jurisprudence, but an application of its established jurisprudence as the Netherlands Supreme Court held in *Urgenda*. And the reason is that it is the effect of the policy that this Court is being asked to rule on. Not some kind of theoretical analysis of the policy itself.

Now, I mentioned to you this morning that applying Switzerland's current policy and dividing the remaining global carbon budget on a *per capita* basis, Switzerland will use up its *per capita* entitlement to carbon - and we say *per capita* of course is wrong - but its *per capita* entitlement to carbon by 2034. Now, after that date, two things can happen. It either goes to net zero immediately, or it starts to use other countries' carbon attributed on a *per capita* basis. And this, obviously, is not just unfair, but increases significantly the chances of an overshoot of 1.5. We effectively say that in examining these policy decisions, i.e. the policy decision to use up its *per capita* entitlement to the remaining carbon budget by 2034 is the same as any policy that affects life, health, public safety for example, if a State did not regulate the kind of chemicals that were used to clean water. And you would look at that failure to regulate putting its citizens at risk of poisoning from water. But one can think of numerous examples, health and safety law, medical health, etc.

The second question was from Judge Seibert-Fohr: Are we challenging or complaining about the failure to take action in the past or the future? What exactly do we say is in breach of the Convention? We say, Members of the Court, that the breach is now. And it is the failures that I outlined in, I think it may have been, section three of our submissions: the failures as regards the setting of an emissions target for 2020, 2030 and 2050. Those targets are woefully inadequate, as I explained. Not taking a fair share approach but taking the most simple approach. As I have said: by 2034, applying that approach on a *per capita* basis, Switzerland has no more carbon. And after that, it takes carbon from other countries. We also complained about the failure to meet its own inadequate 2020 target. Its failure to legislate at all for its 2030 and 2050 target. And its failure to carry out any due diligence at all in relation to meeting a 1.5° pathway.

Thirdly, Judge Seibert-Fohr also asked about the EU 55% emissions reduction set, and to what extent it would be sufficient. And that is for 2030. So, we know that the Swiss target is 34% domestically for 2030 and the commission target is 55%. But I should make it clear: that is an average target for the EU. Denmark has set 70% for 2030, Finland 60% for 2030 with carbon neutrality in 2035. Germany has set 65% emissions reduction target by 2030, all of which will be domestic reduction emissions. Now, Switzerland should obviously be at the level of the EU and, one might say, certainly at the level of Denmark or Germany. But I should also say to the Court that the CAT, which you have before you, says that the EU measures, percentage reduction measures, are not sufficient to protect. Nonetheless, it would still be a lot better if Switzerland at least was attaining those levels as every bit of emission reduction helps. And 34, as compared with 55 or even 70 for 2030, is an extraordinary difference in quantity.

So, the fourth question: How does the Applicants' status vary from others and where do we draw the line in relation to that? Now, the mortality risk for elderly women is significantly higher. We set out a table in paragraph 15 of our observations at page 6, and this is undisputed by the Respondent. It is quite possible that others may be vulnerable. They may be vulnerable separately. And this Court needs to determine that question in another case. But in our case, there is no question, and indeed it is not contested, that the Applicants are vulnerable individuals.

Judge Zünd also asked about why women are at a higher risk than men. I just refer you again to the same table, paragraph 15, page 6. And also to document 25, table 1, page 28, which shows that in the heatwave of 2018, the difference between men and women over 75 dying from heat was a 6.1% increase in female mortality, and a 0.7% increase in male

mortality. And I am afraid I don't have the expertise to give you any reasons for that epidemiological fact. But that is the position, as a matter of evidence before you.

Turning then to Judge Bošnjak's question: If we can assess a regulatory framework, how do we do it? And what principles of international law do we apply? And to what extent would we assess pathways and how should we do that, i.e. how does it play out? Members of the Court, we've set out from paragraph 37 onwards of our observations some more detailed explanation of this complex question. And I would also urge the Court to read the Rajamani report, a group of eminent scientists in the IPCC, and that will provide you with more detail. The international law principles apply, in the same way that this Court has always set, by virtue of this Court's case law and of course the Vienna Convention on the law of treaties.

This Court has frequently looked at international agreements between parties to ascertain and interpret convention obligations. In my submissions this morning, I started by showing you that what Switzerland is actually doing comes nowhere close to even the average pathway towards net 0 or 1.5, the pathway that has been laid down. And I showed you that by reference to the target dates of 2020, 2030 and 2050. But one must then go on and look at the international environmental law principles to ascertain what the principles of fairness require in relation to the emissions reductions by individual States. In looking at fairness, one looks at three essential elements.

There are many other elements, but essentially three. First equality, second historic emissions, and three capability. That effectively comprises the concept of common but differentiated responsibilities. And for a truly fair distribution of this small remaining carbon budget before the temperature limit is exceeded, it is essential that historic emissions and capability are taken into account.

It is clear that Switzerland has never carried out any assessment at all by reference to fairness. This is clear from, first, the point I made: looking at a budget on a purely *per capita* basis, it is used up by 2034. Secondly, that the Government does not come before you with any analysis, assessment, or explanation as to this extraordinary position, nor as to how it intends to meet a fair contribution to emissions reductions. And thirdly, there are two essential reports: the Rajamani report and the CAT report, where such an assessment has been carried out by reference to all the science. So, there are effectively assessment reports like the IPCC report that bring all the science together and analyse them.

Those reports conclude that Switzerland, to do its fair share to reduce global emissions, must reduce its emissions at the 1990 level. So, you take the emissions of Switzerland at 1990 and Switzerland must contribute an emissions reduction of between 160 and 200% of that quantity. And it must do that either by increasing emissions reductions within Switzerland, for example by planting trees, and/or by assisting other countries to reduce their emissions, for example through finance or renewable projects. It follows from that that Switzerland cannot argue that a 50% reduction by 2030, with only a 34% domestically, is compatible with the concept of fairness. And in truth, the arguments made by Switzerland in relation to fairness have nothing to do with principles of international law. Rather, they say it would be too expensive for Switzerland to continue to reduce its emissions domestically. But that, Members of the Court, is not a principle of international law. And we say that this shows that the indicators that Switzerland has used are not in line with international law. It also says, well we only emit a small share of global emissions, so we are not really responsible, and we can't be expected to do more. But the only relevant metric in that context is *per capita*. And I've told you what that position is in relation to that.

But more crucially, every country, in terms of the percentage of global emissions, emits a small percentage, except the huge emitters like China, which of course doesn't have the historical emissions although it has overtaken recently America and the United Kingdom by reference to its early industrial revolution. And of course, if every country argued it, the whole

approach breaks down.

Finally, just to turn to the question of pathways - it's a complex question. The Swiss Government claims that it is following the average pathway. Now, the average pathway, it says, puts it on 50% by 2030. In fact, that is not correct. If you apply that pathway reduction to Switzerland - say you just move the graph effectively onto Switzerland, it requires Switzerland to reduce domestic emissions by 60%. And that is because the pathway includes all the countries and all the different emission methodologies and different emissions from those countries. And when you drill down into the detail of the individual countries and regions, obviously it is highly technical, the answer for Switzerland is 60%. And you find that at paragraphs 45 to 47 of the observations, and also in the CAT and Climate Analytics reports.

We would say, in relation to this, that for the purposes of general measures, this Court may consider that my explanation is inadequate and that this Court would wish to hold an expert hearing. And hear from the people who really understand the detail of how this actually works, because as I say, it is complicated.

Finally, the Government submitted some document submissions yesterday and I haven't had time myself to read them, but I am told from those behind me that an argument is made that all of this is just subjective. Now with the greatest of respect, Switzerland has not assessed and does not claim to have assessed how il will meet the 1.5 pathway. By contrast, CAT, Climate analytics and Rajamani are the world experts who have brought together all the scientists and economists and experts on this issue. Their analysis cannot be accused of being subjective.

My sixth answer to Judge Ravarani: I was asked whether there are any other domestic rights in addition to Article 10 of the Constitution or Articles 2 and 8 of the Convention. There are. There is Article 73 of the Constitution, which is the sustainability principle, and Article 74 precaution and prevention principle.

And then, I was also asked: Can the Applicants envisage more detailed measures i.e. not such general measures as we have submitted? Now, as I said this morning, in 2014 the IPCC said that OECD countries should produce a negative emission, that is an emission of minus 106% to minus 128% by 2030. CAT and Rajamani - we are now nearly a decade later - analyse that that figure is between 164% and 198% lower than 1990 emissions. Now, we recognise that we have only asked for negative emissions. We have not specified minus 108 or minus 150. And the reason for that is that we recognise that it is extremely difficult for this Court to drill down to that level of detail. And that is why we have not been more specific in asking for Rajamani's or the CAT numbers. And as I said, this Court may wish to do so and may wish to hold an expert hearing for that purpose.

Turning to Judge Pavli's question: Why can Switzerland not rely on international carbon reductions? And why does it matter? I would refer the Court to paragraph 47 of our observations. The IPCC 1.5 pathway requires net negative essentially, but it is obviously not fair if countries essentially rest all their emissions reductions efforts on purchasing those efforts outside of their jurisdiction. And there is an irony here in Switzerland relying on foreign reductions but refusing to accept foreign consumption as relevant to their baseline. But in any event: they said it would not be fair and it would not, also, be workable, because for the purposes of climate change, serious, complex, practical questions, as the Respondent has explained to you, need to be dealt with. How do you make transport electric? How do you change gas cooking to electric cooking? These are long term policies that require actual implementation that takes time not just at a legislative level, but at a finance and practical construction level. These are enormous social, economic and ways of life changes that the State needs to move quickly to do. So it's no good, in 2049, saying: «We will be net 0 tomorrow.»

The ninth question was from Judge Guyomar on the question of internal standing. Now, we say that the question of internal standing is not essentially relevant to this Court, because this Court is simply concerned with the victim test under Article 34, which is based essentially on direct impact or direct effect. And it's interesting, from an English lawyer's perspective at least, to see that in Switzerland there is a concept that you have to be more affected than somebody else in order to have standing.

Now that does not exist in the English jurisdiction, nor in the Strasburg Court. If in fact water was poisoned due to failure to adopt measures by the State, and everybody was poisoned, this Court would not say «no standing». I am just going to touch quickly on the connected and also on the intergenerational issue. The intergenerational issue does not arise in this case, but it may of course arise for the Court in another case.

And President O'Leary's question was addressed primarily at the Government, but raising the Gorraiz's case, our primary submission on this is that the claim that this is an association rather than 2038 individuals is a claim of form over substance. And that here, you have 2038 individuals which, the Respondent accepts, all fall within in the higher risk category. And so, our primary submission is that this is what «group of individuals» in Article 34 was intended to address. So, we submit that it is not necessary for you to change your case law. We certainly say that the Aarhus Convention means that you should read «group of individuals» to include this group of individuals, albeit it happens to be under an umbrella organisation which has the title of association. And if you are not satisfied with that interpretation, then we would make the alternative submission that yes, Aarhus requires you to go further and enable environmental organisations to bring complaints before you, at least in contexts such as this. Those are my submissions.

**President O'Leary:** Thank you very much Ms. Simor. Do any of the Judges wish to ask for clarifications of the answers which were given by the parties? Judge Seibert-Fohr.

**Judge Seibert-Fohr:** Thank you very much Madam President. I thank the Applicants, and also the Respondent Government too, for the answers submitted. I would like, only to follow up, on my question related to the measures sought. If the Applicants are claiming that the Respondent State has not sufficiently increased the emissions reductions for 2030 in order to achieve the 1.5 aim of 2050, I am asking myself to what extent would such reduced emissions effectively reduce the Applicants' health risks. The reason for my question is as follows: lower emission rates will not reduce the greenhouse gases which already have been produced over time in the past. So, they will remain in the atmosphere if I understand correctly. So, aren't the heatwaves unlikely to be reduced in the years to come by these emissions reductions? This is why I had asked about alternative measures. Thank you.

**President O'Leary:** Ms. Simor, would you like to respond?

**Ms. Simor:** Yes. I am grateful for the question. Our submission on this is that every reduction counts, but also that we are essentially challenging a violation that should not have taken place. So, if the measures had been in place, the reduction would have gone down significantly. And the Judge's question is very closely connected with the general causation question, which is the drop in the ocean point. Because essentially the same argument could be made that even if Switzerland had done the right thing, it actually wouldn't really impact on global warming because it is only X% of the emissions globally. And our response to that is that in recognising globally the fact that States cannot, alone, deal with this problem, 197 States signed up to the Paris Agreement and committed to highest possible ambition, specifically for developed countries, in order to reach this 1.5 temperature limit. And therefore, we urge on the Court the same analysis as was set out by the Dutch Supreme Court to this question that mutual trust is essential, that every country must do their bit. And the Convention must be interpreted in that light. Because only then is there any prospect of

preventing the threshold from being breached. And if it is said «well, it's only a drop in the ocean», then the same answer comes from every country and causation automatically follows. So, it is novel, this case is novel to that extent. And the way that the Dutch Supreme Court and the German Constitutional Court dealt with that question, we say, is the correct response.

**President O'Leary:** Thank you very much Ms. Simor. I would like to specify that the Swiss Government provided written answers to questions which the Court had posed earlier during the month of March. The Applicants only received copies of those written responses this morning. I will admit the responses to the file, but the Applicants will have two weeks in which you can respond to those written answers if you need. However, this is not an invitation to reopen the written and oral phases of the proceedings. We have now come to the end of the hearing. I thank the parties very warmly for their submissions and for their answers to the many questions posed by the Court. The Court will now deliberate on the admissibility and the merits. The Judgement will be delivered at a later date and the parties will be informed of the date of delivery. I declare the hearing closed.

[End]